

*The Commonwealth of Massachusetts*  
*Department of the State Treasurer*  
*Alcoholic Beverages Control Commission*  
*Boston, Massachusetts 02114*

*Steven Grossman*  
*Treasurer and Receiver General*

*Kim S. Gainsboro, Esq.*  
*Chairman*

NOTICE OF REVOCATION

July 31, 2012

**PEDRO VELEZ DBA FUEGO LATINO**  
**465 BROADWAY**  
**LAWRENCE, MA 01840**  
**LICENSE#: 059400224**  
**HEARD 1/18/2012 (3)**  
**VIOLATION DATE: 09/16/2011**

After a hearing on January 18, 2012, the Commission finds Pedro Velez dba Fuego Latino in violation of:

1. 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 148, section 34A;
2. 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: 527 CMR 10.13 (2) (e);
3. 204 CMR 2.16 (1) -Failure to Post Cover Charge outside the licensed premises in accordance with M.G.L. Ch. 140 §183D; and
4. 204 CMR 4.03 (1)(c) – Selling, offering to sell or delivering to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the public.

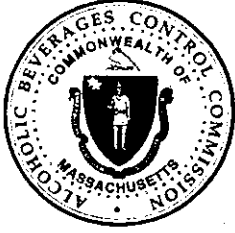
The Commission hereby orders the license of Pedro Velez dba Fuego Latino be **REVOKED** on and after the Indefinite Suspension is revised by a further written order of the Commission as well as on and after the (20) day suspension is served previously ordered in the Commission decisions dated May 21, 2012, and May 24, 2012.

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**

Kim S. Gainsboro  
Chairman

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Rose Bailey, Investigator  
Administration  
File



*The Commonwealth of Massachusetts*  
*Department of the State Treasurer*  
*Alcoholic Beverages Control Commission*  
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**DECISION**

**PEDRO VELEZ DBA FUEGO LATINO**  
**465 BROADWAY**  
**LAWRENCE, MA 01840**  
**LICENSE#: 059400224**  
**HEARD 1/18/2012(3)**  
**VIOLATION DATE: 09/16/2011**

Pedro Velez dba Fuego Latino (the "Licensee") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, January 18, 2012, regarding the alleged violations of:

1. 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 148, section 34A;
2. 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: 527 CMR 10.13 (2) (e);
3. 204 CMR 2.16 (1) -Failure to Post Cover Charge outside the licensed premises in accordance with M.G.L. Ch. 140 §183D; and
4. 204 CMR 4.03 (1)(c) – Selling, offering, to sell or delivering to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the public.

Commission Investigator Rose Bailey testified. The licensee did not appear at this hearing and was not represented by legal counsel at this hearing.<sup>1</sup>

The following document is in evidence:

1. Investigator Bailey's Violation Report dated September 16, 2011.

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

<sup>1</sup> Before this hearing commenced, an attorney did file a special limited appearance only for the purpose of presenting and arguing a motion to continue this hearing. The licensee did not appear with this attorney. The motion to continue this hearing was denied.

## FACTS

1. On Friday, September 16, 2011, at approximately 11:40 p. m., Chief Investigator Mahony with Investigators Doyle and Bailey, investigated the business operation of Pedro Velez d/b/a Fuego Latino to determine how their business was being conducted.
2. Investigators observed a large crowd of people outside the licensed premises.
3. Investigators drove around the surrounding area and observed vehicles parked on both sides of Broad Street for two (2) blocks, as well as vehicles parked on surrounding side streets and in parking lots in the area for businesses that were closed at this hour.
4. At approximately 11:45 p. m., Chief Investigator Mahony with Investigators Doyle and Bailey approached the licensed premises on foot.
5. Investigators observed a line of approximately ten (10) people, in possession of what appeared to be entrance tickets, waiting outside the licensed premises.
6. Investigators also observed the owner, Mr. Pedro Velez, standing outside the licensed premises.
7. Investigators identified themselves to Mr. Velez and informed him they would be conducting an inspection of the licensed premises.
8. Investigators observed a male individual using a hand held counter to keep count of the number of patrons entering the licensed premises.
9. Investigators and Mr. Velez viewed the hand held counter which displayed a count of four hundred ninety-nine (499).
10. Based upon knowledge of occupancy load from previous inspections (conducted on June 24, 2011; on August 27, 2011; and on September 3, 2011), investigators informed Mr. Velez that the premises was currently in excess of the licensed capacity.
11. Mr. Velez stated that the licensed capacity had been changed as of that day, [September 16, 2011].
12. Investigators asked if the licensed premises had been inspected by the City of Lawrence Building or Fire Department.
13. Mr. Velez stated the City of Lawrence Building inspector had conducted an inspection of the licensed premises yesterday.
14. Mr. Velez stated he was in possession of a letter from an engineering company which had been submitted to the City of Lawrence.
15. Investigators asked if tickets had been sold in advance for this evening's event.
16. Mr. Velez stated, "Yes."

17. Investigators asked, "How many tickets had been sold?"
18. Mr. Velez stated, "Seven hundred (700)."
19. Investigators asked, "How were the tickets sold?"
20. Mr. Velez stated, "The tickets were sold by the local Spanish radio station as well as other local area businesses."
21. Investigators asked how much he was paying for the entertainment, and Mr. Velez replied "fifteen thousand dollars" (\$15,000).
22. While interviewing Mr. Velez outside the premises, investigators observed larger numbers of patrons entering the licensed premises, as well as standing in a line awaiting entry.
23. Investigators asked Mr. Velez if tickets were being sold at the door. Mr. Velez answered "yes", and that many people had purchased tickets at the door earlier in the evening.
24. Investigators asked again how many tickets were sold in advance.
25. Mr. Velez stated six hundred (600) tickets were sold in advance.
26. Investigators questioned Mr. Velez about the discrepancy in the number of tickets sold in advance.
27. Mr. Velez stated again that only six hundred (600) tickets were sold in advance.
28. Investigators asked how many tickets had been sold at the door.
29. Mr. Velez stated he did not know.
30. Investigators informed Mr. Velez that they would conduct an inspection inside the licensed premises.
31. After entering the licensed premises, investigators were unable to move forward more than ten (10) feet into the crowd.
32. Inside the licensed premises, investigators observed that three-fourths of the left side wall was occupied by patrons seated at tables and chairs, as well as patrons standing.
33. Investigators also observed the bar area, located to the right upon entry to the licensed premises, was lined three (3) deep with patrons, and the far right end of the bar was occupied by patrons seated at tables and chairs, as well as patrons standing.
34. Beyond these areas, investigators observed a crowd of patrons standing shoulder to shoulder.
35. Investigators observed that there was no clear passageway to the rear of the licensed premises, nor a clear passageway to exit the licensed premises.
36. Chief Investigator Mahony expressed his concern for investigators' safety, and directed them to exit the licensed premises.
37. Chief Mahony expressed his concerns regarding public safety to Mr. Velez.

38. Chief Mahony requested that Mr. Velez determine the current occupancy count.
39. The male employee responsible for the occupancy count was not at the entrance door.
40. Mr. Velez entered the licensed premises and exited moments later with the male employee who was in possession of the hand held counter.
41. Investigators and Mr. Velez viewed the hand held counter which displayed a count of six hundred (600).
42. Investigators reminded Mr. Velez that in order to maintain an accurate occupancy count, the employee responsible should be stationed at the entrance doorway at all times.
43. Investigators requested that Mr. Velez produce the certificate of occupancy, the daily fire and building safety checklist, and the names and certificates of the crowd managers on duty.
44. Investigators observed a larger crowd gathering outside the licensed premises awaiting entry.
45. Investigators observed that the crowd appeared to be upset, with members of the crowd stating they had tickets and demanded entry.
46. Chief Mahony questioned Mr. Velez as to how he intended to manage the large, angry crowd with tickets, outside the licensed premises.
47. Mr. Velez stated he would return their money to the ticketholders.
48. Mr. Velez provided investigators with the following requested documentation:
  - a. New and Renewal Certificate of Inspection certificate no.30637, with the date of issuance of December 29 2010, for an allowable occupancy load of six hundred and twenty eight (628) people;
  - b. Letter dated September 13, 2011 from MDJ Engineering Inc. to City of Lawrence Building Department regarding occupancy load certification; and
  - c. Fire and building safety checklist dated September 16, 2011 with questions 7, and questions 9 through 13 incomplete, not signed by crowd manager, and missing crowd manager certificate number.
49. Investigators informed Mr. Velez the fire and building safety checklist form was incomplete and unsigned.
50. Investigators requested to see copies of the original documentation of these forms, which Mr. Velez then provided.
51. Investigators observed that the copied fire and building safety checklist form was signed.
52. Investigators asked when Mr. Velez had signed the fire and building safety checklist form.
53. Mr. Velez stated that he signed the fire and building safety checklist form before he made the copy.

54. Investigators informed Mr. Velez that the original document provided was unsigned and their report would reflect that fact.
55. Investigators observed that there was no posted signage informing the public of a cover charge in order to enter the licensed premises.
56. Investigators questioned Mr. Velez regarding the bottle specials advertised on promotional cards which were found inside the licensed premises.
57. Mr. Velez stated on nights when there is a live band, he charges eighty (\$80.00) dollars for a bottle. He also stated on regular nights, the cost of a bottle is one hundred (\$100.00) dollars.
58. Investigators informed Mr. Velez of the violation.
59. Investigators left the licensed premises at approximately 12:40 a.m. and immediately drove to the Lawrence Police Department and met with Officer Jay Ceruello.
60. Chief Mahony described in detail his concerns about the public safety based upon the investigators' inspection at the licensed premises.
61. Officer Ceruello informed Chief Mahony that he, and a unit, would be dispatched immediately to the licensed premises.
62. Investigators, Lawrence Police Department members, and a tow truck arrived at the licensed premises at approximately 1:15 a. m.
63. Officers observed many motor vehicles parked illegally, and they began to ticket and tow the vehicles.
64. Officer Ceruello, Chief Mahony, and investigators approached the licensed premises on foot.
65. Investigators and Officer Ceruello observed that while the large crowd seen earlier was gone, some patrons were still entering the licensed premises, and there was no employee stationed at the doorway.
66. Investigators entered the licensed premises and observed Mr. Velez in the entrance foyer.
67. Investigators informed Mr. Velez they would conduct an additional inspection due to public safety concerns found earlier.
68. Investigators and Officer Ceruello attempted to move through the crowd. They were unable to move more than a few feet forward.
69. Investigators observed again that there was no clear passageway to the rear of the licensed premises, nor any clear passageway to the exit.
70. Investigators and Officer Ceruello attempted to conduct a crowd count to determine occupancy, but were unable to maneuver through the crowd.
71. Investigators and Officer Ceruello exited the licensed premises.
72. Investigators and Officer Ceruello, based on their observations, determined the current occupancy load was at least seven hundred (700) patrons.

73. Chief Mahony informed Mr. Velez that a violation report would be filed with the Commission for review.
74. Investigators and Officer Ceruello left the licensed premises without incident.
75. Investigators later reviewed the licensee's administrative file which revealed that the New and Renewal Certificate of Inspection, certificate no. 30637 with date of issuance December 29, 2010 and expiring on December 31, 2011, listed an allowable occupancy load of four hundred and twenty (420) people.
76. Specifically printed on the Certificate of Inspection is the following: "*Failure to post or tampering with the contents of the certificate is strictly prohibited.*"
77. On December 13, 2011, the licensee specifically asked for a continuance until January 18, 2012. That request for a continuance was granted.
78. The licensee failed to appear at the hearing re-scheduled to the date of January 18, 2012 as he requested.

#### DISCUSSION

**Overcrowding:** In accordance with 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: **M.G.L. Ch. 148, section 34A - Overcrowding:** The licensee is responsible for illegalities, disturbances, and/or disorders that occur on the licensed premises. The licensee has a duty of care to prevent foreseeable harm to its patrons and others. See Tobin, Id.; Westerback v. Harold F. Leclair Co., 50 Mass App. Ct. 144, 735 N.E. 2d 1256 (2000); Kane v. Fields Corner Grille, Inc. 341 Mass. 640, 641, 171 N. E. 2d 287 (1961); Carey v. New Yorker of Worcester, Inc. 355 Mass. 450, 451, 245 N.E. 2d 420 (1969). After conducting two (2) inspections of the premises, the Commission heard evidence from the Investigator that, once inside the premises, they were unable to proceed more than ten (10) feet due to the crowd of patrons. The Investigator testified, once inside, they observed that three-fourths of the left side wall was occupied by patrons seated at tables and chairs, as well as patrons standing. They also observed the bar area, located to the right upon entry to the licensed premises, was lined three (3) deep with patrons, and the far right end of the bar was occupied by patrons seated at tables and chairs, as well as patrons standing. Beyond these areas, investigators observed a crowd of patrons standing shoulder to shoulder. Investigators also observed that there was no clear passageway to the rear of the licensed premises, nor a clear passageway to exit the licensed premises. Chief Investigator Mahony expressed his concern for the Investigators' safety, and directed them to exit the licensed premises.

The Commission finds that the premises was grossly overcrowded to the extent that there were no clear passageways to exit the premises, and Investigators could not proceed more than ten feet into the crowd. Observations made by the Investigators and a Lawrence Police officer were, that the occupancy, inside the licensed premises on that evening, **was at least 700 people.** (emphasis supplied). The Commission is satisfied that the premises was grossly overcrowded resulting in extremely unsafe and dangerous conditions that were a threat to the lives and safety of the individuals inside the premises that evening.

Evidence was presented at the hearing which is extremely alarming and disturbing to the Commission:

Mr. Velez on the evening of this incident presented Investigators with a new and renewal Certificate of Inspection certificate No. 30637, with the date of issuance of December 29, 2010, for an allowable occupancy load of six hundred and twenty eight (628) people.

Investigator Bailey testified that she reviewed the licensee's administrative file which contained a document identified as: New and Renewal Certificate of Inspection, certificate No. 30637, with a date of issuance of December 29, 2010 and expiring on December 31, 2011, which listed an allowable occupancy load of four hundred and twenty (420) people.

Yet, the licensee on this evening presented Investigators with a Certificate of Inspection, certificate No. 30637, with the exact same date of issuance of December 29, 2010, and expiring on December 31, 2011, with a greatly increased allowable occupancy load of (628) six hundred and twenty-eight people.

**Failure to Complete the Fire and Building Safety Checklist as prescribed by the Fire Marshall, on each day of operation prior to opening the facility to patrons as required since June 2011 pursuant to: 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: 527 CMR 10.13 (2) (e) -** Investigators requested that Mr. Velez produce the daily fire and building safety checklist, and the names and certificates of the crowd managers on duty. Mr. Velez provided investigators with the following requested documentation:

Fire and building safety checklist dated September 16, 2011 with questions 7, and 9 through 13 incomplete, not signed by crowd manager, and missing crowd manager certificate number.

Investigators informed Mr. Velez the fire and building safety checklist form was incomplete and unsigned. Investigators requested to see copies of the original documentation of these forms, which Mr. Velez then provided. Investigators observed that the copied fire and building safety checklist form was signed. Investigators asked when Mr. Velez had signed the fire and building safety checklist form. Mr. Velez stated that he signed the fire and building safety checklist form before he made the copy. Investigators informed Mr. Velez that the original document provided was unsigned and their report would reflect that fact.

The Licensee clearly did not complete the fire and building safety checklist as prescribed by the Fire Marshal on each day of operation prior to opening the facility to patrons as required since the year 2011.

**204 CMR 2.16 (1) - Failure to Post Cover Charge outside the licensed premises in accordance with M.G.L. Ch. 140 §183D:** While interviewing Mr. Velez outside the premises, investigators observed larger numbers of patrons entering the licensed premises, as well as standing in a line awaiting entry.

Investigators asked Mr. Velez if tickets were being sold at the door. Mr. Velez answered "yes", and that many people had purchased tickets at the door earlier in the evening. Investigators asked again how many tickets were sold in advance. Mr. Velez stated six hundred (600) tickets were sold in advance. Investigators asked how many tickets had been sold at the door. Mr. Velez stated he did not know.

Investigators observed that there was no posted signage informing the public of a cover charge in order to enter the licensed premises. The Licensee did not post a cover charge outside of the establishment thereby violating the General Laws of Massachusetts.



**204 CMR 4.03(1)(c) - Sell, offer to sell or deliver to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the public.** Investigators questioned Mr. Velez regarding the bottle specials advertised on promotional cards which were found inside the licensed premises. Mr. Velez stated on nights when there is a live band, he charges eighty (\$80) dollars for a bottle. He also stated on regular nights, the cost of a bottle is one hundred (\$100) dollars. Investigators informed Mr. Velez of the violation.

The Licensee did reduce the drinks that he sold at a price less than the price regularly charged for drinks during the same calendar week, which is also prohibited under regulations of the Commission.

### CONCLUSION

The Commission is persuaded that the Licensee has committed all violations alleged. The Commission finds this is a clearly dangerous operation of a license. The Commission is alarmed by the unsafe operation of this licensed premises.

The Commission is extremely troubled about the licensee possessing a certificate of inspection with a substantial increase in the occupancy, considered in conjunction with the Licensee's failure to appear at the hearing to explain how two (2) different inspection certificates carry the same date of issuance.

The Commission finds, based on the evidence, that the licensee violated:

1. 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 148, section 34A;
2. 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: 527 CMR 10.13 (2) (e);
3. 204 CMR 2.16 (1) -Failure to Post Cover Charge outside the licensed premises in accordance with M.G.L. Ch. 140 §183D; and
4. 204 CMR 4.03 (1)(c) – Selling, offering, to sell or delivering to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the public.

Therefore, the Commission issues the following penalties:

1. 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 148, section 34A: **REVOKE FORTHWITH;**
2. 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: 527 CMR 10.13 (2) (e): **REVOKE FORTHWITH;**
3. 204 CMR 2.16 (1) -Failure to Post Cover Charge outside the licensed premises in accordance with M.G.L. Ch. 140 §183D: Issues a **WARNING;** and
4. 204 CMR 4.03 (1)(c) – Selling, offering, to sell or delivering to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the public: **SUSPENDS THE LICENSE FOR NINETY (90) DAYS ON AND AFTER THE REVOCATION.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner

*Susan Corcoran*

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Kathleen McNally, Commissioner

*Kathleen McNally*

Dated: July 31, 2012

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.

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Rose Bailey, Investigator  
Administration