

TAPED

The License Commission held a Special Meeting at 6:00 p.m. on Thursday, May 30, 2013, in the G.A.R. Room at City Hall. Present were Chairman Scott H. McDuffy; Commissioners Bruce G. Dansby, Joshua J. Wood, Kathy A. Kenney and Alternate Catherine B. Holbrook. Also present were License Agents Lieut. Paul Bonanca and Officer Scott Uhlman; and Adm. Asst. Bonnie Tucker.

1. **BROCKTON LICENSE COMMISSION RULES AND REGULATIONS** – Review and discussion for proposed changes and/or modifications to the current regulations in the following license classifications:

All Alcoholic Restaurants/Wine and Malt Restaurants
All Alcoholic Clubs
All Alcoholic Hotels
All Alcoholic Package Stores/Wine and Malt Package Stores
General On-Premise
Innholders and Common Victualers

After calling the meeting to order, Chairman McDuffy stated that the purpose of the meeting is to review and make recommendations for possible changes to the current Rules and Regulations. Copies of the rules had been sent to each member so they could be reviewed beforehand. He asked for everyone's input and invited Councillor Jass Stewart who was present to participate in the discussion.

Commissioner Kenney began and stated she has noticed that when hearings are held, the issue of not calling the police comes up frequently and it results in the licensee being found in violation of allowing an illegality or disturbance. She reviewed that the rules do not mention anything about being required to call the police for any kind of disturbance. A call to the police may seem automatic to the Commissioners but not to the licensee. She suggested that an amendment include the wording that any disturbances in or near the premises should be reported as such to the Brockton Police Department.

During discussion, Commissioner Kenney stated that licensees have been charged not just because they allowed an illegality but because they did not call the police. Commissioner Wood reviewed that is an ABCC Rule and the wording states that they allowed an illegality and there could already be a ruling on the issue. Chairman McDuffy suggested that Attorney Feodoroff could research if there is any case law on this.

Chairman McDuffy stated that any changes or recommendations will be researched by the Law Department and/or any other applicable department prior to finalizing any changes.

With regard to Commissioner Kenney's suggestion, Chairman McDuffy indicated it will be looked into and it seems like a good idea to him.

Commissioner Wood recalled that an issue had come up concerning Rule 21 (Restaurants) and he read the last sentence which states, "No window or door facing a public way shall be obstructed by any screen or other object extending more than five feet above the level of the

sidewalk on which the establishment abuts, but in no event shall any screen or obstruction prevent a clear view of the interior of said premises.” He recalled that there were different interpretations of this rule at the time.

Lieut. Bonanca suggested that the rule be amended to state, “ No window or door facing a public way shall be obstructed.”

During discussion, Councillor Stewart stated that many businesses use their window space for advertising and in it could potentially hurt the business if they are not allowed to advertise at all. Officer Uhlman stated that this would apply to liquor establishments and window space is regulated by the Building Department for other establishments.

Commissioner Wood then made the suggestion that the wording be changed to read, “No window or door shall be obstructed by any screen or other object such that said screens or obstructions prevent a clear view of said premises. This wording was agreeable to all.

Chairman McDuffy asked if anyone else had any other areas to discuss and they did not. He then indicated that he had a number of proposals to review. He stated he has been reviewing the regulations for some time and feels things have to be clarified and modernized.

He then reviewed Rule #22 which reads, “All doors and windows shall remain closed at all times from 12:00 noon to closing. He indicated he has been to establishments in other communities where the doors and windows are allowed to be open. He stated he understands there must be certain regulations but he stated that provided the windows or doors do not open out to interfere with people walking on the sidewalk, he feels there should be a way to either change the regulation or eliminate it.

Officer Uhlman reviewed ordinances that prohibit certain structures that project or obstruct a street or sidewalk. He stated the Town of Wellesley requests openings to the outside to be protected against the entry of insects, rodents or other threats to food safety. He indicated that the Board of Health might have rules that would supersede the Commission in this regard.

Chairman McDuffy stated he would be in favor of a change in this rule but it will have to be looked into by the Board of Health.

Lieut. Bonanca stated that he had attended a community meeting last evening at the Arnone School and one of the residents had concerns with people entering and leaving Bar Dinos and disturbances there. He questioned the impact the entertainment and music would have to a neighborhood if doors and windows are allowed to remain open. Officer Uhlman suggested that the noon time hour could be extended to a later time but if there is music playing with the windows and doors being open, the noise will be much louder to the neighborhood. Chairman McDuffy suggested that the time be extended to 9:00 p.m.

Commissioner Wood stated it is not only the noise from the entertainment but the amount of noise that comes from a mass of people. If the windows are open, it is not as concerning at 3:00 in the afternoon. If there is a crowded bar, it can be an extremely noisy environment hitting the

residential area. Officer Uhlman suggested they might consider moving it to 6:00 p.m. Chairman McDuffy indicated that changing the time is something that can be considered.

Lieut. Bonanca asked what could be done if there is a problem with the noise at 4:00 or 5:00 p.m. and it has been authorized by the City. Chairman McDuffy stated other cities and towns such as Plymouth and Boston allow it. Commissioner Wood stated that Plymouth and Boston are not good examples and that Brockton is a substantial city that has residential areas abutting commercial areas.

Councillor Stewart stated he supports getting rid of the closed door and window rule to help with the cost of cooling an establishment. In addition to that, it adds a sense of energy and level of excitement to the area. Commissioner Wood expressed concern that the licensee could be doing everything right and could be brought in on a violation due to a high level of noise from the people inside the establishment because it is affecting the quality of the enjoyment of the nearby residents. He indicated it seems reasonable to change the time but not to eliminate the rule altogether.

Officer Uhlman stated he feels 6:00 p.m. is late enough to allow for the establishment to be aired out. Chairman McDuffy asked if the time limit would apply if there is no entertainment. He stated he is trying to be fair to the businesses. Officer Uhlman stated he only knows of one establishment whose owner has asked to have the windows open.

Commissioner Wood then suggested a provision that would state, "All doors and windows shall remain closed at all times from noon until closing unless a special exception is made by the License Commission." He indicated the board could then make a case by case exception to the rule. Commissioner Kenney asked if that would be discriminatory and Commissioner Wood stated only if they based it on discriminatory reasons as opposed to objective factors such as location, history, noise level, etc.

Chairman McDuffy stated it is something to think about but there are factors that have to be considered and there needs to be a way that they can develop the decisions. He indicated he will have Attorney Feodoroff work on this to see what they can come up with.

In response to Commissioner Dansby, Chairman McDuffy stated he has not received any requests for this proposed change but has seen other towns that allow the doors and windows to be open and he feels Brockton is a bit behind the times. He stated that the rules have not been reviewed for some time and feels they should be modernized.

Commissioner Holbrook stated that when this issue had come up at a meeting, she could not understand why the doors and windows would have to be closed.

Chairman McDuffy then referred to Rule 8 with regard to the closing hour and recalled that there has been confusion as to when the bars must close, when they must stop serving and when the bars and tables to be cleared. He asked if the wording is confusing.

Commissioner Wood stated the times are very precise but there is some wording that can lead to confusion. Officer Uhlman stated that by allowing patrons to be on the premises until one-half hour after the closing time, it actually gives a 2:00 licensee a 2:30 closing. Everyone agreed that the wording pertaining to employees not drinking should be clarified.

Chairman McDuffy stated it was confusing to him and perhaps the Law Department could review this. It was suggested that wording be amended so that last call be required fifteen minutes prior to the closing hour. It was also the Chairman's opinion that the entertainment should stop 30 minutes prior to the closing hour, serving should be 15 minutes prior to the closing hour and bars and tables should be cleared by 15 minutes after the closing hour and the customers should be given another 10 or 15 minutes to leave and the establishment should be closed down.

Lieut. Bonanca asked why the time is put in and that everyone must exit by 15 minutes after. It was reviewed that there needs to be a time to clarify whether or not a violation should be given. Commissioner Wood indicated that he feels there needs to be a set time. Officer Uhlman agreed that the paragraph should be cleaned up. Commissioner Wood asked if anyone is concerned that the earlier last call is going to hit the business owners. Officer Uhlman stated 20 minutes is a reasonable amount of time to be given to drink a drink. Commissioner Wood indicated that is reasonable but that the licensees might look at it as though they are losing their last round.

Chairman McDuffy stated that although they are looking at the Restaurant regulations, changes to Rule 8 would apply to all of the classifications of on premise licenses. Officer Uhlman asked if they are looking for the correct wording and Chairman McDuffy stated the Law Department should do that.

In response to Officer Uhlman's questions, it was agreed that last call will be required 20 minutes prior to the closing hour, all glasses and bottles must be cleared from the tables and bars by the closing hour and all customers must have left the premises by 15 minutes after the closing hour. Chairman McDuffy indicated the last two sentences should remain as they are.

Chairman McDuffy then referred to Rule #16 on the Club regulations, which reads, "There shall be no indecent or immoral entertainment on the licensed premises." He questioned why this is only in the Club regulations.

It was Officer Uhlman's understanding that this would go back to when the government regulated moralities. The commercial clubs or private clubs are locked to the public. Lieut. Bonanca indicated there have been no issues where complaints have come to the Commission concerning this. Commissioner Kenney stated that any licensee is not supposed to allow illegalities so this is actually a redundant statement.

Commissioner McDuffy asked if Rule #16 should remain or whether it should be included in all of the categories of regulations. It was agreed that the rule should be removed.

Commissioner Kenney then reviewed Rule #13 which states, "A current list of employees shall be available upon request of authorized agents of the License Commission and the License

Commissioners.” She asked if this would allow her to walk into a licensed establishment and ask for the information. It was agreed that the commissioners are authorized to do this. Officer Uhlman advised the Commission that they have the right to peer on what is going on in the City and not just sit on the board. He suggested that if they want to go to a car dealership and count cars they are allowed to and they could then bring them before the board. It was reviewed that if this was done, they should not sit on the board if a hearing is held on the matter. Chairman McDuffy stated they could turn it over to a license agent.

Chairman McDuffy then reviewed Rule #7A under the Package Stores which pertains to Wine Tastings. He stated it is the assumption that you must be at least 21 years of age but asked what if someone is there with a parent who gives it to his son or daughter. It was reviewed that serving a person under 21 is against the law. Officer Uhlman stated State law supersedes the Commission’s regulations and the State Law says you cannot serve anyone under 21 years old. The Chairman was informed that the establishment would be responsible.

It was agreed that Rule #7A would remain as is.

Chairman McDuffy asked if everyone understands the sections of the law pertaining to the Innholders and Common Victualer licenses. A discussion was held with regard to Rule #3, which states patrons are not being permitted to bring alcoholic beverages on the premises, however, no changes were proposed.

Officer Uhlman then reviewed a portion of M.G.L. Chapter 138, Section 12, which provides that no license issued under section 12 to conduct a restaurant shall be renewed unless and until the holder shall satisfy the licensing authority that he is in good faith operating a restaurant and that such restaurant is provided with proper equipment for the service of food, etc. and the licensing authority may at any time make investigation at its own initiative as to compliance with the license. He then brought up Pisces Lounge and stated that Pisces Kitchen had been cited and the Fire Department closed it down. There is no kitchen. He also stated that Max’s Blues Café has no kitchen. The Adm. Asst. asked if they have a microwave and Officer Uhlman stated the definition of a kitchen is in the Building Codes.

Chairman McDuffy then reviewed that on several occasions, establishments have said the entertainment ends either 15 minutes before closing or a half-hour before closing so there is a misunderstanding there. The Adm. Asst. reviewed that over the past few years, the Commission has placed the ending hour of any live entertainment at 30 minutes before the closing hour. She stated that the hours are specified on each license and it is not a misunderstanding of any rules.

Another issue which Chairman McDuffy stated comes up at meetings when a license is issued or transferred is whether or not the help is Tips certified. He indicated there is nothing in the rules and regulations requiring any training and/or certification in an alcohol server course. It was agreed that this will be added to the regulations. Again, Chairman McDuffy stated this will have to be reviewed by the Law Department for proper wording. Commissioner Wood asked about the cost involved with the training.

Taneekah Freeman from Health Imperatives at 942 West Chestnut Street was present and stated that she offers a training course called 21 Proof which is a responsible beverage serving training for either package stores or pouring licenses. The cost is \$50 for three employees.

Chairman McDuffy then stated the last issue he would like to talk about is 2:00 a.m. licenses and he indicated that everyone knows how he feels about 2:00 a.m. licenses but he does not think it is right to punish business owners and they should have the right at some point to have a 2:00 a.m. license if they have run a good business. He then reviewed that a 2:00 closing is a privilege in the City and there is no law or regulation that states anyone is entitled to it. It is his opinion that a licensee has to earn the privilege of a 2:00 a.m. license.

Chairman McDuffy then proposed the following:

That every new alcohol establishment in the City may be issued a 2:00 a.m. license, if they so choose, after one year of violation free operation.

Every 2:00 a.m. establishment, if found guilty of a violation, will be rolled back to at least 1:00 a.m. Commissioners Kenney and Wood both asked if this would include all violations or whether it would be limited to certain violations.

Lieut. Bonanca stated he has a problem with the transfers and he feels it is dubious on whether it is an actual transfer or whether it is someone acting as an owner to use this to their advantage.

Chairman McDuffy stated it would have to be worded properly. He indicated he is willing to compromise and give people the chance for a 2:00 license but would like to come up with a way to do this so the licensees know they have to do things right and the 2:00 license is not going to be automatic.

Commissioner Wood indicated that he is concerned with not allowing a business a 2:00 a.m. closing hour for the first year. At this time, the board is left in a difficult position in that the City Council has taken the position that they do not want to get rid of the 2:00 a.m. licenses so as it stands, the playing field is not equal and some establishments have 2:00 a.m. licenses and some don't. He indicated that the toughest time to make a go of a new business is at the beginning and the Commission has this standing rule that the licensee needs to operate for at least six months with good behavior which leaves them to have to compete with establishments, some being in the same neighborhood, that have 2:00 a.m. closings and this leaves them at a slight handicap as they start the new venture. He stated that the licensees can come in after six months and the Commission will make the determination on whether or not they should be granted a 2:00 a.m. license but by saying to them ahead of time that they have to wait a whole year before they can apply is detrimental to the new business.

Chairman McDuffy stated he wants them to know they are not entitled to the 2:00 a.m. closing and his suggestion could be modified to six months if they think a year is too long but he does not want to see someone new come in and immediately be give a 2:00 a.m. license. He stated he feels they have to earn it.

Commissioner Wood stated that is what the board has been doing but it is not written down anywhere. Chairman McDuffy stated they need a written rule. Commissioner Dansby asked how the larger establishments would be separated from the smaller establishments. If a larger establishment has been operating for years with a 2 a.m. license, it would be detrimental to the sale of the establishment to automatically be rolled back an hour.

Commissioner Wood indicated it is a preconceived notion that since the board regulates the shop owners, this is where the problems come from. This might not be true and if there is an establishment that changes ownership, the clientele will most likely remain pretty much the same.

Lieut. Bonanca stated he agrees with Commissioner Wood and he is not sure that the wheel is not working as it is. He reviewed that everyone knows the police department's standpoint on the 2:00 licenses but every rollback that has been imposed has been to repeated offenders. He feels the Commission should be comfortable that if there is a rollback, it has not been for a one time offense. He indicated that things have been working and he is not entirely sure from a police standpoint that things need to be changed.

Chairman McDuffy then suggested that in addition, he would like to propose that every 2:00 a.m. establishment found guilty of a violation will not be issued another 2:00 a.m. license and there be no second chances. He stated this was done back in 1991 but it was not a rule or regulation but a policy for the existing Commission which was not followed as commissions changed over the years.

Commissioner Wood asked what the purpose of that was and whether or not it achieved the purpose. Commissioner Dansby stated the information is documented in the file and Chairman McDuffy reviewed that in most instances when there is a rollback, it is stipulated that they can re-apply after six months or a year. He stated his feeling is that if they don't follow the rules and they don't do things right, why they should be given back the privilege of having a 2 a.m. license when they keep violating the law.

Commissioner Wood stated the thought is that in some cases, they might change based on an economic hit. If they are told that they will never get the 2:00 license back; there is no incentive to follow the rules.

Commissioner Dansby suggested that they could look at a 2 or 3 strike penalty but feels the never again is too strong.

Lieut. Bonanca asked if this might make the Commission hesitate to go forward with a violation. Commissioner Wood indicated that by saying to business owners that they will never get their 2 a.m. license back they will not call in crimes and will try to hide something that might happen. He suggested on the other side, the Commission might find no violation when there has been a violation although it wasn't a blatant violation. Lieut. Bonanca suggested also that on the three strike rollback, an establishment might have one violation but figure they still have two more to go before something happens. He stated he feels the discretion of the board may be the best way to go. Commissioner Wood stated that if there is super egregious conduct on the part of a

licensee, the Commission will roll them back and it may lead to a situation where they never get their 2:00 license back.

Chairman McDuffy stated he is looking at the 2:00 a.m. licenses from an owner's viewpoint that if they think they will never get the 2:00 closing back, they might follow the rules. Officer Uhlman stated that if they do not care about the existing rules, they are not going to get it.

Commissioner Kenney stated she agrees with Chairman McDuffy that it should be clear that a 2:00 license is a privilege and it needs to be earned but indicated she feels that setting limits will not work. She suggested it should be make clear that just because they are in Brockton they are not going to get a 2:00 license and that it has to be earned.

Commissioner Wood indicated he feels that Brockton as a whole has to make a decision through the City Council on whether or not there are going to be 2:00 a.m. licenses and it has to be uniform. He stated he understands the idea of a penalty but the fact that some people have them and some do not is unfair.

Officer Uhlman stated it is his opinion that this is a wheel that is not broken right now and he feels it is working fine as far as weighing the consequences for the actions. Chairman McDuffy indicated he looks at it differently in that establishments have come in looking to get their 2:00 licenses back and they think they are automatically going to get it back.

Commissioner Wood suggested that they could put some wording in that states they must come back before the Commission and that it is not automatic. Commissioner Dansby asked if the Chairman is looking to put this language into the regulations because that is essentially what they have been doing right along.

Chairman McDuffy asked if it would be fair to include in that language that if there are other infractions during the one year period of the rollback, an extension will not be considered. Commissioner Wood stated they could create something automatic where upon review, if there are more than a certain number of violations, it shall not issue. That way it would not be final and never again.

Chairman McDuffy stated there has to be some way to entice owners to follow the rules better and this is what he is attempting to do. He then used Emysafari as an example and stated the owner of that establishment just keeps coming back with violations. Commissioner Wood agreed that is a good example. He indicated he feels the Commission can count on themselves to balance things out when there is a repeated violator. The Chairman stated he would like to have something in place that will tell the repeated offenders not to bother coming in and asking for anything. Commissioner Kenney stated she feels that by the Commission acting appropriately, it does that. She stated she doesn't think a licensee such as Emysafari will ever come back.

Lieut. Bonanca stated there are bars that never come before the board and others that are before the Commission frequently.

Officer Uhlman suggested that they could put something in the rules that a 1:00 or 2:00 license is a privilege and not a right in the City of Brockton and it must be earned. Lieut. Bonanca also suggested that you could put something in that with the rollback, future violations may result in a permanent rollback on the discretion of the board.

Commissioner Wood suggested that one way this could be done, although he is not supporting it, is by saying there is a presumption that once you lose a 2:00 license you have to prove certain criteria and it will be more difficult getting it back that it would be to get it in the first place. The presumption would be against getting it back.

Commissioner Dansby stated that if the rules are too harsh, they become unenforceable.

It was reviewed that any language changes would be included in all of the license classifications with the exception of the package stores.

Commissioner Dansby asked if it would make sense to get a couple of proposals together and then vote on them. Chairman McDuffy indicated they will have to be voted on. Tonight's meeting is for information purposes and discussion. They will move forward from this and come up with proposals and have another special meeting. If there are more changes needed, they can take it up and at some point will come to agreeable amendments to the regulations.

Officer Uhlman stated that the licenses must be renewed by the end of the year so if they want to get something done and codified, they should do it in time to apply to the new licenses. Chairman McDuffy stated he would like to have this done by October or November and hopefully July or August at the latest.

Commissioner Dansby asked if this would also be shared with the entire City Council and Chairman McDuffy stated it would have to be because some of their discussion this evening such as the window issue involves the City Council and he wants to make sure any changes do not violate any ABCC rules, State laws, City Council Ordinances.

Councillor Stewart stated he is very happy he attended tonight's meeting and is very impressed that people are taking this so seriously and sometimes even he takes for granted the amount of time the members put into the Commission. He indicated this has reminded him that there are ordinances that have been in place for a long time so there needs to be some review.

Chairman McDuffy indicated that the City Council has approved a lot of good people to serve on the License Commission and they work hard and know the rules and this is all important and they want people who come to the meetings knowing what is going on. He stated that is why he says improvements have been made in the City over the past couple of years and this must continue.

2. Any other business to properly come before the Commission

At the end of the discussion, Lieut. Bonanca introduced Taneekah Freeman who works for Health Imperatives which is an agency subsidized by the State through grants. Twice a year,

they check package stores for underage sales and use an underage juvenile. On May 29th, 17 package stores were checked and he will be submitting four violations to be scheduled for hearings. They plan to go out again to check the remaining 17 stores.

The Chairman thanked the members, license agents, Councillor Stewart and Taneekah Freeman for attending and asked if there was anything further anyone would like to say.

Ms. Freeman thanked the members and stated the goal of Health Imperatives is to see underaged drinking get reduced in the City and they are happy to partner with the board.

With no further business to come before the Commission, a motion was made by Commissioner Kenney to adjourn the meeting. The motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

Respectfully submitted,

Scott H. McDuffy
Chairman

APPROVED:

Paul D. Sullivan, Commissioner

Bruce G. Dansby, Commissioner

Joshua J. Wood, Commissioner

Kathy Kenney, Commissioner

Fred Fontaine, Alternate Commissioner

Catherine B. Holbrook
Alternate Commissioner