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DECISION of the LOCAL LICENSING AUTHORITY

Licensee:	EPW, LLC d/b/a Prime, Your Local Butcher
Licensed Premises:	1398 Massachusetts Avenue
License No.:	#003000059
License Type:	Package Store License
Expiration Date:	December 31, 2017

On August 7, 2017, after proper notice and hearing, the Town of Arlington Board of Selectmen, in its capacity as local liquor licensing authority ("LLA"), unanimously voted order suspension of the above-referenced license for three consecutive (3) days beginning on the same day of the week that the violation was committed (a Tuesday) on or before October 11, 2017, the specific date to be designated by the Licensee and reported to the Board staff. In accordance with G.L. c. 138, § 23, the LLA hereby provides this statement of reasons for its action.

Procedural History. The Arlington Police Department ("Department"), as the duly appointed agent for the LLA, conducted alcohol compliance checks on February 27, 2017 and February 28, 2017. The Department later notified the LLA of the results of those operations, including advising the LLA of those licensees which failed the compliance check. In accordance with G.L. c. 138, § 23(4), the Board convened a hearing on August 7, 2017, at approximately 7:15 p.m. to consider Prime, Your Local Butcher's compliance check failure. The licensee was notified of the hearing by certified letter dated May 15, 2017, and acknowledged receipt of same. Requests for postponement of initially scheduling hearings were granted.

Questions Presented for Hearing

(1) Did a violation of the state liquor law occur on the above-referenced licensed premises on or about February 28, 2017, by the sale or delivery of alcoholic beverage(s) to one or more underage persons?

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

Evidence Presented

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

(A) Arlington Police Department Incident Report # 17005303/1 (February 28, 2017).
(B) Prime, Your Local Butcher Packet Including Alcohol Service Policy (with revisions) and Verification of Employee Training, and other materials.

The following witnesses appeared and testified:

(1) Inspector Stephen Porciello, Arlington Police Department (the parties consented to accept Inspector Porciello's June 19, 2017 testimony): summarized the annual alcohol compliance check operation and investigatory findings of the Department, especially information codified in Incident Report No. # 17005303/1,

which recorded the details of Prime, Your Local Butcher's compliance check failure; and

(2) Paul Weissman, Owner and Manager Prime, Your Local Butcher: acknowledged the violation, accepting responsibility and expressing regret for the compliance check failure, and explaining both the circumstances which led to the violation, measures already taken to retrain staff, and future plans and initiatives to prevent underage service.

(3) Mary Winstanley-O'Connor Counsel for Prime, Your Local Butcher: providing supporting details on the policies, training measures, and retraining efforts of the Licensee, as well as details of the incident.

Findings of Fact. On the basis of the evidence presented at the June hearing, described above, the LLA made the following findings of fact:

1. On February 28, 2017, the Arlington Police Department, through Inspectors Stephen Porciello and Det. Sergeant Gallagher, conducted alcohol compliance checks of thirteen of the Town's restaurants licensed to sell alcoholic beverages for consumption on the premises, and two package stores (other compliance checks of other license holders on or about February 27, 2017 and 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. *Porciello Testimony.*

3. As part of this compliance check, two underaged operatives were sent into each establishment with no identification. The operatives attempted to purchase alcoholic beverages in each establishment. At the Licensed Premises on February 28, 2017, the two operatives purchased a six pack of Heineken bottles by a white male server his mid 20s with curly brown hair. It was later ascertained that the server's name is

James Cerone. The operatives paid for the beers and received change along with a receipt. The operatives left the establishment. *Porciello Testimony; Incident Report.*

4. Inspector Porciello immediately spoke with Prime's manager on duty, Scott Carta, and Mr. Cerone, both of whom acknowledged the violation immediately. *Porciello Testimony; Incident Report*

5. The Licensed Premises has been in operation in the Town of Arlington as Prime, Your Local Butcher since 2014 (and previously as "The Meat House"), and this is the first alcohol or liquor violation that has been documented. The Licensee stipulated to the facts within the Police Department's reports, and its representatives relayed the efforts already taken to retrain all staff given that the incident was caused by straightforward employee error. *Weissman Testimony; Winstanley-O'Connor Testimony; Prime Alcohol Service Policy and Training Materials Packet.*

6. The Licensee emphasized efforts to improve their training efforts including improved materials and quizzes to ensure comprehension of common problems and issues, and committee to training every quarter. *Weissman Testimony; Winstanley-O'Connor Testimony; Prime Alcohol Service Policy and Training Materials Packet.*

7. The Licensee testified that a manager or assistant manager is always on site, and that each employee has and will continue to sign a verification that they have received training before they can serve alcohol. *Weissman Testimony; Winstanley-O'Connor Testimony; Prime Alcohol Service Policy and Training Materials Packet.*

8. The Licensee also agreed to take part in the Arlington Youth Health and Safety Coalitions' "Sticker Shock" campaign, which aims to reduce underage drinking.

Weissman Testimony; Winstanley-O'Connor Testimony; Prime Alcohol Service Policy and Training Materials Packet.

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 licensed premises on or about February 28, 2017, by the sale or delivery of alcoholic beverage(s) to one or more underage persons?

Yes.

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

3-day license suspension for consecutive days to commence on a Tuesday as selected by the Licensee on or after to be completed before October 11, 2017.

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. On February 28, 2017, 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 adopted a policy governing the sale of alcoholic beverages by restaurants. See Alcohol Licenses and Regulations, at Policies, Rules, and Regulations of Alcohol Licenses for Restaurants (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. 8 Among the factors to be considered in fixing the penalty are the quality of the evidence of the violation, the licensee's procedures for avoiding underage sales, efforts made to check identification, nature and circumstances of the violation, and history of violations by the licensee. Id.

Here, the evidence is uncontroverted that the violation occurred and there was no effort made to check identification of the underaged operatives. Because it was undisputed that the violation occurred, the LLA has no choice but to impose a suspension. However, the LLA expressed satisfaction with the sufficiency of the Licensee's response to the violation, its revised training methods, and commitment to preventing underage service in the future. As such, the LLA chooses to implement the minimum three-day suspension called for in its guidelines for a first offense. The LLA will also allow the Licensee to determine when the suspension shall begin so long as it is served on three consecutive days beginning on the day of the week when the violation was committed (a Tuesday in this instance).

Order

For the reasons stated herein, the above-referenced license is **SUSPENDED** for three days beginning on or after August 7, 2017, said days to be consecutive and beginning on a Tuesday but otherwise selected by the Licensee to be completed before October 11, 2017 and reported to the Office of the Board of Selectmen in advance. This order does not affect the Licensee's other operations permits to sell food, etc., so the Licensee may remain open for serving food and non-alcoholic beverages on those days, as long as no alcoholic beverages are exposed for sale.

Dated: Sept. 11, 2017

By:

TOWN OF ARLINGTON
BOARD OF SELECTMEN

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