

AGENDA OF THE NHLC
DIVISION OF ENFORCEMENT & LICENSING MEETING
FOR WEDNESDAY, NOVEMBER 10, 2021

1. **RECOMMENDATION TO ACCEPT THE MINUTES FROM THE COMMISSION MEETING HELD NOVEMBER 4, 2021.**
2. **SCHEDULED HEARING AT LIQUOR COMMISSION OFFICES, 50 STORRS STREET, CONCORD, NH:**

November 10, 2021 at 1:30 p.m.: EMERGENCY HEARING

Cheers & Beers, 1055 Elm Street, Manchester, NH 03104.

Restaurant, On-Premises, Beverage/Wine/Liquor License #1623603 licensed pursuant to RSA 178:21. Cited for violation of RSA 178:2, II/Liq. 603.01(c) - failed to attend a required training program within 45 days of licensure.

Cited for violation of RSA 179:50 – allowed the premises to be used for a purpose contrary to law – allowed patrons to smoke inside the establishment.

Cited for violation of RSA 179:51 – failed to maintain an orderly premise when an altercation lead to a patron being shot inside the establishment.

Cited for violation of RSA 179:20, II – allowed an employee to consume alcoholic beverage while working.

Cited for violation of RSA 179:27 – allowed patrons to self-serve alcohol beverages.

Date of violations: September 25, 2021.

Case #: 21-513-OF.

CHIEF MARK ARMAGANIAN REPORTED THAT THE LICENSEE REQUESTED AND WAS GRANTED A CONTINUANCE ON OCTOBER 7, 2021; NEW HEARING DATE TO BE DETERMINED.

ASSENTED-TO MOTION TO CONTINUE FILED BY THE DOE AND GRANTED ON 11/5/2021; NEW HEARING DATE NOVEMBER 10, 2021 AT 1:30 P.M.

November 16, 2021 at 1:00 p.m.:

Millennium Cabaret of Bedford, 390 South River Road, Bedford, NH 03110.

Restaurant, On-Premises, Beverage/Wine/Liquor License #1397403 licensed pursuant to RSA 178:21.

Cited for violation of RSA 179:5, I - served alcoholic beverage to a person who was visibly intoxicated or who a reasonable and prudent person would know is intoxicated.

Cited for violation of RSA 179:48 – allowed an employee to receive compensation based on a percentage of the sale of liquor or beverage sold.

Cited for violation of RSA 179:5, I - did serve alcoholic beverage to a person who was visibly intoxicated or who a reasonable and prudent person would know is intoxicated, resulting in a fatality.

Dates of violations: February 1, 2019 & April 5-6, 2019.

Case #s: 19-94-OF & 19-223-OF.

AGREEMENT TO CONTINUE THE HEARING TO NOVEMBER 16, 2021 AT 1:00 P.M.

December 1, 2021 at 12:30 p.m.:

Opus Lounge, 14 West Hollis Street, Nashua, NH 03060.

Restaurant, On-Premises, Beverage/Wine/Liquor License #1593703 licensed pursuant to RSA 178:21.

Cited for violation of RSA 179:50 – allowed patrons to smoke hookah devices on the premises.

Date of violation: May 7, 2021.

Case #: 21-258-OF.

3. **NOTIFICATION OF ADMINISTRATIVE ACTION PER SETTLEMENT AGREEMENT:**

None

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

None

5. LICENSE APPLICATIONS RECOMMENDED FOR COMMISSION APPROVAL:

- a. Arlington Tavern LLC (The) DBA The Arlington Inn & Tavern, 71 Main Street, Winchester, NH 03470.
To be issued Caterer, Off-Site License #1298634 pursuant to RSA 178:22, V(e).
30-Day Temporary License issued 11/3/2021.
- b. Collins, Robert & Catherine DBA Frost Heave Brewery, 260 Stoneham Road, Brookfield, NH 03872.
To be issued Nano Brewery, Beer and/or Specialty Beer License #208622 pursuant to RSA 178:12-a.
30-Day Temporary License issued 11/5/2021.
- c. K & S Sheppard LLC DBA Rudy's Market, 81 Wight Street, Berlin, NH 03570.
To be issued Combination, Off-Premises, Beverage/Wine/Tobacco License #3411047 pursuant to RSA 178:18/RSA 126-K:4.
30-Day Temporary License issued 10/6/2021.
- d. Maher and Ahmed LLC DBA Wow Fried Chicken & Subs, 5-7 Pleasant Street Extension, Concord, NH 03301.
To be issued Caterer, Off-Site License #1299434 pursuant to RSA 178:22, V(e).
30-Day Temporary License issued 11/5/2021.
- e. Mi Jalisco Mexican Grill & Cantina LLC, 300 South Willow Street, Manchester, NH 03103.
To be issued Restaurant, On-Premises, Beverage/Wine/Liquor License #1612203 pursuant to RSA 178:21.
90-Day Temporary License issued 11/4/2021.
- f. Nouria Energy Retail, Inc. DBA Nouria 195 South River Road, 195 South River, Road, Bedford, NH 03110.
To be issued Combination, Off-Premises, Beverage/Wine/Tobacco License #3409447 pursuant to RSA 178:18/RSA 126-K:4.
30-Day Temporary License issued 11/5/2021.
- g. Tulip Hospitality LLC DBA Cafe@TheBookery, 844 Elm Street, Manchester, NH 03101.
To be issued Restaurant, On-Premises, Beverage & Wine License #1631703 pursuant to RSA 178:20.
30-Day Temporary License issued 11/8/2021.

6. LICENSE APPLICATIONS RECOMMENDED FOR COMMISSION DENIAL:

- a. O'Shea's Irish Tavern & Cigar Bar, 449 Amherst Street, Nashua, NH 03063.
Application for 90-Day Temporary Cigar Bar License #406206 pursuant to RSA 178:20-a/RSA 178:9-a received 9/10/2021.
Recommend denial as the applicant does not have a valid lease at the property in the name of O'Shea's Irish Tavern & Cigar Bar and the owner of the business cannot be properly determined.
- b. Utopia Lounge, 148 Plaistow Road, Plaistow, NH 03865.
90-Day Temporary Cigar Bar License #405906 was issued on July 28, 2021 pursuant to RSA 178:20-a/RSA 178:9-a.
Case #: 21-307-OF.
Recommend denial of permanent license due to 60% of the quarterly gross revenue for cigar related products pursuant to RSA 178:20-a could not be determined due to significant

discrepancies in the invoices and inventory; additionally, administrative action for violation of RSA 179:32 – Purchase of Supplies, was issued on October 14, 2021.

7. DIRECT SHIPPER APPLICATIONS RECOMMENDED FOR COMMISSION APPROVAL:

TOTAL NUMBER OF ACTIVE DIRECT SHIPPER PERMITS ENDING NOVEMBER 5, 2021: 1,371

- a. Coeur de Terre Vineyard LLC, 21000 Southwest Eagle Point Road, McMinnville, OR 97128. To be issued Direct Shipper, Wine Manufacturer Permit pursuant to RSA 178:27. (Winery)
- b. Wine Awesomeness LLC, 1471 First Street, Calistoga, CA 94515. To be issued Direct Shipper, Retailer Permit pursuant to RSA 178:27. (Retailer)

8. DIRECT SHIPPER APPLICATIONS RECOMMENDED FOR COMMISSION DENIAL:

None

9. NOTIFICATION OF APPROVED PETITIONS:

- a. Buffalo Wild Wings Grill & Bar, Fox Run Mall, Newington, NH 03801. Restaurant, On-Premises, Beverage/Wine/Liquor License #1435303 licensed pursuant to RSA 178:21. Requested to transfer inventory, to wit, to transfer product to Pictor Enterprises VIII, Inc. DBA Buffalo Wild Wings Grill & Bar, 160 Washington Street, Suite #103, Rochester, NH 03867, License #1455803 pursuant to RSA 178:29, VIII due to expiration of lease.
- b. Mi Jalisco Mexican Grill & Cantina, 300 South Willow Street, Manchester, NH 03103. Restaurant, On-Premises, Beverage/Wine/Liquor License #1612203 licensed pursuant to RSA 178:21. Requested an extension of service, to wit, to extend service to an outdoor patio pursuant to RSA 179:21, II.
- c. Tandy's Top Shelf, 1 Eagle Square, Concord, NH 03301. Restaurant, On-Premises, Beverage/Wine/Liquor License #1404103 licensed pursuant to RSA 178:21. Requested an extension of service, to wit, to extend service to an atrium adjacent to the restaurant with a capacity of 206 on various dates commencing 11/6/2021 through 12/31/2021 pursuant to RSA 179:21, II.
- d. Throwback Brewery, 7 Hobbs Road, North Hampton, NH 03862. Brew Pub License #2002415 licensed pursuant to RSA 178:13. Requested approval for authorization of other areas for tasting and retail sales at farmers' market, to wit, Seacoast Eat Local Winter Market/Wentworth Greenhouses, 141 Rollins Road, Rollinsford, NH 03869 on Saturdays between 9:00 a.m. and 2:00 p.m. from 11/20/2021 to 3/19/2022 pursuant to RSA 178:24/RSA 179:44, II-a.
- e. White Birch Eatery, 571 Mast Road, Goffstown, NH 03045. Restaurant, On-Premises, Beverage/Wine/Liquor License #1618203 licensed pursuant to RSA 178:21. Requested an exception to opening requirements, to wit, for hours of operation to be reduced to 7:00 a.m. – 2:00 p.m. on weekdays and 7:00 a.m. – 1:00 p.m. on weekends pursuant to RSA 179:21, II.

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:

None

17. ADMINISTRATIVE HEARING DECISION:

Heavens Food Mart, 381 Boynton Street, Bedford, NH 03110.

Combination, Off-Premises, Beverage/Wine/Tobacco License #3275047 licensed pursuant to RSA 178:18/RSA 126-K:4.

Cited for violation of RSA 179:5, I – sold alcoholic beverage to an individual who was under the age of twenty-one during a compliance check.

Date of violation: May 6, 2021.

Case #: 21-240-OF.

THE DIVISION OF ENFORCEMENT REQUESTED CONTINUANCE DUE TO A SCHEDULING CONFLICT; THE LICENSEE ASSENTED; THE MOTION WAS GRANTED ON 9/27/2021; HEARING HAS BEEN RESCHEDULED FOR 10/27/2021 AT 12:30 P.M.

HEARING TOOK PLACE ON OCTOBER 27, 2021 AT 12:30 P.M.

DECISION AND ORDER:

“DISCUSSION – DISPOSITION:

RSA 179:5 provides in pertinent part: “No licensee, salesperson, direct shipper, common carrier, delivery agent, nor any other person, shall sell or give away or cause or allow or procure to be sold, delivered, or given away any liquor or beverage to a person under the age of 21...” See NH Rev. Stat. Ann. 179:5, 1. The statute is one of strict liability, much like a violation of the state’s speeding statute. It does not require a purposeful, knowing, reckless or a negligent mental state. Therefore, the purchase of alcohol to an underage individual is a violation of the statute regardless of the mental state of the person making the sale.

179:8 provides in pertinent part: "For the purposes of RSA 179:7, any person making the sale of beverages or liquor to any person whose age is in question shall require the purchaser to furnish any of the following documentation that such person is 21 years of age or over"... See N.H. Rev. Stat. Ann. 179:8. Like the sale of alcohol to an underage individual, failure to request proper identification is a violation of the statute regardless of the mental state of the person making the sale, although the fact of whether one's age is in question may vary among differing minds.

In the present case, it is uncontested that while under the age of 21, Ms. Sara Damboise entered Heaven's Food Mart on May 6, 2021 at approximately 5:01 P.M., and purchased a Natty Daddy, an alcoholic beverage, from Mr. Aniketh Nanganoori, an employee of Heaven's Food Mart, without being asked her age, or asked to provide proper identification.

The licensee argues that Ms. Damboise wearing a mask should be a defense to the violation of RSA 179:5 during a compliance check. He argues it is difficult to determine someone's age while wearing a mask. He testified that Ms. Damboise appeared well over the legal age to purchase alcohol. I do not consider Mr. Zaka's testimony about Ms. Damboise's appearance as he was not the one to make the sale. If Mr. Zaka wanted such testimony to be considered, he would have needed to call Aniketh Nanganoori as a witness and subject him to cross examination by the State. Furthermore, Ms. Damboise was only 18 years of age at the time of the compliance check, 3 years under the legal age to purchase alcohol. I agree with Mr. Zaka that it most certainly would be more difficult to determine an individual's age while they are wearing a mask. That, however, is not a defense to the statute. If anything, a licensee should be more vigilant in requiring identification from individuals wearing a mask when purchasing alcohol or tobacco products.

Further, licensees have been living with the COVID-19 pandemic since March of 2020, with on and off again mask requirements, and with many individuals still choosing to wear masks regardless of such mandates. The division of enforcement withheld from serving licensees with Notices of Agency Action for quite some time working with them to adjust to the pandemic, and these businesses have been open without restrictions for a sustained period of time. Finally, Heaven's Food Mart previously failed a compliance check on October 22, 2020, under a similar set of circumstances, was given a verbal warning, and assessed 4 points to the license without having to pay a fine. Mr. Zaka argues the penalty should be waived due to Ms. Damboise wearing a mask and his long history of being violation free. However, Heaven's Food Mart was given such relief during the previous violation, and the rule regarding penalties provides that the commission "**shall**" impose a fine of \$500 for a violation of 179:5 during a compliance check. See Liq 603.01(a)(6). As such, I have no discretion and must impose the fine.

Penalty

There shall be no additional points assessed on the license as the previous violation and assessment of points occurred within one calendar year of this violation. The licensee is ordered to pay a fine of \$500 to the Division of Enforcement & Licensing.

So Ordered this 8th day of November, 2021."

18. MISCELLANEOUS ITEMS FOR INFORMATION ONLY:

Gilford Rotary Club, PO Box #7091, Laconia, NH 03247.
Issued Special, One-Day, Voluntary Nonprofit Organizations Beverage/Wine/Liquor License #630541 for 11/6/2021 pursuant to RSA 178:22, V(l).