OFFICE OF THE BOARD OF SELECTMEN

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TOWN OF ARLINGTON
MASSACHUSETTS 02476-4908

DECISION of the LOCAL LICENSING AUTHORITY

Licensee:	Arlington Liquors d/b/a "Alexander Liquors
Licensed Premises:	94B Summer Street (Arlington Liquors)
License No.:	003000048
License Type:	Package Store License
Expiration Date:	December 31, 2017

Summary of Findings and Decision

On June 19, 2017, after proper notice and hearing, the Town of Arlington's Board of Selectmen, in its capacity as a local liquor licensing authority ("LLA"), voted to revoke Arlington Liquors' (a/k/a "Alexander Liquors") license. The LLA's decision is based upon the number and severity of alcohol and related violations within a short period of time, the most recent of which occurred while the license holder was on probation for a previous violation, as well as the license holder's manifest lack of any plan or measures to address issues which have apparently led to multiple sales of tobacco and alcohol to underage persons and other illegalities on the premises. This body is well aware of the severity of this penalty, but found little basis in the License Holder's

testimony at hearing to allay its numerous concerns about the safe and effective management and exercise of the business and license at issue in the interests of the public good.

Procedural History

The Arlington Police Department ("Department"), as the duly appointed agent for the LLA, conducted annual alcohol compliance checks (a description of which is provided below) on February 27, 28, and March 8, 2017. The Department later notified the LLA of the results of those operations, advising the LLA of those licensees which failed the compliance check, including "Arlington Liquors." In accordance with G.L. c. 138, § 23(4), the Board scheduled a hearing on June 5, 2017, at approximately 7:15 p.m. to examine the alleged violations and consider whether or not any violation of c. 138, ABCC regulations, or LLA regulations occurred. The Licensee was notified of the hearing by certified letter dated May 15, 2017 and acknowledged receipt of same. The hearing was subsequently postponed until June 19, 2017, and licensee was notified accordingly.

Questions Presented for Hearing

(1) Did a violation of the state liquor law occur on the above-referenced premises by sale or delivery of alcoholic beverages to persons under the age of 21 in violation of c. 138 § 34, as well as 204 C.M.R. 2.05(2), which prohibits any illegality on licensed premises?

(2) If so, what action, if any, will the LLA take concerning the above-referenced license as a result, including a violation of probationary terms set forth at the Board's November 14, 2016 hearing for an alcohol license violation by the license holder, approved and codified by the Board's decision of November 28, 2016?

License History & Prior Violations

The LLA approved the transfer of the "all alcohol package store" license at issue to "Arlington Liquors d/b/a Alexander Liquors" and its owner and manager Mr. Alexander Kushnirsky by a 4-0 vote on August 22, 2011. Since that time, Arlington Liquors has been twice failed tobacco compliance checks, wherein cigarettes were sold to persons under the age of 21, in violation of the Arlington's Regulation Restricting the Sale of Tobacco and Nicotine Delivery Products. Most recently, Arlington Liquors failed a tobacco compliance check on March 16, 2016; and the Arlington Board Health subsequently voted to issue a $100 fine and suspend tobacco sales at Arlington Liquors for seven (7) days on or about April 6, 2016.[1] *See* Board of Health Minutes & Decisions annexed hereto as Attachment "A." Arlington Liquors had previously failed the same type of tobacco compliance check on January 7, 2013, resulting in a February 3, 2013 fine and suspension of the same magnitude. *See* Attachment "A."

Moreover, on November 14, 2016 the Board of Selectmen, in its capacity as the LLA, determined that Arlington Liquors had violated the terms of its license and 204 C.M.R. 2.05(2), when its manager and owner (Mr. Kushnirsky) was found unresponsive and in possession of medical marijuana without a medical marijuana ID card (a then illicit substance), while also on the premises of his package store on or about February 26, 2016. Based upon the evidence and testimony regarding the February 26, 2016 incident, the LLA issued a five (5) day license suspension held in abeyance for a one-year

[1] It bears noting that according to Board of Health minutes of its April 6, 2016 Hearing, Mr. Kushnirsky represented that he was unaware that the legal age required for sale of tobacco in Arlington is 21 years old.

probationary period to end on November 30, 2017.[2] *See*, November 28, 2016 LLA Decision Re: Arlington Liquors, annexed hereto as Attachment "B."

Evidence Presented

The following documents were accepted and made part of the record:

(A) Arlington Police Department Reports Nos. 17005217 (February 27, 2017), 17005303 (February 28, 2017), and 17006003 (March 8, 2017)(hereinafter "Incident Reports," and annexed hereto as Attachment "C").

The following witnesses appeared and testified:[3]

(1) Arlington Police Department Inspector Stephen Porciello: summarized the annual alcohol compliance check operation and investigatory findings of the Department, especially information codified in Incident Report No. 17005303, which recorded the details of Arlington Liquors' compliance check failure; and

(2) Alexander Kushnirsky, Owner and Manager of Arlington Liquors: provided the Licensee's recitation of events, information on his business practices regarding checking identification, and referenced physical evidence not presented to the LLA (video recordings allegedly capturing the sale of alcohol to compliance check operatives).

[2] Given the findings of the June 18, 2017 Hearing in this matter, Arlington Liquors was noticed and did serve a five (5) day consecutive license suspension on or about June 23-27, 2017 in satisfaction of this Board's prior decision.

[3] A true and accurate recording of the entirety of the proceeding including Inspector Porciello and Mr. Kushnirsky's testimony is available on demand at: http://acmi.tv/videos/selectmen-meeting-june-19-2017/ A transcript of such proceedings is also available upon request.

Findings of Fact

On the basis of the evidence presented at the June 19, 2017 Hearing described above, and other judicially noticeable information, the LLA made the following findings of fact:

1. On February 28, 2017, at approximately 4:48 p.m., Arlington Police Department, through Inspectors Stephen Porciello and Detective Sergeant Bryan Gallagher, conducted annual alcohol compliance checks on thirteen (13) of the Town's restaurants licensed to sell alcoholic beverages for consumption on the premises under G.L. c. 138, § 12, and two (2) of the Town's licensed package stores under G.L. c. 138 § 15. Previous compliance checks had been conducted for other restaurant, theater, and package store license holders on February 27, 2017, and subsequent checks were conducted on March 8, 2017. *Porciello Testimony; Incident Report.*
2. The compliance check was conducted in similar fashion to previous checks conducted in Arlington, and in accordance with the Compliance Check Guidelines of the Alcoholic Beverages Control Commission. Operatives are advised to make straight-forward orders for the purchase of alcohol and did not attempt to use fraudulent identification. *Porciello Testimony; Incident Report.*
3. As part of this compliance check, two underaged (teenage) operatives were sent into each establishment with no identification on the date in question. The operatives attempted to purchase alcoholic beverages in

each establishment. At the Licensed Premises on February 28, 2017, the two operatives purchased one (1) six-pack of Bud Light cans from a cashier later self-identified as Almaz Imanlieve to APD. The operatives paid for the six-pack and received change along with a receipt. The operatives left the package store to return immediately thereafter with the APD personnel and notify Arlington Liquors of the violation. *Porciello Testimony; Incident Report.*

4. Mr. Iamnlieve acknowledged the sale, but believed he had seen the operatives "in the business in the past." *Incident Report.*
5. These operatives are, in the opinion of Inspector Porciello, underage in physical appearance. *Porciello Testimony.*
6. The Licensed Premises has been operated by the present license holder since August of 2011. It has not previously failed an alcohol compliance check. The Licensed Premises was previously determined to have violated state and local alcohol regulations at a November 14, 2016 hearing of the LLA, when the owner and manager of the Licensed Premises was found to have been in illegal possession of medical marijuana without a authorized patient identification card on or about February 26, 2016. Moreover, the Licensed Premises has a record of at least two (2) prior violations of tobacco sales laws and regulations (including one in the last year), having similarly sold cigarettes to persons under the legal age for purchase without checking identification in

compliance checks conducted by the Town Health and Human Services Department. *See* Attachments "A," and "B."

7. The Licensee did not dispute Inspector Porciello's basic facts and conclusions, or that the violation set forth in the Incident Report occurred. *Kushnirsky Testimony.*

8. The Licensee reported that his employee, Mr. Imanlieve, has worked for him in a similar capacity for approximately eight (8) years. *Kushnirsky Testimony.*

9. Mr. Kushnirsky admitted that the female operative looked "very young," but believed the male operative looked older because he was bald. *Kushnirsky Testimony.*

10. Mr. Kushnirsky asserted that he takes underage service very seriously, continuously trains his employees in checking for identification, that they are "on top" of identification checks, and that his employees provide APD with confiscated fake IDs. *Kushnirsky Testimony.*

11. However, APD did not corroborate receipt of fake IDs on a routine basis from the Licensee, if at all; and Mr. Kushnirsky acknowledged that the Licensee does not keep logs of underage customer incidents. *Porciello Testimony; Kushnirsky Testimony.*

12. Furthermore, Mr. Kushnirsky suggested that underage service would not occur if the Town of Arlington's or larger community's alcohol policies were different. *Kushnirsky Testimony.*

13. Moreover, Mr. Kushnirsky expressed his view that this is an "isolated incident," but did not outline any plans to change policy or practices at the Licensed Premises. *Kushnirsky Testimony.*

Conclusion

On the basis of the findings of fact recited above, the LLA made the following conclusions on the Questions Presented:

(1) Did a violation of the state liquor law occur on the above-referenced premises by sale or delivery of alcoholic beverages to persons under the age of 21 in violation of c. 138 § 34, as well as 204 C.M.R. 2.05(2), which prohibits any illegality on licensed premises?

Yes.

(2) If so, what action, if any, will the LLA take concerning the above-referenced license as a result, including a violation of probationary terms set forth at the Board's November 14, 2016 hearing for a previous alcohol license violation by the license holder, later codified by the Board's decision of November 28, 2016?

Revocation of the License. Revocation shall be stayed until either the expiration of the statutory appeal period, or should the Licensee appeal the decision to the ABCC, the outcome of such appeal proceedings.

However, the five (5) day suspension held in abeyance for violation of the probationary terms set forth for a prior violation of alcohol laws and regulations shall be served immediately.

Discussion

Sections 12 and 34 of Chapter 138 of the General Laws prohibit sale or delivery of alcoholic beverages to any person under 21 years of age. G.L. c. 138, §§ 12, 34. It is undisputed that on February 28, 2016, two underaged persons were sold alcoholic beverages by the Licensee's staff on the Licensed Premises. This sale was in violation of

Chapter 138, as well as the regulations of the Alcoholic Beverages Control Commission at 204 C.M.R. 2.05(2).

The LLA has the authority to grant, revoke and suspend licenses. Their powers are authorized "to serve the public need and ... to protect the common good." G.L. c. 138, §23, as amended through St. 1977, c. 929, §7. "[T]he purpose of discipline is not retribution but the protection of the public." *Arthurs v. Bd. of Registration in Medicine,* 383 Mass. 299, 317 (1981).

The LLA has adopted a policy governing the sale of alcoholic beverages by package stores. *See* Alcohol Licenses and Regulations, at Policies, Rules, and Regulations of Alcohol Licenses for Package Stores (revised January 12, 2015) ("Policy"). The Policy provides that a first offense of serving alcohol to an underaged person will presumptively lead to a license suspension of three to five days to commence on the same day of the week as the violation. *See* Policy at p. 14. However, such presumptive policy does not limit the Board's discretion to "impose some other type of penalty in place of license suspension if the Board concludes that another penalty is appropriate." *See* Policy at p. 14.

In fixing the penalty for sales to underage individuals, the Board may consider the following factors:

> (a) licensee's policies and procedures and application of those policies and procedures to guard against service to underage individuals;
> (b) severity and type of offense;
> (c) efforts made to identify purchasers of alcohol;
> (d) appearance of the underage purchaser of alcohol;
> (e) quality of the evidence of a violation;
> (f) circumstances of the case; and
> (g) number and nature of licensee's previous violations.

Id.

Applied to facts before the LLA, it is not disputed by any party that the Licensee violated State Law, ABCC regulations, and the Town's regulations and policies by selling alcohol to underaged persons. The well-documented operation, conducted at dozens of license holding establishments over three days, and in accordance with ABCC and LLA guidelines and policies, manifestly demonstrates a violation for which there is no justification.

By the Owner and Manager's admission, one of the two operatives looked "very young." The only explanation offered by the cashier, Mr. Imanlieve (an 8-year employee of the License Holder), was that the operatives appeared to be repeat customers. There was no attempt whatsoever to check for identification. The operatives did not present, nor were they carrying fraudulent identification. Nonetheless, other testimony by the Owner and Manager, Mr. Kushnirsky, was at best confused, and at worst attempted deflect responsibility for the violation onto the underaged operatives in confounding fashion.

Furthermore, Mr. Kushnirsky outlined no plans whatsoever to alter current policies and practices at the Licensed Premises in response to this violation, or other violations. He testified about training practices, but presented no documentary evidence of such practices. He contended that he turned over confiscated fake IDs to APD routinely, but APD could not corroborate same, and Mr. Kushnirsky acknowledged that he keeps no logs of incidents regarding attempted purchases by underage persons.

In light of the lack of mitigating factors for this specific violation or any new plans to address the concerns raised by the second violation within one calendar year, the

LLA is particularly disturbed by the timeline of violations involving sales of controlled products to underage persons and/or more serious incidents, which is as follows:

- ***August 2011,*** Mr. Kushnirsky is approved by the LLA the License for the Licensed Premises;
- ***January 7, 2013,*** the Licensed Premises fails a first Tobacco Compliance Check;
    - ***February 3, 2013*** Tobacco Sale Suspension Hearing and Order;
- ***February 26, 2016,*** incident regarding the Owner and Manager's possession of medical marijuana without a medical marijuana ID card on the licensed premises;
    - ***November 14, 2016*** LLA hearing and November 28, 2016 Decision finding a violation and imposing a suspended 5-day suspension for a 1-year probationary period;
- ***February 28, 2017,*** the Licensed Premises fails the Alcohol Compliance Check subject to this decision;
- ***March 16, 2017,*** the Licensed Premises fails a second Tobacco Compliance Check;
    - ***April 6, 2017*** Tobacco Sale Suspension Hearing and Order.

This timeline of events demonstrates *three (3) incident*s of the sale of either alcohol or tobacco products to underaged persons since 2013, two of which occurred less than one (1) month apart, *in addition to* a serious incident involving possession of a then illicit drug on the premises by the Owner and Manager. The decision placing the Licensed Premises on probation for possession of the illicit substance had been issued only four (4)

months prior to failing the alcohol compliance check which brings the Licensee back before this LLA.

The afore-described pattern of violations and lack of any meaningful assurance that the conditions that allowed for same have or will be addressed offers substantial evidence that the public good is jeopardized by the License Holder's continued operation of Arlington Liquors. In isolation, the violation at issue presents a far different matter for consideration. However, the LLA pauses to emphasize that $200 in fines, 14-days of suspended cigarette sales, and 5-days of suspended alcohol sales have been meted out to the Licensee since February of 2013, and that the nature of the February 2016 incident has no precedent in recent memory for an establishment that remains in operation.

Based on such facts alone, a three to five day suspension is not sufficient to protect the public good, such measures already clearly having failed to insure future lawful compliance. The unquestionable facts of this most recent violation, its consistency with a pattern of violations, and the lack of a clear or meaningful plan to address it provide the basis needed to make revocation of the license is necessary.

Order

For the reasons stated herein, the above-referenced license is **REVOKED** pending the expiration of the statutory appeal period, or should the Licensee appeal this decision to the ABCC, the outcome of such appeal proceedings. The License Holder shall surrender his license and cease all alcohol sales at such time as his rights to appeal have been exhausted.

The five (5) day suspension held in abeyance for violation of the probationary terms set forth for a prior violation of alcohol laws and regulations shall be served immediately.[4]

Licensee is hereby advised of his right to appeal this decision to the ABCC within five (5) business days of receiving this decision and order.

Dated: July 24, 2017

By:

TOWN OF ARLINGTON
BOARD OF SELECTMEN

_____
Joseph A. Curro, Jr., Chair

_____
Steven M. Byrne, Vice-Chair

_____
Kevin F. Greeley

_____
Diane M. Mahon

_____
Daniel J. Dunn

[4] Upon information and belief, the License Holder has served the five (5) day suspension (June 23-27, 2017) and reported such service to the Office of the Board of Selectmen in the interim between hearing and adoption of this decision, which satisfies the terms of the LLA's previous determination.

ATTACHMENT "A"

Town of Arlington, Massachusetts
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Board of Health Minutes 02/06/2013

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE BOARD OF HEALTH
27 Maple Street
Arlington, Massachusetts 02476
Christine M. Connolly, MPH, CHO
Town of Arlington
Director of Health and Human Service

Board of Health Meeting Minute
Wednesday, February 6, 2013
Ground Floor Conference Room
Arlington Senior Center
5:30pm

Board Members in Attendance: Dr. Marie Walsh Condon, Dr. Michael Fitzpatrick (Chair), Mr. Kenneth Kohlberg
Staff in Attendance: Christine Connolly, Director of Health and Human Services and James Feeney, Health Compliance Officer, Natasha Waden, Lead Health Compliance Officer, Gloria Ojimba, Intern.
Other: Juliana Rice, Town Counsel, DJ Wilson, Tobacco Control Director, Public Health Liaison, Mass Municipal Association; Wesley Chin, Sub-regional tobacco control coordinator for Arlington, Belmont, Brookline, Newton and Watertown; Kimona Cameron, Brookline Health Department.
Public in attendance: Adnan Rahim, Tarsem Singh, Davinder Sharma, Musfiqur Rahman, Sankar Marichany, Ranbir Rai, Dan Ramnes, Jani Fowler
Maureen Stephens, Mike Porcano, Ray Laham, A. Sofia Khouri, Anthony Caliendo, Michael Ellakkis, Alex Kurshnisky

December 12, 2012 meeting minutes were approved with the following edits: In agenda item II: removal of the second reference "to a minor"; in agenda item III: removal of "has become problematic" and replace with "was in violation of the 1999 Food Code", in sentence 6: "order" change to "ordered".

Mr. Anthony Caliendo, Owner of 20 Belknap, made a request to move his hearing for a variance from the housing code up on the agenda so that he could attend a zoning meeting in the Town of Lexington. Mr. Caliendo stated he would need to leave by 7:00PM. Dr. Fitzpatrick, Chair stated that the Board would proceed with the current layout of the agenda because he was confident that they would be able to get to his request before 7:00PM.

Inspector Waden reported that on January 7, 2013 a tobacco compliance check was conducted by the Health Department, in which a minor was used to attempt to purchase cigarettes at 25 establishments. One establishment was closed at the time of inspection. A total of 11 establishments out of 24 sold cigarettes to said minor. The minor was a 17 year old male and was trained by Health Department staff on tobacco compliance checks in accordance with MDPH Tobacco Control Program guidelines. Said minor purchased a package of Marlboro cigarettes at Little Joe's Convenience Store at 3:47PM. The minor was not asked his age or for identification. Ranbir Rai was present for the hearing and stated that this establishment has not violated in 6 years and that this was a mistake. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said

suspension.

On January 7, 2013 at 3:53PM said minor purchased a pack of Marlboro cigarettes at Arlington Liquors. The minor was not asked his age or for identification. Nobody from the establishment was present during the hearing. Dr. Walsh-Condon requested that the Board of Selectmen's Office be notified of the sale to a minor and that additional training be conducted with this establishment, as it is under new ownership. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:00PM said minor purchased a pack of Marlboro cigarettes at Mystic Street Gulf. The minor was not asked his age or for identification. Michael Elakis was present for the hearing and stated that the clerk did not do his job in checking for identification. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:15PM said minor purchased a pack of Marlboro cigarettes at Arlington Shell. The minor was not asked his age or for identification. Ana Sofia Khouri, owner, was present for the hearing and stated that this was the first violation for them, but that clerk had been working at this location for a long time. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:31PM said minor purchased a pack of Marlboro cigarettes at CVS Pharmacy, 833 Mass Ave. The minor was not asked his age or for identification. Jani Fowler, Store Manager, was present for the hearing and stated that all new employees go through training when they are first hired. In accordance with corporate policy, the employee was terminated. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:41PM said minor purchased a pack of Marlboro cigarettes at Symmes Mini Mart. The minor was not asked his age or for identification. Ray Laham was present for the hearing and stated that the clerk used bad judgment, there were two clerks at the time and one thought the other checked for identification. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and the issuance of a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:51PM said minor purchased a pack of Marlboro cigarettes at Walgreens, 324 Mass Ave. The minor was not asked his age or for identification. Mike Porcaro, Store Manager, was present for the hearing and stated that all staff has been retrained and the clerk who sold to the minor was disciplined with a final written warning. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and the issuance of a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:58PM said minor purchased a pack of Marlboro cigarettes at Mass Convenience, 245 Mass Ave. The minor was not asked his age or for identification. Davindar Sharma, owner, was present for the hearing and stated that all the tools are in place, the clerk has worked there for over 10 years and he just made a mistake. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 5:06PM said minor purchased a pack of Marlboro cigarettes at Dagg's. The minor was not asked his age or for identification. Musfiqur Rahman was present for the hearing and stated that his father was helping him out and used bad judgment and that it was an honest mistake. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law.

Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 5:19PM said minor purchased a pack of Marlboro cigarettes at Boyle's Market. The minor was not asked his age or for identification. Tarsem Singh was present for the hearing and stated that the clerk was a new employee who had been trained, but that he made a mistake. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 5:31PM said minor purchased a pack of Marlboro cigarettes at Arlington Gulf. The minor was not asked his age or for identification. Adnan Rahim was present for the hearing and stated that there was confusion between the gas attendant and the mechanic. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

Alex Kurshnisky, owner of Arlington Liquor's, introduced himself at the end of the tobacco hearings. The Board reviewed the disciplinary action that had been voted on for this establishment.

(a) Inspector Waden reviewed the Draft regulations for Restricting the Sale of Tobacco Products and Nicotine Delivery Products in the Town of Arlington. DJ Wilson from Mass Municipal Association was also present to help facilitate the discussion of the regulations. The following areas were discussed in detail: Section A: Statement of Purpose, the Board would like to keep the current language, as it proves the need to implement all aspects of this regulation. Section D: Tobacco and Nicotine Delivery Product Sales Prohibited: The Board would like to increase the age of tobacco sales from 18 to 21. DJ Wilson provided an overview of how the Town of Needham implemented this over a few years. The Board approved the language. The Board would like to include language requiring the establishment to post signage about tobacco cessation. Inspector Waden will present draft language to the Board at the next meeting requiring signage for sales to persons under age 21. SECTION E: TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PERMITS: the fee for a permit will remain at $500. Furthermore, the Board would like to change the mandatory retailer training to annually, change the number of permits to 19 for capping purposes; and reduce the number of permits to 15 by 2018. SECTION F: CIGAR SALES REGULATED: The Board request that item 2b and 2c be removed SECTION O: VIOLATIONS, when considering cumulative violations the Board would like to review a 36 month violation history as opposed to a 24 month history, continue with fine schedule of $100, $200, $300, remove "a minimum" from item 1c, and add language ("or failure") to item 2 as requested by Town Counsel.

(b) DJ Wilson reviewed the proposed draft regulations Prohibiting Smoking in Workplaces and Public Places. The following areas were discussed in detail: SECTION 4: SMOKING PROHIBITED, DJ Wilson explained that it might be difficult for staff to enforce item (d) as it pertains the prohibition of smoking within 15 feet of an entranceway accessible to the pubic. The Board tabled this discussion until the next meeting.

The Board agreed to hear agenda item XVI and XVII concerning an update on one property (18 Belknap) and a variance request on another property (20 Belknap) both owned by Mr. Anthony Caliendo.
Inspector Feeney provided the Board with an update regarding existing violations concerning 18 Belknap Street that have not been corrected. Feeney first read two letters into the record, one from a group of neighbors revealing their concerns about disruptive tenants and maintenance of the property and the other from Deputy Chief James Bailey regarding the fire alarm system, the front stairwell and the rear fire escape. Mr. Caliendo stated that he has no authority to do anything about the tenants and insists that his building is well maintained. Feeney reviewed with the Board that Mr. Caliendo had requested a hearing at the last meeting to discuss violations pertaining to the fire escape and lack of an automatic door locking mechanism. At that hearing the Board voted to uphold the order to correct that had previously been issued by Inspector Feeney. Mr. Caliendo reported that he would be filing an appeal to the BBRS concerning the automatic lock, and that he was still working on the repairs to the fire escape. Feeney displayed pictures of the repairs that had currently been made to the fire escape, to which the Board deemed unacceptable. Mr. Caliendo stated that he is a licensed contractor and that according to the regulations it is in compliance. The Board requested a recommendation from Feeney concerning the next steps. Feeney recommended that the health department move forward with filing a complaint in court for failure to correct these violations within the allotted time frame. The Board unanimously approved the recommendation.

Inspector Feeney provided the Board with a copy of the Order letter dated January 15, 2013 addressed to property owner Anthony Caliendo. Feeney went on to explain that Mr. Caliendo is requesting a variance from item #3, the installation of

mechanical ventilation in the bathroom that exhausts to the exterior. Occupant Sankar Marichamy was present at the hearing and explained that his daughter has asthma and that the second hand smoke, which he believes is coming from the neighboring unit, entering through his bathroom, makes it difficult for his daughter to breathe. Feeney explained in a memo to the Board that there is no duct work for the fan and it appears that the air being removed from the bathroom is being pushed into the open wall cavity. Mr. Caliendo stated that he has never had any complaints regarding this matter and that because the house is over 100 years old; it is not possible to make the repair. Dr. Fitzpatrick requested that the health department staff contact the building department to conduct an inspection to determine if it would be possible. Director Connolly explained that it would not likely be possible to have the building inspector out at this property. Feeney explained that a professional such as an HVAC person would be able to provide feedback to the owner on how such repairs could be made. Therefore, the Board unanimously voted to deny the variance.

Agenda item XIV: Medical Marijuana. DJ Wilson provided an overview of the status of medical marijuana by stating the following: As of 1/1/13 Mass Department of Public Health has 90 days to write regulations, at this time, it does not look like the first dispensaries will be opening until early fall, Mass Department of Public Health is looking at sample regulations from Maine, Colorado and New Mexico. Juliana Rice, Town Counsel mentioned that there are two warrant articles being proposed before Town meeting, 1. Which will establish zoning requirements for dispensaries' and 2. In the event that regulations are not in place, this would provide a local moratorium on allowing dispensaries to open until the proper regulations are in place.

Inspector Feeney led the discussion of the draft Bodywork regulations, explaining that at this time there are no State model regulations for Bodywork; therefore, best practices from the Towns of Newton and Belmont were taken under consideration when drafting these regulations. Feeney explained that the need for such regulations was discovered during compliance checks that were conducted by a State inspector and a local police officer. During these checks most therapists identified themselves as body workers as opposed to Massage Therapists, as Body Workers are exempt from the state massage law. Dr. Walsh asked about the inclusion of Reiki in these Regulations, and recommended staff reaches out to the school of acupuncture for guidance and assistance. Feeney agreed to reach out to local experts and stakeholders, and to revise according to the Board's comments; he also stated the Regulations were created in an expedited fashion and would be revised for the next meeting.

Juliana Rice, Town Counsel, reported to the Board that a group of High School Students proposed a warrant article for Town Meeting to restrict the use of water bottles less than 1 liter.

Environmental updates were tabled until the next meeting.

Restaurant updates: Feeney reported that Family Injera installed a grease trap, and that Arlington Restaurant and Diner has been working with a consultant. Inspector Waden reported on the following establishments: Barismo moved one door down from their previous location, Napoli Pizza is under new ownership, Wings Over Arlington has opened, Something Sweet Without Wheat has opened. In addition Waden reported that plans for Menotomy Grill and Tavern, Frozland and Szechuan's Dumpling have been approved. The following establishment did not renew their food permits for 2013: Nana's Market, Jade Garden, Gemma, Foodmaster and Ada-Lula Pastry. Lastly, Whole Foods plans to open in the Foodmaster location by September.

No public comment.

Meeting adjourned at 8:04pm

Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476
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Board of Health Meeting Minutes
Wednesday, April 6, 2016
BOH Conference Room
Arlington Senior Center
5:30pm

Board Members in Attendance: Dr. Marie Walsh Condon, Mr. Kenneth Kohlberg, Dr. Michael Fitzpatrick

Staff in Attendance: Christine Bongiorno, Director, James Feeney, Health Compliance Officer, Natasha Waden, Health Compliance Officer

Others in Attendance: Alex Kushnirsky, Ranbir Rai, Tarsem Singh, Theresa Campbell, Robert Bongiorno, Chris Rozanitis, Jess Lawrence

Recording Secretary: Ivy Laplante, Arlington Youth Health & Safety Coalition Director

Meeting called to order by Dr. Marie Walsh Condon at 5:35 pm.

A Motion was made by Dr. Michael Fitzpatrick, which was seconded by Mr. Kenneth Kohlberg, to approve the February 3, 2016 meeting minutes as amended.

Vote: Motion approved unanimously (3-0)

Hearing: Boyles Market: Tobacco/Nicotine Delivery Product Sales Violation

Mr. James Feeney informed the Board that during a compliance check on March 16, 2016, a 19 year old male agent entered Boyles at 9:41am, and purchased a "Blu" e-cigarette (e-cig) from an adult female clerk who asked the agent for his identification. Mr. Feeney delivered a fine of $100 to Boyles and presented a letter to appear at this hearing for violating the Arlington Regulation Restricting the Sale of Tobacco and Nicotine Delivery Products, which prohibit the sale of tobacco and nicotine delivery products to anyone under the age of 21.

Dr. Walsh-Condon asked the store's representative, Mr. Tarsem Singh, if he would like to speak to the Board and address the violations referenced. Mr. Tarsem Singh stated the female clerk who sold the product has worked at the Medford location for over 1 year, and was called in to work in the Arlington location on March 16. It is to be noted that the city of Medford has regulations restricting the sale of tobacco products to age 18. The adult female clerk, Ms. Theresa Campbell, was present at the meeting and apologized for her mistake.

Dr. Walsh-Condon then asked the manager what his plans were to prevent this from happening in the future. Mr. Tarsem Singh stated he would do better to inform all his workers about the local regulations in each community, and explore establishing a store policy to punish the clerks who violate regulations. Mr. Tarsem Singh stated since the law came into effect in March 2015, there have been no problems at the store. Dr. Walsh-Condon noted Boyles Market has had no prior violations. Dr. Fitzpatrick commented on the price of the device, noting it cost $10.51 for the e-cig.

A Motion was made by Dr. Michael Fitzpatrick, which was seconded by Mr. Kohlberg, to approve the minimum penalty of a $100 fine with a 7-day suspension of tobacco sales to be determined by the Health Compliance Officers.

Vote: Motion Approved Unanimously (3-0)

Hearing: Little Joe's Convenience: Tobacco/Nicotine Delivery Product Sales Violation

Mr. Feeney informed the Board that during a compliance check on March 16, 2016, a 19 year old male agent entered Little Joe's Convenience at 9:06am and purchased a "Blu" e-cigarette (e-cig) from an adult male clerk who asked the agent for his identification. Mr. Feeney delivered a fine of $100 to Little Joe's and presented a letter to appear at this hearing for violating the Arlington Regulation Restricting the Sale of Tobacco and Nicotine Delivery Products, which prohibit the sale of tobacco and nicotine delivery products to anyone under the age of 21.

Dr. Walsh-Condon asked the store's representative, Mr. Ranbir Rai, if he would like to speak to the Board and address the violations referenced. Mr. Rai stated the male clerk made an error, and he has already addressed the issue with the clerk. Mr. Rai noted Little Joe's did have a prior violation in 2007.

Dr. Walsh-Condon then asked the owner what his plans were to prevent this from happening in the future. Mr. Rai stated he would discuss the Town regulations with his clerks again, and was not aware that the clerk who violated the regulation checked the agent's ID. Dr. Walsh-Condon reminded Mr. Rai it is his responsibility as the owner to ensure the clerks know the laws in Town.

A Motion was made by Mr. Kenneth Kohlberg, which was seconded by Dr. Michael Fitzpatrick, to approve the minimum penalty of a $100 fine with a 7-day suspension of tobacco sales to be determined by the Health Compliance Officers.

Vote: Motion Approved Unanimously (3-0)

Hearing: Arlington Liquors: Tobacco/Nicotine Delivery Product Sales Violation

Mr. Feeney informed the Board that during a compliance check on March 16, 2016, a 19 year old male agent entered Arlington Liquors at 9:14am and purchased "Marlboro" cigarettes from an adult female clerk who did not

ask the agent for his identification. Mr. Feeney delivered a fine of $100 to Arlington Liquors and presented a letter to appear at this hearing for violating the Arlington Regulation Restricting the Sale of Tobacco and Nicotine Delivery Products, which prohibit the sale of tobacco and nicotine delivery products to anyone under the age of 21.

Dr. Walsh-Condon asked the store's representative (the owner), Mr. Alex Kushnirsky, if he would like to speak to the Board and address the violations referenced. Mr. Kushnirsky stated he was not aware the Town regulations were to prohibit sales under 21, and thought it was only 18+.

Dr. Walsh-Condon then asked the owner what his plans are to prevent this from happening in the future. Mr. Kushnirsky stated he will conduct a new training of staff and check to see if it was an isolated incident. Dr. Fitzpatrick commented with a concern that the owner does not know about Town tobacco regulations. Mr. Kushnirsky informed the Board his manager went to the Tobacco Retailer Training, and he needed to speak to the manager about the new regulations.

A Motion was made by Dr. Michael Fitzpatrick, which was seconded by Mr. Kenneth Kohlberg, to approve the minimum penalty of a $100 fine with a 7-day suspension of tobacco sales to be determined by the Health Compliance Officers.

Vote: Motion Approved Unanimously (3-0)

Hearing: Christo's Market: Tobacco/Nicotine Delivery Product Sales Violation

Mr. Feeney informed the Board that on March 16, 2016, during a tobacco compliance check, a 19 year old male agent entered Christo's Market at 9:59am and purchased "Marlboro" cigarettes from an adult male clerk who asked the agent for his identification. Mr. Feeney delivered a fine of $100 to Christo's Market and presented a letter to appear at this hearing for their violation of Arlington regulations to prohibit the sale of tobacco to anyone under the age of 21.

Dr. Walsh-Condon asked the store's representative, Mr. Chris Rozanitis, if he would like to speak to the Board and address the violations referenced. Mr. Rozanitis stated at the time he sold to the agent, his mother was sick in the hospital and he was not thinking clearly.

Dr. Walsh-Condon then asked the owner what his plans are to prevent this from happening in the future. Mr. Rozanitis promised to be more careful, especially when dealing with young customers.

A Motion was made by Dr. Michael Fitzpatrick, which was seconded by Mr. Kenneth Kohlberg, to approve the minimum penalty of a $100 fine with a 7-day suspension of tobacco sales to be determined by the Health Compliance Officers.

Vote: Motion Approved Unanimously (3-0)

Hearing: Keeping of Hens - 18 Brattle St. #1

Mr. Feeney informed the Board of Ms. Jess Lawrence's application to keep hens on her property. He noted the plans as submitted in the application are compliant with the hen keeping bylaw, and comments from abutters were supportive of the application. Mr. Feeney questioned the current location of the coop, and noted, according to Town bylaws, the coop must be 6ft. from the property line. Ms. Lawrence informed the Board she has been unable to determine the exact location of the property line due to the brook. Dr. Walsh-Condon recommended Ms. Lawrence check with other Town departments to determine her exact property line.

A Motion was made by Mr. Kenneth Kohlberg, which was seconded by Dr. Michael Fitzpatrick, to approve the application for keeping of hens with the condition the coop is located 6 feet from the property line.

Vote: Motion Approved Unanimously (3-0)

Hearing: Variance Request: Minimum Standards for Swimming Pools: Float Tonic LLC.

Mr. Feeney informed the Board that Mr. Stephen Tomadakis was ill and was unable to attend the hearing. The Board discussed the history of float tanks and examined other communities' current regulation of these therapeutic pools. Dr. Walsh-Condon reaffirmed the notion that float tanks should not be exempt from the pool code. Dr. Fitzpatrick noted that the Board has previously set new regulations without precedent. Dr. Walsh-Condon reminded the Board this was a discussion only, not a hearing.

Discussion: Regulation Restricting the Sale of Medical Marijuana

Mr. Feeney informed the Board of additional regulations provided for review by Natick. The Board discussed having Mr. Feeney amend the current draft Regulation to include the following: requiring fire extinguishers at home cultivation sites, allowing violations of the State regulation to also be considered violations of the local Regulation, requiring the dispensary to notify the Board of any Department of Public Health visit within 24 hours, signage prohibiting entrance to the dispensary to anyone without a valid Registration Card, and requiring a dispensary to deliver products to those with a verified hardship.

The Board discussed comments made during the public hearing on the draft Regulation at the previous Board of Health meeting. Mr. Kohlberg reminded the Board of the comments made by a resident who believed limiting the supply of marijuana to 30 days could create a hardship for those who will have difficulty accessing the dispensary more frequently. Dr. Walsh-Condon stated the restriction of medical marijuana to a 30-day supply is warranted because prescriptions for controlled substances have historically been limited to 30 days. Dr. Walsh-Condon also noted the requirement for a dispensary to deliver to any patients who are unable to physically access the dispensary.

A comment was made at the public hearing regarding the possibility of disallowing a dispensary from engaging in the future sale of recreational marijuana. Mr. Feeney reminded the Board this Regulation pertained only to the sale of medical marijuana, and they would not be able to disallow an activity that is considered legal.

Mr. Kohlberg suggested the word "medical" be added throughout the Arlington Regulation to alleviate any confusion between medical marijuana regulations and recreational marijuana.

Dr. Walsh-Condon asked how the Board will regulate "edible" medical marijuana products. Mr. Feeney noted that the FDA states marijuana is not a food and therefore cannot be regulated under FDA code, but the Board can still ensure the food preparation is safe and sanitary. Dr. Walsh-Condon suggested the Board adds a provision that references the minimum standards of food preparation when preparing medical marijuana edibles.

Dr. Walsh-Condon noted due to no substantial changes in the Regulation, the next Board meeting on May 18th will be a hearing to adopt the Regulation Restricting the Sale of Medical Marijuana.

Discussion: 2013/2015 FDA Model Food Code

Mrs. Waden informed the Board that Ms. Maureen Lee, a contracted health compliance officer, plans to facilitate the purchase and use of electronic software for Arlington inspections. Mrs. Waden proposed Arlington should adopt the 2013 food code with 2015 addendums, similar to Newton and Cohasset. Mr. Feeney noted Arlington currently enforces the 1999 food code, which does not cover the specialized procedures being used today. Mr. Kohlberg commended Mrs. Waden on her proactive approach to adopting these new regulations.

Discussion: Food Establishment Plan Review Policy

Mrs. Waden discussed formalizing the current policy requiring food establishments that are changing ownership to undergo a plan review. This policy would require new owners to submit plan documents, procedures, menus, operations, etc. to the health compliance officers before officially re-opening establishment.

Environmental Updates

No environmental updates at this time.

Restaurant Updates

Mrs. Waden informed the Board that Fashion Cake Boutique has closed, and the food establishment formerly known as Zocalo will reopen as The Commune Kitchen.

Public Health Nurse Updates

Mrs. Waden informed the Board:

- An 8 year old boy recently passed away. The boy had been diagnosed with influenza but also had underlying medical conditions.
- There has been a flu spike in Arlington - 57 confirmed cases since September 2015.

- Arlington still has state supplied flu vaccine and the Public Health Nurse, Mrs. Kara Katz, has been contacting local physician's offices for distribution.
- 3 confirmed cases of mumps in Arlington.

Public Comment

None

Other:

A Motion was made by Mr. Kohlberg, which was seconded by Dr. Fitzpatrick, to adjourn the meeting at 8:06 pm.

Vote: Motion approved unanimously (3-0)

Meeting was adjourned at 8:06 pm.

ATTACHMENT "B"

OFFICE OF THE BOARD OF SELECTMEN

DIANE M. MAHON, CHAIR
DANIEL J. DUNN, VICE CHAIR
KEVIN F. GREELEY
STEVEN M. BYRNE
JOSEPH A. CURRO, JR.

730 MASSACHUSETTS AVENUE

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781-316-3020
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TOWN OF ARLINGTON
MASSACHUSETTS 02476-4908

DECISION of the LOCAL LICENSING AUTHORITY

Licensee:	Arlington Liquors d/b/a "Alexander Liquors"
Licensed Premises:	94B Summer Street (Arlington Liquors)
License No.:	003000048
License Type:	Package Store License
Expiration Date:	December 31, 2016

On November 14, 2016, after proper notice and hearing, the Town of Arlington's Board of Selectmen, in its capacity as local liquor licensing authority ("LLA"), unanimously voted to impose a five (5) day license suspension held in abeyance for a one-year probationary period to end on November 30, 2017. Should this LLA find the license holder in violation of G.L. c. 138, any regulation promulgated by the Alcoholic Beverages Control Commission ("ABCC") or its own regulations, within such a period,

the license shall be immediately suspended for five (5) days in addition to any suspension or other sanction for the new violation.

It is also the expectation of this Board, that the license holder make arrangements to bring the licensed premises into compliance with sign regulations codified in the Town's Zoning Bylaws, and up to the standards expected of license-holders in Arlington generally.

In accordance with G.L. c. 138, § 23, the LLA hereby provides this statement of reasons for its action.

Procedural History. Following a thorough investigation, including interviews, reviews of pertinent local and state records, and further evidence collected, by the Arlington Police Department ("Department"), it was determined that on or about the evening of February 26, 2016, Arlington Liquors staff called the Department for assistance with a medical emergency on the licensed premises – 94B Summer Street, Arlington. APD Patrolman Officer Scott Urquhart along with Sergeant Gregory Flavin responded and rendered aid to the license holder, Mr. Alex Kushnirsky. In the process of rendering such aid, 60 milligrams of edible marijuana was recovered from Mr. Kushnirsky's person. Subsequent investigation confirmed that Mr. Kushnirsky was not then licensed or otherwise permitted to possess medical marijuana under the Commonwealth Medical Use of Marijuana program.

As a duly appointed agent for the LLA, the Department in conjunction with the Arlington Legal Department recommended a hearing to determine if any violations of state or local alcohol laws occurred.

In accordance with G.L. c. 138, § 23(4), the Board convened a hearing on November 14, 2016, at approximately 7:15 p.m. to consider whether or not any violation of c. 138, ABCC regulations or LLA regulations occurred at Arlington Liquors on the evening at issue. The licensee was notified of the hearing by certified letter dated November 2, 2016 and acknowledged receipt of same.

Questions Presented.

(1) Did a violation of the state liquor law occur on the above-referenced premises by an agent, manager, or employee's possession of marijuana on the license premises under G.L. c. 138 sec. 64 and/or 204 C.M.R. 2.05(2), which prohibits any illegality on licensed premises?

(2) If so, what action, if any, will the LLA take concerning the above-referenced license as a result of any such violation?

Evidence.

The following witnesses appeared and testified:

(1) Police Officer Scott Urquhart, Arlington Police Department: summarized investigatory findings of the Department, including information codified in Incident Report No. 16004573 and relevant investigative supplements ("Incident Reports").[1]

(2) Alexander Kushnirsky Owner and Manager of Arlington Liquors with Robert Panico, Esq., his counsel provided the Licensee's recitation of events, evidence of mitigating circumstances, as well as a list of remedial actions taken in response to a number of issues raised during the hearing.

Findings of Fact. On the basis of the evidence presented at the November 14, 2016 Hearing described above, the LLA made the following findings of fact:

[1] The License Holder was provided a copy such incident reports in advance of the hearing by the Legal Department.

1. On February 26, 2016, at approximately 9:02 p.m. Sgt. Gregory Flavin and Officer Scott Urquhart were dispatched to 94 Summer Street (Arlington Liquors) to investigate a report of an unconscious person inside the premises. *Incident Report; Urquhart Testimony.*
2. Upon arrival, APD personnel spoke with an Arlington Liquors employee, Roman Ivanov, who led the officers to an office inside Arlington Liquors where owner/manager Alex Kushnirsky was found unresponsive. *Incident Report; Urquhart Testimony.*
3. Arlington Liquors employee Almaz Imamaliev noted to officers that Mr. Kushnirsky had arrived at Arlington Liquors earlier that evening at approximately 6:30 p.m. and went into his office. *Incident Report; Urquhart Testimony.*
4. Officer Urquhart rendered aid to Mr. Kushnirsky, who was revived and received further assistance from the Arlington Fire Department. *Incident Report; Urquhart Testimony.*
5. However, a check of the immediate area in which officers found Mr. Kushnirsky possessed 60 milligrams of "Kool Ballz" THC Edible Marijuana in his pocket, which was seized and kept in evidence by APD. *Incident Report; Urquhart Testimony.*
6. Mr. Kushnirsky did not deny possessing or consuming marijuana that evening, but denied consuming any other drugs. *Incident Report; Urquhart Testimony; Kushnirsky Testimony.*

7. At the time of the incident in question, Mr. Kushnirsky was not a registered medical use of marijuana patient in the Commonwealth of Massachusetts., but has since obtained a medical use of marijuana card to help manage a chronic condition which has required numerous surgical interventions. *Incident Report; Urquhart Testimony; Kushnirsky Testimony.*

8. The license holder has not had previous alcohol-related violations, but has been penalized for underage tobacco sales previously. Mr. Kushnirsky described remedial actions take to address such violations. *Kushnirsky Testimony.*

Conclusion. On the basis of the findings of fact recited above, the LLA made the following conclusions on the Questions Presented:

(1) Did a violation of the state liquor law occur on the above-referenced premises by an agent, manager, or employee's possession of marijuana on the license premises under G.L. c. 138 sec. 64 and/or 204 C.M.R. 2.05(2), which prohibits any illegality on licensed premises?

Yes.

(2) If so, what action, if any, will the LLA take concerning the above-referenced license as a result?

A five (5) day license suspension held in abeyance for a one-year probationary period to end on November 30, 2017.

Discussion.

The ABCC and courts have long upheld that illegality on the premises of a licensed establishment may serve as grounds for modification, suspension, or revocation of a liquor license. 204 C.M.R. 2.05(2) states:

> *No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefor, whether present or not.*

To that end, "disorder, disturbance or illegality of any kind" includes the possession of illicit drugs and paraphernalia on licensed premises. *See e.g., Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Commission, et al.*, 19 Mass. App. Ct. 1026, 477 N.E. 2d 174 (1985)(possession of cocaine and drug paraphernalia on licensed premises by an employee sufficient for penalty under 204 CMR 2.05(2)). While the landscape regarding marijuana possession has changed in the Commonwealth, at the time of the incident in question it is beyond dispute that it was unlawful to possess one ounce or less marijuana pursuant to G.L c. 94C §32L.

In the matter before this Board, it is uncontested that Mr. Kushnirsky, the owner and manager of Arlington Liquors possessed on his person a medical marijuana product without then being a registered medical marijuana cardholder in the Commonwealth. As such, there is no question that an illegality took place on the premises and the terms of Mr. Kushnirsky's license were violated. The Board also found additional cause for concern in previous tobacco sale violations and the general conditions of the licensed premises, which may be in violation of other Arlington rules and regulations with respect to signage and other matters.

The Board appreciates that Mr. Kushnirsky has taken steps to address some of these concerns, and further, that he obtained a personal medical marijuana card to help him manage the medical conditions he represents led to the mistakes he made in possessing marijuana on the premises on the evening in question. We pause however to caution that a medical marijuana card is not a license to override the strictures of 204

C.M.R. 2.05(2), to work in the capacity as a liquor store owner or manager while impaired by marijuana, alcohol, or any other substance. Nonetheless, we credit his testimony that he has taken steps to address his own mistake, and will rectify the appurtenant conditions of concern this Board raised to his attention.

Therefore, considering all of the above-discussed evidence, the LLA chooses to issue a five (5) consecutive day suspension, to be held in abeyance for a one-year period of probation ending on November 30, 2017. Should any violation occur within that period, Arlington Liquors will serve said 5-days beginning on the same day of the week the original violation took place, a Friday.

Order. For the reasons stated herein, the above-referenced license is in PROBATION for a period of one year to end on November 30, 2017. Should the licensee violate the terms of its license, c. 138, or any regulation of the ABCC during such period, the license will be SUSPENDED for five (5) consecutive days to commence on a Friday, in addition to further penalties the licensee may face for a future violation.

Licensee is hereby advised of their right to appeal this decision to the ABCC within five (5) business days of receiving this decision and order.

Dated: November 28, 2016

By:

TOWN OF ARLINGTON
BOARD OF SELECTMEN

Diane M. Mahon, Chair

Daniel J. Dunn, Vice-Chair

Kevin F. Greeley

Joseph A. Curro, Jr.

Steven M. Byrne

ATTACHMENT "C"

ARLINGTON POLICE
ARLINGTON, MA

INCIDENT # / REPORT #	OFFICER	RANK	REVIEW STATUS
17005217 / 1	PORCIELLO	INSP	APPROVED

INCIDENT #17005217 DATA
As Of 02/28/2017 08:04:46

BASIC INFORMATION

CASE TITLE	LOCATION	APT/UNIT #
ALCOHOL COMPLIANCE CHECKS	112 MYSTIC ST	

DATE/TIME REPORTED	DATE/TIME OCCURRED
02/27/2017 18:59:17	On or about 02/27/2017 18:59

INCIDENT TYPE/OFFENSE
ASSIST

[NO PERSONS]

[NO OFFENDERS]

[NO VEHICLES]

[NO PROPERTY]

OFFICER REPORT: 17005217 - 1 / PORCIELLO (INSP)

DATE/TIME OF REPORT	TYPE OF REPORT	REVIEW STATUS
02/27/2017 18:59:17	INCIDENT	APPROVED

NARRATIVE

On February 27, 2017, I, Inspector Porciello along with Detective Sergeant Gallagher conducted alcohol compliance checks of restaurants and businesses licensed to sell and/or serve alcohol in Arlington. We worked with 2 juvenile operatives. One operative was a male party and the second operative was a female. Prior to conducting the checks both operatives were breath tested using the portable breath test. The male blew a 0.00 (test 103) and the female also blew a 0.00 (test 104). The operatives were photographed and provided me with parental releases. They were given a copy of the recommended guidelines for conducting underage sting operations. They both read, understood and signed the recommended guidelines. Both parties removed all money and forms of identification from their possession and we secured the items and money in a gun locker with the Criminal Investigations Bureau. Ivy Laplant from the Arlington

Youth and Safety Coalition provided us with 100 dollars to conduct the compliance checks. The operatives were provided with 20 dollars prior to entering any restaurant/business.

The following are the restaurants/businesses that were closed.

-Noodle Market located at 470-472 Mass Ave.

-Punjab Fine Indian Cuisine located at 485-487 Mass Ave.

-Sabzi located at 352A Mass Ave.

-Commune Kitchen located at 203 A&B Mass Ave.

-Little Q Pot & Szechuan House located at 196 Mass Ave.

-Ristorante Olivio located at 193-201 Mass Ave.

-Sugo Cuicina Italiano located at 164 Mass Ave.

-Arlington Restaurant and Diner located at 134 Mass Ave.

The following is a list of restaurants/businesses that were open and compliance checks were completed resulting in NO VIOLATIONS.

-At 5:02PM the operatives entered Menotomy Grill and Tavern located at 25 Mass Ave. No alcohol was served.

-At 5:08PM the operatives entered Spy Pond Beer & Wine (Giles Wine and Spirits) located at 137 Mass Ave. no alcohol was sold.

-At 5:11PM the operatives entered Za located at 138 Mass Ave. No alcohol was served.

-At 5:57PM the operatives entered Otto located at 202 Mass Ave. No alcohol was served.

-At 6:21PM the operatives entered Acitron located at 473 Mass Ave. No alcohol was served.

-At 6:28PM the operatives entered Tango located at 464 Mass Ave. No

alcohol was served.

-At 6:31PM the operatives entered Singh Saab Fine Indian located at 444 Mass Ave. No alcohol was served.

-At 6:34PM the operatives entered Shanghai Village located at 434-436 Mass Ave. No alcohol was served.

-At 4:43PM the operatives entered Menotomy Beer and Wine located at 80 Broadway. No alcohol was sold.

-At 4:51PM the operatives entered Fusion Taste located at 303A-305 Broadway. No alcohol was served.

-At 4:53PM the operatives entered the Common Ground located at 319 Broadway. No alcohol was served.

The following is a list of the compliance checks that resulted IN A VIOLATION with a brief description of the violation.

-At 5:19PM the operatives entered Zhu's Garden located at 166 Mass Ave. At 5:25PM the operatives exited Zhu's Garden and returned to our vehicle. The operatives informed us that they were seated inside and had an Asian woman wearing black clothing as a server. The operatives ordered 2 Peak Fresh Cut beers and were served the alcohol. The total cost of the purchase was $10.70. The operatives provided me with the receipt and the change which amounted to $9.30. Myself and Detective Sergeant Gallagher entered Zhu's Garden, observed that there were no other customers in the restaurant and spoke to the manager now known to us as Bowei Zhu. Zhu acknowledged the sale and directed me to the server who identified herself as Fanguyan Chen. Chen acknowledged that she had served the two operatives.

-At 5:34PM the operatives entered Duet located at 190 Mass Ave. At 5:41PM the operatives exited Duet and returned to our vehicle. The operatives informed us that they sat at the restaurant's bar and ordered 2 Kronenbourg 1664 beers and were served the alcohol. The total cost of the purchase was $12.84. The operatives provided me with a receipt and the change which amounted to $7.16. They reported that the bar tender was a white male who was approximately 6'00" with an average build. The bar tender informed the operatives of upcoming wine tastings. After receiving their receipt they left the restaurant. Myself and Detective Sergeant

Gallagher entered Duet, observed 1 couple seated at a table and 1 man at the bar. We met the manager at the greeting booth and informed her that there had been an alcohol violation and 2 underage operatives were served alcohol at the bar. I was directed to the bar where I met the bar tender who identified himself as Tim Hurlburt. It should be noted that the receipt lists the server as Timothy H. Hurlburt acknowledged the sale to the two operatives. He stated, "I didn't ID them, my fault."

It should be noted that the serves were never witnessed by Inspectors and were reported to us by the operatives.

Once back at the station the 2 receipts from Zhu's Garden and Duet were bagged as evidence together. The evidence bag was then secured in evidence locker 9. The operatives were again breath tested using the portable breath test. The male blew a 0.00 (test 105) and the female also blew a 0.00 (test 106). The operative's property was returned.

ARLINGTON POLICE
ARLINGTON, MA

INCIDENT # / REPORT #	OFFICER	RANK	REVIEW STATUS
17005303 / 1	PORCIELLO	INSP	APPROVED

INCIDENT #17005303 DATA
As Of 03/02/2017 08:02:10

BASIC INFORMATION

CASE TITLE	LOCATION	APT/UNIT #
ALCOHOL COMPLIANCE CHECKS	112 MYSTIC ST	

DATE/TIME REPORTED	DATE/TIME OCCURRED
02/28/2017 18:48:30	On or about 02/28/2017 18:48

INCIDENT TYPE/OFFENSE
ASSIST

[NO PERSONS]

[NO OFFENDERS]

[NO VEHICLES]

[NO PROPERTY]

OFFICER REPORT: 17005303 - 1 / PORCIELLO (INSP)

DATE/TIME OF REPORT	TYPE OF REPORT	REVIEW STATUS
02/28/2017 18:48:30	INCIDENT	APPROVED

NARRATIVE

On February 28, 2017, I, Inspector Porciello along with Detective Sergeant Gallagher conducted alcohol compliance checks of restaurants and businesses licensed to sell and/or serve alcohol in Arlington. We worked with 2 juvenile operatives. One operative was a male party and the second operative was a female. Prior to conducting the checks both operatives were breath tested using the portable breath test. The female blew a 0.00 (test 107) and the male also blew a 0.00 (test 108). The operatives were photographed and provided me with parental releases. They were given a copy of the recommended guidelines for conducting underage sting operations. They both read, understood and signed the recommended guidelines. Both parties removed all money and forms of identification from their possession and we secured the items and money in a gun locker with the Criminal Investigations Bureau. Ivy Laplant from the Arlington

Youth and Safety Coalition provided us with 100 dollars to conduct the compliance checks on the previous evening and the remaining money was used to conduct the compliance checks on today's date. The operatives were provided with 20 dollars prior to entering any restaurant/business.

The following is a list of restaurants/businesses that were open and compliance checks were completed resulting in NO VIOLATIONS.

-At 4:59PM the operatives entered Sono located at 469 Summer St #3&4. No alcohol was served.

-At 5:32PM the operatives entered Scutra located at 92 Summer St. No alcohol was served.

-At 5:08PM the operatives entered Not Your Average Joes located at 645 Mass Ave. No alcohol was served.

-At 5:15PM the operatives entered Thai Moon located at 663 Mass Ave. No alcohol was served.

-At 5:17PM the operatives entered Pasha Mediterranean located at 669A Mass Ave. No alcohol was served.

-At 5:20PM the operatives entered Tryst located at 689 Mass Ave. No alcohol was served.

-At 5:25PM the operatives entered Mr. Sushi located at 693 Mass Ave. No alcohol was served.

-At 5:53PM the operatives entered Toraya located at 890 Mass Ave. No alcohol was served.

-At 6:00PM the operatives entered the Mystic Wine Shoppe located at 901 Mass Ave. No alcohol was sold.

-At 6:06PM the operatives entered Jimmy's Steer House located at 1111 Mass Ave. No alcohol was served.

-At 6:13PM the operatives entered Szechuan's Dumpling located at 1360 Mass Ave. No alcohol was served.

-At 6:18PM the operatives entered Thai E-Sarn located at 1377-1381 Mass Ave. No alcohol was served.

-At 6:35PM the operatives entered Nina Trattoria & Pizzeria located at 1510 Mass Ave. No alcohol was served. It should noted that this restaurant has not begun selling beer and wine.

The following is a list of the compliance checks that resulted IN A VIOLATION with a brief description of the violation.

-At 4:48PM the operatives entered Arlington Liquors located at 94 Summer St. At 4:50PM the operatives exited Arlington Liquors and returned to our vehicle carrying a six pack of 12 ounce Bud Light cans. The operatives informed us that the cashier sold them the six pack while failing to ask for identification. The operatives provided us with the sales receipt which documented that their purchase of the six pack amounted to $7.00. The operatives returned the $13.00 in change. They described the cashier as being a male with dark hair and having a tanned complexion. I entered Arlington Liquors and spoke to the cashier who identified himself as Almaz Imanlieve. I identified myself as an Arlington Police Detective and informed him that he sold a six pack to 2 underage operatives. Almaz acknowledged the sale and reported that he thought he had seen them in the business in the past.

-At 6:21PM the operatives entered Prime, Your Local Butcher located at 1398 Mass Ave. At 6:23 the operatives exited Prime, Your Local Butcher carrying a six pack of 12 ounce Heineken bottles. The operatives informed us that the cashier sold them the six pack while failing to ask for identification. The operatives provided us with a sales receipt which documented that their purchase of the six pack amounted to $10.99. The operatives returned the $9.01 in change. The cashier was described as a white male in his twenties with curly brown hair. As we were seated in the car an employee exited the business carrying trash. The operatives identified the employee as being the cashier who sold them the six pack. I then entered the business and spoke to the manager now known to me as Scott Carta. I identified myself as an Arlington Police Detective and informed Carta that a violation had occurred. I then directed Carta's attention to an employee who had been identified by the operatives as selling the six pack. Carta reported that the employee's name is James Cerone. We were able to speak to Cerone who acknowledged selling the six pack of Heineken without asking for identification.

It should be noted that the serves were never witnessed by Inspectors and were reported to us by the operatives.

Once back at the station 2 receipts from Arlington Liquors and Prime, Your Local Butcher were bagged as evidence together. The Bud Light six pack (12 oz cans) and the Heineken six pack (12 oz bottles) were tagged as evidence separately. The evidence bag containing the receipts and the 2 tagged six packs were then secured in evidence locker 3. The operatives were again breath tested using the portable breath test. The female blew a 0.00 (test 109) and the male also blew a 0.00 (test 110). The operative's property was returned. It should be noted that the tagged evidence indicates that the evidence was placed in locker 7. However, locker 7 was not operating correctly and the evidence was then placed in locker 3.

The remaining $58.47 will be returned to Ivy Laplant.

ARLINGTON POLICE
ARLINGTON, MA

INCIDENT # / REPORT #	OFFICER	RANK	REVIEW STATUS
17005303 / 2	PORCIELLO	INSP	APPROVED

INCIDENT #17005303 DATA
As Of 03/02/2017 08:02:10

BASIC INFORMATION

CASE TITLE	LOCATION	APT/UNIT #
ALCOHOL COMPLIANCE CHECKS	112 MYSTIC ST	

DATE/TIME REPORTED	DATE/TIME OCCURRED
02/28/2017 18:48:30	On or about 02/28/2017 18:48

INCIDENT TYPE/OFFENSE
ASSIST

[NO PERSONS]

[NO OFFENDERS]

[NO VEHICLES]

[NO PROPERTY]

OFFICER REPORT: 17005303 - 2 / PORCIELLO (INSP)

DATE/TIME OF REPORT	TYPE OF REPORT	REVIEW STATUS
02/28/2017 18:48:30	SUPPLEMENT	APPROVED

NARRATIVE

On March 1, 2017 at approximately 15:10 hours, the Bud Light and Heineken six packs were removed from evidence, photographed and disposed of. The photographs have been attached to this report.

ARLINGTON POLICE
ARLINGTON, MA

INCIDENT # / REPORT #	OFFICER	RANK	REVIEW STATUS
17006003 / 1	PORCIELLO	INSP	APPROVED

INCIDENT #17006003 DATA
As Of 03/09/2017 07:52:57

BASIC INFORMATION

CASE TITLE	LOCATION	APT/UNIT #
ALCOHOL COMPLIANCE CHECKS	112 MYSTIC ST	

DATE/TIME REPORTED	DATE/TIME OCCURRED
03/08/2017 18:02:16	On or about 03/08/2017 18:02

INCIDENT TYPE/OFFENSE
ASSIST

[NO PERSONS]

[NO OFFENDERS]

[NO VEHICLES]

[NO PROPERTY]

OFFICER REPORT: 17006003 - 1 / PORCIELLO (INSP)

DATE/TIME OF REPORT	TYPE OF REPORT	REVIEW STATUS
03/08/2017 18:02:16	INCIDENT	APPROVED

NARRATIVE

On March 8, 2017, I, Inspector Porciello along with Detective Sergeant Gallagher conducted alcohol compliance checks of restaurants and businesses licensed to sell and/or serve alcohol in Arlington. We worked with 2 juvenile operatives. One operative was a male party and the second operative was a female. The operatives were the same that were used in alcohol compliance checks assigned to incident numbers 17005217 and 17005303. Prior to conducting the checks both operatives were breath tested using the portable breath test. The female blew a 0.00 (test 111) and the male also blew a 0.00 (test 112). The operatives were then photographed. Both parties removed all money and forms of identification from their possession and we secured the items and money in a gun locker with the Criminal Investigations Bureau. Ivy Laplante of the Arlington Youth and Safety Coalition had previously supplied us with money for past

compliance checks. The remaining $58.47 was used on today's date. The operatives were provided with 20 dollars prior to entering any restaurant/business.

The following is a list of restaurants/businesses that were open and compliance checks were completed resulting in NO VIOLATIONS.

-At 4:28PM the operatives entered the Commune Kitchen located at 203 A&B Broadway. No alcohol was served.

-At 4:43PM the operatives entered Sugo Cucina Italiana located at 164 Mass Ave. No alcohol was served.

-At 5:07PM the operatives entered Little Q Pot-Szchuan House located at 196 Mass Ave. No alcohol was served.

-At 5:12PM the operatives entered Ristorante Olivia located at 193-201 Mass Ave. No alcohol was served.

-At 5:15PM the operatives entered The Capital Theatre located at 204 Mass Ave. No alcohol was served.

-At 5:48PM the operatives entered Sabzi located at 352A Mass Ave. No alcohol was served.

Once back at the station the operatives were again breath tested using the portable breath test. The female blew a 0.00 (test 113) and the male also blew a 0.00 (test 114). The operative's property was returned.

The remaining $58.47 will be returned to Ivy Laplante.

[BoS LETTERHEAD]

DECISION of the LOCAL LICENSING AUTHORITY

Licensee:	Arlington Liquors d/b/a "Alexander Liquors"
Licensed Premises:	94B Summer Street (Arlington Liquors)
License No.:	003000048
License Type:	Package Store License
Expiration Date:	December 31, 2017

Summary of Findings and Decision

On June 19, 2017, after proper notice and hearing, the Town of Arlington's Board of Selectmen, in its capacity as a local liquor licensing authority ("LLA"), voted to revoke Arlington Liquors' (a/k/a "Alexander Liquors") license. The LLA's decision is based upon the number and severity of alcohol and related violations within a short period of time, the most recent of which occurred while the license holder was on probation for a previous violation, as well as the license holder's manifest lack of any plan or measures to address issues which have apparently led to multiple sales of tobacco and alcohol to underage persons and other illegalities on the premises. This body is well aware of the severity of this penalty, but found little basis in the License Holder's

testimony at hearing to allay its numerous concerns about the safe and effective management and exercise of the business and license at issue in the interests of the public good.

Procedural History

The Arlington Police Department ("Department"), as the duly appointed agent for the LLA, conducted annual alcohol compliance checks (a description of which is provided below) on February 27, 28, and March 8, 2017. The Department later notified the LLA of the results of those operations, advising the LLA of those licensees which failed the compliance check, including "Arlington Liquors." In accordance with G.L. c. 138, § 23(4), the Board scheduled a hearing on June 5, 2017, at approximately 7:15 p.m. to examine the alleged violations and consider whether or not any violation of c. 138, ABCC regulations, or LLA regulations occurred. The Licensee was notified of the hearing by certified letter dated May 15, 2017 and acknowledged receipt of same. The hearing was subsequently postponed until June 19, 2017, and licensee was notified accordingly.

Questions Presented for Hearing

(1) Did a violation of the state liquor law occur on the above-referenced premises by sale or delivery of alcoholic beverages to persons under the age of 21 in violation of c. 138 § 34, as well as 204 C.M.R. 2.05(2), which prohibits any illegality on licensed premises?

(2) If so, what action, if any, will the LLA take concerning the above-referenced license as a result, including a violation of probationary terms set forth at the Board's November 14, 2016 hearing for an alcohol license violation by the license holder, approved and codified by the Board's decision of November 28, 2016?

License History & Prior Violations

The LLA approved the transfer of the "all alcohol package store" license at issue to "Arlington Liquors d/b/a Alexander Liquors" and its owner and manager Mr. Alexander Kushnirsky by a 4-0 vote on August 22, 2011. Since that time, Arlington Liquors has been twice failed tobacco compliance checks, wherein cigarettes were sold to persons under the age of 21, in violation of the Arlington's Regulation Restricting the Sale of Tobacco and Nicotine Delivery Products. Most recently, Arlington Liquors failed a tobacco compliance check on March 16, 2016; and the Arlington Board Health subsequently voted to issue a $100 fine and suspend tobacco sales at Arlington Liquors for seven (7) days on or about April 6, 2016.[1] *See* Board of Health Minutes & Decisions annexed hereto as Attachment "A." Arlington Liquors had previously failed the same type of tobacco compliance check on January 7, 2013, resulting in a February 3, 2013 fine and suspension of the same magnitude. *See* Attachment "A."

Moreover, on November 14, 2016 the Board of Selectmen, in its capacity as the LLA, determined that Arlington Liquors had violated the terms of its license and 204 C.M.R. 2.05(2), when its manager and owner (Mr. Kushnirsky) was found unresponsive and in possession of medical marijuana without a medical marijuana ID card (a then illicit substance), while also on the premises of his package store on or about February 26, 2016. Based upon the evidence and testimony regarding the February 26, 2016 incident, the LLA issued a five (5) day license suspension held in abeyance for a one-year

[1] It bears noting that according to Board of Health minutes of its April 6, 2016 Hearing, Mr. Kushnirsky represented that he was unaware that the legal age required for sale of tobacco in Arlington is 21 years old.

probationary period to end on November 30, 2017.[2] *See*, November 28, 2016 LLA Decision Re: Arlington Liquors, annexed hereto as Attachment "B."

Evidence Presented

The following documents were accepted and made part of the record:

(A) Arlington Police Department Reports Nos. 17005217 (February 27, 2017), 17005303 (February 28, 2017), and 17006003 (March 8, 2017)(hereinafter "Incident Reports," and annexed hereto as Attachment "C").

The following witnesses appeared and testified:[3]

(1) Arlington Police Department Inspector Stephen Porciello: summarized the annual alcohol compliance check operation and investigatory findings of the Department, especially information codified in Incident Report No. 17005303, which recorded the details of Arlington Liquors' compliance check failure; and

(2) Alexander Kushnirsky, Owner and Manager of Arlington Liquors: provided the Licensee's recitation of events, information on his business practices regarding checking identification, and referenced physical evidence not presented to the LLA (video recordings allegedly capturing the sale of alcohol to compliance check operatives).

[2] Given the findings of the June 18, 2017 Hearing in this matter, Arlington Liquors was noticed and did serve a five (5) day consecutive license suspension on or about June 23-27, 2017 in satisfaction of this Board's prior decision.

[3] A true and accurate recording of the entirety of the proceeding including Inspector Porciello and Mr. Kushnirsky's testimony is available on demand at: http://acmi.tv/videos/selectmen-meeting-june-19-2017/ A transcript of such proceedings is also available upon request.

Findings of Fact

On the basis of the evidence presented at the June 19, 2017 Hearing described above, and other judicially noticeable information, the LLA made the following findings of fact:

1. On February 28, 2017, at approximately 4:48 p.m., Arlington Police Department, through Inspectors Stephen Porciello and Detective Sergeant Bryan Gallagher, conducted annual alcohol compliance checks on thirteen (13) of the Town's restaurants licensed to sell alcoholic beverages for consumption on the premises under G.L. c. 138, § 12, and two (2) of the Town's licensed package stores under G.L. c. 138 § 15. Previous compliance checks had been conducted for other restaurant, theater, and package store license holders on February 27, 2017, and subsequent checks were conducted on March 8, 2017. *Porciello Testimony; Incident Report.*
2. The compliance check was conducted in similar fashion to previous checks conducted in Arlington, and in accordance with the Compliance Check Guidelines of the Alcoholic Beverages Control Commission. Operatives are advised to make straight-forward orders for the purchase of alcohol and did not attempt to use fraudulent identification. *Porciello Testimony; Incident Report.*
3. As part of this compliance check, two underaged (teenage) operatives were sent into each establishment with no identification on the date in question. The operatives attempted to purchase alcoholic beverages in

each establishment. At the Licensed Premises on February 28, 2017, the two operatives purchased one (1) six-pack of Bud Light cans from a cashier later self-identified as Almaz Imanlieve to APD. The operatives paid for the six-pack and received change along with a receipt. The operatives left the package store to return immediately thereafter with the APD personnel and notify Arlington Liquors of the violation. *Porciello Testimony; Incident Report.*

4. Mr. Iamnlieve acknowledged the sale, but believed he had seen the operatives "in the business in the past." *Incident Report.*
5. These operatives are, in the opinion of Inspector Porciello, underage in physical appearance. *Porciello Testimony.*
6. The Licensed Premises has been operated by the present license holder since August of 2011. It has not previously failed an alcohol compliance check. The Licensed Premises was previously determined to have violated state and local alcohol regulations at a November 14, 2016 hearing of the LLA, when the owner and manager of the Licensed Premises was found to have been in illegal possession of medical marijuana without a authorized patient identification card on or about February 26, 2016. Moreover, the Licensed Premises has a record of at least two (2) prior violations of tobacco sales laws and regulations (including one in the last year), having similarly sold cigarettes to persons under the legal age for purchase without checking identification in

compliance checks conducted by the Town Health and Human Services Department. *See* Attachments "A," and "B."

7. The Licensee did not dispute Inspector Porciello's basic facts and conclusions, or that the violation set forth in the Incident Report occurred. *Kushnirsky Testimony.*

8. The Licensee reported that his employee, Mr. Imanlieve, has worked for him in a similar capacity for approximately eight (8) years. *Kushnirsky Testimony.*

9. Mr. Kushnirsky admitted that the female operative looked "very young," but believed the male operative looked older because he was bald. *Kushnirsky Testimony.*

10. Mr. Kushnirsky asserted that he takes underage service very seriously, continuously trains his employees in checking for identification, that they are "on top" of identification checks, and that his employees provide APD with confiscated fake IDs. *Kushnirsky Testimony.*

11. However, APD did not corroborate receipt of fake IDs on a routine basis from the Licensee, if at all; and Mr. Kushnirsky acknowledged that the Licensee does not keep logs of underage customer incidents. *Porciello Testimony; Kushnirsky Testimony.*

12. Furthermore, Mr. Kushnirsky suggested that underage service would not occur if the Town of Arlington's or larger community's alcohol policies were different. *Kushnirsky Testimony.*

13. Moreover, Mr. Kushnirsky expressed his view that this is an "isolated incident," but did not outline any plans to change policy or practices at the Licensed Premises. *Kushnirsky Testimony.*

Conclusion

On the basis of the findings of fact recited above, the LLA made the following conclusions on the Questions Presented:

(1) Did a violation of the state liquor law occur on the above-referenced premises by sale or delivery of alcoholic beverages to persons under the age of 21 in violation of c. 138 § 34, as well as 204 C.M.R. 2.05(2), which prohibits any illegality on licensed premises?

Yes.

(2) If so, what action, if any, will the LLA take concerning the above-referenced license as a result, including a violation of probationary terms set forth at the Board's November 14, 2016 hearing for a previous alcohol license violation by the license holder, later codified by the Board's decision of November 28, 2016?

Revocation of the License. Revocation shall be stayed until either the expiration of the statutory appeal period, or should the Licensee appeal the decision to the ABCC, the outcome of such appeal proceedings.

However, the five (5) day suspension held in abeyance for violation of the probationary terms set forth for a prior violation of alcohol laws and regulations shall be served immediately.

Discussion

Sections 12 and 34 of Chapter 138 of the General Laws prohibit sale or delivery of alcoholic beverages to any person under 21 years of age. G.L. c. 138, §§ 12, 34. It is undisputed that on February 28, 2016, two underaged persons were sold alcoholic beverages by the Licensee's staff on the Licensed Premises. This sale was in violation of

Chapter 138, as well as the regulations of the Alcoholic Beverages Control Commission at 204 C.M.R. 2.05(2).

The LLA has the authority to grant, revoke and suspend licenses. Their powers are authorized "to serve the public need and ... to protect the common good." G.L. c. 138, §23, as amended through St. 1977, c. 929, §7. "[T]he purpose of discipline is not retribution but the protection of the public." *Arthurs v. Bd. of Registration in Medicine,* 383 Mass. 299, 317 (1981).

The LLA has adopted a policy governing the sale of alcoholic beverages by package stores. *See* Alcohol Licenses and Regulations, at Policies, Rules, and Regulations of Alcohol Licenses for Package Stores (revised January 12, 2015) ("Policy"). The Policy provides that a first offense of serving alcohol to an underaged person will presumptively lead to a license suspension of three to five days to commence on the same day of the week as the violation. *See* Policy at p. 14. However, such presumptive policy does not limit the Board's discretion to "impose some other type of penalty in place of license suspension if the Board concludes that another penalty is appropriate." *See* Policy at p. 14.

In fixing the penalty for sales to underage individuals, the Board may consider the following factors:

> (a) licensee's policies and procedures and application of those policies and procedures to guard against service to underage individuals;
> (b) severity and type of offense;
> (c) efforts made to identify purchasers of alcohol;
> (d) appearance of the underage purchaser of alcohol;
> (e) quality of the evidence of a violation;
> (f) circumstances of the case; and
> (g) number and nature of licensee's previous violations.

Id.

Applied to facts before the LLA, it is not disputed by any party that the Licensee violated State Law, ABCC regulations, and the Town's regulations and policies by selling alcohol to underaged persons. The well-documented operation, conducted at dozens of license holding establishments over three days, and in accordance with ABCC and LLA guidelines and policies, manifestly demonstrates a violation for which there is no justification.

By the Owner and Manager's admission, one of the two operatives looked "very young." The only explanation offered by the cashier, Mr. Imanlieve (an 8-year employee of the License Holder), was that the operatives appeared to be repeat customers. There was no attempt whatsoever to check for identification. The operatives did not present, nor were they carrying fraudulent identification. Nonetheless, other testimony by the Owner and Manager, Mr. Kushnirsky, was at best confused, and at worst attempted deflect responsibility for the violation onto the underaged operatives in confounding fashion.

Furthermore, Mr. Kushnirsky outlined no plans whatsoever to alter current policies and practices at the Licensed Premises in response to this violation, or other violations. He testified about training practices, but presented no documentary evidence of such practices. He contended that he turned over confiscated fake IDs to APD routinely, but APD could not corroborate same, and Mr. Kushnirsky acknowledged that he keeps no logs of incidents regarding attempted purchases by underage persons.

In light of the lack of mitigating factors for this specific violation or any new plans to address the concerns raised by the second violation within one calendar year, the

LLA is particularly disturbed by the timeline of violations involving sales of controlled products to underage persons and/or more serious incidents, which is as follows:

- ***August 2011,*** Mr. Kushnirsky is approved by the LLA the License for the Licensed Premises;
- ***January 7, 2013,*** the Licensed Premises fails a first Tobacco Compliance Check;
    - ***February 3, 2013*** Tobacco Sale Suspension Hearing and Order;
- ***February 26, 2016,*** incident regarding the Owner and Manager's possession of medical marijuana without a medical marijuana ID card on the licensed premises;
    - ***November 14, 2016*** LLA hearing and November 28, 2016 Decision finding a violation and imposing a suspended 5-day suspension for a 1-year probationary period;
- ***February 28, 2017,*** the Licensed Premises fails the Alcohol Compliance Check subject to this decision;
- ***March 16, 2017,*** the Licensed Premises fails a second Tobacco Compliance Check;
    - ***April 6, 2017*** Tobacco Sale Suspension Hearing and Order.

This timeline of events demonstrates *three (3) incident*s of the sale of either alcohol or tobacco products to underaged persons since 2013, two of which occurred less than one (1) month apart, *in addition to* a serious incident involving possession of a then illicit drug on the premises by the Owner and Manager. The decision placing the Licensed Premises on probation for possession of the illicit substance had been issued only four (4)

months prior to failing the alcohol compliance check which brings the Licensee back before this LLA.

The afore-described pattern of violations and lack of any meaningful assurance that the conditions that allowed for same have or will be addressed offers substantial evidence that the public good is jeopardized by the License Holder's continued operation of Arlington Liquors. In isolation, the violation at issue presents a far different matter for consideration. However, the LLA pauses to emphasize that $200 in fines, 14-days of suspended cigarette sales, and 5-days of suspended alcohol sales have been meted out to the Licensee since February of 2013, and that the nature of the February 2016 incident has no precedent in recent memory for an establishment that remains in operation.

Based on such facts alone, a three to five day suspension is not sufficient to protect the public good, such measures already clearly having failed to insure future lawful compliance. The unquestionable facts of this most recent violation, its consistency with a pattern of violations, and the lack of a clear or meaningful plan to address it provide the basis needed to make revocation of the license is necessary.

Order

For the reasons stated herein, the above-referenced license is **REVOKED** pending the expiration of the statutory appeal period, or should the Licensee appeal this decision to the ABCC, the outcome of such appeal proceedings. The License Holder shall surrender his license and cease all alcohol sales at such time as his rights to appeal have been exhausted.

The five (5) day suspension held in abeyance for violation of the probationary terms set forth for a prior violation of alcohol laws and regulations shall be served immediately.[4]

Licensee is hereby advised of his right to appeal this decision to the ABCC within five (5) business days of receiving this decision and order.

Dated: July ___, 2017

By:

TOWN OF ARLINGTON
BOARD OF SELECTMEN

_____
Joseph A. Curro, Jr., Chair

_____
Diane M. Mahon, Vice-Chair

_____
Kevin F. Greeley

_____
Daniel J. Dunn

_____
Steven M. Byrne

[4] Upon information and belief, the License Holder has served the five (5) day suspension (June 23-27, 2017) and reported such service to the Office of the Board of Selectmen in the interim between hearing and adoption of this decision, which satisfies the terms of the LLA's previous determination.

ATTACHMENT "A"

Town of Arlington, Massachusetts
730 Massachusetts Ave., Arlington, MA 02476
Phone: 781-316-3000

webmaster@town.arlington.ma.us

Board of Health Minutes 02/06/2013

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE BOARD OF HEALTH
27 Maple Street
Arlington, Massachusetts 02476
Christine M. Connolly, MPH, CHO
Town of Arlington
Director of Health and Human Service

Board of Health Meeting Minute
Wednesday, February 6, 2013
Ground Floor Conference Room
Arlington Senior Center
5:30pm

Board Members in Attendance: Dr. Marie Walsh Condon, Dr. Michael Fitzpatrick (Chair), Mr. Kenneth Kohlberg
Staff in Attendance: Christine Connolly, Director of Health and Human Services and James Feeney, Health Compliance Officer, Natasha Waden, Lead Health Compliance Officer, Gloria Ojimba, Intern.
Other: Juliana Rice, Town Counsel, DJ Wilson, Tobacco Control Director, Public Health Liaison, Mass Municipal Association; Wesley Chin, Sub-regional tobacco control coordinator for Arlington, Belmont, Brookline, Newton and Watertown; Kimona Cameron, Brookline Health Department.
Public in attendance: Adnan Rahim, Tarsem Singh, Davinder Sharma, Musfiqur Rahman, Sankar Marichany, Ranbir Rai, Dan Ramnes, Jani Fowler
Maureen Stephens, Mike Porcano, Ray Laham, A. Sofia Khouri, Anthony Caliendo, Michael Ellakkis, Alex Kurshnisky

December 12, 2012 meeting minutes were approved with the following edits: In agenda item II: removal of the second reference "to a minor"; in agenda item III: removal of "has become problematic" and replace with "was in violation of the 1999 Food Code", in sentence 6: "order" change to "ordered".

Mr. Anthony Caliendo, Owner of 20 Belknap, made a request to move his hearing for a variance from the housing code up on the agenda so that he could attend a zoning meeting in the Town of Lexington. Mr. Caliendo stated he would need to leave by 7:00PM. Dr. Fitzpatrick, Chair stated that the Board would proceed with the current layout of the agenda because he was confident that they would be able to get to his request before 7:00PM.

Inspector Waden reported that on January 7, 2013 a tobacco compliance check was conducted by the Health Department, in which a minor was used to attempt to purchase cigarettes at 25 establishments. One establishment was closed at the time of inspection. A total of 11 establishments out of 24 sold cigarettes to said minor. The minor was a 17 year old male and was trained by Health Department staff on tobacco compliance checks in accordance with MDPH Tobacco Control Program guidelines. Said minor purchased a package of Marlboro cigarettes at Little Joe's Convenience Store at 3:47PM. The minor was not asked his age or for identification. Ranbir Rai was present for the hearing and stated that this establishment has not violated in 6 years and that this was a mistake. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said

suspension.

On January 7, 2013 at 3:53PM said minor purchased a pack of Marlboro cigarettes at Arlington Liquors. The minor was not asked his age or for identification. Nobody from the establishment was present during the hearing. Dr. Walsh-Condon requested that the Board of Selectmen's Office be notified of the sale to a minor and that additional training be conducted with this establishment, as it is under new ownership. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:00PM said minor purchased a pack of Marlboro cigarettes at Mystic Street Gulf. The minor was not asked his age or for identification. Michael Elakis was present for the hearing and stated that the clerk did not do his job in checking for identification. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:15PM said minor purchased a pack of Marlboro cigarettes at Arlington Shell. The minor was not asked his age or for identification. Ana Sofia Khouri, owner, was present for the hearing and stated that this was the first violation for them, but that clerk had been working at this location for a long time. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:31PM said minor purchased a pack of Marlboro cigarettes at CVS Pharmacy, 833 Mass Ave. The minor was not asked his age or for identification. Jani Fowler, Store Manager, was present for the hearing and stated that all new employees go through training when they are first hired. In accordance with corporate policy, the employee was terminated. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:41PM said minor purchased a pack of Marlboro cigarettes at Symmes Mini Mart. The minor was not asked his age or for identification. Ray Laham was present for the hearing and stated that the clerk used bad judgment, there were two clerks at the time and one thought the other checked for identification. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and the issuance of a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:51PM said minor purchased a pack of Marlboro cigarettes at Walgreens, 324 Mass Ave. The minor was not asked his age or for identification. Mike Porcaro, Store Manager, was present for the hearing and stated that all staff has been retrained and the clerk who sold to the minor was disciplined with a final written warning. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and the issuance of a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 4:58PM said minor purchased a pack of Marlboro cigarettes at Mass Convenience, 245 Mass Ave. The minor was not asked his age or for identification. Davindar Sharma, owner, was present for the hearing and stated that all the tools are in place, the clerk has worked there for over 10 years and he just made a mistake. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 5:06PM said minor purchased a pack of Marlboro cigarettes at Dagg's. The minor was not asked his age or for identification. Musfiqur Rahman was present for the hearing and stated that his father was helping him out and used bad judgment and that it was an honest mistake. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law.

Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 5:19PM said minor purchased a pack of Marlboro cigarettes at Boyle's Market. The minor was not asked his age or for identification. Tarsem Singh was present for the hearing and stated that the clerk was a new employee who had been trained, but that he made a mistake. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

On January 7, 2013 at 5:31PM said minor purchased a pack of Marlboro cigarettes at Arlington Gulf. The minor was not asked his age or for identification. Adnan Rahim was present for the hearing and stated that there was confusion between the gas attendant and the mechanic. The Board unanimously voted to suspend the tobacco permit for 7 days in accordance with Arlington's Tobacco Control Regulations and issue a $100 fine in accordance with Mass State Law. Health Department staff will contact the establishment to determine the implementation date of said suspension.

Alex Kurshnisky, owner of Arlington Liquor's, introduced himself at the end of the tobacco hearings. The Board reviewed the disciplinary action that had been voted on for this establishment.

(a) Inspector Waden reviewed the Draft regulations for Restricting the Sale of Tobacco Products and Nicotine Delivery Products in the Town of Arlington. DJ Wilson from Mass Municipal Association was also present to help facilitate the discussion of the regulations. The following areas were discussed in detail: Section A: Statement of Purpose, the Board would like to keep the current language, as it proves the need to implement all aspects of this regulation. Section D: Tobacco and Nicotine Delivery Product Sales Prohibited: The Board would like to increase the age of tobacco sales from 18 to 21. DJ Wilson provided an overview of how the Town of Needham implemented this over a few years. The Board approved the language. The Board would like to include language requiring the establishment to post signage about tobacco cessation. Inspector Waden will present draft language to the Board at the next meeting requiring signage for sales to persons under age 21. SECTION E: TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PERMITS: the fee for a permit will remain at $500. Furthermore, the Board would like to change the mandatory retailer training to annually, change the number of permits to 19 for capping purposes; and reduce the number of permits to 15 by 2018. SECTION F: CIGAR SALES REGULATED: The Board request that item 2b and 2c be removed SECTION O: VIOLATIONS, when considering cumulative violations the Board would like to review a 36 month violation history as opposed to a 24 month history, continue with fine schedule of $100, $200, $300, remove "a minimum" from item 1c, and add language ("or failure") to item 2 as requested by Town Counsel.

(b) DJ Wilson reviewed the proposed draft regulations Prohibiting Smoking in Workplaces and Public Places. The following areas were discussed in detail: SECTION 4: SMOKING PROHIBITED, DJ Wilson explained that it might be difficult for staff to enforce item (d) as it pertains the prohibition of smoking within 15 feet of an entranceway accessible to the pubic. The Board tabled this discussion until the next meeting.

The Board agreed to hear agenda item XVI and XVII concerning an update on one property (18 Belknap) and a variance request on another property (20 Belknap) both owned by Mr. Anthony Caliendo.
Inspector Feeney provided the Board with an update regarding existing violations concerning 18 Belknap Street that have not been corrected. Feeney first read two letters into the record, one from a group of neighbors revealing their concerns about disruptive tenants and maintenance of the property and the other from Deputy Chief James Bailey regarding the fire alarm system, the front stairwell and the rear fire escape. Mr. Caliendo stated that he has no authority to do anything about the tenants and insists that his building is well maintained. Feeney reviewed with the Board that Mr. Caliendo had requested a hearing at the last meeting to discuss violations pertaining to the fire escape and lack of an automatic door locking mechanism. At that hearing the Board voted to uphold the order to correct that had previously been issued by Inspector Feeney. Mr. Caliendo reported that he would be filing an appeal to the BBRS concerning the automatic lock, and that he was still working on the repairs to the fire escape. Feeney displayed pictures of the repairs that had currently been made to the fire escape, to which the Board deemed unacceptable. Mr. Caliendo stated that he is a licensed contractor and that according to the regulations it is in compliance. The Board requested a recommendation from Feeney concerning the next steps. Feeney recommended that the health department move forward with filing a complaint in court for failure to correct these violations within the allotted time frame. The Board unanimously approved the recommendation.

Inspector Feeney provided the Board with a copy of the Order letter dated January 15, 2013 addressed to property owner Anthony Caliendo. Feeney went on to explain that Mr. Caliendo is requesting a variance from item #3, the installation of

mechanical ventilation in the bathroom that exhausts to the exterior. Occupant Sankar Marichamy was present at the hearing and explained that his daughter has asthma and that the second hand smoke, which he believes is coming from the neighboring unit, entering through his bathroom, makes it difficult for his daughter to breathe. Feeney explained in a memo to the Board that there is no duct work for the fan and it appears that the air being removed from the bathroom is being pushed into the open wall cavity. Mr. Caliendo stated that he has never had any complaints regarding this matter and that because the house is over 100 years old; it is not possible to make the repair. Dr. Fitzpatrick requested that the health department staff contact the building department to conduct an inspection to determine if it would be possible. Director Connolly explained that it would not likely be possible to have the building inspector out at this property. Feeney explained that a professional such as an HVAC person would be able to provide feedback to the owner on how such repairs could be made. Therefore, the Board unanimously voted to deny the variance.

Agenda item XIV: Medical Marijuana. DJ Wilson provided an overview of the status of medical marijuana by stating the following: As of 1/1/13 Mass Department of Public Health has 90 days to write regulations, at this time, it does not look like the first dispensaries will be opening until early fall, Mass Department of Public Health is looking at sample regulations from Maine, Colorado and New Mexico. Juliana Rice, Town Counsel mentioned that there are two warrant articles being proposed before Town meeting, 1. Which will establish zoning requirements for dispensaries' and 2. In the event that regulations are not in place, this would provide a local moratorium on allowing dispensaries to open until the proper regulations are in place.

Inspector Feeney led the discussion of the draft Bodywork regulations, explaining that at this time there are no State model regulations for Bodywork; therefore, best practices from the Towns of Newton and Belmont were taken under consideration when drafting these regulations. Feeney explained that the need for such regulations was discovered during compliance checks that were conducted by a State inspector and a local police officer. During these checks most therapists identified themselves as body workers as opposed to Massage Therapists, as Body Workers are exempt from the state massage law. Dr. Walsh asked about the inclusion of Reiki in these Regulations, and recommended staff reaches out to the school of acupuncture for guidance and assistance. Feeney agreed to reach out to local experts and stakeholders, and to revise according to the Board's comments; he also stated the Regulations were created in an expedited fashion and would be revised for the next meeting.

Juliana Rice, Town Counsel, reported to the Board that a group of High School Students proposed a warrant article for Town Meeting to restrict the use of water bottles less than 1 liter.

Environmental updates were tabled until the next meeting.

Restaurant updates: Feeney reported that Family Injera installed a grease trap, and that Arlington Restaurant and Diner has been working with a consultant. Inspector Waden reported on the following establishments: Barismo moved one door down from their previous location, Napoli Pizza is under new ownership, Wings Over Arlington has opened, Something Sweet Without Wheat has opened. In addition Waden reported that plans for Menotomy Grill and Tavern, Frozland and Sczechuan's Dumpling have been approved. The following establishment did not renew their food permits for 2013: Nana's Market, Jade Garden, Gemma, Foodmaster and Ada-Lula Pastry. Lastly, Whole Foods plans to open in the Foodmaster location by September.

No public comment.

Meeting adjourned at 8:04pm

Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

Board of Health Meeting Minutes
Wednesday, April 6, 2016
BOH Conference Room
Arlington Senior Center
5:30pm

Board Members in Attendance: Dr. Marie Walsh Condon, Mr. Kenneth Kohlberg, Dr. Michael Fitzpatrick

Staff in Attendance: Christine Bongiorno, Director, James Feeney, Health Compliance Officer, Natasha Waden, Health Compliance Officer

Others in Attendance: Alex Kushnirsky, Ranbir Rai, Tarsem Singh, Theresa Campbell, Robert Bongiorno, Chris Rozanitis, Jess Lawrence

Recording Secretary: Ivy Laplante, Arlington Youth Health & Safety Coalition Director

Meeting called to order by Dr. Marie Walsh Condon at 5:35 pm.

A Motion was made by Dr. Michael Fitzpatrick, which was seconded by Mr. Kenneth Kohlberg, to approve the February 3, 2016 meeting minutes as amended.

Vote: Motion approved unanimously (3-0)

Hearing: Boyles Market: Tobacco/Nicotine Delivery Product Sales Violation

Mr. James Feeney informed the Board that during a compliance check on March 16, 2016, a 19 year old male agent entered Boyles at 9:41am, and purchased a "Blu" e-cigarette (e-cig) from an adult female clerk who asked the agent for his identification. Mr. Feeney delivered a fine of $100 to Boyles and presented a letter to appear at this hearing for violating the Arlington Regulation Restricting the Sale of Tobacco and Nicotine Delivery Products, which prohibit the sale of tobacco and nicotine delivery products to anyone under the age of 21.

Dr. Walsh-Condon asked the store's representative, Mr. Tarsem Singh, if he would like to speak to the Board and address the violations referenced. Mr. Tarsem Singh stated the female clerk who sold the product has worked at the Medford location for over 1 year, and was called in to work in the Arlington location on March 16. It is to be noted that the city of Medford has regulations restricting the sale of tobacco products to age 18. The adult female clerk, Ms. Theresa Campbell, was present at the meeting and apologized for her mistake.

Dr. Walsh-Condon then asked the manager what his plans were to prevent this from happening in the future. Mr. Tarsem Singh stated he would do better to inform all his workers about the local regulations in each community, and explore establishing a store policy to punish the clerks who violate regulations. Mr. Tarsem Singh stated since the law came into effect in March 2015, there have been no problems at the store. Dr. Walsh-Condon noted Boyles Market has had no prior violations. Dr. Fitzpatrick commented on the price of the device, noting it cost $10.51 for the e-cig.

A Motion was made by Dr. Michael Fitzpatrick, which was seconded by Mr. Kohlberg, to approve the minimum penalty of a $100 fine with a 7-day suspension of tobacco sales to be determined by the Health Compliance Officers.

Vote: Motion Approved Unanimously (3-0)

Hearing: Little Joe's Convenience: Tobacco/Nicotine Delivery Product Sales Violation

Mr. Feeney informed the Board that during a compliance check on March 16, 2016, a 19 year old male agent entered Little Joe's Convenience at 9:06am and purchased a "Blu" e-cigarette (e-cig) from an adult male clerk who asked the agent for his identification. Mr. Feeney delivered a fine of $100 to Little Joe's and presented a letter to appear at this hearing for violating the Arlington Regulation Restricting the Sale of Tobacco and Nicotine Delivery Products, which prohibit the sale of tobacco and nicotine delivery products to anyone under the age of 21.

Dr. Walsh-Condon asked the store's representative, Mr. Ranbir Rai, if he would like to speak to the Board and address the violations referenced. Mr. Rai stated the male clerk made an error, and he has already addressed the issue with the clerk. Mr. Rai noted Little Joe's did have a prior violation in 2007.

Dr. Walsh-Condon then asked the owner what his plans were to prevent this from happening in the future. Mr. Rai stated he would discuss the Town regulations with his clerks again, and was not aware that the clerk who violated the regulation checked the agent's ID. Dr. Walsh-Condon reminded Mr. Rai it is his responsibility as the owner to ensure the clerks know the laws in Town.

A Motion was made by Mr. Kenneth Kohlberg, which was seconded by Dr. Michael Fitzpatrick, to approve the minimum penalty of a $100 fine with a 7-day suspension of tobacco sales to be determined by the Health Compliance Officers.

Vote: Motion Approved Unanimously (3-0)

Hearing: Arlington Liquors: Tobacco/Nicotine Delivery Product Sales Violation

Mr. Feeney informed the Board that during a compliance check on March 16, 2016, a 19 year old male agent entered Arlington Liquors at 9:14am and purchased "Marlboro" cigarettes from an adult female clerk who did not

ask the agent for his identification. Mr. Feeney delivered a fine of $100 to Arlington Liquors and presented a letter to appear at this hearing for violating the Arlington Regulation Restricting the Sale of Tobacco and Nicotine Delivery Products, which prohibit the sale of tobacco and nicotine delivery products to anyone under the age of 21.

Dr. Walsh-Condon asked the store's representative (the owner), Mr. Alex Kushnirsky, if he would like to speak to the Board and address the violations referenced. Mr. Kushnirsky stated he was not aware the Town regulations were to prohibit sales under 21, and thought it was only 18+.

Dr. Walsh-Condon then asked the owner what his plans are to prevent this from happening in the future. Mr. Kushnirsky stated he will conduct a new training of staff and check to see if it was an isolated incident. Dr. Fitzpatrick commented with a concern that the owner does not know about Town tobacco regulations. Mr. Kushnirsky informed the Board his manager went to the Tobacco Retailer Training, and he needed to speak to the manager about the new regulations.

A Motion was made by Dr. Michael Fitzpatrick, which was seconded by Mr. Kenneth Kohlberg, to approve the minimum penalty of a $100 fine with a 7-day suspension of tobacco sales to be determined by the Health Compliance Officers.

Vote: Motion Approved Unanimously (3-0)

Hearing: Christo's Market: Tobacco/Nicotine Delivery Product Sales Violation

Mr. Feeney informed the Board that on March 16, 2016, during a tobacco compliance check, a 19 year old male agent entered Christo's Market at 9:59am and purchased "Marlboro" cigarettes from an adult male clerk who asked the agent for his identification. Mr. Feeney delivered a fine of $100 to Christo's Market and presented a letter to appear at this hearing for their violation of Arlington regulations to prohibit the sale of tobacco to anyone under the age of 21.

Dr. Walsh-Condon asked the store's representative, Mr. Chris Rozanitis, if he would like to speak to the Board and address the violations referenced. Mr. Rozanitis stated at the time he sold to the agent, his mother was sick in the hospital and he was not thinking clearly.

Dr. Walsh-Condon then asked the owner what his plans are to prevent this from happening in the future. Mr. Rozanitis promised to be more careful, especially when dealing with young customers.

A Motion was made by Dr. Michael Fitzpatrick, which was seconded by Mr. Kenneth Kohlberg, to approve the minimum penalty of a $100 fine with a 7-day suspension of tobacco sales to be determined by the Health Compliance Officers.

Vote: Motion Approved Unanimously (3-0)

Hearing: Keeping of Hens - 18 Brattle St. #1

Mr. Feeney informed the Board of Ms. Jess Lawrence's application to keep hens on her property. He noted the plans as submitted in the application are compliant with the hen keeping bylaw, and comments from abutters were supportive of the application. Mr. Feeney questioned the current location of the coop, and noted, according to Town bylaws, the coop must be 6ft. from the property line. Ms. Lawrence informed the Board she has been unable to determine the exact location of the property line due to the brook. Dr. Walsh-Condon recommended Ms. Lawrence check with other Town departments to determine her exact property line.

A Motion was made by Mr. Kenneth Kohlberg, which was seconded by Dr. Michael Fitzpatrick, to approve the application for keeping of hens with the condition the coop is located 6 feet from the property line.

Vote: Motion Approved Unanimously (3-0)

Hearing: Variance Request: Minimum Standards for Swimming Pools: Float Tonic LLC.

Mr. Feeney informed the Board that Mr. Stephen Tomadakis was ill and was unable to attend the hearing. The Board discussed the history of float tanks and examined other communities' current regulation of these therapeutic pools. Dr. Walsh-Condon reaffirmed the notion that float tanks should not be exempt from the pool code. Dr. Fitzpatrick noted that the Board has previously set new regulations without precedent. Dr. Walsh-Condon reminded the Board this was a discussion only, not a hearing.

Discussion: Regulation Restricting the Sale of Medical Marijuana

Mr. Feeney informed the Board of additional regulations provided for review by Natick. The Board discussed having Mr. Feeney amend the current draft Regulation to include the following: requiring fire extinguishers at home cultivation sites, allowing violations of the State regulation to also be considered violations of the local Regulation, requiring the dispensary to notify the Board of any Department of Public Health visit within 24 hours, signage prohibiting entrance to the dispensary to anyone without a valid Registration Card, and requiring a dispensary to deliver products to those with a verified hardship.

The Board discussed comments made during the public hearing on the draft Regulation at the previous Board of Health meeting. Mr. Kohlberg reminded the Board of the comments made by a resident who believed limiting the supply of marijuana to 30 days could create a hardship for those who will have difficulty accessing the dispensary more frequently. Dr. Walsh-Condon stated the restriction of medical marijuana to a 30-day supply is warranted because prescriptions for controlled substances have historically been limited to 30 days. Dr. Walsh-Condon also noted the requirement for a dispensary to deliver to any patients who are unable to physically access the dispensary.

A comment was made at the public hearing regarding the possibility of disallowing a dispensary from engaging in the future sale of recreational marijuana. Mr. Feeney reminded the Board this Regulation pertained only to the sale of medical marijuana, and they would not be able to disallow an activity that is considered legal.

Mr. Kohlberg suggested the word "medical" be added throughout the Arlington Regulation to alleviate any confusion between medical marijuana regulations and recreational marijuana.

Dr. Walsh-Condon asked how the Board will regulate "edible" medical marijuana products. Mr. Feeney noted that the FDA states marijuana is not a food and therefore cannot be regulated under FDA code, but the Board can still ensure the food preparation is safe and sanitary. Dr. Walsh-Condon suggested the Board adds a provision that references the minimum standards of food preparation when preparing medical marijuana edibles.

Dr. Walsh-Condon noted due to no substantial changes in the Regulation, the next Board meeting on May 18th will be a hearing to adopt the Regulation Restricting the Sale of Medical Marijuana.

Discussion: 2013/2015 FDA Model Food Code

Mrs. Waden informed the Board that Ms. Maureen Lee, a contracted health compliance officer, plans to facilitate the purchase and use of electronic software for Arlington inspections. Mrs. Waden proposed Arlington should adopt the 2013 food code with 2015 addendums, similar to Newton and Cohasset. Mr. Feeney noted Arlington currently enforces the 1999 food code, which does not cover the specialized procedures being used today. Mr. Kohlberg commended Mrs. Waden on her proactive approach to adopting these new regulations.

Discussion: Food Establishment Plan Review Policy

Mrs. Waden discussed formalizing the current policy requiring food establishments that are changing ownership to undergo a plan review. This policy would require new owners to submit plan documents, procedures, menus, operations, etc. to the health compliance officers before officially re-opening establishment.

Environmental Updates

No environmental updates at this time.

Restaurant Updates

Mrs. Waden informed the Board that Fashion Cake Boutique has closed, and the food establishment formerly known as Zocalo will reopen as The Commune Kitchen.

Public Health Nurse Updates

Mrs. Waden informed the Board:

- An 8 year old boy recently passed away. The boy had been diagnosed with influenza but also had underlying medical conditions.
- There has been a flu spike in Arlington - 57 confirmed cases since September 2015.

- Arlington still has state supplied flu vaccine and the Public Health Nurse, Mrs. Kara Katz, has been contacting local physician's offices for distribution.
- 3 confirmed cases of mumps in Arlington.

Public Comment

None

Other:

A Motion was made by Mr. Kohlberg, which was seconded by Dr. Fitzpatrick, to adjourn the meeting at 8:06 pm.

Vote: Motion approved unanimously (3-0)

Meeting was adjourned at 8:06 pm.

ATTACHMENT "B"

OFFICE OF THE BOARD OF SELECTMEN

DIANE M. MAHON, CHAIR
DANIEL J. DUNN, VICE CHAIR
KEVIN F. GREELEY
STEVEN M. BYRNE
JOSEPH A. CURRO, JR.

730 MASSACHUSETTS AVENUE

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781-316-3020
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TOWN OF ARLINGTON
MASSACHUSETTS 02476-4908

DECISION of the LOCAL LICENSING AUTHORITY

Licensee:	Arlington Liquors d/b/a "Alexander Liquors"
Licensed Premises:	94B Summer Street (Arlington Liquors)
License No.:	003000048
License Type:	Package Store License
Expiration Date:	December 31, 2016

On November 14, 2016, after proper notice and hearing, the Town of Arlington's Board of Selectmen, in its capacity as local liquor licensing authority ("LLA"), unanimously voted to impose a five (5) day license suspension held in abeyance for a one-year probationary period to end on November 30, 2017. Should this LLA find the license holder in violation of G.L. c. 138, any regulation promulgated by the Alcoholic Beverages Control Commission ("ABCC") or its own regulations, within such a period,

the license shall be immediately suspended for five (5) days in addition to any suspension or other sanction for the new violation.

It is also the expectation of this Board, that the license holder make arrangements to bring the licensed premises into compliance with sign regulations codified in the Town's Zoning Bylaws, and up to the standards expected of license-holders in Arlington generally.

In accordance with G.L. c. 138, § 23, the LLA hereby provides this statement of reasons for its action.

Procedural History. Following a thorough investigation, including interviews, reviews of pertinent local and state records, and further evidence collected, by the Arlington Police Department ("Department"), it was determined that on or about the evening of February 26, 2016, Arlington Liquors staff called the Department for assistance with a medical emergency on the licensed premises – 94B Summer Street, Arlington. APD Patrolman Officer Scott Urquhart along with Sergeant Gregory Flavin responded and rendered aid to the license holder, Mr. Alex Kushnirsky. In the process of rendering such aid, 60 milligrams of edible marijuana was recovered from Mr. Kushnirsky's person. Subsequent investigation confirmed that Mr. Kushnirsky was not then licensed or otherwise permitted to possess medical marijuana under the Commonwealth Medical Use of Marijuana program.

As a duly appointed agent for the LLA, the Department in conjunction with the Arlington Legal Department recommended a hearing to determine if any violations of state or local alcohol laws occurred.

In accordance with G.L. c. 138, § 23(4), the Board convened a hearing on November 14, 2016, at approximately 7:15 p.m. to consider whether or not any violation of c. 138, ABCC regulations or LLA regulations occurred at Arlington Liquors on the evening at issue. The licensee was notified of the hearing by certified letter dated November 2, 2016 and acknowledged receipt of same.

Questions Presented.

(1) Did a violation of the state liquor law occur on the above-referenced premises by an agent, manager, or employee's possession of marijuana on the license premises under G.L. c. 138 sec. 64 and/or 204 C.M.R. 2.05(2), which prohibits any illegality on licensed premises?

(2) If so, what action, if any, will the LLA take concerning the above-referenced license as a result of any such violation?

Evidence.

The following witnesses appeared and testified:

(1) Police Officer Scott Urquhart, Arlington Police Department: summarized investigatory findings of the Department, including information codified in Incident Report No. 16004573 and relevant investigative supplements ("Incident Reports").[1]

(2) Alexander Kushnirsky Owner and Manager of Arlington Liquors with Robert Panico, Esq., his counsel provided the Licensee's recitation of events, evidence of mitigating circumstances, as well as a list of remedial actions taken in response to a number of issues raised during the hearing.

Findings of Fact. On the basis of the evidence presented at the November 14, 2016 Hearing described above, the LLA made the following findings of fact:

[1] The License Holder was provided a copy such incident reports in advance of the hearing by the Legal Department.

1. On February 26, 2016, at approximately 9:02 p.m. Sgt. Gregory Flavin and Officer Scott Urquhart were dispatched to 94 Summer Street (Arlington Liquors) to investigate a report of an unconscious person inside the premises. *Incident Report; Urquhart Testimony.*
2. Upon arrival, APD personnel spoke with an Arlington Liquors employee, Roman Ivanov, who led the officers to an office inside Arlington Liquors where owner/manager Alex Kushnirsky was found unresponsive. *Incident Report; Urquhart Testimony.*
3. Arlington Liquors employee Almaz Imamaliev noted to officers that Mr. Kushnirsky had arrived at Arlington Liquors earlier that evening at approximately 6:30 p.m. and went into his office. *Incident Report; Urquhart Testimony.*
4. Officer Urquhart rendered aid to Mr. Kushnirsky, who was revived and received further assistance from the Arlington Fire Department. *Incident Report; Urquhart Testimony.*
5. However, a check of the immediate area in which officers found Mr. Kushnirsky possessed 60 milligrams of "Kool Ballz" THC Edible Marijuana in his pocket, which was seized and kept in evidence by APD. *Incident Report; Urquhart Testimony.*
6. Mr. Kushnirsky did not deny possessing or consuming marijuana that evening, but denied consuming any other drugs. *Incident Report; Urquhart Testimony; Kushnirsky Testimony.*

7. At the time of the incident in question, Mr. Kushnirsky was not a registered medical use of marijuana patient in the Commonwealth of Massachusetts., but has since obtained a medical use of marijuana card to help manage a chronic condition which has required numerous surgical interventions. *Incident Report; Urquhart Testimony; Kushnirsky Testimony.*

8. The license holder has not had previous alcohol-related violations, but has been penalized for underage tobacco sales previously. Mr. Kushnirsky described remedial actions take to address such violations. *Kushnirsky Testimony.*

Conclusion. On the basis of the findings of fact recited above, the LLA made the following conclusions on the Questions Presented:

(1) Did a violation of the state liquor law occur on the above-referenced premises by an agent, manager, or employee's possession of marijuana on the license premises under G.L. c. 138 sec. 64 and/or 204 C.M.R. 2.05(2), which prohibits any illegality on licensed premises?

Yes.

(2) If so, what action, if any, will the LLA take concerning the above-referenced license as a result?

A five (5) day license suspension held in abeyance for a one-year probationary period to end on November 30, 2017.

Discussion.

The ABCC and courts have long upheld that illegality on the premises of a licensed establishment may serve as grounds for modification, suspension, or revocation of a liquor license. 204 C.M.R. 2.05(2) states:

No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefor, whether present or not.

To that end, "disorder, disturbance or illegality of any kind" includes the possession of illicit drugs and paraphernalia on licensed premises. *See e.g., Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Commission, et al.*, 19 Mass. App. Ct. 1026, 477 N.E. 2d 174 (1985)(possession of cocaine and drug paraphernalia on licensed premises by an employee sufficient for penalty under 204 CMR 2.05(2)). While the landscape regarding marijuana possession has changed in the Commonwealth, at the time of the incident in question it is beyond dispute that it was unlawful to possess one ounce or less marijuana pursuant to G.L c. 94C §32L.

In the matter before this Board, it is uncontested that Mr. Kushnirsky, the owner and manager of Arlington Liquors possessed on his person a medical marijuana product without then being a registered medical marijuana cardholder in the Commonwealth. As such, there is no question that an illegality took place on the premises and the terms of Mr. Kushnirsky's license were violated. The Board also found additional cause for concern in previous tobacco sale violations and the general conditions of the licensed premises, which may be in violation of other Arlington rules and regulations with respect to signage and other matters.

The Board appreciates that Mr. Kushnirsky has taken steps to address some of these concerns, and further, that he obtained a personal medical marijuana card to help him manage the medical conditions he represents led to the mistakes he made in possessing marijuana on the premises on the evening in question. We pause however to caution that a medical marijuana card is not a license to override the strictures of 204

C.M.R. 2.05(2), to work in the capacity as a liquor store owner or manager while impaired by marijuana, alcohol, or any other substance. Nonetheless, we credit his testimony that he has taken steps to address his own mistake, and will rectify the appurtenant conditions of concern this Board raised to his attention.

Therefore, considering all of the above-discussed evidence, the LLA chooses to issue a five (5) consecutive day suspension, to be held in abeyance for a one-year period of probation ending on November 30, 2017. Should any violation occur within that period, Arlington Liquors will serve said 5-days beginning on the same day of the week the original violation took place, a Friday.

Order. For the reasons stated herein, the above-referenced license is in PROBATION for a period of one year to end on November 30, 2017. Should the licensee violate the terms of its license, c. 138, or any regulation of the ABCC during such period, the license will be SUSPENDED for five (5) consecutive days to commence on a Friday, in addition to further penalties the licensee may face for a future violation.

Licensee is hereby advised of their right to appeal this decision to the ABCC within five (5) business days of receiving this decision and order.

Dated: November 28, 2016

By:

TOWN OF ARLINGTON
BOARD OF SELECTMEN

Diane M. Mahon, Chair

Daniel J. Dunn, Vice-Chair

Kevin F. Greeley

Joseph A. Curro, Jr.

Steven M. Byrne

ATTACHMENT "C"

ARLINGTON POLICE
ARLINGTON, MA

INCIDENT # / REPORT #	OFFICER	RANK	REVIEW STATUS
17005217 / 1	PORCIELLO	INSP	APPROVED

INCIDENT #17005217 DATA
As Of 02/28/2017 08:04:46

BASIC INFORMATION

CASE TITLE	LOCATION	APT/UNIT #
ALCOHOL COMPLIANCE CHECKS	112 MYSTIC ST	

DATE/TIME REPORTED	DATE/TIME OCCURRED
02/27/2017 18:59:17	On or about 02/27/2017 18:59

INCIDENT TYPE/OFFENSE
ASSIST

[NO PERSONS]

[NO OFFENDERS]

[NO VEHICLES]

[NO PROPERTY]

OFFICER REPORT: 17005217 - 1 / PORCIELLO (INSP)

DATE/TIME OF REPORT	TYPE OF REPORT	REVIEW STATUS
02/27/2017 18:59:17	INCIDENT	APPROVED

NARRATIVE

On February 27, 2017, I, Inspector Porciello along with Detective Sergeant Gallagher conducted alcohol compliance checks of restaurants and businesses licensed to sell and/or serve alcohol in Arlington. We worked with 2 juvenile operatives. One operative was a male party and the second operative was a female. Prior to conducting the checks both operatives were breath tested using the portable breath test. The male blew a 0.00 (test 103) and the female also blew a 0.00 (test 104). The operatives were photographed and provided me with parental releases. They were given a copy of the recommended guidelines for conducting underage sting operations. They both read, understood and signed the recommended guidelines. Both parties removed all money and forms of identification from their possession and we secured the items and money in a gun locker with the Criminal Investigations Bureau. Ivy Laplant from the Arlington

Youth and Safety Coalition provided us with 100 dollars to conduct the compliance checks. The operatives were provided with 20 dollars prior to entering any restaurant/business.

The following are the restaurants/businesses that were closed.

-Noodle Market located at 470-472 Mass Ave.

-Punjab Fine Indian Cuisine located at 485-487 Mass Ave.

-Sabzi located at 352A Mass Ave.

-Commune Kitchen located at 203 A&B Mass Ave.

-Little Q Pot & Szechuan House located at 196 Mass Ave.

-Ristorante Olivio located at 193-201 Mass Ave.

-Sugo Cuicina Italiano located at 164 Mass Ave.

-Arlington Restaurant and Diner located at 134 Mass Ave.

The following is a list of restaurants/businesses that were open and compliance checks were completed resulting in NO VIOLATIONS.

-At 5:02PM the operatives entered Menotomy Grill and Tavern located at 25 Mass Ave. No alcohol was served.

-At 5:08PM the operatives entered Spy Pond Beer & Wine (Giles Wine and Spirits) located at 137 Mass Ave. no alcohol was sold.

-At 5:11PM the operatives entered Za located at 138 Mass Ave. No alcohol was served.

-At 5:57PM the operatives entered Otto located at 202 Mass Ave. No alcohol was served.

-At 6:21PM the operatives entered Acitron located at 473 Mass Ave. No alcohol was served.

-At 6:28PM the operatives entered Tango located at 464 Mass Ave. No

alcohol was served.

-At 6:31PM the operatives entered Singh Saab Fine Indian located at 444 Mass Ave. No alcohol was served.

-At 6:34PM the operatives entered Shanghai Village located at 434-436 Mass Ave. No alcohol was served.

-At 4:43PM the operatives entered Menotomy Beer and Wine located at 80 Broadway. No alcohol was sold.

-At 4:51PM the operatives entered Fusion Taste located at 303A-305 Broadway. No alcohol was served.

-At 4:53PM the operatives entered the Common Ground located at 319 Broadway. No alcohol was served.

The following is a list of the compliance checks that resulted IN A VIOLATION with a brief description of the violation.

-At 5:19PM the operatives entered Zhu's Garden located at 166 Mass Ave. At 5:25PM the operatives exited Zhu's Garden and returned to our vehicle. The operatives informed us that they were seated inside and had an Asian woman wearing black clothing as a server. The operatives ordered 2 Peak Fresh Cut beers and were served the alcohol. The total cost of the purchase was $10.70. The operatives provided me with the receipt and the change which amounted to $9.30. Myself and Detective Sergeant Gallagher entered Zhu's Garden, observed that there were no other customers in the restaurant and spoke to the manager now known to us as Bowei Zhu. Zhu acknowledged the sale and directed me to the server who identified herself as Fanguyan Chen. Chen acknowledged that she had served the two operatives.

-At 5:34PM the operatives entered Duet located at 190 Mass Ave. At 5:41PM the operatives exited Duet and returned to our vehicle. The operatives informed us that they sat at the restaurant's bar and ordered 2 Kronenbourg 1664 beers and were served the alcohol. The total cost of the purchase was $12.84. The operatives provided me with a receipt and the change which amounted to $7.16. They reported that the bar tender was a white male who was approximately 6'00" with an average build. The bar tender informed the operatives of upcoming wine tastings. After receiving their receipt they left the restaurant. Myself and Detective Sergeant

Gallagher entered Duet, observed 1 couple seated at a table and 1 man at the bar. We met the manager at the greeting booth and informed her that there had been an alcohol violation and 2 underage operatives were served alcohol at the bar. I was directed to the bar where I met the bar tender who identified himself as Tim Hurlburt. It should be noted that the receipt lists the server as Timothy H. Hurlburt acknowledged the sale to the two operatives. He stated, "I didn't ID them, my fault."

It should be noted that the serves were never witnessed by Inspectors and were reported to us by the operatives.

Once back at the station the 2 receipts from Zhu's Garden and Duet were bagged as evidence together. The evidence bag was then secured in evidence locker 9. The operatives were again breath tested using the portable breath test. The male blew a 0.00 (test 105) and the female also blew a 0.00 (test 106). The operative's property was returned.

ARLINGTON POLICE
ARLINGTON, MA

INCIDENT # / REPORT #	OFFICER	RANK	REVIEW STATUS
17005303 / 1	PORCIELLO	INSP	APPROVED

INCIDENT #17005303 DATA
As Of 03/02/2017 08:02:10

BASIC INFORMATION

CASE TITLE	LOCATION	APT/UNIT #
ALCOHOL COMPLIANCE CHECKS	112 MYSTIC ST	

DATE/TIME REPORTED	DATE/TIME OCCURRED
02/28/2017 18:48:30	On or about 02/28/2017 18:48

INCIDENT TYPE/OFFENSE
ASSIST

[NO PERSONS]

[NO OFFENDERS]

[NO VEHICLES]

[NO PROPERTY]

OFFICER REPORT: 17005303 - 1 / PORCIELLO (INSP)

DATE/TIME OF REPORT	TYPE OF REPORT	REVIEW STATUS
02/28/2017 18:48:30	INCIDENT	APPROVED

NARRATIVE

On February 28, 2017, I, Inspector Porciello along with Detective Sergeant Gallagher conducted alcohol compliance checks of restaurants and businesses licensed to sell and/or serve alcohol in Arlington. We worked with 2 juvenile operatives. One operative was a male party and the second operative was a female. Prior to conducting the checks both operatives were breath tested using the portable breath test. The female blew a 0.00 (test 107) and the male also blew a 0.00 (test 108). The operatives were photographed and provided me with parental releases. They were given a copy of the recommended guidelines for conducting underage sting operations. They both read, understood and signed the recommended guidelines. Both parties removed all money and forms of identification from their possession and we secured the items and money in a gun locker with the Criminal Investigations Bureau. Ivy Laplant from the Arlington

Youth and Safety Coalition provided us with 100 dollars to conduct the compliance checks on the previous evening and the remaining money was used to conduct the compliance checks on today's date. The operatives were provided with 20 dollars prior to entering any restaurant/business.

The following is a list of restaurants/businesses that were open and compliance checks were completed resulting in NO VIOLATIONS.

-At 4:59PM the operatives entered Sono located at 469 Summer St #3&4. No alcohol was served.

-At 5:32PM the operatives entered Scutra located at 92 Summer St. No alcohol was served.

-At 5:08PM the operatives entered Not Your Average Joes located at 645 Mass Ave. No alcohol was served.

-At 5:15PM the operatives entered Thai Moon located at 663 Mass Ave. No alcohol was served.

-At 5:17PM the operatives entered Pasha Mediterranean located at 669A Mass Ave. No alcohol was served.

-At 5:20PM the operatives entered Tryst located at 689 Mass Ave. No alcohol was served.

-At 5:25PM the operatives entered Mr. Sushi located at 693 Mass Ave. No alcohol was served.

-At 5:53PM the operatives entered Toraya located at 890 Mass Ave. No alcohol was served.

-At 6:00PM the operatives entered the Mystic Wine Shoppe located at 901 Mass Ave. No alcohol was sold.

-At 6:06PM the operatives entered Jimmy's Steer House located at 1111 Mass Ave. No alcohol was served.

-At 6:13PM the operatives entered Szechuan's Dumpling located at 1360 Mass Ave. No alcohol was served.

-At 6:18PM the operatives entered Thai E-Sarn located at 1377-1381 Mass Ave. No alcohol was served.

-At 6:35PM the operatives entered Nina Trattoria & Pizzeria located at 1510 Mass Ave. No alcohol was served. It should noted that this restaurant has not begun selling beer and wine.

The following is a list of the compliance checks that resulted IN A VIOLATION with a brief description of the violation.

-At 4:48PM the operatives entered Arlington Liquors located at 94 Summer St. At 4:50PM the operatives exited Arlington Liquors and returned to our vehicle carrying a six pack of 12 ounce Bud Light cans. The operatives informed us that the cashier sold them the six pack while failing to ask for identification. The operatives provided us with the sales receipt which documented that their purchase of the six pack amounted to $7.00. The operatives returned the $13.00 in change. They described the cashier as being a male with dark hair and having a tanned complexion. I entered Arlington Liquors and spoke to the cashier who identified himself as Almaz Imanlieve. I identified myself as an Arlington Police Detective and informed him that he sold a six pack to 2 underage operatives. Almaz acknowledged the sale and reported that he thought he had seen them in the business in the past.

-At 6:21PM the operatives entered Prime, Your Local Butcher located at 1398 Mass Ave. At 6:23 the operatives exited Prime, Your Local Butcher carrying a six pack of 12 ounce Heineken bottles. The operatives informed us that the cashier sold them the six pack while failing to ask for identification. The operatives provided us with a sales receipt which documented that their purchase of the six pack amounted to $10.99. The operatives returned the $9.01 in change. The cashier was described as a white male in his twenties with curly brown hair. As we were seated in the car an employee exited the business carrying trash. The operatives identified the employee as being the cashier who sold them the six pack. I then entered the business and spoke to the manager now known to me as Scott Carta. I identified myself as an Arlington Police Detective and informed Carta that a violation had occurred. I then directed Carta's attention to an employee who had been identified by the operatives as selling the six pack. Carta reported that the employee's name is James Cerone. We were able to speak to Cerone who acknowledged selling the six pack of Heineken without asking for identification.

It should be noted that the serves were never witnessed by Inspectors and were reported to us by the operatives.

Once back at the station 2 receipts from Arlington Liquors and Prime, Your Local Butcher were bagged as evidence together. The Bud Light six pack (12 oz cans) and the Heineken six pack (12 oz bottles) were tagged as evidence separately. The evidence bag containing the receipts and the 2 tagged six packs were then secured in evidence locker 3. The operatives were again breath tested using the portable breath test. The female blew a 0.00 (test 109) and the male also blew a 0.00 (test 110). The operative's property was returned. It should be noted that the tagged evidence indicates that the evidence was placed in locker 7. However, locker 7 was not operating correctly and the evidence was then placed in locker 3.

The remaining $58.47 will be returned to Ivy Laplant.

ARLINGTON POLICE
ARLINGTON, MA

INCIDENT # / REPORT #	OFFICER	RANK	REVIEW STATUS
17005303 / 2	PORCIELLO	INSP	APPROVED

INCIDENT #17005303 DATA
As Of 03/02/2017 08:02:10

BASIC INFORMATION

CASE TITLE	LOCATION	APT/UNIT #
ALCOHOL COMPLIANCE CHECKS	112 MYSTIC ST	

DATE/TIME REPORTED	DATE/TIME OCCURRED
02/28/2017 18:48:30	On or about 02/28/2017 18:48

INCIDENT TYPE/OFFENSE
ASSIST

[NO PERSONS]

[NO OFFENDERS]

[NO VEHICLES]

[NO PROPERTY]

OFFICER REPORT: 17005303 - 2 / PORCIELLO (INSP)

DATE/TIME OF REPORT	TYPE OF REPORT	REVIEW STATUS
02/28/2017 18:48:30	SUPPLEMENT	APPROVED

NARRATIVE

On March 1, 2017 at approximately 15:10 hours, the Bud Light and Heineken six packs were removed from evidence, photographed and disposed of. The photographs have been attached to this report.

ARLINGTON POLICE
ARLINGTON, MA

INCIDENT # / REPORT #	OFFICER	RANK	REVIEW STATUS
17006003 / 1	PORCIELLO	INSP	APPROVED

INCIDENT #17006003 DATA
As Of 03/09/2017 07:52:57

BASIC INFORMATION

CASE TITLE	LOCATION	APT/UNIT #
ALCOHOL COMPLIANCE CHECKS	112 MYSTIC ST	

DATE/TIME REPORTED	DATE/TIME OCCURRED
03/08/2017 18:02:16	On or about 03/08/2017 18:02

INCIDENT TYPE/OFFENSE
ASSIST

[NO PERSONS]

[NO OFFENDERS]

[NO VEHICLES]

[NO PROPERTY]

OFFICER REPORT: 17006003 - 1 / PORCIELLO (INSP)

DATE/TIME OF REPORT	TYPE OF REPORT	REVIEW STATUS
03/08/2017 18:02:16	INCIDENT	APPROVED

NARRATIVE

On March 8, 2017, I, Inspector Porciello along with Detective Sergeant Gallagher conducted alcohol compliance checks of restaurants and businesses licensed to sell and/or serve alcohol in Arlington. We worked with 2 juvenile operatives. One operative was a male party and the second operative was a female. The operatives were the same that were used in alcohol compliance checks assigned to incident numbers 17005217 and 17005303. Prior to conducting the checks both operatives were breath tested using the portable breath test. The female blew a 0.00 (test 111) and the male also blew a 0.00 (test 112). The operatives were then photographed. Both parties removed all money and forms of identification from their possession and we secured the items and money in a gun locker with the Criminal Investigations Bureau. Ivy Laplante of the Arlington Youth and Safety Coalition had previously supplied us with money for past

compliance checks. The remaining $58.47 was used on today's date. The operatives were provided with 20 dollars prior to entering any restaurant/business.

The following is a list of restaurants/businesses that were open and compliance checks were completed resulting in NO VIOLATIONS.

-At 4:28PM the operatives entered the Commune Kitchen located at 203 A&B Broadway. No alcohol was served.

-At 4:43PM the operatives entered Sugo Cucina Italiana located at 164 Mass Ave. No alcohol was served.

-At 5:07PM the operatives entered Little Q Pot-Szchuan House located at 196 Mass Ave. No alcohol was served.

-At 5:12PM the operatives entered Ristorante Olivia located at 193-201 Mass Ave. No alcohol was served.

-At 5:15PM the operatives entered The Capital Theatre located at 204 Mass Ave. No alcohol was served.

-At 5:48PM the operatives entered Sabzi located at 352A Mass Ave. No alcohol was served.

Once back at the station the operatives were again breath tested using the portable breath test. The female blew a 0.00 (test 113) and the male also blew a 0.00 (test 114). The operative's property was returned.

The remaining $58.47 will be returned to Ivy Laplante.