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TOWN OF BARNSTABLE

NOTICE OF MEETINGS OF TOWN DEPARTMENT AND ALL TOWN BOARDS
As Required by Chapter 28 of the Acts of 2009 which amends MGL Chapter 30 A

Licensing Authority Minutes

DATE OF MEETING: December 14, 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

Vote to accept Minutes

1. Vote to accept minutes of the 10/19/15 and 11/16/15 Meetings

A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to accept the minutes of both meetings.

New Business

1. **Request for Temporary Closure of Common Victualler All Alcohol License:** Request received from Susan Finegold, of the Barnstable Restaurant and Tavern, 3176 Main Street, Barnstable to close from February 1, 2016 to March 8, 2016. A modified schedule of no lunches Monday through Thursday during January and March. Remaining schedule will be to be open for dinner every night beginning at 4:00 PM, and lunches Friday, Saturday and Sunday.

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

2. **Request for Temporary Closure of Common Victualler All Alcohol License:** Request received from Dave Colombo, of the Roadhouse Café, 488 South St., Hyannis to close for annual maintenance and repair from January 3, 2016 to February 11, 2016.

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

3. **Request for Temporary Closure of Common Victualler All Alcohol License:** Request received from Dave Colombo, of The Black Cat Tavern, 165 Ocean St., Hyannis to close for annual maintenance and repair from January 3, 2016 to March 3, 2016.

Mr. Colombo appeared for both the Roadhouse Café and The Black Cat Tavern. Mr. Scali confirmed that the closure policy was for 2 weeks. Additionally, he suggested that the Board create a policy on the matter of closure.

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

4. **Request for Temporary Closure of Common Victualler All Alcohol License:** Request received from Danielle Siscoe, of Wimpy's, 752 Main Street, Osterville to close for general maintenance from January 18, 2016 to February 10, 2016.

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

5. **Application for a New One Day Beer and Wine License:** Application of Paula Tropeano on behalf of Spoon and Seed, 12 Thornton Dr., Hyannis for a one day beer and wine license for the Sencorp Christmas party. The event is to be held at the Spoon and Seed restaurant location on December 17, 2015 beginning at 6:00 PM.

Paula and Matthew Tropeano appeared on behalf of the application. The party will be 5:30 to 9:00 PM. The license will reference 5:00 to 9:00 PM.

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

6. **Application for a New One Day Beer and Wine License:** Application of Jessica Sylver on behalf of the Hyannis Area Chamber of Commerce for a one day beer and wine license for a Business after Hours Event. The event was held on December 9, 2015 from 5:30-7:30 PM at iCape Solutions, 973 Iyannough Rd., Hyannis.

Jessica Sylver stated that the event was very successful. Mr. Scali has advised that there will be no more retroactive applications accepted.

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

7. **Licensing Authority Hearing Schedule for 2016**

A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to accept Licensing Authority Hearing Schedule for 2016 as presented.

8. **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.

Public Hearings

1. **Alteration of Premises of Annual All Alcohol Common Victualler License:**

The Barnstable Licensing Authority will hold a public hearing on the application of GMRI, Inc. d/b/a The Olive Garden, 1095 Iyannough Rd., Hyannis on their Annual All Alcohol Common Victualler License, for an Alteration of premises of the licensed location.

Proposed change is to increase the total seating from 278 to 281 seats. These changes will be indoors, outdoor seating remains at 45 seats; all changes approved by the Building Commissioner on November 3, 2015.

There is an increase of 3 seats from 278 to 281. Ms. Hartsgrove recommended that this application be continued until the 28th of December to have someone appear at the hearing.

******Continued to 12/28/2015 Hearing******

Show Cause Hearings:

1. Show Cause Hearing for Embargo:

The Barnstable Police Department have requested a Show Cause Hearing be called before the Licensing Authority for Davester, LLC, d/b/a Embargo located at 453 Main St, Hyannis. Manager David Noble for the following violations of the Town of Barnstable, MA Code:**501-5G Physical premises.** Licensees are not permitted to invite members of the general public to private areas of the premise which are approved by the Licensing Authority for storage or for an office or for a Kitchen. Only owners and employees of the licensed premises may be in that area. (1 Count.) **501-12A5 Illegal activity on the licensed premises.** Calling for police 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 (1 Count.) **501-13B Injuries to persons at the premises.** Licensees shall call the police and an ambulance and to take all other reasonable steps to assist patrons or persons who are injured in or on the licensed premise or whose injuries have occurred outside the premise but have been brought to the attention of the licensee. (2 Counts.)

Officer Steven Estey reviewed the Police report and the corresponding facts. The altercation happened on Halloween. A video was provided for the Board. The video demonstrates what happened on the dance floor. The victim was taken to the hospital by the Embargo bartender. The other individual; assailant, was also at the hospital. The victim was an ex-employee.

Attorney Bianchi stated there are 3 charges relating to the fight. No one from Embargo was involved in the fight. This happened at closing, security was unaware of the victim on the floor. The first charge of being invited into the premises, the victim went into the kitchen on his own accord. The second, they did use reasonable efforts; it may include calling the police. This was after the fact, the man left and Embargo cooperated completely by providing the video of the altercation. The third charge, the altercation was over, the men were gone. Embargo and security took this very seriously. In the future the employees at Embargo will always call the police.

Mr. Hoxie asked Lt. Murphy if there is an issue similar to Trader Ed's. This is an ongoing issue according to the Lt.; where events continue after the altercation leaves the premises and goes to the hospital. The most troubling issue is the last one not knowing that the victim and the assailant are both at the hospital. In comparison to the last issue, the staff neutralized that situation and an employee took the individual to the hospital; not the case at Trader Ed's.

Mr. Scali reiterated that the Rules and Regulations are being worked on for clarification of contacting the police.

Mr. Semprini stated that this is very difficult to manage a nightclub these days but the police need to be called. Need to clarify that all instances MUST call the police. 501-13B states shall.

Mr. Semprini asked if the victim was unconscious; no he was not. Lt. Murphy has the concern of public safety. If we do not tighten up this language it will be the Wild West out there. The Consumer Affairs officer will visit every establishment to reiterate that they need to contact the police. We have strived over the past 5 years to go over safety issues in depth, a more open honest dialogue with the business community.

Lt. Murphy addressed punitive action, this is a difficult decision. Embargo was not trying to cover up; they did cooperate with the Police Department. Ms. Hartsgrove reiterated the Show Cause hearing findings from July that the 7 days were held in abeyance for one year.

Mr. Hoxie stated that do we want to issue a written warning for today and hold the seven days in abeyance for a future date.

After testimony and discussions, the following motions were voted 3-0 by the Licensing Authority:

To move that the Licensing Authority determine no found violations of Town of Barnstable Regulations 501-5G and 501-12A5.

To move that the Licensing Authority determine violation of Town of Barnstable Regulations 501-13B was found (2 counts).

To move that the Licensing Authority find Embargo Restaurant guilty in violating Town of Barnstable Regulations 501-13B (2 counts).

To move that the Licensing Authority issue a warning for the violation and extend the July 13th, 2015 suspension action (one week, 7 days), held in abeyance for one year.) to December 14, 2016.

2. Show Cause Hearings for International Inn:

a) The Barnstable Licensing Authority will hold a Show Cause Hearing for the International Inn Bar & Grill d.b.a. International Inn, 662 Main Street, Hyannis, MA, Ravi Ahuja, Mgr., for violation of Code of the Town of Barnstable, Massachusetts, §501-14A1, Other causes for revocation, suspension and modification due to various Health Code violations found during an on-site inspection conducted on July 16, 2015 resulting in the closure of the operation.

******Continued from 8/12/2015 and 9/21/2015 Hearings******

Elizabeth Hartsgrove stated that this is a continuation of a previous hearing. On Thursday December 10th Donna Miorandi completed her 23rd inspection. There is still problem with fruit flies. In August the BOH required a consultant be hired and that the International Inn notify the Board of Health with any change of employees; this is not being complied with.

Attorney Lawler confirmed inspection dates and they did receive a grade A. The motel inspector did inspect for 2016 and approved, this does not include the kitchen. With respect to the consultant, the Inn is trying to get a new one. This is a board of Health condition to report the change of employees.

Attorney Lawler stated that they have had issues with the consultant; his services were no longer necessary. The Inn has spent significant amounts of money to improve. According to Attorney Lawler, his clients are in compliance. He suggested that this just being a letter in the file if anything at all.

Ms. Hartsgrove asked Attorney Lawler about whether or not the consultant has been paid. He stated that this is inappropriate for this hearing. There is no contract between the client and the contract. Mr. Scali stated that the payment issue is a concern as he understands the consultant was to be there for a period of time. Mr. Banta stated that the consultant did not help in the kitchen. His client is attempting to obtain a second consultant. Procedurally Mr. Scali is getting ahead of himself according to Attorney Lawler. Failure to comply with a condition from the Board of Health in relation to the license is not getting ahead of oneself. This is a pattern and history of individuals coming and going and getting paid and not paid.

b) The Licensing Division has scheduled a show cause hearing before the Barnstable Licensing Authority on December 14, 2015 for violating Code of the Town of Barnstable, Massachusetts on October 31, 2015 according to attached Police Reports and photograph: **501-5G Physical premises.** The general public was in the kitchen area at the time Police responded to the incident. (1 Count) **501-6P Business arrangements of Licensees.** Restaurant portion is operating under the name "Oasis". (1 count) **501- 8A Environs of licensed premise.** Employee of International Inn overdosed in the kitchen area while working for the establishment. (1 count) **501-9C Inspections and investigations** The Manager had no knowledge of the employee's name when Police located him on the kitchen floor unresponsive. (1 count)

Ms. Hartsgrove addressed that the licensee was operating under the name of Oasis. She reviewed the earlier meeting with Town officials. A letter of warning, in 2014 was issued for earlier name change (Magnussen) and then 10 days later a cease and desist was issued regarding the name.

On 10/31/15 the name was yet again changed (Oasis) that the name was changed without approval. Attorney Lawler stated this is not disputed.

Officer Estey responded to an overdose in the kitchen. No one at the establishment could give his name. He was given Narcan, the employees poured water on him to revive him. There were people in the kitchen that did not work there. Narcan is only for opiates. This was a very difficult situation. It was Halloween, no one came up to Officer Estey. His name was found by going through his pockets. The Police Department is not 100% sure who called them; they never identified themselves.

Attorney Lawler asked were the individuals invited into the kitchen, This individual was on clozapam. The victim denies opiate use. Mr. Scali asked who "Count Dracula" was; is he the manager what is his role?

Ahmed Jain is the manager at the Inn. Did you hire the individual that was on the floor, yes. Mr. Scali asked Ahmed did you speak with Officer Estey. He told them the name of the individual. He told the other police officer. Officer Estey reiterated that he needed to go into the pockets to get the name of the individual.

Attorney Lawler stated that opiates are rampant in all industries; we have no answers to that. The bartender instructed the ambulance to come. Mr. Ahmed is the acting manager; there may have been some communication/language issues.

Request that a letter be filed by Attorney Lawler. Mr. Hoxie asked who was in the kitchen. Ahmad stated that the individuals were all employees that were in the kitchen. The DJ's mother was in the kitchen she is not a manager. Is the licensed manager ever on the premise during the inspections, no.

Mr. Scali suggested that the board continue this matter based upon the Board of Health. Mr. Ahmad has been employed since August. The individuals that were in the kitchen may have come from the bar area according to Officer Estey.

Mr. Hoxie asked if they believe the manager needs to stay with the employee on the floor. The manager has a responsibility to the employee and his safety. Officer Estey stated Ahmad was not there the entire time.

Lt. Murphy stated that what we are dealing with is the lack of proper management of this premise. This is a recurring problem. This goes to the poor supervision and management of this establishment.

Attorney Lawler stated that there have been great efforts to improve this business. They did call the rescue. Ahmad went to the hospital to check on the employee; CCH would not give him information.

Mr. Scali stated we are getting close to revocation, and recommends a 30-60 suspension, a total suspension of the premise. Mr. Burman stated that they have personified poor management, recommend a thirty day suspension to run concurrently. Mr. Semprini is tired of all of these show cause hearings.

After testimony and discussions, the following motions were voted 3-0 by the Licensing Authority:

That the Licensing Authority continue the show cause hearing regarding Public Health violations of §501-14A1 until after the Board of Health hearing in March, 2016.

That the Licensing Authority determine violation of Town of Barnstable Regulations 501-5G, 501-6P, 501-8A and 501-9C was found.

That the Licensing Authority find International Inn guilty in violating Town of Barnstable Regulations 501-5G, 501-6P, 501-8A and 501-9C.

That the Licensing Authority suspend entire operations and all licenses for thirty (30) days commencing on March 1st, 2016.

3. **Show Cause Hearing for Five Bay's Bistro:** The Barnstable Police Department and Licensing Division have requested a Show Cause Hearing be called before the Licensing Authority for J&T Food Service, Inc., d/b/a Five Bays Bistro, James Suprenant, Manager, 825 Main Street, Osterville for the following violation of the Town of Barnstable, MA Code: **501-7 Section I. Alcoholic beverages sales and laws: for the sale or delivery of an alcoholic beverage to a person under 21 years of age.**

Officer Estey stated the facts as a continuation of the previous compliance checks.

Jamie Suprenaut appeared, not going to dispute. The bartender admitted to the service. We take this very seriously.

After testimony from Consumer Affairs Officer Steven Estey, the following motions were voted 3-0 by the Licensing Authority:

FINDINGS: That the Licensing Authority found violations of Section § 501-7I of the Barnstable Licensing Authority Rules and Regulations;

VERDICT: That the Licensing Authority find Five Bays Bistro located at 825 Main Street, Osterville guilty in violating Section § 501-7I of the Barnstable Licensing Authority Rules and Regulations;

ACTION: That the Licensing Authority suspend the Annual All Alcohol Common Victualler License, the Common Victualler and Entertainment Licenses for 2 days: of which you will serve a one day suspension on March 5th, 2016 and have one day suspension held in abeyance for one year from date of this hearing.

4. **Show Cause Hearing for Brito's Auto Sales:** The Barnstable Licensing Authority will hold a Show Cause Hearing for Jeremy Brito, d/b/a Brito's Auto Sales, 657 Yarmouth Road, Hyannis for violating the Town of Barnstable Licensing Authority Rules and Regulations for Class II Auto Dealerships and MGL c.140 §59 for displaying and storing vehicles outside of the licensed premise without being properly licensed by the Local Licensing Authority.

Elizabeth Hartsgrove reviewed the facts. Jeremy and Manuel Brito appeared at the hearing.

Officer Estey on 10/19/15 conducted a site visit, 49 vehicles are counted, 17 of which were for sale. Licensed for a maximum of 8 vehicles for sale and 8 for parking only on 657 Yarmouth Road.

The Town surveyor needs to complete a survey of the property to see what is on Town property. The conditions have not improved to date. The railroad property is also being encroached upon. The pictures indicate the 17 vehicles are for sale. The location does body work on vehicles that belong to other dealerships; they have for sale stickers. The cleanup has to do with Manny Brito not Brito's Auto sales.

Mr. Scali has stated that this has not been cleaned up. Only one registered vehicle is allowed. A survey is being conducted. Jeremy Brito asked if the tenant that he rents to do I need to tell him he cannot do this anymore. The gentleman you rent to must have his own separate plan approved by the building commissioner showing where he is parking. You have 8 and 8, he needs a separate plan.

Lt. Murphy suggests we continue this until January 11, 2016 we will have survey, plan from the individual leasing the location.

After testimony from Consumer Affairs Supervisor Elizabeth Hartsgrove and the Licensee, the following motions were voted 3-0 by the Licensing Authority:

That the Licensing Authority continue the show cause hearing until January 11, 2016 to allow sufficient time for the Town Surveyor to stake out and define the property lines in order for Brito's to clean up objects on Town property, and to submit an amended floor plan of 659 Yarmouth Road, approved by the Building Commissioner, defining the entire property where vehicles will be parked/stored including any vehicles of tenants located at the property.

Licensing Division Updates

1. **Licensing Department updates** – Hearing with Town Manager on 12/10/15 regarding Pedicabs , minimum \$5 fee and open to other operators. It was very successful. No issues with the police department. Rules and Regulations will be before the Board as a work session. Mr. Scali asked about policy on first time offenders specifically to licensees that have a long standing license during compliance checks.
2. **Police Department updates** – Officer Estey will be visiting every license this week.

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

- **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

The meeting was adjourned at 11:45

Respectfully submitted,

Margaret D. Flynn, Recorder

Ron Semprini, Clerk

Town of Barnstable

Consumer Affairs

Elizabeth G. Hartsgrove, Supervisor

Licensing Authority

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BARNSTABLE LICENSING AUTHORITY

CONSENT AGENDA

December 14, 2015

Renewals:

Common Victualler All Alcohol:

Not Your Average Joe's, Cape Cod Mall, Hyannis

Sam Diego's, 950 Iyannough Rd., Hyannis

King Grant Racquet Club, 112 Old Kings Rd., Cotuit

Kettle-Ho, 12 School Street, Cotuit

Five Bays Bistro, 825 Main Street, Osterville

Jack's Lounge, 373 West Main Street, Hyannis

Sam Diegos, 950 Iyannough Rd., Hyannis

Barbyann's, 120 Airport Rd., Hyannis

Pain D'Avignon, 15 Hinkley Rd., Hyannis

Common Victualler Wine and Malt:

Mike's Pizza, 1220 Iyannough Rd., Hyannis

Chipolte, Cape Cod Mall, Hyannis

Regina Pizzeria, Cape Cod Mall, Hyannis

The Daily Paper, 644 West Main Street, Hyannis

Golden Fountain, 203 West Main Street, Hyannis

General On Premise License:

Cotuit Center for the Arts, 4404 Falmouth Rd., Cotuit

All Alcohol Innholder:

Resort and Conference Center, 35 Scudder Ave., Hyannis

Club:

Osterville Veteran's Association, 753 Main Street, Osterville

West Barnstable Deer Club, 1800 Old Stage Road, West Barnstable

Wequaquet Lake Yacht Club, 150 Annabelle Point Rd., Centerville

Hyannisport Club, 2 Irving Ave., Hyannisport
Hyannis Yacht Club, 490 Ocean St., Hyannis

Common Victualler:

Marylou's Coffee, 1481 Iyannough Rd., Hyannis
Regina's Pizza, Cape Cod Mall, Hyannis
Honey Dew Donuts, 313 Iyannough Rd., Hyannis
Barnes and Noble, Cape Cod Mall, Hyannis
Starbucks Coffee, 655 Iyannough Rd., Hyannis
Earthly Delights, 15 West Bay Road, Osterville
Honey Dew Donuts, 313 Iyannough Rd., Hyannis
Cooke's Seafood, 1120 Iyannough Rd., Hyannis
McDonald's, 654 Iyannough Rd., Hyannis
D'Angelo, 187 Falmouth Rd., Hyannis
Papa Gino's, Bell Tower Mall, Centerville
Spoon and Seed, 12 Thornton Dr., Hyannis
BJ's Wholesale Club, 420 Attucks Lane, Hyannis
Subway #29595, 425 Iyannough Rd., Hyannis
Subway #53322, 14 West Main St., Hyannis
International House of Pancakes, Capetown Plaza, Hyannis

Lodging Houses:

Bursley Manor, 651 Main Street, West Barnstable
High Pointe Inn, 70 High Street, West Barnstable
Honeysuckle Hill B&B, 591 Main Street, West Barnstable
The Old Hundred House, 1211 Craigville Beach Rd., Centerville
Simmons Homestead Inn, 288 Scudder Ave, Hyannis
Saltwinds B&B Guest House, 319 Sea St., Hyannis

Auto Amusement:

Ryan Family Amusements, Cape Cod Mall, Hyannis
Tri-Corp Amusements, Cape Cod Mall, Hyannis

All Alcohol Retail Package Store:

Hyannis Blanchard's, 167 Corporation Street, Hyannis
Parker's Discount Liquors, 1166 Iyannough Rd., Hyannis
Moonshine Liquors, 101 Iyannough Rd., Hyannis
Willow Package, 700 Yarmouth Rd., Hyannis
Cotuit Liquors, 3858 Falmouth Rd., Cotuit
Osterville Package Store, 11 Wianno Ave., Osterville
Craigville Package Store, 2946 Falmouth Rd., Centerville
Seven G's Liquor Shoppe, 990 Route 6A, West Barnstable
Barnstable Bottle Shoppe, 10 Seaboard Lane, Hyannis
Hyannis Package Store, 775 Main Street, Hyannis

Wine and Malt Retail Package Store:

Old Village Store of West Barnstable, 2455 Meetinghouse Way, W Barnstable
Barnstable Market, 3220 Main St., Barnstable
Gol Supermarket, 55 Iyannough Rd., Hyannis

Class I Dealer:

Hyannis Honda, 405 West Main Street, Hyannis
Hyannis Honda Bodyshop, 1364 Phinney's Lane, Hyannis
Kia of Cape Cod, 1056 Iyannough Rd., Hyannis
Hyannis Toyota, 1020 Iyannough Rd., Hyannis
Audi, 270 North St., Hyannis
Premier Mazda, 141 Stevens St., Hyannis
Land Rover of Cape Cod, 100 Barnstable Rd., Hyannis
Buckler's, 116 Ridgewood Ave., Hyannis

Class II Dealer:

Executive Auto & Sales Inc., 515 West Main St., Hyannis
Ziggy's Auto Sales, 832 Bearnse's Way, Hyannis
Prime Pre-Owned, 95 Falmouth Rd., Hyannis

Live Theatre:

Barnstable Comedy Club, 3171 Main St., Barnstable