

**City of Malden
Massachusetts
215 Pleasant Street, Suite 424
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Malden Licensing Board**

Lee A. Kinnon, Chairman

Andrew Zeiberg, Member
Frances Lin, Member

Diane M. Anthony, Clerk



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**MINUTES OF MEETING
MALDEN LICENSING BOARD
January 18, 2022**

Lee A. Kinnon, Chairman
Andrew Zeiberg, Board Member
Frances Lin, Member
Kathryn M. Fallon, City Solicitor
Diane M. Anthony, Clerk
Captain Marc Gatcomb, Police Liaison

The Meeting was called to order by Chairman Kinnon in person at 6:00 p.m.
It was stated by Mr. Kinnon that the meeting will be recorded on Zoom and may be recorded by UMA.

Motion by Andrew Zeiberg to approve the Minutes from December 1, 2021, meeting of the Malden Licensing Board. Seconded by Frances Lin.

Roll Call Vote:

Andrew Zeiberg – Yea
Frances Lin – Yea
Lee Kinnon - Yea

Motion passed.

The next item on the agenda is the application for Change of Manager for Pumpsy's, 271 Highland Avenue. Present and representing Pumpsy's is Attorney John Mooradian of Demakis Law Offices along with owner, Nick Patel and proposed manager Dhavel Patel.

Attorney Mooradian said that Dhavel has been a clerk at the store for 8 years. He is TIPS certified and knows the safe sale of alcohol. Attorney Mooradian said he had sent the proof of citizenship to the Clerk for the Board. Chairman Kinnon acknowledged that it had been received.

Member, Frances Lin acknowledged that Dhavel has been working for quite a few years at the store. Ms. Lin then went on to ask Dhavel what the 6 acceptable forms of identification are. He said Massachusetts ID and hesitated for a time. Ms. Lin went on to inform Dhavel that the Board requires that this be posted at the location. Again,

there was hesitation by Dhavel Patel.

Member, Andrew Zeiberg then went on to ask Dhavel to name the 6 forms of acceptable identification. Dhavel Patel said passport, military ID, state ID and driver's license.

Chairman Kinnon said that the forms of ID are critical to make sure you are not selling to underage patrons. This should be posted at the store. Mr. Nick Patel, owner and current manager of the store said he does have the acceptable forms of identification posted.

Attorney Mooradian and Nick Patel said they use the ID scanning system,

Mr. Zeiberg asked if Nick Patel would be there. Nick Patel said he will be there, but Dhavel will be the manager. The clientele at his store is well aware of the system. They do not sell anything without scanning an ID. Mr. Zeiberg asked what Dhavel has done other than a clerk's job. Nick Patel said he stocks, orders and has had TIPS classes. Mr. Zeiberg then asked Dhavel how he purchases alcohol. Where does he go to get it? Dhavel said from the wholesaler. Mr. Zeiberg asked Nick Patel if there would be another clerk. Nick said they are training another clerk, but he will be there too. Nick said he is a hands-on owner, and he will be there, but his children are getting ready for college and is trying to reduce his hours and spend time with his family. That is why he is asking to change manager to Dhavel. Mr. Zeiberg asked about the store hours. Nick said Monday through Saturday 9am to 11pm and Sunday from 10am to 10pm.

Ms. Lin asked if the additional employees will be TIPS trained.

Chairman Kinnon said TIPS training is fine, but he is concerned with this applicant. He wants someone who is manager to be familiar with the job. When he looked at this application, he was comfortable, but he cannot answer the question. He should know the acceptable forms of ID. Those are important for the job.

Attorney Mooradian said there may be a language barrier.

Mr. Zeiberg said he does not feel comfortable making a decision at this moment. Let him familiarize himself with the 6 forms of ID and manager's job.

Attorney Mooradian said it would be fine to continue this until the next meeting.

Motion by Andrew Zeiberg to hold this application in abeyance until the next meeting. Seconded by Frances Lin.

Roll Call Vote:

Andrew Zeiberg – Yea

Frances Lin – Yea

Lee Kinnon - Yea

The next item on the agenda is the Notice of Hearing for Exchange Street Bistro, 67 Exchange Street, Malden. Present and representing Exchange Street Bistro is John Carlino, owner/manager and Attorney Christopher Fallon.

The licensee acknowledged the receipt of the Notice of Hearing and attached police reports regarding incidents on October 16, 2021, and December 31, 2021.

Chairman Kinnon asked Attorney Fallon if he would like to speak. Attorney Fallon said he would wait until after the Malden Police made their presentation.

Chairman Kinnon asked Captain Gatcomb to speak as to the October 16, 2021, incident.

Captain Gatcomb summarized from the police reports submitted regarding the October 16, 2021, incident. He said that the police were called to the Bistro by the Manager. The manager was very cooperative. The victim was verbally confronted by a patron, and he spit at her. Other patrons intervened and a fight ensued. The Bistro employee had taken the patron/defendant's keys from him. They were going to call an uber for him before the incident occurred. The police arrived and the patron/defendant threatened to fight the officer at the scene. He could not be booked as he was highly intoxicated. He was placed in protective custody. Officer Owens and Froio asked why he was served so much. Lt. Michael Powell followed up with Mr. Carlino at the Bistro and reviewed the security tapes from the incident. He said something escalated this event. Lt. Powell said that Detective Co followed up and was provided with the receipt for the patron/defendant's bill. It showed 7 drinks that included 3-Corona, 2-Corona light, 1- expresso martini and 1-Tito's vodka.

Mr. Zeiberg asked to hear from Attorney Fallon and Mr. Carlino.

Attorney Fallon states that this is the first incident that Mr. Carlino has ever had in the restaurant industry. This is his very first time before this Board or any other Liquor License Board or the ABCC. As far as Mr. Carlino and the Exchange Street Bistro these seem to be aberrations. Mr. Carlino is the incoming president of the Massachusetts Restaurant Retail Association. The irony of this situation is that Mr. Carlino is actively involved with State and National politicians about how the industry can handle the circumstances and what can be asked of a patron or customer about marijuana or prescription drug use. Mr. Carlino is trying to be ahead of the curve in these circumstances.

Mr. Carlino spoke to the Board and said that the patron/defendant has been a regular customer in his establishment for over 10 years. He works as a Board of Health Director and even had his wedding reception at his restaurant. He was served 5 beers and purchased the martini and Tito's for other customers. The patron was recently prescribed a blood thinner, and he is not sure of the relevance it has to his reaction to 5 beers. He was there for a several hours and he has never been a problem before. It was a very unfortunate incident. This patron is known to the staff at the Bistro. He is a generous person and buys drinks for others. He is generous tipper. What precipitated him to spit on someone he can't say. Mr. Carlino states that his staff has been with him long-term, and they have connections with their regular customers. They are all TIPS certified and although they are knowledgeable, good worker's he still stays on top of them about their re-certifications and protocol that he requires from his employees. Mr. Carlino is very embarrassed and has not been able to sleep well since the first incident. He welcomes any suggestions from Captain Gatcomb or Lt. Powell. Mr. Carlino states that this patron has been issued a trespass notice and is not allowed to enter his establishment again.

Chairman Kinnon asks Board Members if they have any questions. Mr. Zeiberg wants to wait until we hear about the second incident. Mr. Zeiberg said there have been 2 incidents in a short period of time. Chairman Kinnon said it is concerning that there have been 2 incidents when they have never had any in the 16 plus years in business in Malden. Mr. Kinnon said the biggest question for him is taking they keys away from the patron's keys because they recognized it was a problem but not doing anything else. One of the most difficult cases is to stop serving someone who you know as a regular but suddenly it seemed like he had too much. The police report said they didn't know whether if the manager stopped him from drinking or just took his keys. Ms. Lin also has no questions at this time.

Mr. Carlino said it happened so quickly. The patron/defendant had 5 beers and he weighs over 300 pounds. They were going to call his wife or get an uber for him before the incident happened. Two guys walked in, and the

incident happened, and they threw chairs and started trouble. He has been in Malden for 16 years and his establishment is a fine dining restaurant. It is about the food not the liquor. He has reviewed the tapes with his staff, and he said they need to do better. It is really eating at him, and he is very upset.

Mr. Zeiberg said he believes 5 beers would put you under the influence. Mr. Carlino stated that he had 5 beers in a period of 3 ½ hours.

Chairman Kinnon turned the meeting back over to Captain Gatcomb to speak about the December 31, 2021, incident.

Captain Gatcomb said the incident occurred on December 31, 2021, at 6:22 p.m. Officers were dispatched to Exchange Street Bistro about a female that fell outside the restaurant. She tripped on curbing. When officers arrived, the female started screaming. She walked back into the Bistro. The officer called for additional assistance. She attempted to take a lit cigarette and throw it at the officers and smelled strongly of alcohol and was combative. Ultimately, they used pepper spray and she was transported by Cataldo Ambulance to a local hospital. The second woman who was with her and also interfered seemed to be heavily intoxicated and she grabbed an officer. After several attempts she was restrained and processed by Malden Police. The police officer did not feel comfortable putting her in a cell at the station. They ended up calling family members to come and pick her up. Lt. Michael Powell followed up with Mr. Carlino. He said Mr. Carlino was very cooperative. The receipt showed they had 8 drinks between them. However, according to the bartender and the report from Sgt. Lanni, the 4th drink was pulled from each patron. The video is consistent with the report. In reviewing the tape, he paid attention to the 2 females involved in the incident. It stemmed from outside the restaurant and the review of the video does not appear to show impairment. There was one time when the woman needed assistance to get her jacket on and she seemed a little unsteady. He observed 2 females walk outside and then she lost her footing and apparently fell on the sidewalk.

Attorney Fallon asked the Chair if he could ask follow-up questions to Lt. Powell. Chairman Kinnon agreed. Attorney Fallon asked Lt. Powell if the 2 women were related. Lt. Powell said they were. Attorney Fallon asked if Cataldo Ambulance was summoned to the Exchange Street Bistro or the Police Station. Lt. Powell said they were summoned to the Exchange Street Bistro. Attorney Fallon asked who arrived first at the scene. Lt. Powell said Cataldo Ambulance and they transported one woman to the hospital. Attorney Fallon asked if the records document whether they took a level of alcohol at the hospital. Attorney Fallon then asked if Lt. Powell had an opportunity to review the video, how long were the 2 women at the Exchange Street Bistro. Lt. Powell said they appeared to be there over 3 hours. Attorney Fallon asked if they had food or desserts. Lt. Powell said they had food and drinks.

Mr. Zeiberg asks as the officers who made the arrest said both women smelled of alcohol, were they charged in Court. Captain Gatcomb said both women were charged and summonsed to Court. They did not stay in a cell as one was brought to the hospital, and one was picked up by a family member. Lt. Correale reports one had trouble breathing and a second female's pants were down to her knees. A jail cell was not the proper place for them.

Chairman Kinnon said it sounds like they fell outside the Bistro, and someone called Cataldo Ambulance and the police were called to the Bistro.

Attorney Fallon said these 2 women were congenial and happy. They seemed happy with the service and left a generous tip. One of the women went to the restroom and the other one ordered another drink for them. When the other woman returned from the restroom the bartender noticed she was unsteady on her feet. Although the 4th drink was served it was pulled from the bar. Relevant to what Lt. Powell stated, they walked outside the restaurant. One person inside the restaurant saw her fall and Exchange Street Bistro called he ambulance and police also arrived. Attorney Fallon asked Lt. Powell if he observed the women walk to and from the bar area on

several occasions if they seemed unsteady on their feet. Lt. Powell said just when she tried to get up to leave the older woman was a little unsteady on her feet.

Mr. Carlino said he talked to his staff and the 2 women came in at 3pm. They had 3 drinks with one bartender. There was a shift change, and the women were chatting and there were no problems. They had ordered food and asked for another drink. The drink was served but Pier, the bartender, thought one seemed a little unstable. She got the manager, and they pulled the drink. The women were okay with that, and Mr. Carlino feels his staff did a great job. They were there for 3 hours and had 3 drinks. They were not upset they pulled the 4th drink. The women left and one fell outside the restaurant on the sidewalk. It was actually a customer in the restaurant that called for the ambulance. It was New Year's Eve, and the 2 women caused a scene outside the restaurant. They left happy and no one knew there was a problem. When they left, they were okay. Three drinks in 3 hours. He feels his staff recognized one was unsteady and pulled the 4th drink. Mr. Carlino expressed concerns about edibles and prescription drugs and tools restaurateurs need with recognizing this potential problem.

Mr. Zeiberg has no follow up questions.

Ms. Lin said John Carlino has made a good point. After listening to Malden Police, Mr. Carlino and Attorney Fallon she feels the first incident was a regular customer and asks if this was the first time, he got intoxicated with 5 drinks. Mr. Carlino answers that the patron drinks Corona lite and always had 4-5 beers. Mr. Carlino has seen him drink like that before and he was a regular for 10 years. He feels his staff handled it well, calling the police and no one was hurt. It has been a tough year with COVID for him. People are anxious and we are a restaurant not a bar. As he said before he is a fine dining restaurant not a bar. Alcohol is secondary. He feels bad about the incident outside with the 2 women but that was outside the restaurant. He can't speak for society and how they act. He also said he's never been before a liquor board and has had 8 restaurants. He joined the Massachusetts Restaurant Association and is working with 9,000 restaurants. They are trying to figure out the potential problems with edibles and prescription drugs. If someone has one drink they can smell like alcohol. We are trying to get tools to help us recognize these potential problems. Ms. Lin has no further questions.

Chairman Kinnon said that the record of the Exchange Street Bistro is impeccable until this time. Maybe edibles are changing things, but we have to be vigilant. We need to up our game. The Bistro has never been before us.

Mr. Zeiberg said there is no evidence anyone took an edible. He believes the 2 incidents were from his bartenders overserving people. With regard to the 2 women, they were also overserved, and he wants to know what has been done to stop this. Mr. Carlino responded that they had 3 drinks in 3 hours and the 4th drink was pulled at 90 percent full. Mr. Carlino states he does not tolerate this. The patron that had 5 beers has had 5 beers in the past. He was a regular for 10 years and he was there for over 3 hours. Mr. Carlino states he has been there for 16 years and has never had an incident until this time. He trains his staff, and he runs a tight ship. He is not a bar he is a restaurant and does not want this.

Mr. Zeiberg said the issue is if the bartender was overserving. He understands this issue and the question is where do we go from here? Mr. Zeiberg makes a motion for a roll back held in abeyance for 6 months. Chairman Kinnon said a roll back has a time limit. Mr. Zeiberg suggests a roll back to closed at 11pm for 2 weeks or 14 days held in abeyance for 6 months. Mr. Carlino interrupts and speaks about 16 years with no problems. This record should speak for itself. Attorney Fallon asks to consider a modification and not roll back as this is the first incident and this business is recovering from the effects of the pandemic. Attorney Fallon suggests roll back for Monday through Thursday and continue regular hours on Friday and Saturday and held in abeyance. Mr. Zeiberg said 2-week rollback held in abeyance for 6 months without incident. Chairman Kinnon asks Ms. Lin what her thoughts are. Ms. Lin feels 6 months is a long time for Mr. Carlino not to sleep. Chairman Kinnon said we can't ignore our job and the first incident is more bothersome to him than the second one.

Attorney for the Board, Kathryn M. Fallon asks if a motion has been framed for the 2-week rollback to 11pm held in abeyance for 6 months. Chairman Kinnon said there has been no second made yet. Mr. Zeiberg withdraws his motion.

Member Andrew Zeiberg makes a motion to roll back hours to 11pm for 14 days to be held in abeyance as long as there is no other incident within 3 months.

Attorney for the Board, Kathryn M. Fallon clarifies that the penalty will go into effect immediately if there is another incident within 3 months.

Attorney for the licensee, Christopher Fallon asks with no due process – no hearing? Another over-service incident? Mr. Carlino then asks to define over-service.

Attorney for the Board, Kathryn M. Fallon said they are not looking to elicit testimony from John Carlino. He will need to do what needs to be done to prevent this from happening again.

Attorney Christopher Fallon asks if there was another incident would he have the opportunity for due process. Attorney Kathryn M. Fallon states the discipline has been moved on for the 2 instances that have already transpired. It is up to the Board if there were another incident if they would hear it.

Chairman Kinnon said both events have indications of overserving and if Mr. Carlino needs to clamp down on his staff so be it. We are doing our job to protect the City.

Attorney Kathryn M. Fallon said the Board does not have a measure of what overservice is. It is a case-by-case basis. The Licensee should know this. Attorney Christopher Fallon states respectfully what you are suggesting is for Exchange Street Bistro not call Malden Police? This is grossly unfair and there is no due process. Attorney Kathryn M. Fallon said the Motion was made to impose a 2 week roll back held in abeyance as long as there are no further incidents within 3 months. He has had his due process on these 2 incidents by what is imposed today. The discipline is for the 2 incidents.

Mr. Zeiberg restates “As a result of the 2 incidents I make a Motion for a roll back to 11pm for two (2) weeks to be held in abeyance with no further incidents within 3 months. Seconded by Frances Lin.

Motion Passed.

Roll Call Vote:

Andrew Zeiberg -Yea
Frances Lin – Yea
Lee Kinnon – Yea

Representing the City of Malden, Kevin Duffy has asked to speak with the Board under “Other Business”.

Kevin Duffy states he is anticipating the end of COVID and has a few events that involve a one-day license to be considered by the Liquor Licensing Board. One event would be held in September, 2022 and would be held by Idle Hands and would be First National Lager Festival. The event would be held on the top floor of the Jackson Street Garage for and would be for 3 ½ hours starting at 1pm and a second event for 3 ½ hours starting at 6pm with the event ending at 10pm. Chairman Kinnon asked about security and control of the situation. He asked

about involving the police department from the start and feels it is a good idea since it is near to the train station. Mr. Kinnon expresses concern about people near the edge on the top of the garage. Kevin Duffy said it would be on top of the garage and he would have fencing with a 3-5-foot buffer zone around the edge. Mr. Zeiberg asks if it has ever been done before. Kevin Duffy said no this would be the First National Lager Festival in the U.S. Mr. Duffy also stated that it is City owned property and he wants it to be advertised as a package with food served on site. The event would be held in September, 2022 assuming COVID is over by then. Attorney Kathryn M. Fallon indicates insurance riders would need to be coordinated.

Kevin Duffy explained to the Board the second event he is proposing that would also require approval by the Board would be the Phantom Gourmet Food Festival on June 25, 2021. They would be closing portions of Exchange Street, Middlesex Street and Pleasant Streets. It would be a gated area. It is a big event and would be big advertising for Malden. It would be coordinated by 110 Grill and Phantom Gourmet. There will be 2 outdoor stations for 110 Grill in a corralled area. The only people admitted will be over 21 years old and they will be carded upon entry and upon service of any alcohol. It is for 21 years or older and would require a ticket to enter. The sidewalks will be open, and families can watch from the sidewalk but the street area where the event is held will be corralled off. Mr. Zeiberg asked if it was done in Waltham recently. Kevin Duffy said they have had this event on Lansdown Street in Boston and most recently in Waltham. Phantom Gourmet has held this event for 20 years. Mr. Zeiberg states he did not know it was an over 21 event. Chairman Kinnon asked about the flow of the area and if 110 Grill will be pulling the license. Kevin said as hosts the City gets a table and tent for free. Mr. Kinnon said it would be a big bonus for Malden businesses. Kevin Duffy said they expect 8,000 people. Ms. Lin asked if it was a family event and Kevin said it is for 21 years or older. Mr. Duffy said it will be a good, successful event for Malden. Attorney Kathryn M. Fallon asked if it was a daytime or nighttime event. Kevin Duffy said it is a 4-hour window and ends at 4pm. Attorney Fallon said insurance would need to be provided to the City by 110 Grill and Phantom Gourmet. Kevin Duffy said he is working closely with the Malden Police and Fire Departments and would like to submit the application for the one-day license to the Board for this event at its February meeting.

Meeting adjourned at 6:00 p.m. Next regularly scheduled meeting will be Tuesday February 15, 2022, at 6:00 p.m. to be determined if it is via Zoom or in person.

Submitted by:

Diane M. Anthony, Clerk
Malden Licensing Board
Minutes Approved by:

Bee G. Kinnon/da

Andrew G. Zeiberg/da

Frances Lin/da