



# *The Commonwealth of Massachusetts*

*Department of the State Treasurer*

*Alcoholic Beverages Control Commission*

*Boston, Massachusetts 02114*

*Deborah B. Goldberg*  
*Treasurer and Receiver General*

*Kim L. Gainsboro, Esq.*  
*Chairman*

## NOTICE OF SUSPENSION

January 27, 2017

**CARLIN'S RESTAURANT INC.  
7 DEPOT SQUARE  
AYER, MA 01432  
LICENSE#: 006000002  
VIOLATION DATE: 11/25/2015  
HEARD: 01/10/2017**

After a hearing on January 10, 2017, the Commission finds Carlin's Restaurant Inc. violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: 527 CMR 1.05, § 10.5.2.1: Overcrowding or admittance of any person beyond the established posted occupant load shall be punished.

**The Commission suspends the license for a period of twelve (12) days of which six (6) days will be served and six (6) days will be held in abeyance for a period of two (2) years, provided no further violations of Chapter 138 or Commission Regulations occur.**

**The suspension shall commence on Wednesday, March 29, 2017 and terminate on Monday, April 3, 2017.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, March 29, 2017 at 9:00 A.M. It will be returned to the licensee Tuesday, April 4, 2017.

You are advised that pursuant to the provisions of M.G.L. c. 138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form, which must be signed by the Licensee and a Massachusetts Licensed Accountant.

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

## **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Ralph Sacramone  
Executive Director

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Rose Bailey, Investigator  
Brad Doyle, Investigator  
Roy Pastor Esq. via facsimile 978-372-9902  
Administration, File



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**DECISION**

**CARLIN'S RESTAURANT INC.**  
**7 DEPOT SQUARE**  
**AYER, MA 01432**  
**LICENSE#: 006000002**  
**VIOLATION DATE: 11/25/2015**  
**HEARD: 01/10/2017**

Carlin's Restaurant Inc. (the "Licensee") holds an all alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, February 7, 2012, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: 527 CMR 1.05, § 10.5.2.1: Overcrowding or admittance of any person beyond the established posted occupant load shall be punished. The above captioned occurred on November 25, 2015 according to Investigator Bailey's report.

The following documents are in evidence as exhibits:

1. Investigator Bailey's Amended Investigative Report.
- A. Crowd Manager Training Certificates for Employees.

The Commission took Administrative Notice of the Licensee's Commission files.

There is one (1) audio recording of this hearing and two (2) witnesses testified.

**FINDINGS OF FACT**

1. On Wednesday, November 25, 2015, at approximately 11:20 p.m., Investigators Doyle and Bailey ("Investigators") conducted an investigation of the business operation of Carlin's Restaurant Inc. to determine the manner in which their business was being conducted and to investigate a complaint filed with this Commission.
2. Investigators entered the licensed premises, identified themselves to the door man, David Berry, and informed him of the complaint and inspection.
3. Mr. Berry stated that he was the owner and license manager.

4. Investigators asked Mr. Berry for the total occupancy for the premises. Mr. Berry thought the capacity was 90 persons plus an additional 24 persons for the outside smoking area.
5. Investigators asked Berry if the staff were using a counter device and if he had a current head count of persons in the establishment. Mr. Berry responded no to both questions.
6. Based on their training and experience, Investigators know a counter device is commonly utilized by door persons at § 12 licensed premises in order to keep an accurate account of the total capacity.
7. Investigators asked to see the posted liquor license and occupancy permit. Mr. Berry located the license and occupancy permit behind the bar on a clip board with various other documents. Investigators informed Mr. Berry that the liquor license and 304 Certificate (“occupancy permit”) must be displayed at all times in a conspicuous place where it may be easily read by the public.
8. Investigators conducted a visual inspection of the establishment and found the bar area, including a pool room, to be extremely crowded, with individuals standing shoulder to shoulder. Investigators were unable to conduct a head count based upon the overcrowding of the premises. Investigator Doyle estimated, without doing a head count, that there were at least 200 persons inside the premises.
9. A review of the 304 Certificate indicated the allowable occupancy load was 90 persons. Mr. Berry stated that he would have the rear doorman conduct a head count.
10. Chris Hooper, the rear doorman, conducted a head count and stated to Investigators and Mr. Berry that there were approximately 235 to 240 persons on the premises. Mr. Berry instructed Hooper to not allow anyone else into the restaurant.
11. Investigators informed Mr. Berry of the violation, and that a report would be filed with the Chief Investigator for review and further action.
12. Prior to Investigators exiting the establishment, Ayer Police Detective Andrew Kularski arrived on scene. Investigators informed Detective Kularski that they had advised Mr. Berry of the violation and a report would be filed with the Chief Investigator.

### DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm’n, 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in M.G.L. c. 138.

M.G.L. c. 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was “enacted ... to serve the public need and ... to protect the common good.” M.G.L. c. 138, § 23. “[T]he purpose of discipline is not retribution, but the protection of the public.” Arthurs v. Board of Registration in Medicine, 383 Mass. 299, 317 (1981) (emphasis supplied). The Commission is given “comprehensive powers of supervision over licensees.” Connolly, 334 Mass. at 617.

The Commission is given broad authority to promulgate regulations. The Commission may make regulations for “clarifying, carrying out, enforcing and preventing violation of” statutory provisions for the “method of carrying on the business of any licensee,” and “for the proper and orderly conduct of the licensed business.” M.G.L. c. 138, § 24. The Commission has exercised this authority through the promulgation of regulations that are codified at chapter 204 of the Code of Massachusetts Regulations (“CMR”). The Commission also has comprehensive powers of supervision over licensees and has the statutory authority under M.G.L. c. 138, § 64 to revoke or suspend a license for violation of a regulation. Aristocratic Restaurant of Massachusetts, Inc. v. Alcoholic Beverages Control Comm’n, 374 Mass. 547 (1978); Connolly, 334 Mass. at 617.

A Commission regulation promulgated at 204 CMR 2.05(2) provides that “[n]o licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not.” The law is well-settled that “under the regulation, [204 CMR 2.05(2)] the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises.” A vendor who sells alcohol is “bound at his own peril to keep within the condition of his license.” Commonwealth v. Gould, 158 Mass. 499, 507, (1893). Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm’n, 11 Mass. App. Ct. 785, 788 (1981).

The Licensee was charged with a violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: 527 CMR 1.05, § 10.5.2.1 Overcrowding. Massachusetts General Laws Ch. 138, § 12, paragraph 8, provides in pertinent part, that “[n]o license issued under this section shall be subject to any condition or requirement varying the occupancy of the licensed premises as certified by any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules or regulations”.

The Licensee did not stipulate to this allegation. The Commission finds that when the Investigators entered the premises they observed it to be extremely crowded. Patrons were standing shoulder to shoulder and investigators had difficulty trying to maneuver inside the premises.

Investigator Doyle did not observe any staff member or door personnel in possession of a counting device or clicker, nor was any type of counting device presented to the investigators. Investigators asked the license manager, David Berry, what the capacity was for patrons inside the premises, and he stated the capacity was 90 persons. The Town of Ayer 304 Certificate states the total occupancy is 90 persons.

The capacity of the premises is 90. On November 25, 2015, the Licensee had approximately 200 to 240 patrons inside the licensed premises, which was approximately 100 to 150 persons over capacity.

Based on the evidence, the Commission finds that the Licensee committed the violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: 527 CMR 1.05, § 10.5.2.1 Overcrowding.

### CONCLUSION

Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: 527 CMR 1.05, § 10.5.2.1: Overcrowding or admittance of any person beyond the established posted occupant load. Therefore, the Commission **suspends the license for a period of twelve (12) days of which six (6) days will be served and six (6) days will be held in abeyance for a period of two (2) years, provided no further violations of Chapter 138 or Commission Regulations occur.**

### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



Dated: January 27, 2017

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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