



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358*

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

June 10, 2019

**PACIFIC BAY INC. D/B/A TIKI PORT RESTAURANT
712 IYANNOUGH ROAD
BARNSTABLE, MA 02601
LICENSE#: 0070-00084
VIOLATION DATE: 12/29/2018
HEARD: 5/28/2019**

After a hearing on May 28, 2019, the Commission finds Pacific Bay Inc. d/b/a Tiki Port Restaurant violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C – Possession of an alcoholic beverage to a person under twenty-one years of age (2 counts).

The Commission **suspends the license for a period of six (6) days of which four (4) days will be served, and two (2) 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 Monday, July 29, 2019 and terminate on Thursday, August 1, 2019. The license will be delivered to the Local Licensing Board or its designee on Monday, July 29, 2019 at 9:00 A.M. It will be returned to the licensee on Friday, August 2, 2019.

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

Jean M. Lorizio
Chairman

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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Christopher Temple, Investigator
Lisa Watson, Investigator
Stephen V. Miller, Esq.
Administration, File



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DECISION

**PACIFIC BAY INC. D/B/A TIKI PORT RESTAURANT
712 IYANNOUGH ROAD
BARNSTABLE, MA 02601
LICENSE#: 0070-00084
VIOLATION DATE: 12/29/2018
HEARD: 5/28/2019**

Pacific Bay Inc. d/b/a Tiki Port Restaurant (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, May 28, 2019, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C – Possession of an alcoholic beverage to a person under twenty-one years of age (2 counts). Prior to the commencement of the hearing, the Licensee stipulated to the facts alleged in Investigator Temple's Report.

The following documents are in evidence:

1. Investigator Temple's Investigative Report;
2. Licensee Stipulation of Facts.
3. Photocopy of Fraudulent Driver's Licenses; and
4. Licensee's Applications.

A. Licensee's Alcohol Service Procedures.

There is one (1) audio recording of this hearing.

FINDINGS OF FACT

1. On Saturday, December 29, 2018, at approximately 12:40 a.m., Investigators Watson and Temple ("Investigators") conducted an investigation of the business operation of Pacific Bay Inc. d/b/a Tiki Port Restaurant to determine the manner in which its business was being conducted. (Exhibit 1)
2. Investigators observed three youthful appearing male individuals in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age. (Exhibit 1)

3. Underage #1, actual date of birth 2/21/1999 (age 19) was in possession of a Scorpion Bowl mixed drink. He presented to Investigators a fraudulent Rhode Island driver's license. (Exhibits 1, 3)
4. Underage #2, actual date of birth, 12/4/1998 (age 20), was in possession of a Pineapple Passion mixed drink. He presented to Investigators a fraudulent Connecticut driver's license. (Exhibits 1, 3)
5. Underage #3, actual date of birth, 6/26/1999 (age 19), was in possession of a Zombie mixed drink. He presented to Investigators a fraudulent Massachusetts driver's license. (Exhibits 1, 3)
6. Investigators identified the underage individuals to the server, John Mah, and the night manager, Fah Mah. (Exhibit 1)
7. Investigators informed Fah Mah of the violations and that a report would be filed with the Chief Investigator for further action. (Exhibit 1)
8. Following the investigation, the Licensee had all of its employees complete TIPS training. The Licensee implemented an alcohol policy for its employees and now uses a scanner for all identifications. (Testimony, Exhibit A)
9. The Licensee has been in business since 1976. As of December 29, 2018, the date of the incident in this matter, the Licensee had never been brought before the Commission to answer any charges of alleged violations. By decision dated June 3, 2019, the Commission found that on December 14, 2018, the Licensee violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C – Possession of an alcoholic beverage to a person under twenty-one years of age (1 count) and issued a warning. By decision dated June 7, 2019, the Commission found that on December 21, 2018, the Licensee ~~again~~ violated 204 CMR 2.05 (2), to wit: M.G.L. c. 138, § 34C (2 counts) and issued a suspension with 1 day to be served and 1 day to be held in abeyance for a period of 2 years.

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: M.G.L. c. 138, § 34C – Possession of an alcoholic beverage to a person under twenty-one years of age (2 counts). Therefore, the Commission **suspends the license for a period of six (6) days of which four (4) days will be served, and two (2) 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

Kathleen McNally

Jean M. Lorizio, Chairman

Jean M. Lorizio

Elizabeth A. Lashway, Commissioner

Elizabeth A. Lashway

Dated: June 10, 2019

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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