

TAPED

The License Commission held a Special Meeting at 6:00 p.m. on Wednesday, August 10, 2011 in the Little Theatre at Brockton High School, 470 Forest Avenue. Present were Chairman Joseph P. Kelley; Commissioners Paul D. Sullivan, Bruce G. Dansby, Joshua J. Wood, Scott H. McDuffy and Alternate Kathy Kenney. Also present were Assistant City Solicitor Kate Feodoroff, License Agent Captain Emanuel Gomes and Administrative Assistant Bonnie Tucker.

At the beginning of the hearing, Chairman Kelley asked that anyone wishing to speak to please sign in. He indicated that after he reads the proposals on the agenda, he will ask for input from the Police and will then ask to hear from any elected officials. After that he will call on individuals as listed on the sign in sheet.

Chairman Kelley then read the following:

All holders of licenses to sell alcoholic beverages pursuant to M.G.L. Chapter 138, Section 12:

Public hearing for the purpose of amending the Brockton License Commission Regulations.

PROPOSED AMENDMENTS

(a) Add the following provisions as Rule #8B which will apply to Restaurants (All Alcoholic and Wine and Malt), Hotels, General On-Premise and Clubs:

HOLDERS OF LICENSES WITH A 2:00 A.M. CLOSING HOUR:

- 1. No patrons are allowed admittance after 1:00 a.m. Any patron leaving the establishment, which includes going outside to smoke, is not allowed to re-enter after 1:00 a.m.**
- 2. All Entertainment must cease at 1:30 a.m. (Notice of this provision is being sent pursuant to M.G.L. Chapter 140, Section 183A and the public hearing will be held accordingly)**
- 3. Last call must be made no later than 1:45 a.m.**

A violation of any of the above will result in an automatic one hour rollback of the closing hour as well as any other sanction(s) deemed appropriate.

(b) Add the following as Rule #23 to Restaurants, Hotels, General On-Premise and Rule #26 to Clubs:

Holders of Section 12 licenses (Restaurants, Hotels, General On-Premise and Clubs) shall have allowable capacities reviewed at the time of annual renewals and may be subject to a downward adjustment if justified by reviews.

- (c) **Add the following as Rule #24 to Restaurants, Hotels, General On-Premise and Rule #27 to Clubs.**

No Licensee shall permit any “Under 21 Night” and/or “18 Plus Night” or similar type event in any licensed liquor establishment.

Chairman Kelley then called on Capt. Gomes who introduced himself to those present. He indicated that the basis for the meeting this evening is in response to a report he had filed with the License Commission. Capt. Gomes then reviewed his Memorandum of March 21, 2011, which stated that the Brockton Police Department has had to deal with a number of problems at licensed establishments and that most problems have to do with establishments that have 2:00 a.m. closings. From a police perspective, the problems encountered indicate that corrective action needs to be taken in order to curtail some of these problems. He indicated that he filed the memo in March because the good weather was coming and his fear is that the tribulations will only increase as the good weather nears. He reviewed that his memo further indicated that recent incidents have led to the deployment of every single officer they had working. They also have outside agencies here and have put on additional patrols on weekends. He stated that the situation becomes even more perilous when police and EMS services are tied up at liquor establishments at closing time leaving no one to send to respond to other calls, sometimes for hours.

Capt. Gomes stated that based on these issues and short of ending all 2:00 a.m. licenses, he made the following recommendations for the License Commission to consider:

The first would be that no patrons be allowed to gain entrance into an establishment after 1:00 a.m. He explained that this would eliminate the rush of patrons coming from local establishments as well as from the neighboring communities that do not have 2:00 licenses. He indicated that this stipulation had been placed years ago but it was never put in writing and was a so called “gentlemen’s agreement” making it unenforceable.

He reviewed that he also requested that the hours on entertainment licenses be reviewed and that they be required to end no later than 1:30 a.m. At the present time, some licenses are allowed to go to 1:30 a.m. and some go until 1:45 a.m. By having all entertainment end at 1:30, it will allow for a more gradual exiting from some of the establishments and would make the ending time uniform.

He reviewed that his next recommendation would be to require last call no later than 1:45. He stated that at the present time, some bars serve right up until 2:00 a.m. and when the alcohol is served and the entertainment plays right up until 2 a.m., there tends to be a mass exodus which turns into problems.

Capt. Gomes stated he is requesting that the so called "Under 21" nights not be allowed. From a police perspective, it is unenforceable for police as well as the License Commission. He indicated the bracelet systems do not work and are very easy to defeat. As license holders know, it is impossible to monitor everyone who is under 21 in the establishments.

He then stated that he would like for the allowable capacity to be tied in with the renewal of the license. He indicated that as licensees are aware, the Building Department can give an occupancy number which is different from that of the License Commission. He indicated that during the year, a bar could do some alterations so the footprint of the place changes but the numbers don't and the License Commission has the final approval over the premises.

Councillor Thomas Brophy, Councillor-at-Large, stated that he supports the proposals of Capt. Gomes and the Brockton Police Department and is in favor of the amendments being adopted. He indicated in his opinion all licensed establishments in the City should be rolled back to 1:00 a.m. because the surrounding towns do not have 2:00 a.m. licenses and they are seeing Brockton becoming a magnet for problems between midnight and 2:00 a.m. He stated he thinks this is a good test to see if these amendments will address some of the problems that have occurred at some of the establishments and he recommended the board adopt them.

Chairman Kelley made clear for the record that this hearing is not about a rollback of the hours from 2:00 a.m. to 1:00 a.m. and they are hearing input this evening but will not be making a decision tonight.

Councillor Dennis DeNapoli, Ward Five, asked the Commission who will be enforcing the measures if they are implemented. He asked if it will be the owners' responsibility. He indicated he knows that some of the establishments who have been rolled back are already bound by this but some do not have police details and some have private security. He indicated he doesn't think that the Brockton Police Department has enough manpower to go around and check on this. Chairman Kelley informed Commissioner DeNapoli that the Commission approves license agents each month and they check on the licensed establishments.

Attorney Feodoroff stated that there has to be internal monitoring and this would be implemented in the same manner as required for all regulations. She stated that at the present time, the license agents go out and determine whether there are violations and this proposal will be enforced the same as any other rule. She stated that everyone is responsible for following the rules of the license.

Councillor DeNapoli stated he is not in favor of rolling everyone back to 12:00 and there are many establishments that run good businesses. He indicated there are only a few establishments in the City that cause problems. He stated he was not aware that there are establishments doing the Under 21 events. He supports what the Commission is trying to do.

Councillor Tom Monahan, Ward Two, indicated he understands that with the proposed changes, they are trying to get rid of the element which is coming into Brockton and causing the problems. He stated he would like to hear what the bar owners have to say and what impact there will be for their businesses. He indicated he thinks not allowing anyone in after 1:00 a.m. is a good thing but he does not know if that will stop the problems.

With no other City Officials present wishing to speak, Chairman Kelley called on the individuals who had signed the list.

The first person was Attorney Louis Cassis, 18 Russell Park, Quincy, who stated he represents Frank's of Brockton. He thanked the Commission and indicated he feels it is important that the bar owners position be heard on this as it affects their livelihood. As far as Frank's, he stated the proposed change is ill-advised. He stated we are currently in the worst recession since the 1930's and restaurants and bars have closed all over the commonwealth. People are not spending money the way they used to and the strain on the restaurant and bar owners' revenue has been massive in the last few years. The number of foreclosures and bankruptcies will attest to that. He stated the last hour, from 1 to 2 o'clock is very important and it is a high percentage of the amount of alcoholic beverages and entertainment patrons that come in to Frank's. He feels they will lose that hour if people find out they can't leave for a cigarette and they probably won't come at all and according to the proposed regulation, once that door is locked you can't go outside and come back in. He used as an example that Ireland had a smoking ban in their pubs and business dropped almost fifty percent. He stated that people who smoke do not want to go to a place where they can't smoke and if they can't go outside to smoke they are not going to go there at all. He stated it is a major loss in revenue at Frank's and other establishments if this rule is put in the way it has been written.

Attorney Cassis indicated he also feels that if people think they have to get there by 1:00 a.m., they will race to Brockton to get in before 1:00. He stated that since Frank's has had its entertainment license, there have been virtually no problems at all. He stated he wanted to point out that one size does not fit all as in this case. If the Brockton police are having a problem with one, two or even a half dozen establishments, there are ample remedies to take care of the problems such as modifying, revoking suspending or rolling back the hours which has almost no appeal. He asked why the Commission would want to put in a regulation that affects the people who are doing a really good job and having no problems. He asked why the good businesses should get the same penalty as the person who is causing the problems. He indicated that the people in the room this evening are probably the ones that are doing the best job and they are being lumped in with the people who are doing the worst job, having the most problems and causing the problems to begin with. He stated that if you want to address the problem you should address it with the one who is causing the problem and not the law abiding bar owners and restaurants. Attorney Cassis stated there is no question in Frank's mind that this will be a revenue loser and that he will lose additional revenue that is already down because of the recession. He stated that Frank's is one of the largest contributors to various charities in Brockton and he has been the entire time he has been at that establishment. He

has been a very good corporate citizen and has proven himself over the years to be such. The drain on his revenue will most certainly have a negative impact on the charities he supports.

In closing, Attorney Cassis stated that Frank's was the subject of a successful lawsuit when he got his Entertainment license and pointed out that there is an Agreement for Judgment in place that dictates his hours of service and that any regulation passed here can not be applied to Frank's as it would violate the Agreement for Judgment. He stated he doesn't think that is an important argument from the policy standpoint but it is an important argument from Frank's point of view. He stated that other cities and towns have tried these types of modifications to licenses which don't seem to solve any problems. He stated that if you there is going to be a problem it will just move it forward by rolling back the hours. He stated there are bad bars and bad people and bad things happening and instead of happening at 2:00, they will happen at 1:00. With a good bar owner or a good restaurateur who doesn't have a problem, the problem that didn't happen at 2:00 isn't going to happen at 1:00. Attorney Cassis stated he feels they are painting with too broad of a brush and they are asking too much of the people who have done everything correctly and that the Commission should focus their attention on the individual bar owner who needs the police and commission's attention.

Attorney Feodoroff asked Attorney Cassis if he has examples of the cities or towns that have implemented policies which have been ineffective. Attorney Cassis stated he cannot get into specifics as some of these places involve clients of his but what he is trying to explain is that when closing hours are moved up, there are as many problems, they just happen earlier. He stated that if they look at statistics, they are not going to find an appreciable change.

Attorney Feodoroff stated that she had checked with one of the cities up north that had done a full rollback to 1:00 and the solicitor's office had explained to her that they had seen a dramatic decrease in violent incidents. Attorney Cassis stated that is perception and if she tested this with convictions in Court there would not be much of a difference. He indicated it could have been the solicitor's opinion or impression but he doubts it would stand scrutiny.

Councillor Todd Petti, Councillor-at-Large, stated he would like to be recorded in favor of the recommendations made by Captain Gomes.

The next person to speak was Antonia Cardoso, owner of Malu's Lounge at 23 Montello Street, who stated she thinks she is the only one with a 12:00 license. People come to her place at 10:00 and she has to start kicking them out at 11:30. She stated she has no business because no one wants to leave so early.

Chairman Kelley stated he feels this is a much different issue than the ones being addressed this evening and that is how her license reads and at some point she would have an opportunity to come in and apply for something different but not at this meeting.

Skip Sergio came forward and stated he would like to thank the License Commission for giving him the opportunity to express his views on this subject. He indicated he has held about ten liquor licenses over the past fifty years in the City of Brockton and surrounding towns. He stated he wants to go back over the thirty years that 2:00 licenses have existed and stated there have been the same problems over and over again. He indicated many people do not realize that a 2:00 a.m. license is a privilege and it can be given out and taken away. Too many people think they have a right to have the 2:00 license but if you deserve it you get it but if you foul up you lose it.

Mr. Sergio stated that the intention of the 2:00 a.m. license was to take care of the customer already in the establishment. He stated 1:00 a.m. should be the cutoff time for admitting anyone. People coming in after that are not your loyal customers and they are coming in with foreign loads. If they were your loyal customer they would have come in earlier. He stated that the 2 a.m. license helps the people working the later shift such as nurses and police officers coming in after work and being given a chance to relax. Mr. Sergio stated that from a safety point of view and as a former Brockton Police officer, he looks at the situation from both a bar owner and public safety point of view. He stated that by not allowing admittance after 1 a.m. and by turning the Entertainment off at 1:30 a.m., the last call should be announced when the music stops. He stated it is impossible for someone to get a drink at 1:45, drink it down and go out and act normally by 2 a.m. He indicated that by stopping new customers from entering after 1 a.m., the bartenders and wait staff know the customers who have been in the establishment and how much they have been drinking and whether they should be served more or not. He indicated that the bar owner might lose a few dollars by stopping the admission at 1:00 but it will save them a lot of grief.

Mr. Sergio stated the police can't do everything and there has to be a good compromise. A lot can be handled in house by complete observation and knowing what is going on. The bartenders and waitresses can hear what is going on and can tell if there is anything going on. He stated the thing is not to let them in after 1:00 so the help can take care of who they have been serving all night long and you can cut down on a lot of problems and give the police a break.

Frank Casell was then next person signed in, however, Mr. Caswell stated he did not wish to speak.

Sam Sergio stated he, too, did not wish to speak.

The next person on the list was Sheila Angelo who stated she wants everyone in the room to know that Joe and she have been locking their doors at 1:00 for well over a year and she indicated that hasn't worked for them. Other than Frank's and Westgate, she thinks there are not too many bars that have a lot of out of towners that come to the City of Brockton. She stated that people do not even want to drive in the City of Brockton during the day and to just read the comments in Brockton.com whenever there is a shooting. They are all negative about

Brockton. Mrs. Angelo stated that if there is anyone who loves Brockton it is Joe Angelo and he gives his life to Brockton. She stated that is how she feels and people can disagree with her but she will stand up and say her piece. She stated that they locked their doors at 1:00 for a year and it didn't change a thing. They have always had a detail officer on Friday and Saturday along with five security people. Whenever there has been a fight they have called police and she thinks Capt. Gomes will back her up for that. They have never been cited for problems where they didn't call the police but when something happens outside their bar they are being held responsible. She asked the Commission if they are going to tell the bar owners present that they are going to be held responsible for something that doesn't happen inside their bar but that happens outside of their bar because that is what was done to them. She stated they accept it but she wants to know if the new rule for the License Commission is that the bar owners are going to be responsible for not only what happens on their premise but off of their premises because if it is, that is a whole different ball game. Mrs. Angelo stated her other question for the commission is the capacity issue because she has looked up the State Law. She indicated that she wished there was someone present from the Building Department because when they made their changes, they didn't ask for the occupancy load with tables or without tables but someone from the Building Department put that up on their wall and gave them the numbers based on either because the chairs could be removed.

Chairman Kelley asked Mrs. Angelo to make her case. She stated that State Law bases the number of people on square footage and the Chairman informed her that they are prepared to defend that with the rules of the License Commission but not at this hearing. He stated that the proposal is to be able to review the capacity at renewal time. Mrs. Angelo stated she will pass this along because they were changed from 400 to 160. Chairman Kelley stated that if the Building Department does this, the License Commission has to approve the change at a hearing. She asked if they could ask for a new hearing and was informed she could with the renewal of the license.

Kevin Gill, owner of Owen O'Leary's, 1280 Belmont Street, came forward and stated he is primarily a restaurant and sells way more food than alcohol. He stated that when the meals tax went up 25 percent and then raised another 15 percent to 40 percent, he had a meeting with his help to figure out a way to adapt. They have been open for 18 years and he never wanted to chase the 2:00 license dollar. When the taxes went up, his sales dropped and they decided to stay open until 2:00 a.m. They monitored their customer base beginning last August and he stated there was a learning curve. He had the foreign loads coming in from the towns. He met with his help and told the bartenders and waitresses that he was staying open until 2 a.m. for them. The only people they wanted in were the restaurant workers, the police and hospital workers. Since the first six weeks, they have not had any problems. He stated he does not agree with the smoking issue but he could perhaps build an outdoor deck. He stated that he keeps his kitchen open until 1:30 which is the entire time he sells alcohol. People from the V.A. Hospital come in just after 1:00 and it would be nice to be able to take care of that customer. Mr. Gill stated he disagrees with the way the proposal is for the 1:30 Entertainment and 1:45 last call. He stated if his customer comes in and orders a drink at 1:30 and the next thing the

entertainment is stopped and the lights go on, it is not the same atmosphere he came in to enjoy. He likes to leave his entertainment on until 1:45 and his lights don't go up until 1:50 a.m. and he indicated what works for a nightclub does not necessarily work for a restaurant or pub. He has not sold a shot in his establishment since he opened. Mr. Gill explained that when you open a business you put everything out there and want to stay in business and provide for your family. He opposes the rule change.

been discussion in the past regarding the 2:00 license. To him, this seems like another approach to try to circumvent the last meeting a couple of years back. He stated he is empathetic with Capt. Gomes and the difficult challenges the Brockton Police Department has to face, not just with the 2 a.m. license and the bars in the City. He stated he is reminded of being in school and being kept after school because of two kids that were misbehaving. He stated that the Brockton Police Department and the License Commission clearly know the problem places that are out there. He commented that they have done a remarkable job in the past in disciplining the establishments that require discipline and he urged them to continue on that course. He stated that to punish everyone for the sins of a few in any walk of life is just incorrect. He stated that the Club National is very supportive of the City and makes donations and they wish to continue to do this. Many of their members come in after midnight, some who work until midnight and some who work later and cannot get there until 1:10 or 1:15 a.m. It will be a disservice to their members if they are not allowed to let them in after 1:00 a.m. For these reasons he is against changing that particular proposal. He stated as it relates to the occupancy levels at renewal time, in their particular case, occupancy levels determine whether a sprinkler system is required. If the occupancy level is over 100, a sprinkler system is required and he reminded the members of the expense involved. He urged some type of restraint in rolling back the occupancy levels just because so many places have had to incur the cost of sprinkler systems that were borderline of the 100 mark. The Under 21 Nights do not impact the Club National and in his opinion it is a great rule to institute.

Chairman Kelley stated he wanted to clarify Mr. Pickett's statement suggesting this proposal is another way circumventing the prior meeting on the rollback of the hours. He explained that this meeting has absolutely nothing to do with the meeting held several years ago and at that meeting there had been a motion to table. Chairman Kelley indicated that if the Commission had any intention to consider a rollback, they would have taken it off the table and acted on it which is not the intention of this board. He explained that the board is trying to assist the police department with their recommendations going forward. He further stated that as far as the occupancy loads, a lot of this is house cleaning and it has been found that the Building Department has issued an occupancy at licensed premises which is different from what has been approved by the License Commission. He stated they are not looking to put anyone into a financial hardship. Mr. Pickett thanked the Chairman for the clarification.

Chairman Kelley stated that is the last name on the sign in sheet and asked if there was anyone else wishing to be heard.

Lou Asack, 68 Field Street, the owner of Max's Blues Café stated that when they opened, they had a limited capacity and limited entertainment. They have brought in hard core and regular rock'n roll. He stated that a lot of the kids that play in the bands are under 21 and their families come in to see them. He explained that many of these kids do not drink or smoke. He stated that Capt. Gomes can attest that he has never had a call to Max's. He stated that it is his opinion that if there is a problem in a place because of age then that place should be penalized. In his opinion they shouldn't be punished if they have not done anything wrong.

Councillor Monahan stated he sees the main issue is with the people coming in with foreign loads who are causing the problems. With the way the economy is, he stated he feels the compromise is to not allow anyone in after 1 a.m. but to allow them to continue to be open until 2. He asked those present if they would find this acceptable and commented that perhaps something could be done to address the smoking.

Attorney Feodoroff asked to address Mr. Asack's comments and explained that the 18 Plus night is a specifically advertised event to attract underage crowds. It does not prevent someone who is under 21 from going into an establishment. She indicated to have an under 21 restriction across the board would be impossible. Chairman Kelley suggested that any questions concerning something like this should be directed to the License Commission office.

Francisco Cardoso stated he works at Malu's Lounge and used to manage Tamboo. He stated the City is a great place and many people who live in the City want to stay here and each place has to be responsible for their own.

Councillor DeNapoli stated that he is working with Tamboo to build an outside deck onto the old Sweeney's Bar. This would be a closed area and they should be allowed to go back inside because it is going to be a designated patio. He stated that he feels the Commission should consider modifying the amendment to allow people to go out and smoke and be able to go back in. He feels they shouldn't punish the good places.

Chairman Kelley stated he feels this is not an issue of allowing people to smoke or not to smoke, it is to give the police department a little assistance in monitoring who is going in after 1:00 a.m. but he indicated everything is on the table to look at and he appreciates that. He then asked the other members of the Commission if they had any comments or questions.

Commissioner McDuffy stated he appreciates the owners and councilors coming in and giving their opinions and it will help in making their decision.

Chairman Kelley again indicated that they have no intention to vote on this tonight and will consider all of the information presented this evening. He also stated that anyone is welcome to contact the office with more suggestions or comments.

A motion was made by Commissioner McDuffy to table the matter which motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

Chairman Kelley thanked all those present for attending the meeting.

2. Any other business to properly come before the Commission.

With no further business to come before the Commission, the meeting was adjourned.

Respectfully submitted,

Joseph P. Kelley
Chairman

APPROVED:

Paul D. Sullivan, Commissioner

Bruce G. Dansby, Commissioner

Joshua J. Wood, Commissioner

Scott H. McDuffy, Commissioner

Fred Fontaine, Alternate Commissioner

Kathy Kenney, Alternate Commissioner