



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

Jean M. Lorizio, Esq.
Chairman

**MEMORANDUM AND ORDER ON
CITY OF FITCHBURG'S MOTION TO DISMISS APPEAL**

**MILL CITY PUB & PIZZA LLC D/B/A MILL CITY PUB
488 JOHN FITCH HIGHWAY
FITCHBURG, MA 01420
LICENSE#: 08485-GP-0394
HEARD: 9/03/2025**

Mill City Pub & Pizza LLC d/b/a Mill City Pub (“Licensee” or “Appellant” or “Mill City Pub”) and the City of Fitchburg Licensing Board (“Appellee” or “Fitchburg” or “Local Board”) appeared before the Commission on Wednesday, September 3, 2025, for a hearing on Fitchburg’s Motion to Dismiss Appeal (“Motion”) because the Licensee’s appeal was untimely, not in compliance with M.G.L. c. 138, § 67, and the Licensee’s Opposition.

M.G.L. c. 138, § 67 states, “Any applicant for a license who is aggrieved by the action of the local licensing authorities in refusing to grant the same, or by their failure to act within the period of thirty days limited by section sixteen B, or any person who is aggrieved by the action of such authorities in modifying, suspending, cancelling, revoking or declaring forfeited the same, may appeal therefrom to the commission within five days following notice of such action or following the expiration of said period, upon petition in writing, setting forth all the material facts in the case.”

The Licensee’s letter, dated May 1, 2025, appealing the suspension of the Fitchburg Licensing Board, states the Local Board’s decision was dated April 22, 2025, and delivered to him on April 25, 2025. The Licensee’s letter appealing the Local Board’s decision was received by the Commission on May 5, 2025.

In an affidavit dated May 28, 2025, signed under the pains and penalties of perjury, Fitchburg Police Officer Alison Tota states she delivered the Decision, dated April 23, 2025, by hand on Wednesday, April 23, 2025, at 4:01 p.m. to a person at the licensed premises whom she recognized as having attended the Local Board’s hearing. (Exhibit B to Motion)

Under 801 CMR 1.01, time is computed by the Commission as follows: “computation of any time period referred to in 801 CMR 1.00 shall begin with the first day following the act which initiates the running of the time period ... When the time period is less than seven days, intervening days when the Agency is closed shall be excluded in the computation.” 801 CMR 1.01(4)(c).

The Local Board points out that even if one begins counting the day after notice was provided, April 24, 2025, and counts only business days to include Thursday, April 24, 2025, Friday, April 25, 2025, Monday, April 28, 2025, Tuesday, April 29, 2025, and Wednesday, April 30, 2025, the appeal letter was not authored until the day after the appeal period ran out, on Thursday, May 1, 2025.

Failure to appeal a decision to an agency within the time provided by statute deprives the agency of jurisdiction to act on the appeal. Gordon v. State Bldg. Code Appeals Bd., 70 Mass. App. Ct. 12, 13 & 19-21 (2007). Although some procedural missteps in an administrative appeal process may be innocuous, the expiration of a time limitation in an appeal period “has a substantive effect on the authority of the tribunal to act on the subject matter.” Id. At 19, citing Schulte v. Dir. Of Div. of Employ. Sec., 369 Mass. 74, 79 (1975). Greeley v. Zoning Bd. Of Appeals of Framingham. 350 Mass. 549, 552 (1966) (where statute expressly conditioned appeal to Zoning Board on filing notice of appeal with the town clerk, a failure to timely do so deprived the Board of jurisdiction); Craig v. Planning Bd. Of Haverhill. 64 Mass. App. Ct. 677, 680 (2005) (failure to comply with filing requirements applicable to extension agreements rendered Planning Board’s belated approval of applicant’s plan invalid).

The Licensee argued the Board’s decision was improperly delivered because it was not delivered to a person “listed as a director on the license itself”. However, the Licensee confirmed the decision was, in fact, delivered to an employee, the bartender on duty at the time of Officer Tota’s visit to the licensed premises. (Testimony) The Commission is not persuaded by the Licensee’s argument as there is no legal requirement a local board’s decision be delivered to a director of the licensee entity.

CONCLUSION

After reviewing the evidence and considering the arguments made, the Commission **ALLOWS** the Appellee’s Motion to Dismiss the appeal.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman Jean M. Lorizio

Crystal Matthews, Commissioner Crystal Matthews

Deborah Baglio, Commissioner Deborah Baglio

Dated: March 30, 2026

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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2025-000076-ad-enf

cc: Joshua Champagne
Matthew D. Provencher, Esq.
Frederick G. Mahony, Chief Investigator
Administration
File