



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

Jean M. Lorizio, Esq.
Chair

DECISION

**TAVERN MANAGEMENT CORP. D/B/A TAVERN ON THE HARBOR
30 WESTERN AVENUE
GLOUCESTER, MA 01930
LICENSE#: 00050-TV-0450
HEARD: 1/26/2022 & 3/28/2022**

This is an appeal¹ from the action of the City of Gloucester Licensing Board (“Local Board”, “LLA” or “Gloucester”) in limiting the 2022 renewal of the M.G.L. C. 138, § 12 all alcoholic beverages license of Tavern Management Corp. d/b/a Tavern on the Harbor (“Licensee” or “Tavern”) located at 30 Western Avenue, Gloucester, Massachusetts. The Licensee timely appealed the Local Board’s decisions to the Alcoholic Beverages Control Commission (“Commission” or “ABCC”), and remote hearings via Microsoft Teams were held on Wednesday, January 26, 2022, and Monday, March 28, 2022.

The following documents are in evidence as exhibits:

1. ABCC Decision, 5/12/2011;
2. ABCC Decision, 6/9/2016;
3. Tavern Management Corp.’s 2020 § 12 License;
4. Tavern Management Corp.’s 2021 § 12 License;
5. Licensee e-mails to Local Board re: 6/8/2021 meeting, 6/9/2021 and 6/11/2021;
6. Attorney Coyne’s e-mail, 7/12/2021;
7. Local Board Letter re: non-use of License, 9/15/2021;
8. Attorney Coyne’s e-mail to Local Board, 11/9/2021;
9. Local Board Letter, 10/15/2021;
10. Local Board Letter, 11/15/2021;
11. Local Licensing Board Meeting Minutes, 11/9/2021;
12. Licensee’s Notice of Appeal of the Local Board’s Limited Renewal for 2022, 11/16/2021;
13. Licensee’s Notice of Appeal of the Local Board’s Denial of its 2022 License Renewal, 12/16/2021;
14. Local Board’s Letter, 12/13/2021;

¹ Licensee’s November 16, 2021 appeal notice included an appeal of the Board’s revocation of the Licensee’s common victualler license and non-renewal for 2022; however the revocation of the common victualler license is not within the jurisdiction of the Commission and not the subject of this appeal.

- A. Email, 2/9/2020;
- B. Signed Change of Manager application and copy of payment, check # 16562;
- C. Local Board Meeting Minutes, 12/8/2020;
- D. Licensing Board Meeting Minutes, 12/14/2020;
- E. Licensing Board Meeting Minutes, 1/12/2021;
- F. Licensing Board Meeting Minutes, 3/9/2021;
- G. Email dated May 21, 2021, to Mr. McLaughlin to attend June 8th meeting;
- H. Email dated June 7, 2021, to LLA Clerk Alison Battle from Patrick McLaughlin;
- I. Email dated June 9, 2021
- J. Email from Attorney Coyne to LLA Clerk Alison Battle, 6/11/2021;
- K. Licensing Board Meeting Minutes, 6/15/2021;
- L. Email from Attorney Coyne to LLA Clerk Alison Battle, 7/12/2021
- M. Licensing Board Meeting Minutes, 7/13/2021;
- N. Email to Licensing Board from Attorney Coyne, 8/24/2021;
- O. Licensing Board Meeting Minutes, 9/14/2021;
- P. Letter from the Licensing Board to Tavern, 9/15/2021;
- Q. Snapshot of Tavern on the Harbor's website indicating "permanently closed";
- R. Letter from the License Board to Tavern, 10/18/2021;
- S. Licensing Board Meeting Minutes, 11/9/2021;
- T. Email from Attorney Coyne to Licensing Board, 11/9/2021;
- U. Snapshot of Zillow real estate website indicating Tavern for sale;
- V. Licensing Board Meeting Minutes, 11/9/2021;
- W. Notice to Tavern on the Harbor representatives, 11/15/2021;
- X. Snapshot of City of Gloucester on-line permitting system;
- Y. 2022 LLA Annual Retail Renewal Process ABCC document;
- Z. Letter to Licensee – sent to Tavern, 12/13/2021;
- AA. Decision by ABCC, 5/11/2011;
- BB. Decision by the Licensing Board, 11/23/2015;
- CC. Licensing Board Meeting Minutes, 11/10/2015;
- DD. Decision by ABCC heard 2/9/16, dated 6/9/2016;
- EE. Audio/Video of January 12, 2021 Zoom Meeting of the Licensing Board, 1/12/2021;
- FF. Audio/Video of March 9, 2021 Zoom Meeting, 3/9/2021;
- GG. Local Board's Letter to Mr. Park, 7/28/2021;
- HH. Licensing Board Meeting Minutes 12/6/2021;
- II. Tavern's 2021 Annual All-Alcohol Restaurant with Common Victualler License;

There is one audio recording of each hearing, and (6) witnesses testified.

FINDINGS OF FACT

The Commission makes the following findings based on the evidence presented at the hearing:

1. Tavern Management Corporation ("Tavern" or "Licensee") operates a function facility, bar and lounge at 30 Western Avenue in Gloucester and has held an all-alcoholic beverages license issued pursuant to M.G.L. c. 138, §12, since 1987. (Testimony, Exhibit 3)

2. On September 14, 2021, the Board held a meeting wherein the Tavern's license was discussed. Patrick McLaughlin, Manager of Record, attended. (Exhibit O)
3. By letter, dated September 15, 2021, the Board notified the Tavern of the following:
 - a. The Tavern is to utilize their 2021 Common Victualler license and the 2021 Annual Retail Restaurant Liquor license with a plan to remain open as a function hall and a restaurant open to the public within the next thirty (30) days;
 - b. An in-person hearing was scheduled for October 12, 2021 at 6:30 p.m. to give the Tavern the opportunity to provide evidence that their license was in use for the 2021 calendar year;
 - c. Failure to utilize their license in the 2021 calendar year, and to keep the license active throughout the remainder of 2021 year, may result in a non-renewal of the license for the 2022 calendar year.

(Exhibit P)

4. By letter, dated October 18, 2021, the Tavern was notified "An in-person hearing originally scheduled on October 12, 2021, has been re-scheduled for Tuesday, November 9, 2021." (Exhibit R)
5. The Licensee did not attend the Board's November 9, 2021 hearing. However, Counsel for the Licensee submitted a written update to the Board via email in the afternoon of November 9, 2021.² (Exhibits S, T, V)
6. By letter, dated November 15, 2021, the Tavern was notified "...the Gloucester Licensing Board voted unanimously to limit a potential renewal request for Tavern on the Harbor's Massachusetts General Laws 138 § 12 all alcohol license to expire March 31, 2022. Notice sent to Tavern on the Harbor on September 15, 2021 and October 18, 2021 notified Tavern on the Harbor of the potential non-renewal of the 2022 calendar year licenses." (Exhibit W)
7. The Tavern filed a timely appeal with the Alcoholic Beverages Control Commission. (Exhibit 12)
8. The Licensee failed to submit its 2022 license renewal within the month of November. (Testimony)
9. By letter, dated December 13, 2021, the Local Board notified the Tavern that their 2022 license renewal had not been received and stated, "If it is your intention to obtain a liquor license for the 2022 calendar year, you must immediately file a New Retail License Application...Once your application is received, the Board will schedule a meeting for consideration." (Exhibit Z)
10. The Tavern filed a timely appeal with the Alcoholic Beverages Control Commission. (Exhibit 13)

² During the Board hearing, Counsel for the Licensee was contacted by the Board via telephone. He referenced his earlier email and stated there was nothing additional to offer.

11. On February 8, 2022, the Board held a hearing regarding the Licensee's new license application, filed because of the Licensee's failure to renew within the month of November. The Local Board voted to reinstate the Licensee's section 12 annual all alcoholic beverages license, with an expiration date of June 14, 2022. (Testimony)
12. On February 9, 2022, the Tavern timely appealed the Board's decision of February 8, 2022.
13. The parties agreed to consolidate the February 9, 2022 appeal with those already under review.

DISCUSSION

General Laws c. 138, § 23 provides that “[e]very license and permit granted under the provisions of this chapter, unless otherwise provided in such provisions, shall expire on December thirty-first of the year of issue, subject, however, to revocation or cancellation within its term.” M.G.L. c. 138, § 23. M.G.L. c. 138, § 16A controls the license renewal process of alcoholic beverages licenses and confers upon such licensees a prima facie right to renewal. This statute states, in pertinent part, that “[l]icenses issued under section twelve... shall be automatically renewed for the next annual license period upon application by the holder thereof during the month of November.” M.G.L. c. 138, § 16A. Section 16A goes on to state “if the application does not meet the conditions hereunder, it shall be treated as an application for a new license and all the procedures set forth under section fifteen A shall be applicable thereto.” M.G.L. c. 138, § 16A

Here, the Licensee failed to renew its license for 2022 within the month of November. However, it was allowed to file a new license application. Said application was considered by the Local Board and the Tavern's 2022 license was approved with an expiration date of June 14, 2022. (Testimony)

Despite the plain language of § 16A and 23, the Local Board limited the Tavern's 2022 license, first to a period of 3 months, and later to a period of 6 months. (Testimony, Exhibits S, V, W, 12)

Massachusetts General Law c. 138 does not authorize the Local Board to set an arbitrary expiration date for a §12 license. M.G.L. c. 138 § 16A, § 23.

The Commission **DISAPPROVES** the action of the Local Board in limiting the renewal of the M.G.L. c. 138, § 12 license.

CONCLUSION

The Alcoholic Beverages Control Commission (“Commission”) **DISAPPROVES** the action of the City of Gloucester Licensing Board in limiting the renewal of the M.G.L. c. 138, § 12 license.

As such, the Commission remands the matter to the City of Gloucester with the recommendation that the license be renewed, effective February 8, 2022, for the calendar year 2022.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Deborah Baglio, Commissioner Deborah A Baglio

Jean M. Lorizio, Chairman Jean M. Lorizio

Crystal Matthews, Commissioner Crystal Matthews

Dated: February 6, 2023

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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2021-000157-ad-enf

cc: John E. Coyne, Esq.
Krisna Basu, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File