



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**MASA INC. D/B/A IXTAPA MEXICAN GRILL & CANTINA
765 BOSTON ROAD
GROTON, MA 01450
LICENSE#: 00020-RS-0476
HEARD: 8/4/2021**

This is an appeal of the action of the Town of Groton Board of Selectmen (the "Local Board" or "Groton") in suspending the M.G.L. c. 138, § 12 all alcoholic beverages license of Masa Inc. d/b/a Ixtapa Mexican Grill & Cantina ("Licensee" or "Ixtapa") located at 765 Boston Road, Groton, Massachusetts for four (4) days. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a remote hearing via Microsoft Teams was held on Wednesday, August 4, 2021.

The following documents are in evidence as exhibits:

1. Alcohol Intervention Methods Certificates for three (3) Ixtapa's Employees.
 - A. Groton Police Chief's Letter to Local Board, 5/3/2021 with attached Dunstable Police Report, 4/17/2021, and Groton Police Reports, 4/17/2021 and 4/18/2021;
 - B. Local Board's Notice of Hearing, 5/6/2021;
 - C. Minutes of Local Board's Hearing, 5/24/2021;
 - D. Minutes of Local Board's Hearing, 6/7/2021;
 - E. Local Board's Decision, 5/25/2021;
 - F. Local Board's Revised Decision, 6/7/2021.

There is one (1) audio recording of this hearing, and three (3) witnesses testified.

FINDINGS OF FACT

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

1. The Local Board held a remote hearing on Monday, May 24, 2021, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Ch. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under 21-years of age. (Exhibit C)

2. By decision dated May 25, 2021, the Local Board found the Licensee in violation and voted to suspend its license for four (4) days to be served on July 2, 2021, July 3, 2021, July 4, 2021, and July 5, 2021. In addition, all employees of Ixtapa Mexican Grill and Cantina were required to re-take TIPS training within thirty (30) days of the decision. (Exhibit E)
3. The Licensee timely appealed the Local Board's decision on June 1, 2021. (Commission records)
4. The Licensee, through Counsel, admitted to the violation as charged: 203 CMR 2.05(2) Permitting an illegality, to wit: G.L. c. 138, § 34 Sale or Delivery of an Alcoholic Beverage to a person under twenty-one years of age.
5. Groton does not have a progressive discipline policy. (Testimony)

DISCUSSION

During the Commission hearing, the Licensee stipulated to the violation as charged by Groton, 204 CMR 2.05(2) Permitting an illegality, to wit: G.L. c. 138, § 34 sale or delivery of an alcoholic beverage to a to a person under twenty-one years of age. However, the Licensee disputes the severity of the penalty imposed by the Local Board. As a result, the only issue before the Commission is the appropriateness of the penalty imposed by the Local Board. The Licensee argues that the penalty of a four-day suspension is excessive. Therefore, the Commission must review whether the sanction imposed by the Local Board was reasonable. "The burden is on the licensee to prove the penalty imposed should not be approved." Metrowest Tropical Foods, Inc. (ABCC Decision Sept. 20, 2006).

Groton does not have a progressive discipline policy. Thus, the Commission must consider, in the absence of these rules and regulations, the totality of the evidence, including but not limited to, the prior violation history of the Licensee, the egregiousness of the violation, and the penalties imposed against other licensees by the Local Board for comparable violations. See JMRS Restaurant Inc. d/b/a Tavern in the Square (ABCC Decision Dec. 19, 2017).

There was no evidence presented regarding the Licensee having any history of prior violations. There was no evidence presented concerning penalties that the Local Board has imposed on similarly situated licensees for sale to a minor.

The Local Board argues that it imposed the four-day penalty for sale to a minor due to the multiple infractions and "failures along the way." Specifically, the Local Board pointed to the staff's failure to check ID's, allowing the underage females to continue drinking, allowing "soldiers" to buy them drinks, and allowing the three underage females to leave the establishment while believing them to be intoxicated. (Testimony, Exhibit C) However, the Licensee was only charged with and admitted to the violation of 204 CMR 2.05(2) Permitting an illegality to wit: G.L. c. 138 § 34 Sale or Delivery of an Alcoholic Beverage to a person under twenty-one years of age.

The Commission finds that based on the totality of the facts, the Local Board's imposition of a four-day suspension for sale or delivery of an alcoholic beverage to a person under twenty-one years of age was not reasonable.

CONCLUSION

Given the Licensee stipulated to the violation, the Alcoholic Beverages Control Commission ("Commission") **APPROVES** the action of the Select Board of the Town of Groton in finding that Masa Inc. d/b/a Ixtapa Mexican Grill & Cantina violated 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Chapter 138, §34 Sale or Delivery of an alcoholic beverage to a person under 21-years of age.


The Commission **DISAPPROVES** the action of the Select Board of the Town of Groton in suspending the license for four (4) days. The Commission remands the matter to the Local Board with the **RECOMMENDATION OF A PENALTY NOT TO EXCEED MORE THAN A TWO (2) DAY SUSPENSION.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Crystal Matthews, Commissioner



Jean M. Lorizio, Chairman



Deborah Baglio, Commissioner



Dated: August 17, 2022

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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cc: Nicholas A. Felici, Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File