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MEETING MINUTES

A meeting of the Salem Licensing Board was held on Monday, **March 11, 2019** at 6:00 p.m., at City Hall Annex, 98 Washington Street in the first-floor meeting room. Present was: Chairman Bob St. Pierre member Deborah Greel, Clerk of the Board, Melissa Pagliaro, Special Investigator, Sgt. Doyle and City Solicitor Elizabeth Rennard. Absent was member Paul Flores.

1. Application for a One Day Liquor License at Hamilton Hall, Chestnut Street on April 6, 2019 for 100 people for a Dance from 8-11:30 p.m. Applicant: Hamilton Hall.

Ms. Pagliaro presented the application for Robin Perry who could not attend. She said all of the paperwork was in order. Mr. Ms. Greel motioned to approve. Mr. St. Pierre seconded. Motion carries.

2. Application for a One Day Liquor License at The Salem Common on July 11, 2019 for 500 people for the Witches Cup Bike Race from 5:30-10:00 p.m. Applicant: Salem Cycle, Inc.

Postponed until March 25, 2019 meeting.

3. Application for several One Day Liquor Licenses at The Bridge, 211 Bridge Street for Monthly Art Gallery Opening Receptions for 100 people from 5-8:00 p.m. on April 5, May 10, June 9, July 12, August 2, September 6, September 21 Artoberfest from 12-8:00p.m., October 4, November 8 and December 15, 2019 for about 75 people. Applicant: Salem Arts Association.

James Bostick presented the applications. Ms. Pagliaro said that all of the paperwork is in order. Ms. Greel motioned to approve. Mr. St. Pierre seconded. Motion carries.

4. Application to add an Automatic Amusement (jukebox). Applicant: Fantasy Island, Loring Ave.

Karen Lin, owner, presented the application. Ms. Pagliaro said that all of the paperwork is in order. Ms. Lin said they are just requesting the application for a juke box be approved. Ms. Greel motioned to approve. Mr. St. Pierre seconded. Motion carries.

5. Application to amend an Entertainment License to include live entertainment. Applicant: PLAV, Daniels Street.

Mike Sosnowski, manager, presented the application. Sgt. Doyle started by saying there have been no recent complaints. Mr. St. Pierre asked exactly what the club is looking for. Mr. Sosnowski said that he originally got approved by the Board back a few years ago on a temporary basis but didn't follow up after trial period. He said they are a private Vets club since 1968 and not a commercial business. He said they are not looking to have live bands play 3 or 4 nights a week. He said they would like to have a live amplifies band maybe once or twice a month and on few special occasions and would not go past 11pm.

He said the bands volunteer for the club and are not paid. He said the club tries very hard to be a good neighbor. He said all of the complaints have been invalid except for the recycling issue which they corrected. He said that he runs a very good club. He said that it will mostly remain live acoustic bands but sometimes they may like to have an amplified band play. He said he that he would like to have approval for at least the next two events that are planned for March 17 and July 13, 2019 both from 12-6pm. He said the Board instructed him last year to come in for special events. Ms. Greel said she feels if they have live acoustic now a couple of times a month and that changes to amplified that it may cause a change in the neighborhood, families with kids, etc. She said maybe it should stay acoustic. Mr. St. Pierre asked if anyone would like to speak. Elizabeth Klauss said she resides at 11 Daniels St. She said she is opposed to the amplified live entertainment and feels is PLAV is not a good neighbor. She said currently members smoke pot in the driveway and are loud while conversing in the driveway. She said she strongly opposes it. Don Seiffert said he resides at 10 Daniels St. He said that he does not have an issue with the music however his issue is more with the patrons being loud outside and being woken up at 1am when they leave. He said he has called the PLAV directly and not police. Mr. St. Pierre said in all fairness that is a universal complaint throughout the City at liquor establishments. Ms. Klauss asked if the patrons of the Club are being asked to be good citizens. Mr. Sosnowski said that they have big signs posted at the exit door reminding patrons to be respectful of neighbors. He said many neighbors are members of the club now and he does everything possible to do what he can to correct any issues. Ms. Rennard said that if granted the license should be spelled out on days and times that amplified vs. acoustic would be allowed. Mr. Seiffert reiterated again that his issue was not ever with the music. Ms. Klauss said there have been minor improvements but does not agree to them having amplified music. Sgt. Doyle said that the club has been there for decades. He said it is impossible to control every single person. Ms. Rennard suggested Mr. Sosnowski download an application to check decibel levels during the two upcoming events. Mr. St. Pierre suggest that Mr. Sosnowski come back to the Board with days or dates that he thinks events for live amplified music could happen and the Board could do a trial period. He said he feels the bigger issue here is policing the patrons. He said if they come back with dates and times the Board would not be opposed to a six-month trial. Mr. Sosnowski said that he will do whatever the Board request but would like to note that they have not done anything wrong. Mr. St. Pierre, said they haven't. Mr. St. Pierre said the Board would approve the two events tonight. He said Mr. Sosnowski should go back and talk to the membership and come back with days and times for amplified music and they can consider a trial period. Mr. Sosnowski said he would like to talk with the gentleman from the neighborhood about his concerns with patron's late night. Ms. Greel motioned to approve the two-night requested for live amplified music at the Club on 3/17 and 7/13/2019 from 12-6pm. Mr. St. Pierre seconded. Motion carries.

6. Application for an Entertainment License to include live entertainment. Applicant: Cinema Salem, East India Square.

Paul Van Ness presented the application. He said- that he would like to add live amplified entertainment, up to 6 pieces, Thursday evenings in the theatre from 7-11pm. He said he did not realize that this was not allowed already on the license so he wants to be compliant. Ms. Greel motioned to approve. Mr. St. Pierre seconded. Motion carries.

7. Application for a Blanket Vendors License for the Annual Black Picnic at Salem Willows, July 2019. Applicant: Salem United. Ms. Rennard presented the application to the Board. She said they are having some vendors to raise money for a banners and entertainment. She said the event is historically held the 3rd Saturday in July and this year's date is July 20th. Ms. Greel motioned to approve. Mr. St. Pierre seconded. Motion carries.
8. Application for a Common Victualler License. Applicant: New England Sammie Co, LLC, 1 Boston Street.

No one present.

9. Application for a Common Victuallers License and an Entertainment License. Applicant: Lobstah on a Roll, LLC, 135 Lafayette Street.

Joe Marcus and David Spinney presented the application. Mr. Spinney said they are here for a Common Victualler and Entertainment License. Mr. St. Pierre asked about seating. Mr. Spinney said that they think they should have 30 or 25. Ms. Pagliaro said that the Building Department will issue the final number for seating. Ms. Greel asked about the operating hours. Mr. Spinney said the hours will be from 10-8pm Sunday thru Thursday and 10-10pm Friday and Saturday. Mr. Spinney said they are requesting TV's and piped in radio for Entertainment. Ms. Greel motioned to approve. Mr. St. Pierre seconded. Motion carries.

10. Application for a Change of Location from 94 Washington Sq. to 18 Commercial Street. Applicant: Knights of Columbus Club.

Charles Holloran, manager, presented the application. He explained that the Club has its new location and is almost ready to go. Ms. Pagliaro said that all of the paperwork is in order. Ms. Greel motioned to approve. Mr. St. Pierre seconded. Motion carries.

11. Hearing with Bistro 118, 118 Washington Street, regarding to overcrowding.

Attorney Diaz was present along with owner Frandy Xu, also present was Tom St. Pierre, Building Commissioner and Sgt. Harry Rocheville. Chairman St. Pierre swore in Sgt. Doyle, Sgt. Rocheville, Thomas St. Pierre and Frandy Xu. Sgt. Doyle said that most of the evidence and testimony was given at the last meeting on this matter. He said that a brief synopsis was that on October 29, 2018 Sgt. Rocheville witnessed extreme overcrowding at Bistro 118. He said at the time the owner nor the bouncer had an exact count of patrons, but the owner finally said 176 then after counting strips said possibly 167. Sgt. Rocheville testified that there were about 250 people in the establishment with an additional very large, loud crowd out on the patio. He testified that the certificates were not in clear view and he had to return the next day to look at them. Upon returning and looking at the certificates which were posted about 7 feet high on a pole facing away from the dining room, the capacity read 94 inside and 35 on the patio. He stated that by the owner's own admission and by the estimated count by himself and Fire Deputy Pelletier there were easily more than 250 people in the establishment. Attorney Diaz wanted to submit for the record the copies of the reports that were mailed to him and his client as part of the Hearing request. Mr. St. Pierre noted that Mr. Diaz is submitting for evidence the same letters that the City sent him when requesting the Hearing. Mr. Diaz

said there is also an Elaine Martin in the audience who is here on Bistro's behalf because she helped fill out an application some years ago in the Building Dept. Attorney Diaz said he just wanted to be on record saying that by the Sgt. and Deputy's testimony there was no count taken with a clicker or anything that it was just an estimate, never a specific count. He asked how they could establish a number. Sgt. Rocheville said from all of his years of training. Attorney Diaz said Mr. Xu thought his capacity was higher than it was. He said Ms. Martin submitted a plan some years back for more seating. Chairman St. Pierre said that this Hearing is all about overcrowding. He said this officer has over 25 years of experience and thinks he can determine a crowd size. He asked Ms. Rennard what number is actually allowed on the premise. Attorney Diaz said he is operating under the assumption he has a capacity of 172 seats. Ms. Rennard said she is not sure where that belief comes from as every 304 Certificate going back at least to 2010 shows a capacity of 94 inside and 34 on the patio. Chairman St. Pierre questioned Mr. Tom St. Pierre. Tom said he wanted to be clear that a Certificate of Occupancy is different from a 304 certificate. He said an occupancy permit only allows people in a building. Chairman St. Pierre asked Sgt. Rocheville if the certificate was placed in a conspicuous position. Sgt. Rocheville said no it was not. Ms. Rennard asked Tom St. Pierre what his position is. Tom said he is the Building Commissioner and is responsible for enforcing Commonwealth of Mass Building Code and Sec 110 of the Law and its amendments. Ms. Rennard asked how capacity is set. Tom said that usually an architect will prepare plans and write the number they want, he said the Building Dept has to look at things like bathrooms and exits, halls, etc. and sometimes they agree on the number and sometimes they don't and Building will set it differently. Ms. Rennard asked about the numbers at the Bistro. Tom said that the number is 94 inside and 35 outside so if it were to rain and everyone had to come in the number should not exceed 129. He said that it is a legal document and needs to be posted where it can be read. He said that if he ever declined an increase in capacity for anyone it can be appealed to the State. Sgt. Doyle asked Tom if the 304's are done every year. Tom said they are and have been for quite a while as a result of the RI Nightclub fire. He said Mr. Xu's numbers have been the same every single year. Ms. Rennard said Mr. Xu has been called in twice before for discussions with the Board for not being in compliance with the 304 regulations. Sgt. Rocheville said the certificate was not in an easy to read place being 7 feet high on a pole facing the back of the establishment. Attorney Diaz asked how the 304 certificates were given. Tom St. Pierre said each card is signed by him and the Police Chief and individually hand delivered to each establishment in the City. Attorney Diaz asked how the establishment would know if everything wasn't ok. Tom said because they would not get their license from Licensing. He said the 304 Certificates go hand in hand with their liquor license. Attorney Diaz asked Sgt. Rocheville if his count was an actual count or estimate. Sgt. Rocheville said that by his own count of bands and then by seeing the situation in the establishment there were clearly at least 250 people in the restaurant. Mr. Xu said that at one point in 2014 he submitted a drawing to building and fire to increase capacity and thought that everything was ok. He said he closed for about 7 months to do some remodeling and then he had a number of other issues when he tried to open. He said in 2015 or 2016 he went back to the Building Dept and Mike, one of the inspectors could not find the plans. Attorney Diaz asked how Mr. Xu thought his capacity increased and if he was ever given a document. Mr. Xu said he gave them a plan with that number on it

and in 2016 Fire came in and he told them the number was wrong. Mr. Xu said he tried to inquire at the Building Dept. Attorney Diaz asked if he ever tried to inquire. Ms. Rennard said a few years back he did petition the Board for an Alteration of Premise but that was denied at the ABCC due to DOR issues. Ms. Pagliaro said that Mr. Xu was told many times what he had to get to the ABCC to correct the issues and he never complied. Chairman St. Pierre swore Elaine Martin in. Ms. Martin said she was invited through a friend to help Mr. Xu because of the language barrier. Attorney Diaz asked her what her knowledge about the seating capacity was at Bistro. She said that she went to various department to request files and copies of things and never got them. She said someone in the Building Dept. told her that whatever they requested under that building number would be approved. She said Frandy hadn't received occupancy certificate and when he did, they thought it was a mistake because it was the same as it had always been. Ms. Greel said that this business has gotten a certificate every single year with the same numbers on it. Ms. Martin said that they were told it would be fixed and that she is just stating a fact. Tom St. Pierre said that is hearsay and not a fact. Tom St. Pierre said Ms. Martin was not present for any of these conversations so she cannot be stating a fact. Chairman St. Pierre said that it is very clear what the capacity is. He said they have been spoken to twice in the past about not being complaint with the 304 inspections. He said that the inspections start early in the summer time because most times reinspection's have to be done, sometimes more than once, so it gives the licensee time to correct issues before the certificates expire on November 30th. Chairman St. Pierre closed the discussion portion of the Hearing. Ms. Rennard asked Attorney Diaz if he had a closing statement. Attorney Diaz said he didn't. Ms. Rennard said that Mr. Xu stated that there were at least 166 patrons in the establishment so by his own admission they were over capacity. She said just because he had been to the building Dept several times and to the ABCC he believed that to be true even though there was no documentation to show in increase. Ms. Rennard said that they received a 5-day suspension in 2017 for 5 days with 2 to be served and three days held in abeyance and then received another in 2018 to serve the other 3 days as well as warning for not being in compliance with the 304 requirements. When asked by the chair for a recommendation, she said that a 2-day suspension with one held in abeyance for one year would be appropriate. Ms. Greel said that she would motion to suspend the license for Bistro 118 for 2 days with one to be served in a one-month period and the other held in abeyance for one year. Sgt. Doyle said the suspension should be held on the day that the violation was on and the Board agreed. Sgt. Doyle said it was a Saturday. Attorney Diaz said that Ms. Rennard has been excellent to work with and that Mr. Xu is going to be looking for a seller and he told him he should work with Sgt. Doyle. Attorney Diaz went out to speak with his client and came back in to inform the Board that he would like to serve his one-day suspension on April 6th, 2019.

12. Old/New Business:

NEW: The Clerk will send a letter to the current owner of New England Sammie Co. to call him before the Board to find out the status of the ownership. Ms. Greel motioned to approve. Mr. St. Pierre seconded. Motion carries.

13. Approval of Meeting Minutes from January 28, 2019. Ms. Greel motioned to approve. Mr. St. Pierre seconded. Motion carries.

14. Adjournment: Ms. Greel motioned to approve. Mr. St. Pierre seconded. Motion carries.

Melissa Pagliaro
Clerk of the Board

**Know your rights under the Open Meeting Law M.G.L. c. 30A and City Ordinance Sections 2-2028
and through 2-2033**