

AGENDA OF THE NHLC
DIVISION OF ENFORCEMENT & LICENSING MEETING
FOR THURSDAY, JULY 15 2021

1. RECOMMENDATION TO ACCEPT THE MINUTES FROM THE COMMISSION MEETING HELD JULY 8, 2021.

2. SCHEDULED HEARING AT LIQUOR COMMISSION OFFICES, 50 STORRS STREET, CONCORD, NH:

July 21, 2021 at 1:00 p.m.:

The Cloud Lounge Cigar Bar, 2 Range Road, Salem, NH 03079.
Cigar Bar, On-Premises Beverage/Wine/Liquor/Cigar/Tobacco License #402206 licensed pursuant to RSA 178:20-a/RSA 178:9-a.
Renewal of license denied on June 3, 2021 pursuant to RSA 178:20-a, II(a) & RSA 178:3, IX-a, XI.

3. NOTIFICATION OF ADMINISTRATIVE ACTION PER SETTLEMENT AGREEMENT:

Dubai Night Club & Grill, 253 Wilson Street, Manchester, NH 03103.
Restaurant, Full Service With Lounge License #1601103 licensed pursuant to RSA 178:21, II(a)(1)/RSA 178:22, V(q).
Cited for violation of RSA 179:27 – allowed patrons to self-serve alcohol beverages.
Date of violation: February 20, 2021.
Case #: 21-147-OF.
\$250 administrative fine suspended for twelve (12) months pending no like violation.

4. RECOMMENDATION FOR NON-CONTESTED ADMINISTRATIVE ACTION FOR COMMISSION APPROVAL:

- a. 809 Bar & Grille, 43 West Hollis Street, Nashua, NH 03060.
Restaurant, Full Service With Lounge License #1592203 licensed pursuant to RSA 178:21, II(a)(1)/RSA 178:22, V(q).
Cited for violation of RSA 179:17 – allowed the sale or consumption of alcoholic beverage on the premises after expiration of the serving hour.
Date of violation: 5/9/2021.
Case #: 21-259-OF.
Warning.
- b. D. R. Stephens Estate Wines, 230 Colfax Avenue, Suite A, Grass Valley, CA 95945.
Direct Shipper Permit #8153633 licensed pursuant to RSA 178:27.
Cited for violation of RSA 178:27 – failed to file report by the 15th of the following month.
Date of violation: 7/1/2021.
Case #: 21-338-OF.
Warning.
- c. Dutch Henry Winery, 4300 Silverado Trail, Calistoga, CA 94515.
Direct Shipper Permit #8035733 licensed pursuant to RSA 178:27.
Cited for violation of Liq. 1103.02 – failed to provide tracking numbers for shipments into the state of New Hampshire.
Date of violation: 7/1/2021.
Case #: 21-341-OF.
Warning.
- d. Federal Cigar Bar, 505 Central Avenue, Dover, NH 03820.
Cigar Bar, On-Premises Beverage/Wine/Liquor/Cigar/Tobacco License #402606 licensed pursuant to RSA 178:20-a/RSA 178:9-a.

Cited for violation of RSA 178:20-a, II(a) – failed to generate 60% of its quarterly gross revenue from the sale of cigar-related products which are limited to cigars, humidors, cigar cutters and cases, lighters and ashtrays.

Date of violation: 7/6/2021.

Case #: 21-314-OF.

Warning.

- e. Hub (The), 222 State Street, Portsmouth, NH 03801.
Retail Tobacco License #154217 licensed pursuant to RSA 178:19-a
Cited for violation of RSA 179:50 – unlawful purpose – sold CBD products.
Date of violation: May 30, 2021.
Case #: 21-293-OF.
Warning.
- f. Jessup Cellars Holding Co., 25 Enterprise Court, Suite #s 4-6, Napa, CA 94558.
Direct Shipper Permit #8087933 licensed pursuant to RSA 178:27.
Cited for violation of RSA 178:27 – failed to file report by the 15th of the following month.
Date of violation: 7/1/2021.
Case #: 21-331-OF.
Warning.
- g. Orfila Vineyards, 13455 San Pasqual Road, Escondido, CA 92025.
Direct Shipper Permit #8097633 licensed pursuant to RSA 178:27.
Cited for violation of RSA 178:27, V(a) – failed to file monthly reports.
Date of violation: 7/1/2021.
Case #: 21-336-OF.
Warning.
- h. Parallel Wines, 3125 St. Helena Highway North, St. Helena, CA 94574.
Direct Shipper Permit #8296733 licensed pursuant to RSA 178:27.
Cited for violation of Liq. 1103.02 – failed to provide tracking numbers for shipments into the state of New Hampshire.
Date of violation: 7/1/2021.
Case #: 21-335-OF.
Warning.
- i. Petroni Vineyards, 990 Cavedale Road, Sonoma, CA 95476.
Direct Shipper Permit #8132433 licensed pursuant to RSA 178:27.
Cited for violation of Liq. 1103.02 – failed to provide tracking numbers for shipments into the state of New Hampshire.
Date of violation: 7/1/2021.
Case #: 21-340-OF.
Warning.
- j. TC Vineyards, 2232 Big Ranch Road, Napa, CA 94558.
Direct Shipper Permit #8215733 licensed pursuant to RSA 178:27.
Cited for violation of RSA 178:27, V(a) – failed to file monthly report.
Date of violation: 7/1/2021.
Case #: 21-333-OF.
Warning.

5. LICENSE APPLICATIONS RECOMMENDED FOR COMMISSION APPROVAL:

- a. Diddy Concessions LLC, 1053 North Barnstead Road, Center Barnstead, NH 03225.
To be issued Caterer, Off-Site License #1296934 pursuant to RSA 178:22, V(e).
30-Day Temporary License issued 7/12/2021.

- b. HCC Wolfeboro LLC DBA Winnepesaukee Belle, 90 North Main Street, Wolfeboro, NH 03894. To be issued Seasonal Vessel License #491213 pursuant to RSA 178:22, V(s). 30-Day Temporary License issued 7/9/2021.
- c. HRV LLC DBA Vashaw's Valley Food and Beverage, 302 Main Street, Gorham, NH 03581. To be issued Combination, Off-Premises, Beverage/Wine/Tobacco License #3409147 pursuant to RSA 178:18/RSA 126-K:4. 30-Day Temporary License issued 7/9/2021.
- d. Melco Corp. DBA BP Nashua, 485 Amherst Street, Nashua, NH 03063. To be issued Combination, Off-Premises, Beverage/Wine/Tobacco License #3400447 pursuant to RSA 178:18/RSA 126-K:4. 30-Day Temporary License issued 7/13/2021.

6. LICENSE APPLICATIONS RECOMMENDED FOR COMMISSION DENIAL:

None

7. DIRECT SHIPPER APPLICATIONS RECOMMENDED FOR COMMISSION APPROVAL:

TOTAL NUMBER OF ACTIVE DIRECT SHIPPER PERMITS ENDING JULY 9, 2021: 1,357

- a. Relic Wine Cellars LLC, 2400 Soda Canyon Road, Napa, CA 94558. To be issued Direct Shipper, Wine Manufacturer Permit pursuant to RSA 178:27. (Winery)
- b. Remedy Wholesale LLC DBA Remedy Liquor, 1700 West Glenoaks Boulevard, Glendale, CA 91201. To be issued Direct Shipper, Retailer Permit pursuant to RSA 178:27. (Retailer)
- c. Viluko Vineyard, Inc., 6705 Christo Lane, Santa Rosa, CA 95409. To be issued Direct Shipper, Wine Manufacturer Permit pursuant to RSA 178:27. (Winery)
- d. Yorkville Cellars LLC, 1170 Bel Arbres Drive, Redwood Valley, CA 95470. To be issued Direct Shipper, Wine Manufacturer Permit pursuant to RSA 178:27. (Winery)

8. DIRECT SHIPPER APPLICATIONS RECOMMENDED FOR COMMISSION DENIAL:

None

9. NOTIFICATION OF APPROVED PETITIONS:

- a. Bayside Diner, 12 Mount Major Highway, Alton Bay, NH 03810. Restaurant, On-Premises, Beverage/Wine/Liquor License #1622103 licensed pursuant to RSA 178:21. Requested a waiver for authorization for reduction of hours, to wit, to reduce the hours of operation to serve only breakfast and lunch due to a staffing shortage pursuant to RSA 178:21, II, a (2) and as indicated in an email dated 6/25/2021; no alcohol will be served.
- b. Coos Brewing Co., 13 Merrill Street, Colebrook, NH 03576. Nano Brewery, Beer and/or Specialty Beer License #206222 licensed pursuant to RSA 178:12-a. Requested transfer of location, to wit, to transfer the business location to 30 Bill Bromage Drive, Colebrook, NH pursuant to RSA 178:29, VIII.

- c. Woodstock Inn Brewery, 135 Main Street, North Woodstock, NH 03262.
Restaurant, Full Service With Lounge License #1458603 pursuant to
RSA 178:21, II(a)(1)/RSA 178:22, V(q).
Requested approval for an outside area, to wit, an outside area with a capacity of 45 on 7/7/2021
pursuant to RSA 178:24/Liq. 404.05.

10. PETITIONS RECOMMENDED FOR COMMISSION DENIAL:

None

11. TABLED ITEMS:

None

12. MISCELLANEOUS ITEMS RECOMMENDED FOR COMMISSION APPROVAL:

None.

13. MISCELLANEOUS ITEMS RECOMMENDED FOR COMMISSION DENIAL:

None

14. NOTIFICATION OF COMPLIANCE CHECKS SCHEDULED WITHIN NINETY (90) DAYS:

None

15. RECOMMENDATION FOR ADMINISTRATIVE ACTION ON COMPLIANCE CHECKS FOR COMMISSION APPROVAL:

None

16. ADMINISTRATIVE HEARING DECISION PENDING:

Utopia Lounge, Inc., 148 Plaistow Road, Plaistow, NH 03865.
Application for Cigar Bar License #405906.
INFORMATIONAL HEARING WAS HELD IN PLAISTOW, NH ON JULY 7, 2021.

17. ADMINISTRATIVE HEARING DECISION:

Manchester Adult Lifestyles, 179 Elm Street, Manchester, NH 03101.
Contesting denial of Retail Tobacco License #150917 licensed pursuant to RSA 178:4.
Case #: 20-357-OF.

DISCUSSION – DISPOSITION:

“No license shall be issued under this chapter to any person who has been convicted of a felony, or to any partnership, limited liability company or partnership, or corporation when a partner, director, officer, member, or any other person with a controlling interest in the operation of the business has been convicted of a felony”.
See RSA 178:3, VI.

“Notwithstanding the provisions of RSA 178:3, the commission may issue liquor and beverage licenses to a person who has been convicted of a felony, other than...trafficking in drugs, provided that not less than 5 years shall have passed since such person completed his or her sentence or was placed on parole or probation...”.
See RSA 178:4.

“Any applicant denied a license under this chapter shall be granted a hearing by the commission, upon the applicant's request.” N.H. RSA 178:3, X. Mr. Thomas was given the opportunity for a hearing on June 23, 2021. During the hearing, Attorney Sakellarios stipulated to the evidence and facts presented by the Division of Enforcement.

It is conceded that Mr. Thomas was convicted of the sale or distribution of the drug commonly referred to as “spice” on August 27, 2015, and was sentenced to a term in the New Hampshire State prison all suspended for a period of 5 years. The licensee has put forth 3 legal arguments why the Commission’s decision to deny the felon exception waiver was in error. First, the licensee argues that 178:3 only applies to liquor licenses and not retail tobacco licenses. Second, that 178:4 is silent as to retail tobacco licenses and therefore its provisions only apply to liquor licenses. Third, the licensee challenges the commission’s interpretation of 178:4 in determining when five years have passed since an applicant has “completed” his or her sentence. Finally, the licensee argues the term trafficking of drugs in 178:4 is not defined. The licensee posits that due to the unclear language of 178:4, the Hearings Officer has discretion in determining whether or not Mr. Thomas may be issued a retail tobacco license.

The hearing held on behalf of Manchester Adult Lifestyles is in essence, an appeals hearing, conducted under the rules of the liquor commission. As such, it amounts to a review of the decision made by the Commission, considering all facts and law presented at the hearing. In the present case, the Division of Enforcement presented evidence that Mr. Thomas is a convicted felon. These facts are not contested. What the licensee contests are the Commission’s interpretation of the statutes.

First, the licensee argued there is a distinction between liquor licenses and retail tobacco licenses. He argues that the provision in 178:3, VI, which prohibits the commission from issuing a license, should only apply to liquor licenses. However, the plain language of the statute states that “**[n]o license shall be issued under this chapter to any person who has been convicted of a felony...**”. RSA 178:3, VI. The authority for the commission to issue a retail tobacco license is found in 178:19-a. “The commission may issue a retail tobacco license to a person engaged in the business of retail sales and distribution of tobacco products or e-cigarettes in this state”. 178:3-a, I. By statute, the commission has no discretion to issue a license under Chapter 178:3 to any person convicted of a felony. Retail tobacco licenses fall under Chapter 178 and the licensee has been convicted of a felony, therefore he does not qualify for a license under the plain meaning of the statute. I now turn to whether he qualifies for an felon exception waiver under RSA 178:4.

Next, the licensee argues that because 178:4 is silent as to retail tobacco licenses, it does not apply, or in the alternative, the hearings officer has discretion to grant the felon waiver. I need not address this issue as the licensee was convicted under an offense that qualifies as drug trafficking.

Next, the licensee argues the commission erred in calculating the five- year period between the time the applicant completed his sentence to the time he applied for a license. Again, in the alternative, the licensee invites the hearings officer to exercise discretion in deviating from the commission’s interpretation of the statute. Again, I decline to address this issue as the licensee does not qualify due to being convicted for the sale of “spice”, which falls within the meaning of trafficking of drugs.

Finally, the licensee argues that drug trafficking is not defined anywhere and may not be applicable to the licensee’s felony convictions. The licensee was convicted of 2 counts of the sale of the controlled drug, commonly known as “spice.” Drug Trafficking is not defined in the New Hampshire Criminal Code, Title XIII, or Black’s

Law Dictionary or Webster's Dictionary. It should be enough to recognize that it is common sense to recognize that the sale or distribution of drugs would fall under the definition of drug trafficking. Although the above referenced materials do not define drug trafficking, many other States and the federal government do define it.

"For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46." See 18 U.S.C. 924(c)(2). 21 U.S.C. 841 defines this as (a) Unlawful acts (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance...". See 21 U.S.C. 841. I find that that the sale or distribution of a controlled substance falls within the definition of trafficking or drugs. The language of 178:4 is very clear, and while the commission has some discretion whether or not to grant felon exception waivers in general, a felon exception may not be granted for a licensee who has been convicted of "abduction, arson, incest, manslaughter in the first degree, mayhem, murder, rape, robbery, or trafficking in drugs." Therefore, the licensee does not qualify for the felon exception under RSA 178:4 and may not be issued a retail tobacco license.

The Hearings Officer had no discretion in denying the felon exception pursuant to the specific language in RSA 178:4 regarding trafficking of drugs, and thus the Division of Enforcement & Licensing were unable to issue a retail tobacco license under this chapter.

Holding

The decision of the Hearings Officer to deny Mr. Thomas' request for a felon exception waiver under RSA 178:4 and the denial of a retail tobacco license is upheld.

18. MISCELLANEOUS ITEMS FOR INFORMATION ONLY:

- a. American Independence Museum, 1 Governors Lane, Exeter, NH 03833.
Issued Special, One-Day, Voluntary Nonprofit Organizations Beverage/Wine/Liquor License #619641 pursuant to RSA 178:22, V(l).
Event date: July 10, 2021 between 12:00 p.m. – 7:00 p.m.
- b. American Independence Museum, 1 Governors Lane, Exeter, NH 03833.
Issued Special, One-Day, Voluntary Nonprofit Organizations Beverage/Wine/Liquor License #619741 pursuant to RSA 178:22, V(l).
Event date: July 17, 2021 between 12:00 p.m. – 7:00 p.m.
- c. American Independence Museum, 1 Governors Lane, Exeter, NH 03833.
Issued Special, One-Day, Voluntary Nonprofit Organizations Beverage/Wine/Liquor License #619841 pursuant to RSA 178:22, V(l).
Event date: July 24, 2021 between 12:00 p.m. – 7:00 p.m.
- d. Center For The Arts Lake Sunapee Region, 179 Little Sunapee Road, New London, NH 03257.
Issued Special, One-Day, Voluntary Nonprofit Organizations Beverage/Wine/Liquor License #614241 pursuant to RSA 178:22, V(l).
Event date: July 8, 2021 between 6:00 p.m. – 9:30 p.m.
- e. Louis T. Festo Memorial Scholarship, 56 North Road, Sandown, NH 03873.
Issued Special, One-Day, Voluntary Nonprofit Organizations Beverage/Wine/Liquor License #619141 pursuant to RSA 178:22, V(l).
Event date: July 10, 2021 between 12:00 p.m. – 10:30 p.m.

- f. Newport Opera House Association, 20 Main Street, Newport, NH 03773.
Issued Special, One-Day, Voluntary Nonprofit Organizations Beverage/Wine/Liquor License #616641 pursuant to RSA 178:22, V(l).
Event date: July 17, 2021 between 7:00 p.m. – 9:00 p.m.

- g. Newport Opera House Association, 20 Main Street, Newport, NH 03773.
Issued Special, One-Day, Voluntary Nonprofit Organizations Beverage/Wine/Liquor License #616741 pursuant to RSA 178:22, V(l).
Event date: August 14, 2021 between 7:00 p.m. – 9:00 p.m.