

SELECTMEN'S MEETING AGENDA\*

Donn B. Griffin Room, Town Hall

732 Main Street, Harwich, MA

Public Hearings 4:00 P.M.

Tuesday, December 14, 2021

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. PUBLIC COMMENTS/ANNOUNCEMENTS

IV. PUBLIC HEARINGS (NO EARLIER THAN 4:00 P.M.)

- A. Brax Restaurant Management, Inc. d/b/a Brax Landing, 705 Main Street - Public hearing on alleged violations of the Annual, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.
- B. Port Restaurant and Bar, Inc., 541 Route 28 - Public hearing on alleged violations of the Seasonal, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.
- C. Wychmere Harbor Functions Lp d/b/a Wychmere Harbor Beach and Tennis Club, 23 Snow Inn Road - Public hearing on alleged violations of the Seasonal, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.
- D. Lucky Labrador, Inc. d/b/a Perks, 545 Route 28 - Public hearing on alleged violations of the Seasonal, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.
- E. Beachlight LLC d/b/a Seal Pub, 703 Main Street - Public hearing on alleged violations of the Annual, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.

V. NEW BUSINESS

- A. Summation of the Show Cause Hearing process and discussion on the future hearing process going forward presented by the Town Administrator

VI. ADJOURNMENT

*\*Per the Attorney General's Office: The Board of Selectmen may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting following "New Business." If you are deaf or hard of hearing or a person with a disability who requires an accommodation contact the Selectmen's Office at 508-430-7513.*

Authorized Posting Officer:

\_\_\_\_\_  
Danielle Delaney, Executive Assistant

Posted by: \_\_\_\_\_  
Town Clerk

Date: \_\_\_\_\_  
December 10, 2021

**HARWICH BOARD OF SELECTMEN  
NOTICE OF HEARING**

**ALLEGED VIOLATIONS OF CONDITIONS OF LIQUOR LICENSE  
DECEMBER 14, 2021**

The Board of Selectmen, will hold a hearing on Tuesday, December 14, 2021 at 4:00 P.M., for the purpose of consideration of alleged liquor license violations by Lucky Labrador Inc. d/b/a Perks, located at 545 Route 28, Harwich Port. The Board of Selectmen will consider possible penalties including modifications, suspension, revocation or cancellation of said license. All members of the public having an interest in the topic are cordially invited to attend the Hearing which will be held in the Griffin Room at the Harwich Town Hall, 732 Main Street, Harwich MA 02645.

Board of Selectmen  
Local Licensing Authority

Cape Cod Times  
November 30, 2021

# OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039




Joseph F. Powers, *Town Administrator*  
Meggan M. Eldredge, Assistant Town Administrator

732 MAIN STREET, HARWICH, MA

## MEMO

TO: Board of Selectmen

FROM: Joseph F. Powers, Town Administrator 

CC: Meggan M. Eldredge, Assistant Town Administrator  
Attorney Jeffrey Blake, KP Law

RE: Lucky Labrador, Inc. DBA Perks, 545 Rt. 28 - Public hearing on alleged violations of the Seasonal, All Alcoholic Beverages License

DATE: December 10, 2021

The Board of Selectmen as Local Licensing Authority (LLA) for the town received a memorandum from Chief David Guillemette of the Harwich Police Department on June 14, 2021 (see attached) outlining violations alleged to have occurred on June 5, 2021, June 11, 2021, and June 13, 2021 at the licensed establishment known as Perks operating at 545 Route 28 in Harwich Port.

On June 21, 2021, the Board of Selectmen voted to remand the allegation to me, as Town Administrator, to conduct a show cause hearing for the purpose of determining whether there is cause for the LLA to hold a hearing to determine whether the facts support a finding of allegation(s) and to recommend to the LLA any potential discipline if the facts so warrant.

Based on the Board's vote, a show cause hearing was scheduled for July 8, 2021 at 1:00pm in the Griffin Room at Harwich Town Hall. **Please note:** the hearing on July 8, 2021 was continued to July 23, 2021 at 10:00am in the Griffin Room at Harwich Town Hall.

### Allegation(s) of violations:

The Town, acting through Attorney Jeffrey T. Blake, presented witnesses and exhibits supporting the claim of violation.

The establishment, acting through its owner and manager, Taylor Powell, presented witnesses and testimony refuting the alleged violations.

**Events of June 5, 2021:**

The allegation relating to events of June 5, 2021 is that there was music emanating from outside speakers located at the licensed premises beyond the time allowed (“after 2200 hours”) under the entertainment license.

**Finding(s)/Determination(s):**

The licensed establishment has an outdoor entertainment license which allows for outside entertainment up to 10:00pm. However, the Town’s noise bylaw states, in part, that noises that are “...plainly audible at a distance of 150 feet from their source between 10:00 p.m. and 7:00 a.m.” would constitute a violation of the noise bylaw. Based on the sworn testimony and exhibits provided, I find that the Town failed to demonstrate a violation of the noise bylaw as it was not demonstrated that the noise was plainly audible *beyond 150* feet from the source and therefore failed to find a violation of the licensed establishment’s liquor license.

**Recommendation of discipline (if any):**

Whereas, I find that there is not sufficient evidence to warrant a finding of illegal activity by the licensed establishment, I do not have any recommendation on discipline.

**Events of June 11, 2021:**

The allegation relating to the events of June 11, 2021 is that a complaint of loud noise was called into the Harwich Police Department for noise allegedly emanating from Perks at 8:14pm.

**Finding(s)/Determination(s):**

I find that the witness for the Town confirmed that the complaint was lodged at 8:14pm. The licensed establishment has an outdoor entertainment license which allows for outside entertainment up to 10:00pm. Additionally, the Town’s noise bylaw states, in part, that noises that are “...plainly audible at a distance of 150 feet from their source between 10:00 p.m. and 7:00 a.m.” would constitute a violation of the noise bylaw. Based on the sworn testimony and exhibits provided, I find that the Town failed to demonstrate a violation of the outdoor entertainment license and therefore failed to find a violation of the licensed establishment’s liquor license.

**Recommendation of discipline (if any):**

Whereas, I find that there is not sufficient evidence to warrant a finding of illegal activity by the licensed establishment, I do not have any recommendation on discipline.

**Events of June 13, 2021**

The allegation relating to the events of June 13, 2021 is that there was an alleged altercation in front of Perks.

**Finding(s)/Determination(s):**

I find that the Town did not provide evidence sufficient enough for the Town to succeed on appeal to the Alcoholic Beverages Control Commission (ABCC) as would be the licensee’s right of appeal.

**Recommendation of discipline (if any):**

Whereas, I find that there is not sufficient evidence to warrant a finding of illegal activity by the licensed establishment, I do not have any recommendation on discipline.

**Matters wherein the licensee was represented by Counsel**

The Board of Selectmen as Local Licensing Authority (LLA) for the town received a memorandum from Chief David Guillemette of the Harwich Police Department on August 30, 2021 (see attached) outlining violations alleged to have occurred on July 24, 2021 at the licensed establishment known as Perks operating at 545 Route 28 in Harwich Port.

On September 7, 2021, the Board of Selectmen voted to remand the allegation to me, as Town Administrator, to conduct a show cause hearing for the purpose of determining whether there is cause for the LLA to hold a hearing to determine whether the facts support a finding of allegation(s) and to recommend to the LLA any potential discipline if the facts so warrant.

Based on the Board's vote, a show cause hearing was scheduled for October 20, 2021 at 1:00pm in the Griffin Room at Harwich Town Hall. **Please note:** the hearing on October 20, 2021 was initially postponed until November 10, 2021. However, the Board received a memo on October 12, 2021 from Chief Guillemette concerning violations alleged to have occurred on October 3, 2021. The matters pertaining to July 24, 2021 and October 3, 2021 were heard on November 23, 2021 at 1:00pm in the Griffin Room.

**Allegation(s) of violations:**

The Town, acting through Attorney Jeffrey T. Blake, presented witnesses and exhibits supporting the claim of violation.

The establishment, acting through Attorney Benjamin E. Zehnder, presented witnesses and testimony refuting the alleged violations.

**Events of July 24, 2021**

The allegations relating to the events of July 24, 2021 are that Perks served an under-aged patron and over-served a patron.

**Finding(s)/Determination(s):**

I find that the Town did not provide evidence sufficient enough for the Town to succeed on appeal to the Alcoholic Beverages Control Commission (ABCC) as would be the licensee's right of appeal.

**Recommendation of discipline (if any):**

Whereas, I find that there is not sufficient evidence to warrant a finding of illegal activity by the licensed establishment, I do not have any recommendation on discipline.

**Events of October 3, 2021**

The allegation relating to the events of October 3, 2021 is that there was an alleged noise violation in front of Perks.

**Finding(s)/Determination(s):**

I find that the noise emanating from the licensed establishment occurred after 10:00pm and the Town *did* provide sufficient evidence of a noise violation, specifically that a

Detective Sergeant testified to the noise being “plainly audible” more than 150 feet from the establishment (the testimony indicated “approximately 550 feet in a straight line”).

**Recommendation of discipline (if any):**

Whereas, I find that there is sufficient evidence to warrant a finding of illegal activity by the licensed establishment, yet the licensed establishment does not have a prior findings occurring within the preceding two years, I recommend that the Town discontinue permitting outdoor entertainment at any establishment within the Town of Harwich for the 2022 calendar year and licensing period.

This concludes my findings, determinations and recommendations regarding alleged violations to have occurred at Perks during the timeframe referenced within.

**Hearing Summary**  
**July 23, 2021**  
**Lucy Labrador Inc. d/b/a Perks**

**Attendees**

Joseph F. Powers  
Attorney Jeffrey Blake  
Danielle Delaney  
Jamie Goodwin  
Taylor Powell  
Sarah Powell  
Walter Mason  
Bailey King  
Paige LaCava  
James Horgan  
Robert Brackett  
Mark Holmes  
Chris Arrigo  
Brendan Brickley  
Ron Ruggiero  
Thomas Seth  
Charles Bilezihia  
Rebecca Goldberg  
David Guillemette  
Theodore Wyman

The Hearing Officer opened the hearing at 10:00 a.m., introduced himself and went over the hearing process. The Hearing Officer read the Hearing Notice into the record and stated this matter was continued from July 8, 2021. The Hearing Officer proceeded to introduce Town of Harwich Staff and Town Council. He asked all parties to sign in and all parties that will provide testimony to stand to be sworn in.

Attorney Blake entered documents into the record as exhibits: Hearing Notice - Exhibit A, Letter to Mr. Powell dated June 22, 2021 - Exhibit B, Letter to Mr. Powell dated July 7, 2021 – Exhibit C, Establishment’s current licenses – Exhibit D, Memo written by the Town Administrator dated August 3, 2020 pertaining to prior disciplinary action – Exhibit E, letter of disciplinary action dated October 29, 2018 – Exhibit F, letter of disciplinary action dated October 11, 2017 – Exhibit G, letter of warning dated October 3, 2016 – Exhibit H.

At 10: 14 a.m., Attorney Blake called Chief of Police David Guillemette to provide testimony. Attorney Blake made reference to Chief Guillemette’s Memorandum dated June 14, 2021 and the Chief gave a brief overview of the memo pertaining to an alleged violation. Attorney Blake confirmed there were multiple police reports. The Hearing Officer confirmed with Mr. Powell that he is not represented by council and offers for him to ask the Chief questions. Mr. Powell stated he will wait until the end if that is acceptable. Attorney Blake and the Hearing Officer confirm that is acceptable. The Hearing Officer asked Mr. Powell if he contests anything in the police reports and he responds that it will take him a while to read through the documents. Attorney Blake stated that the reports were sent with the letter to the establishment, however, he will have the Officers testify.

Attorney Blake called Officer Arrigo to provide testimony. Officer Arrigo explains why he is present at the hearing and confirms he wrote a narrative report. Attorney Blake asks Officer Arrigo to explain to the Hearing Officer what took place on June 11, 2021. Officer Arrigo stated they received a noise complaint and proceed to go over details of the evening. Officer Arrigo stated Officer Holmes was the Officer in Charge that evening and used a LIDAR device to measure 153 from where they stood to the singer. He states he spoke with Mr. Powell who was understanding, helpful and turned the music down immediately. Officer Arrigo confirmed the time to be 8:14 p.m. Attorney Blake asked Officer Arrigo to explain what LIDAR is. Officer Arrigo explains that it is a laser device to measure speed and distance. Attorney Blake confirmed that the distance the Officer measured was 153 feet. Officer Arrigo stated he did not remember the exact distance the reporting party reported, but thought it may have been slightly over 150 feet. He confirmed the reporting party is two doors down from the establishment. The Officer confirmed that Mr. Powell turned music down and there were no more complaints that day. The Hearing Officer confirms with Mr. Powell that he would prefer to speak at the end.

Mr. Powell stated he had a pleasant experience with the responding Officers. Mr. Powell brings out a map of lot lines indicating how far the calling property is from the establishment. The Hearing officer asked Mr. Powers if he had questions for the Officer and he answered no. The Hearing Officer responded that statements can be made later and he wanted to make sure Mr. Powell understands he has the right to question the witness. Mr. Powell stated he had no questions and will introduce the lot line information later in the hearing.

Attorney Blake stated the Memorandum from Chief Guillemette will be marked as Exhibit I. Attorney Blake confirmed with Officer Arrigo the call log and summary that were provided are accurate and marks both as Exhibit J.

Attorney Blake calls Officer Holmes to provide testimony. Officer Homes confirms he was sworn in, why he is present at the hearing and that he wrote a narrative for this incident. Officer Holmes proceeded to give a brief overview of what happened on the night in question. Officer Holmes confirmed he did hear noise that evening and used the LIDAR (Light, Distance and Ranging) device. He further explains where he measured from and where the singer was located. Officer Holmes confirmed his report is accurate. Attorney Blake proceeded to ask Officer Holmes questions about where he was parked that evening and how far from the establishment's property line he was. Officer Holmes confirmed Mr. Powell was cooperative and turned the music down. Once music was turned down he could hear it faintly, but not audible.

The Hearing officer asked Officer Holmes to explain how he could hear the music, but it was not audible. Officer Holmes responded that by the towns definition it was audible, but he could not make out what the singer was saying. The Hearing Officer stated he forgot to mention that this hearing is being recorded in order to make a complete record.

Mr. Powell starts discussion about the noise by-law and boundary lines. The Hearing Officer states Mr. Powell will have an opportunity to point this out later and explains how the hearing process works. An individual joins the hearing and is asked to sign in and be sworn in. Ms. Powell asks the Officer to explain what the reporting party says when they call to complain and he states that he does not listen to the recorded calls.

At 10:33 a.m., Attorney Blake calls Officer Arrigo back to the podium to discuss a possible altercation at Perks. Officer Arrigo stated he was not really involved, he was in the area at that time and when he arrived the disturbance was over. Ms. Powell asks the same question to Officer Arrigo and he answers that the caller does not state anything about disturbing their peace, only that they can hear music.



Attorney Blake calls Officer Ruggiero to provide testimony and confirms he has been sworn in. Officer Ruggiero explains why he is present at the hearing and confirmed he provided a written narrative. Officer Ruggiero goes over the details of what happened on June 13, 2021. He stated he was speaking to a doorman that works at the Port and two men fell to the ground and began wrestling. He continued that one of the people got up immediately and began running east. The other person got up and stated he did not know what happened. He was met by friends coming out of Perks. Officer Ruggiero shared that it was a very busy night with at least 100 people on the sidewalk. The person and friends left in an Uber. Attorney Blake questioned if it was a fight and Officer Ruggiero responded that it was more of a wrestling match. He confirmed Perks did not know what went on and that he did not know if the gentlemen had been at Perks. Mr. Powell stated he has no questions. Attorney Blake enters the narrative and log as Exhibit L.

At 10:40 a.m., Attorney Blake calls Chief Guillemette to the podium. The Chief clarifies that the call summary pages are not from the Officers writing the police reports. He stated this is what he refers to as a log entry as it is a part of the official police log. The log is separate from a narrative report. Attorney Blake asks Chief Guillemette to summarize his June 14, 2021 Memorandum. Attorney Blake enters the Memorandum as Exhibit M.

Attorney Blake calls Officer Brickley to the stand to offer testimony. Officer Brickley states why he is present at the hearing, confirmed he wrote the narrative and gives a brief overview of the night in question. He stated the Manager of the Port called the Police about a vandalism incident. Officer Brickley stated he spoke with Mr. Powell who questioned some of the men in the vicinity of the damage and discussed how it potentially could have happened. Officer Brickley confirmed at that time recorded music was playing and limited to the Perks property. He shared he was asked by Administration to document his findings. Attorney Blake confirmed the music was playing outside at 11:00 p.m. Officer Brickley confirmed the music was limited to the property. Mr. Powell admits there was ambient background music and asks if the call was for a noise complaint. Officer Brickley stated the call was for vandalism, not noise. The Hearing Officer stated they will take a brief recess for copies of a report to be made.

At 10:52 a.m., the hearing is resumed. The Hearing Officer shares they have received two documents. The first indicates vandalism at The Port and the second is a supplemental narrative. The Hearing Officer confirmed the time of the alleged incident was 11:00 p.m. Officer Brickley goes over the details of his narrative. The Hearing officer asked Officer Brickley to read the third paragraph for it to be read into the record. Officer Brickley confirmed the activities that occurred did not emanate from the establishment present at the hearing. Attorney Blake enters the two narratives as Exhibit N and the Harwich Liquor License Regulations as Exhibit O.

The Hearing Officer offers the Powell's an opportunity to present an abutting case. Mr. Powell states he would like to produce some evidence. At this time, copies are made for Town Staff and Town counsel. Mr. Powell outlines what information he has provided. The Hearing Officer states they will recess and resume at 11:05 a.m.

At 11:06 a.m., the hearing resumes. Mr. Powell introduces Exhibits 1 through 3. Mr. Powell states there have been changes this summer and changes that were unbeknownst to them. Mr. Powell states he brought his entertainment license and proceeded to read the license. The Hearing Officer goes through the entertainment licenses that are in the hearing packet. Mr. Powell states there have been changes on how noise is being enforced and how it reads on the license. He continues that they were not made aware of any changes and proceeded to reiterate portions of the noise bylaw. Mr. Powell went through details of one of the nights in question. He stated from the parking lot by the Chamber, he could hear regular noise from around town, but did not hear music coming from Perks. He stated there is confusion on what the permit

says, what normal background noise is and the new enforcement. The Hearing Officer clarifies that Mr. Powell was not reading from the license. Mr. Powell stated he went on the town website to read about plainly audible.

At 11:17 a.m., Mr. Powell asked Officer Holmes if the music was unreasonable and the Officer stated no. He asked if the Officer could hear music over cars and Officer Holmes answered no. Mr. Powell asked the same questions to Officer Arrigo and he answered no to both. Mr. Powell stated the complainer has called many times and many calls have been unfounded. The caller has also called other departments to complain, not just Police, which were also unfounded. The Hearing Officer confirmed the individual is not present. Ms. Powell stated she has tried to reach out to the individual, but they will not speak to her. Mr. Powell shared that the individual's property does lie within 150 feet of the establishment. Mr. Powell confirmed he went to the Assessing Office and made photo copies for exhibits. Mr. Powell shared after they learned of this call they postponed all music because they want clarification on the noise bylaw. The Hearing Officer asked for Mr. Powell to identify on the music schedule provided when they stopped entertainment. The Powell's confirmed all acts from June 12<sup>th</sup> on were canceled. Mr. Powell stated they do have music for Wednesday nights in the Port. Mr. Powell shared he met with Deputy Chief Kevin Considine to get clarification on noise by law. The Powell's stated that having no entertainment has hurt their business and they have made efforts to mitigate sound. Mr. Powell proceeded to explain the sound system that was installed. The Hearing Officer asks for clarification on an exhibit and Ms. Powell explains it's a letter from their booking agent that goes out to musicians. Mr. Powell shares that when the individual complaining is away there are no complaints. He also shared that they put a fence up on complainer's side to mitigate the noise. The Hearing Officer asked the Powell's if they can outline the Wednesday nights they have music and Ms. Powell answered that they do not have anything booked. They do have one musician that they call who played last Wednesday. The Hearing Officer reads a letter from Perks that is sent to musicians and questions statements contained within. Mr. Powell confirmed that the letter was written by their booking agent. Mr. Powell stated in closing they have made attempts and they care about the town and the neighbors. The Hearing Officer confirmed the Powell's know why they are present today.

The Hearing Officer goes over Exhibits E, F, G and H and reads information pertaining to the exhibits and how they relate to prior violations, but would not make any determinations for this hearing. The Powell's state they are not challenging the past violations and understand noise has been an issue. They share they have not had any liquor violations since they opened 12 years ago.

Mr. Powell calls Walter Mason to offer testimony. The Hearing Officer confirms Mr. Mason has been sworn in. Mr. Mason states he was a part of the noise containment committee and was present for all of the noise bylaw hearings. He shared that the committee viewed the 150 foot rule to be from the property line and a large issue was that they were unable to define the term plainly audible. Mr. Mason stated he went to Harwich Port on the night in question and went to the parking lot next to the Chamber and could not hear anything with the cars going by and music was barely audible. He also went to the Hot Stove parking lot and could barely hear music. Attorney Blake asked if he had read the liquor license regulations and Mr. Mason confirmed he had. Attorney Blake proceeded to read a portion of the regulations.

The Hearing Officer asked if Mr. Mason was at the establishment at the night in question and he confirms he was there around 9:30/10:00 p.m. The Hearing Officer comments that Mr. Mason used the phrase barely audible and not plainly audible. Mr. Mason summarizes what the committee talked about in terms of the term plainly audible. Mr. Mason stated it does get technical and they should leave more discretion up to Police Officers. Mr. Mason confirmed the committee did not define the words plainly audible.

At 11: 50 a.m., Mr. Powell calls Thomas Seth to provide testimony. The Hearing Officer proceeded to swear the witness in. Mr. Seth stated his affiliation with the establishment as a bartender. Mr. Powell asks Mr. Seth to explain how he feels. Mr. Seth stated that music is a massive draw for people. The Hearing Officer confirms this is Mr. Seth's third year at Perks as a bartender. Mr. Seth confirms he was not present at the evenings in question. The Hearing Officer asks Mr. Powell if he is planning to have people give impact statements or witness testimony and he responded yes to impact statements, however he does have someone present that was present on the night in question. The Hearing Officer stated he would like to hear testimony first and if there is time then he will hear impact statements. The Hearing Officer stated Mr. Seth could not finish if he is not providing testimony.

At 11:53 a.m., Mr. Powell calls Rebecca Goldberg to give witness testimony as she was working the night in question. Ms. Goldberg stated her affiliation as a bartender at the establishment for three years. The Hearing Officer proceeded to swear the witness in. Ms. Goldberg confirmed she was present on the night in question and shared patrons commented that they could not make out what the singer was saying because it was so quiet. Mr. Powell asks if people ask for live music at Perks and Ms. Goldberg responded that she gets that question every time she works. Ms. Goldberg shares that she felt the noise level was appropriated and there were no complaints within the establishment. Attorney Blake confirms Ms. Goldberg was behind the bar the entire time and did not go out in the street or 150 feet away.

Mr. Powell calls Sarah Powell to provide testimony. Ms. Powell stated she was also a member on the Noise Containment Committee and provided her affiliation with the establishment as co-owner with her husband Taylor Powell. Ms. Powell stated on the night in question she did go out across the street and down by the complaining parties house and could not hear the music. Ms. Powell confirmed the musician was Nico Rivers. Attorney Blake confirmed Ms. Powell walked around and that she heard the Officers testify. She also confirmed she went to the same area that the Officers went to. Ms. Powell confirmed she completed the sound check before they received the complaint and that they always do a sound check prior to music. Ms. Powell stated Nico is not present.

Mr. Powell calls Theodore Wyman to provide testimony and confirms he is a musician and friend. Mr. Wyman confirmed he was not present at the night in question. The Hearing Officer speaks to Mr. Powell about where he is going with this witness and the line of questioning since he was not present on the night in question. Mr. Powell stated he wants to hear what Mr. Wyman has to say in relation to the alleged violations. The Hearing Officer stated that the witness is not recognized and asks Mr. Wyman to sit. Mr. Powell confirmed there are no more witnesses that were present on the night in question. Mr. Powell states he would like Mr. Wyman to speak in relation to this topic in general.

The Hearing Officer directs Mr. Wyman to go back to the podium to speak. Mr. Powell directs Mr. Wyman to carry on with what he was saying. Mr. Wyman thanks the Police Officers and starts to read a section of a police narrative and the Hearing Officer interrupts and states the he has brought that information out already and we are pressed for time. The Hearing Officer confirmed that Mr. Wyman is not representing the Powell's and is not present as an Attorney. Mr. Wyman continues to summarize the measures the Powell's have taken. The Hearing Officer stated Mr. Powell has already provided testimony as it relates to additional equipment he has purchased and asked Mr. Wyman if he repeating this information. Mr. Wyman states he will be summarizing. Mr. Wyman proceeded to go through a list of what the Powell's have done and that he did get a call from Mr. Powell that they were canceling music for the summer. Mr. Wyman stated that this has been an economic impact to the establishment and it's important to consider than when considering if there was a violation. The Hearing officer stated that the statements that are being made are not relative. Mr. Powell and Attorney Blake have no further questions.

At 12:08 p.m., Mr. Powell stated in closing the way this interpretation of plainly audible has changed he can no longer have music. Mr. Powell continues to express his thoughts on the noise bylaw.

Attorney Blake stated that Officers confirmed music was on past 10:00 p.m. and the Entertainment License is clear that it ends at 10:00 p.m. As it relates to the altercation, there is strong circumstantial evidence. Attorney Blake states in his opinion there has been evidence shown that there were violations, however, he will not make a recommendation as to what the penalties are.

The Hearing Officer thanks all who participated and that the hearing will be concluded today. He will make a recommendation to the Local Licensing Authority, who is known as the Board of Selectmen. He shares his role is to make sure the hearing process is as thorough and complete as possible.

The Hearing Officer declares the hearing is adjourned at 12:17 p.m.

# **EXHIBITS**

A

**HARWICH BOARD OF SELECTMEN  
NOTICE OF SHOW CAUSE HEARING**

**ALLEGED VIOLATIONS OF CONDITIONS OF LIQUOR LICENSE  
JULY 8, 2021**

The Town Administrator, acting as the Hearing Officer for the Board of Selectmen, will hold a Show Cause Hearing on Thursday, July 8, 2021 at 1:00 P.M., for the purpose of consideration of alleged noise violations by Lucky Labrador Inc. d/b/a Perks, located at 545 Route 28, Harwich Port. The Hearing Officer will consider possible penalties including modifications, suspension, revocation or cancellation of said license. All members of the public having an interest in the topic are cordially invited to attend the Public Hearing which will be held in the Griffin Room at the Harwich Town Hall, 732 Main Street, Harwich MA 02645.

Joseph F. Powers  
Town Administrator

Cape Cod Times  
June 25, 2021

B

**OFFICE OF THE TOWN ADMINISTRATOR**

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Town Administrator*  
Meggan M. Eldredge, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645



June 22, 2021

VIA CERTIFIED MAIL AND EMAIL

Taylor Powell, Manager of Record  
Lucky Labrador Inc.  
d/b/a Perks  
545 Route 28  
Harwich Port, MA 02646

Re: Notice of Disciplinary Hearing  
Lucky Labrador Inc. d/b/a Perks

Dear Mr. Powell:

On Thursday, July 8, 2021 at 1:00 pm at the Harwich Town Hall, acting on behalf of the Harwich Board of Selectmen as local licensing authority, I will conduct a Show Cause Hearing, in accordance with Massachusetts General Laws, Chapter 138, Sections 23 and 64, to determine whether you have violated the terms of the Entertainment License for Lucky Labrador Inc. d/b/a Perks.

The specific charges are as follows: Violation of 204 CMR 2.05 (2): Permitting a disorder, disturbance or illegality to take place on the licensed premises. The Town reserves the right to consider and/or levy additional charges that may arise during the hearing process.

The facts underlying these allegations arise from an incidents occurring on or about June 5, 2021 and June 11, 2021, as described in detail in the Harwich Police Incident Report attached hereto. Also, attached are the Town of Harwich Liquor License regulations.

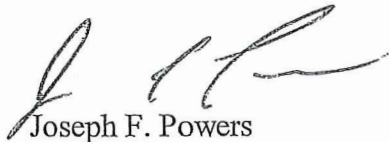
Purpose of said hearing is to review the findings of Chief of Police and Officers as well as to determine if any additional facts may warrant additional allegations of violations, to that end, you are directed to provide copies of any material documentation, CCTV video within establishment, records of any and all receipts of tabs, credit card transactions and any other such material which the town may rely upon to determine if added violations are contemplated.

You are invited to participate in the hearing and be represented by counsel at your own expense if you wish. At that time you may produce any documentation and/or witnesses which show that you did not commit the violations described herein. Please provide copies of any documents and a list of participants to Danielle Delaney at [ddelaney@town.harwich.ma.us](mailto:ddelaney@town.harwich.ma.us) by the close of business on Thursday, July 1, 2021.

B

The allegations, if proven, may result in a recommendation to the Board of Selectmen for disciplinary action, including warning, suspension, revocation or modification of the above-referenced license.

Sincerely,



Joseph F. Powers  
Town Administrator

CC: Board of Selectmen  
Licensing File  
Certified mail #7008 1830 0002 5217 1337



C

**OFFICE OF THE TOWN ADMINISTRATOR**

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Town Administrator*  
Meggan M. Eldredge, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645



July 7, 2021

VIA CERTIFIED MAIL AND EMAIL

Taylor Powell, Manager of Record  
Lucky Labrador Inc.  
d/b/a Perks  
545 Route 28  
Harwich Port, MA 02646

Re: Notice of Disciplinary Hearing – Continuation  
Lucky Labrador Inc. d/b/a Perks

Dear Mr. Powell:

Please be advised that due to a scheduling conflict, the disciplinary hearing scheduled for July 8, 2021 at 1:00 P.M. will not be going forward. The hearing is to be rescheduled for July 23, 2021 at 10:00 A.M. The Hearing Officer will open the disciplinary hearing on July 8, 2021 at 1:00 P.M. for the sole purpose of continuing the hearing on the record to July 23, 2021 at 10:00 A.M. You are welcome to attend the continuation hearing, but your presence is not needed and there will be no testimony taken or any evidence presented by either you or the Town

Sincerely,

Joseph F. Powers  
Town Administrator

CC: Board of Selectmen  
Licensing File  
Certified mail #7014 1820 0001 9486 2489

D

No.: 00088-GP-0506

**LICENSE**  
**ALCOHOLIC BEVERAGES**  
**THE LICENSING BOARD, TOWN OF HARWICH, MASSACHUSETTS**  
**HEREBY GRANTS A**  
**GENERAL ON PREMISE**  
**License to Expose, Keep for Sales, and to Sell**  
**All Kinds of Alcoholic Beverages**

.....  
**To Be Drunk On The Premises**  
 .....

**To: Lucky Labrador Inc.**  
**DBA: Perks**

Date: 03/24/2021

License Duration Type: Seasonal All Alcohol

Manager: Taylor Powell

**License Conditions (description of premise)**

545 Route 28, Harwich MA 02645

Café located on first floor rear of building with three entrances (2 on north side & 1 on south side).

Patio area with exterior seating and porch area with exterior seating.

**On the following described premises:**

This license is granted and accepted upon the express condition that the licensee shall in all respects, conform to all the provisions of the Liquor Control Act, Chapter 138 of the General Laws, as amended, and any rules or regulations made expires **January 15, 2022**, unless earlier suspended, cancelled or revoked.

IN TESTIMONY WHEREOF, the undersigned have thereunto affixed their official signatures.

**The Hours during which Alcoholic Beverages may be sold are From:**

**8:00AM – 1:00AM WEEKDAYS**  
**10:00AM – 1:00AM SUNDAYS & HOLIDAYS**

LICENSE  
granted by:

\_\_\_\_\_  
*L. Ballantines*  
 \_\_\_\_\_  
*E. Powell*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
*T. Powell*  
 \_\_\_\_\_

This License Shall be Displayed on the Premises in a conspicuous position where it can be easily read

LICENSING AUTHORITIES

NUMBER  
19-08S

THE COMMONWEALTH OF MASSACHUSETTS  
TOWN OF HARWICH

FEE  
\$75.00

**LICENSE FOR INNHOLDERS, COMMON VICTUALLERS  
AND OTHER KEEPERS OF RESTAURANTS AND OTHER ESTABLISHMENTS**

In accordance with the provisions of Chapter 140 of the General laws as amended by Chapter 299 of the Acts of 1926, and amendments thereto, LICENSE is hereby granted to:

Lucky Labrador Inc. d/b/a Perks

to conduct the amusements as herein described in connection with his regular business of innholder, common victualler, or owner, manager or controller of a café, restaurant or other eating or drinking establishment, on the premises owned by Same

of Harwich Port located at 545 Route 28

Description of Premises: Same

Description of amusements to be conducted: Recorded or live music with use of amplification - outside

Dancing by Patrons

To be conducted between the hours of: 11:30 a.m. -- 10:00 p.m.

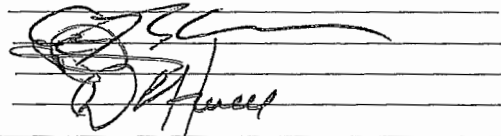
Mondays to Saturdays

This LICENSE is granted as subject to the provisions of the General Laws, chapter one hundred and forty, sections twenty-two to thirty-two inclusive, and of chapter two hundred and seventy-two, sections twenty-five to twenty-seven inclusive, and amendments thereto, and shall not be valid for a location other than as herein described.

Date: 05/03/2021

License granted by: \_\_\_\_\_

**EXPIRES DECEMBER 31, 2021**



THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE

Outside Entertainment – Noise from entertainment must be at reasonable sound levels which are not plainly audible at a distance of 150 feet from boundary line or source of sound amplification system whichever is further.

*Suggested Minimum Regulations which will be required by the Licensing Authorities before approval of Licenses issued in accordance with the provisions of Chapter 299, Acts of 1926 and amendments thereto.*

1. This license is granted and approved subject to compliance with the laws of this Commonwealth relative to the exposing, sale and keeping of liquor or other intoxicating beverages and with compliance with the following conditions: —
2. The premises shall be open at all times to inspection by any police officer or constable of the town, or by any State Police Officer.
3. No person or persons under the influence of intoxicating liquor or other intoxicating beverage, or having the appearance thereof, shall be granted admittance to or be permitted to remain in or upon any of the premises described in this license.
4. No dialogue, gesture, song, language or conversation of any description which is directly or indirectly obscene, lascivious or suggestive, shall be permitted to be used by any person or persons while in or upon the premises.
5. Muscle or suggestive dancing or any description or form is prohibited.
6. Gaming of any description, games at which a prize is offered, any game where money is exposed as a prize or inducement, wheels of change and jingle boards are prohibited.
7. Private dining rooms, booths or enclosures for the accommodation of less than four persons shall not be permitted and not less than four persons shall be allowed or permitted to occupy any such room or enclosure.
8. Rooms used for dining rooms and for dancing shall be so lighted as to render it possible to distinguish any person by every other person therein at all times.
9. The license will be suspended for non-compliance with any of the laws of this Commonwealth relating to this particular establishment, and may, after a hearing, be revoked.
10. Non-compliance with the provisions of any of the above regulations will be sufficient cause for suspension, and after hearing the license may be revoked.

By authority of and in compliance with the provisions of Chapter 299, Acts of 1926, and amendments thereto, the above minimum rules and regulations are hereby prescribed and approved.

Board of Selectmen

NUMBER  
19-08S

THE COMMONWEALTH OF MASSACHUSETTS  
TOWN OF HARWICH

FEE  
\$75.00

**LICENSE FOR INNHOLDERS, COMMON VICTUALLERS  
AND OTHER KEEPERS OF RESTAURANTS AND OTHER ESTABLISHMENTS**

In accordance with the provisions of Chapter 140 of the General laws as amended by Chapter 299 of the Acts of 1926, and amendments thereto, LICENSE is hereby granted to:

Lucky Labrador Inc. d/b/a Perks

to conduct the amusements as herein described in connection with his regular business of innholder, common victualler, or owner, manager or controller of a café, restaurant or other eating or drinking establishment, on the premises owned by Same

of Harwich Port located at 545 Route 28

Description of Premises: Same

Description of amusements to be conducted: Recorded or live music with use of amplification – Inside

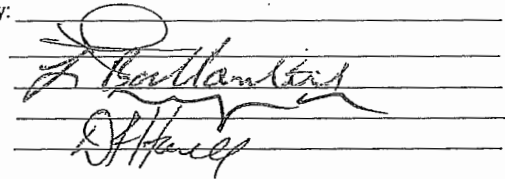
To be conducted between the hours of: 12:00 p.m. – 12:00 a.m.

Mondays to Saturdays

This LICENSE is granted as subject to the provisions of the General Laws, chapter one hundred and forty, sections twenty-two to thirty-two inclusive, and of chapter two hundred and seventy-two, sections twenty-five to twenty-seven inclusive, and amendments thereto, and shall not be valid for a location other than as herein described.

Date: 06/28/2021

License granted by:



**EXPIRES DECEMBER 31, 2021**

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE

Outside Entertainment – Noise from entertainment must be at reasonable sound levels which are not plainly audible at a distance of 150 feet from boundary line or source of sound amplification system whichever is further.

*Suggested Minimum Regulations which will be required by the Licensing Authorities before approval of Licenses issued in accordance with the provisions of Chapter 299, Acts of 1926 and amendments thereto.*

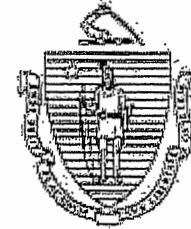
1. This license is granted and approved subject to compliance with the laws of this Commonwealth relative to the exposing, sale and keeping of liquor or other intoxicating beverages and with compliance with the following conditions: —
2. The premises shall be open at all times to inspection by any police officer or constable of the town, or by any State Police Officer.
3. No person or persons under the influence of intoxicating liquor or other intoxicating beverage, or having the appearance thereof, shall be granted admittance to or be permitted to remain in or upon any of the premises described in this license.
4. No dialogue, gesture, song, language or conversation of any description which is directly or indirectly obscene, lascivious or suggestive, shall be permitted to be used by any person or persons while in or upon the premises.
5. Muscle or suggestive dancing or any description or form is prohibited.
6. Gaming of any description, games at which a prize is offered, any game where money is exposed as a prize or inducement, wheels of change and jingle boards are prohibited.
7. Private dining rooms, booths or enclosures for the accommodation of less than four persons shall not be permitted and not less than four persons shall be allowed or permitted to occupy any such room or enclosure.
8. Rooms used for dining rooms and for dancing shall be so lighted as to render it possible to distinguish any person by every other person therein at all times.
9. The license will be suspended for non-compliance with any of the laws of this Commonwealth relating to this particular establishment, and may, after a hearing, be revoked.
10. Non-compliance with the provisions of any of the above regulations will be sufficient cause for suspension, and after hearing the license may be revoked.

By authority of and in compliance with the provisions of Chapter 299, Acts of 1926, and amendments thereto, the above minimum rules and regulations are hereby prescribed and approved.

Board of Selectmen

**THE COMMONWEALTH OF MASSACHUSETTS  
TOWN OF HARWICH**

State Fee: \$ 50/\$100  
Municipal Fee: \$ 85/\$175



# LICENSE

For  
**PUBLIC ENTERTAINMENT ON SUNDAY**

The Name of the Establishment is Lucky Labrador Inc. DBA Perks in or on the property at No. \_\_\_\_\_  
545 Route 28, Harwich Port MA 02646 (address)

The Licensee or Authorized representative, Taylor Powell in \_\_\_\_\_  
accordance with chapter 136 of the General Laws, as amended, hereby request a license for the following program or entertainment:

DATE	TIME	Proposed dancing or game, sport, fair, exposition, play, entertainment or public diversion
Sundays	6PM-10PM	Recorded music or live music with amplification and dancing

Hon. A. Ballantyne Mayor/ Chairman of Board of Selectman, \_\_\_\_\_ (City or Town)

**Fees per occurrence (Individual Sunday(s)): Regular Hours (Sunday 1:00pm – Midnight): \$2.00 Special Hours (Sunday 12:00 am- Midnight): \$5.00. Annual Fee (For Operating on every Sunday in calendar year): Regular Hours (Sunday 1:00pm – Midnight): \$50.00 Special Hours (Sunday 12:00 am- Midnight): \$100.00**

This license is granted and accepted, and the entertainment approved, upon the understanding that such entertainment that the licensee shall comply with the laws of the Commonwealth applicable to licensed entertainments, and also to the following terms and conditions: The licensee shall at all times allow any person designated in writing by the Mayor, Board of Selectmen, or Commissioner of Public Safety, to enter and inspect his place of amusement and view the exhibitions and performances therein; shall permit regular police officers, detailed by the Commissioner of Public Safety or Chief of the local Police Department to enter and be about this place of amusement during performances therein; may employ to preserve order in his place of amusement only regular or special police officers designated therefore by the Chief of Police, and shall pay to said Chief of Police for the services of the regular police officers such amount as shall be fixed by him; shall permit at all times to enter and be about his place of amusement such members of the Fire Department as shall be detailed by the Chief of the Fire Department to guard against fire; shall keep in good condition, go as to be easily accessible, such standpipes, hose, axes, chemical extinguishers and other apparatus as the fire department may require; shall allow such members of the fire department in case of any fire in such place, to exercise exclusive control and direction of his employees and of the means and apparatus provided for extinguishing fire therein; shall permit no obstruction of any nature in any aisle, passageway or stairway of the licensed premises, nor allow any person therein to remain in any aisle passageway or stairway during an entertainment; and shall conform to any

other rules and regulations at any time made by the Mayor or Board of Selectmen. This license shall be kept on the premise where the entertainment is to be held, and shall be surrendered to any regular police officer or authorized representative of the Department of Public Safety. This license is issued under the provisions of Chapter 136 of the General Laws, as amended, and is subject to revocation at any time by the Mayor, Board of Selectmen, or Commissioner of Public Safety.

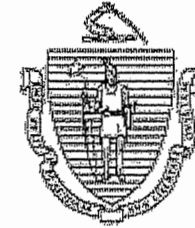
**Do not write in this box**

**This application and program must be signed by the licensee or authorized representative of entertainment to be held. No Change to be made in the program without permission of the authorities granting and approving the license**

**THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE ON THE PREMISES**

THE COMMONWEALTH OF MASSACHUSETTS  
TOWN OF HARWICH

State Fee: \$ 50/\$100  
Municipal Fee: \$ 85/\$175



2021 LICENSE

For  
PUBLIC ENTERTAINMENT ON SUNDAY

The Name of the Establishment is Lucky Labrador Inc. DBA Perks in or on the property at No. \_\_\_\_\_  
545 Route 28, Harwich Port MA 02646 (address)

The Licensee or Authorized representative, Taylor Powell in \_\_\_\_\_  
accordance with chapter 136 of the General Laws, as amended, hereby request a license for the following program or entertainment:

DATE	TIME	Proposed dancing or game, sport, fair, exposition, play, entertainment or public diversion
Sundays	3PM-12AM	Recorded music or live music with amplification inside
Sundays	1PM - 12AM	Ambient Music and/or television inside

Hon. [Signature] Mayor/ Chairman of Board of Selectman, Harwich (City or Town)

Fees per occurrence (Individual Sunday(s)): Regular Hours (Sunday 1:00pm – Midnight): \$2.00 Special Hours (Sunday 12:00 am- Midnight): \$5.00. Annual Fee (For Operating on every Sunday in calendar year): Regular Hours (Sunday 1:00pm – Midnight): \$50.00 Special Hours (Sunday 12:00 am- Midnight): \$100.00

This license is granted and accepted, and the entertainment approved, upon the understanding that such entertainment that the licensee shall comply with the laws of the Commonwealth applicable to licensed entertainments, and also to the following terms and conditions: The licensee shall at all times allow any person designated in writing by the Mayor, Board of Selectmen, or Commissioner of Public Safety, to enter and inspect his place of amusement and view the exhibitions and performances therein; shall permit regular police officers, detailed by the Commissioner of Public Safety or Chief of the local Police Department to enter and be about this place of amusement during performances therein; may employ to preserve order in his place of amusement only regular or special police officers designated therefore by the Chief of Police, and shall pay to said Chief of Police for the services of the regular police officers such amount as shall be fixed by him; shall permit at all times to enter and be about his place of amusement such members of the Fire Department as shall be detailed by the Chief of the Fire Department to guard against fire; shall keep in good condition, go as to be easily accessible, such standpipes, hose, axes, chemical extinguishers and other apparatus as the fire department may require; shall allow such members of the fire department in case of any fire in such place, to exercise exclusive control and direction of his employees and of the means and apparatus provided for extinguishing fire therein; shall permit no obstruction of any nature in any aisle, passageway or stairway of the licensed premises, nor allow any person therein to remain in any aisle passageway or stairway during an entertainment; and shall conform to any

other rules and regulations at any time made by the Mayor or Board of Selectmen. This license shall be kept on the premise where the entertainment is to be held, and shall be surrendered to any regular police officer or authorized representative of the Department of Public Safety. This license is issued under the provisions of Chapter 136 of the General Laws, as amended, and is subject to revocation at any time by the Mayor, Board of Selectmen, or Commissioner of Public Safety.

This application and program must be signed by the licensee or authorized representative of entertainment to be held. No Change to be made in the program without permission of the authorities granting and approving the license.

Do not write in this box

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE ON THE PREMISES

NUMBER  
19-05S

FEE  
\$50.00

THE COMMONWEALTH OF MASSACHUSETTS  
**TOWN OF HARWICH**

This is to Certify that Lucky Labrador Inc. d/b/a Perks  
545 Route 28, Harwich Port

**IS HEREBY GRANTED A  
COMMON VICTUALLER'S LICENSE**

in said **Harwich Port** and at that place only and expires **December 31, 2021** unless sooner suspended or revoked for violation of the laws of the Commonwealth respecting the licensing of common victuallers. This license is issued in conformity with the authority granted to the licensing authorities by General Laws, Chapter 140, and amendments thereto.

In Testimony Whereof, the undersigned have hereunto affixed their official signatures.

LICENSING AUTHORITIES:

Z Ballantyne

[Signature]

[Signature]

DATE: 05/03/2021

**EXTRACTS FROM GENERAL LAWS, CHAPTER 140**

*Section 8.* A common victualler who, upon request, on any day but Sunday, refuses to supply food to a stranger or traveler shall be punished by a fine of not more than fifty dollars.

*Section 9.* If, in the opinion of the licensing authorities, a licensee as an innholder or a common victualler ceases to be engaged in the business he is licensed to pursue, or fails to maintain upon his premises the implements or facilities required by this chapter, they shall immediately revoke his license. If a licensee at any time conducts his licensed business in an improper manner, the licensing authorities, after notice to the licensee and reasonable opportunity for a hearing, may upon satisfactory proof thereof suspend or revoke his license. A common victualler who violates section eight shall forfeit his license. \* \* \* A licensee who is convicted a second time of the violation of any of the provisions of sections six to eighteen, inclusive, shall forfeit his license.

*Section 18.* Every innholder and common victualler shall at all times have a board or sign affixed to his house, shop, cellar or store, or in a conspicuous place near the same, with his name legibly inscribed thereon, in large letters and the business for which he is licensed inscribed thereon, and upon neglect thereof shall forfeit twenty dollars.

*Section 20.* Whoever assumes to be an innholder or common victualler without being licensed as such under this chapter shall forfeit one hundred dollars.

*Section 21.* Whoever is convicted a third time of a violation of any provision of the preceding sections, except those contained in sections seven and eight, shall, in addition to the penalties before provided, be punished by imprisonment for not more than three months.

E



**OFFICE OF THE TOWN ADMINISTRATOR**

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Interim Town Administrator*

732 MAIN STREET, HARWICH, MA

# MEMO

TO: Board of Selectmen

FROM: Joseph F. Powers, *JFP* Interim Town Administrator

CC: David J. Guillemette, Chief – Police  
 Gregg J. Corbo, Esq. – KP Law  
 Taylor B. Powell – Perks, Manager of Record

RE: Recommended action following disciplinary hearing held on June 30, 2020  
 re: Go Industries Inc., d/b/a Perks, Entertainment License Violations

DATE: August 3, 2020

The following is my report on a disciplinary hearing held on June 30, 2020 for alleged violations of the entertainment license for Go Industries Inc., d/b/a Perks, located at 545 Route 28, Harwich Port.

**Violations alleged:**

Specifically, the allegations of violations were:

- One (1) entertainment license violations, in the form of live or recorded music being played at Perks in a manner that was plainly audible beyond 150 feet — Sunday, September 1, 2019 (Police warning Saturday, July 4, 2019).

**Hearing summary:**

The enclosed hearing summary outlines the manner in which the hearing was conducted, the witnesses who provided sworn testimony, their testimonies, as well as discussions that ensued between the town’s counsel, the licensees and the hearing office.

**Legal Standard:**

I applied the following legal standard, as suggested by Town Counsel, in making my recommendation:

- Restaurants are permitted to offer live or recorded music if authorized by a license issued by the Board of Selectmen in accordance with Massachusetts General Laws, Chapter 140, Section 183A.



- The statute allows the Board to modify, revoke or suspend such a license if it finds that the licensed activity causes an unreasonable level of noise in the area, for any violation of law, or for any violation of the rules and regulations of the licensing authority.
- Chapter 189 of the Town's General Bylaws makes it "unlawful for any person or persons to cause or allow any noise which emanates from any building, boat, structure, vehicle, premises, or any sound amplification system, which is plainly audible at a distance of 150 feet from any such building, boat, structure, vehicle, premises or sound amplification system."
- The standard set forth in the Bylaw is adopted as a regulation of the Board of Selectmen, Section One, Subsection 1.09(e), and is set forth as a condition on the license.

**Statement of findings:**

I find that the licensed establishment did, in fact, cause an unreasonable level of noise in the area and that it violated the Bylaw, regulation and license condition with regard to the manner in which it presented outside entertainment on the date outlined above.

This finding is based on testimony and evidence that on the date in question, an officer of the Harwich Police Department observed that live music being played at the establishment was plainly audible from a distance of greater than 150 feet. This observation is described in greater detail in Harwich Police Incident Reports admitted into evidence at the hearing, which reports are consistent with the sworn testimony offered by the officer and which I credit as true.

Further, I considered evidence verifying that the location from which the officer heard the music as being plainly audible was from a distance of more than 150 feet from the source of the music. The manner in which this verification was determined is described in greater detail in the Harwich Police Incident Reports admitted into evidence and the hearing, which reports are consistent with the sworn testimony of the officers and which I credit as true.

Further, I credit the testimony of the owners of the establishment that they made honest attempts to limit the extent of the noise generated from the establishment, that all of the complaints appear to originate from the same location and that they in good faith believed that the location of the complaints was closer than 150 feet from the establishment.

Notwithstanding the testimony of the owners, based on my review of the licensing file for the establishment, I find that the establishment was the subject of disciplinary hearings for similar noise violations in each of 2016, 2017 and 2018, with a total of five (5) violations being confirmed and one (1) additional violation being unconfirmed and with a total of three (3) written warnings and one (1) day of suspension being served.

**Recommended disciplinary action:**

Whereas, there were two offenses found to have occurred during the 2019 operating season; and

Whereas, the licensee was issued a written warning for the first offense; and

Whereas, the licensee was issued a one (1) day suspension for similar violations occurring in 2017, but that the last of said violations occurred on August 19, 2017, more than two years prior to the date of the subject violation.

Therefore, I recommend the following discipline be rendered against the licensee as follows:

That the licensee serve a one (1) day suspension of all entertainment, both indoors and outdoors, on a day to be chosen by the licensee to be served prior to Monday, September 14, 2020.



October 29, 2018

COPY

Mr. Taylor Powell  
Perks  
545 Route 28  
Harwich Port, MA 02646

Subject: Disciplinary Hearing for Violations of Entertainment License

Dear Mr. Powell:

At a meeting of the Board of Selectmen held on Monday, October 29, 2018, the Board voted to issue you the following notice relating to the disciplinary hearing held on October 18, 2018 for violations of the conditions of Perks' Weekday Entertainment License on July 27, 2018 and August 26, 2018:

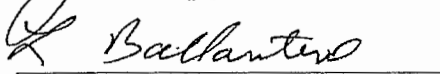
With regard to the incident on July 27, 2018, this was a first violation for which you received a letter of warning from the Police Department, which is standard procedure, and no disciplinary action is warranted.


With regard to the incident on August 26, 2018, testimony indicated a minor technical violation but not sufficient to warrant any discipline.


The Board has the highest expectation that in the future you will comply with the conditions of your license.

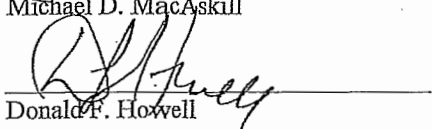
Sincerely,

  
Julie E. Kavanagh, Chair

  
Larry G. Ballantine

  
Edward J. McManus

  
Michael D. MacAskill

  
Donald F. Howell

cc: Chief David Guillemette

OFFICE OF THE SELECTMEN

PHONE (508) 430-7513  
FAX (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



October 11, 2017

VIA USPS AND EMAIL

Mr. Taylor Powell  
Perks  
15345 SW 88 Ave.  
Palmetto Bay, FL 33157

Subject: Notice of Disciplinary Action – Violations of Entertainment License


Dear Mr. Powell:

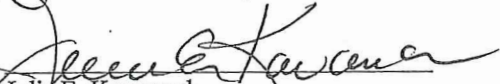
At a meeting of the Board of Selectmen held on Tuesday, October 10, 2017, the Board voted to approve the recommendation of the Town Administrator to suspend your Weekday Entertainment License for one day on Monday, June 25, 2018. This suspension is related to the two violations of your Weekday Entertainment License on August 19, 2017.


The Board recognizes that you previously received a warning for violations to your Weekday Entertainment License in 2016 and intends to follow a progressive course of discipline, if needed, up to and including revocation of Entertainment and /or Liquor License for any future violations.


The Board has the highest expectation that in the future you will comply with the conditions of your license.


Sincerely,

  
\_\_\_\_\_  
Michael D. MacAskill, Chair

  
\_\_\_\_\_  
Julie E. Kavanagh

  
\_\_\_\_\_  
Larry Ballantine

  
\_\_\_\_\_  
Jannell M. Brown

  
\_\_\_\_\_  
Donald F. Howell

cc: Chief David Guillemette

THE SELECTMEN

PHONE (508) 430-7513  
FAX (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



October 3, 2016

Mr. Taylor Powell  
Perks  
545 Route 28  
Harwich Port, MA 02646

Subject: Letter of Warning – Violations of Entertainment License


Dear Mr. Powell:

At a meeting of the Board of Selectmen held on Monday, October 3, 2016, the Board voted to issue you the following warning notice relating to violations of the conditions of Perks' Weekday Entertainment License on July 6, 2016 and August 10, 2016, per the recommendation of the Town Administrator:

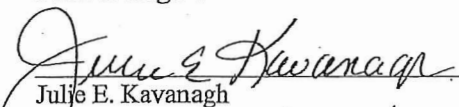
**You are hereby notified that the Board intends to follow a progressive course of discipline, if needed, up to and including revocation of Entertainment License and/or Liquor License for any future violations.**

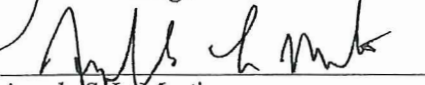
The Board recognizes that this season was the first with significant complaints and has the highest expectation that in the future you will comply with the conditions of your license.

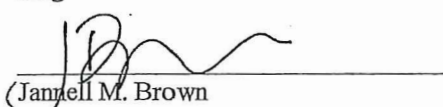
Sincerely,

  
\_\_\_\_\_  
Michael D. MacAskill, Chair

  
\_\_\_\_\_  
Peter S. Hughes

  
\_\_\_\_\_  
Julie E. Kavanagh

  
\_\_\_\_\_  
Angelo S. LaMantia

  
\_\_\_\_\_  
Jannell M. Brown

cc: Chief David Guillemette



# HARWICH Police

DEPARTMENT

183 Sisson Road, Harwich, MA 02645

Tel 508-430-7541 Fax 508-432-2530




DAVID J. GUILLEMETTE  
Chief of Police

KEVIN M. CONSIDINE  
Deputy Chief

## Memorandum

**TO:** Board of Selectmen  
Joseph Powers  
Town Administrator

**FROM:** David J. Guillemette  
Chief of Police 

**DATE:** June 14, 2021

**SUBJECT:** Alleged noise violation at Perks on June 11, 2021

Please see attached log entry and report regarding an alleged noise violation at Perks which was investigated on June 11, 2021. I have also included a disturbance call where an officer observed two men fighting in front of Perks on June 13, 2021 at 1:04 am. It appears from the report that at least one of the combatants had come from Perks.

J

or Date: 06/11/2021 - Friday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
1-6715	2013	Noise Complaint	Investigated
Call Taker: 2373 - PSD Telecommunicator IRIS G MCINALLY			
Primary Id: 205 - Patrol Christopher R Arrigo			
Location/Address: - HARWICH, MA 02645			
Calling Party: DOB: 00/00/0000			
Involved Party: PERKS			
POWELL, TAYLOR BRETT @ 545 RT 28 - HARWICH, MA 02645			
ID: 205 - Patrol Christopher R Arrigo			
Disp-20:15:10 Enrt-20:15:49 Arvd-20:24:22 Clrd-20:44:04			
ID: 139 - Patrol Supervisor Mark T Holmes			
Disp-20:15:14 Enrt-20:16:07 Arvd-20:26:04 Clrd-20:44:01			
Narrative: 06/11/2021 2014 PSD Telecommunicator IRIS G MCINALLY			
Noise complaint believed to be coming from Perks. Acoustic guitar with male singing.			
Narrative: 06/11/2021 2044 PSD Telecommunicator IRIS G MCINALLY			
Units spoke to owners of Perk's, clear investigated.			
Narrative: 06/11/2021 2230 Patrol Supervisor Mark T Holmes			
Valid complaint, business owner was advised. See formal report.			
Refer To Incident: <u>21-6715-OF</u>			

NARRATIVE FOR PATROL CHRISTOPHER R. ARRIGO

Ref: 21-6715-OF

J

The follow is a narrative regarding a noise complaint at Perk's:

On June 11, 2021, at approximately 2014 hours, I, Officer Christopher Arrigo, was dispatched to [redacted] to speak to an RP regarding a noise complaint at Perk's. Upon my arrival, I was met by [redacted], the reporting party. [redacted] stated that she could hear an acoustic guitar and a male singing at the restaurant. From [redacted] driveway, I could hear a guitar playing and could barely hear a male singing. I did not find the noise level to be unreasonable, however, the music was audible from th [redacted] residence which is over 150' away. I informed [redacted] that I would go over and speak to the manager at Perk's about getting the volume lowered.

I spoke to OIC Holmes in the Schoolhouse lot, which is located across the street from Perk's. At this location, I could see exactly where the musician was playing. OIC Holmes used his LIDAR to get the distance from our location to where the musician was. OIC Holmes was able to determine that the distance was 153'. At this location, I could faintly hear the guitar and the musician singing.

OIC Holmes and I made contact with Taylor Powell, the owner of Perk's. I informed him of the complaint and that we could hear the music outside of the 150' radius. Mr. Powell immediately turned down the music and apologized. Mr. Powell was very cooperative tonight and stated that he was ending the entertainment early tonight.

Respectfully Submitted,

\_\_\_\_\_  
Officer Christopher Arrigo



K

This is the supplemental narrative of Mark T. Holmes regarding the Noise Complaint at 549 Route 28.

\*\*\*\*\*

At approximately 2013, 11JUN21, while assigned as the Shift Supervisor, Officer Arrigo and I were dispatched to the area of Route 28 for a noise complaint. The basis of the complaint was a male voice signing and an acoustic guitar. I arrived a few minutes after Officer Arrigo, who was at the residence. I parked across the street on Schoolhouse Rd. From my location at the front Handicap Parking space I could plainly hear a guitar and a male voice, though I could not discern what the voice was saying. The sound was coming from the open air patio at Perks.

Using a handheld LiDAR unit I took a distance measurement from the white parking space line abutting the handicap parking space to the area just above the head of the person playing guitar at Perks. The distance measured 153 feet. Officer Arrigo met up with me after speaking with the RP, and we both went over to Perks to speak with management. The owner of Perks, Taylor Powell, met with Officer Arrigo and I and we advised him of the complaint and the fact that the noise could be heard more than 150 feet from its' source, making it a violation of the noise by-law.

Taylor spoke with his performer and they made some adjustments to the sound equipment, a small speaker, which lowered the volume significantly. As Taylor spoke with Officer Arrigo and I we all walked over to where my cruiser was parked. We could still hear a very faint din of guitar and signing. I explained to Taylor that our interaction would be documented, which he said he understood. Taylor asked for a little clarification of the noise by-law. I told Taylor that we were instructed to document each and every call to any establishment in town in detail and describe what we heard and where we heard it from. I also told him that the interpretation of the by-law was that any noise heard at 150 feet or more from the source was a violation of the by-law.

Taylor understood our position and said he was going to cut tonight's entertainment short to avoid any further issues.

Respectfully submitted, \_\_\_\_\_ 139

Mark T. Holmes  
Patrolman

NARRATIVE FOR PATROL RONALD D RUGGIERO

Ref: 21-6776-OF

L

The following is a narrative regarding a disturbance on June 13, 2021:

On Sunday, June 13, 2021 at 0104hrs. I, Officer Ron Ruggiero, was on patrol in Harwichport. While driving east on Route 28, I observed two male parties fall to the ground on the sidewalk in front of 545 Route 28, Perks Coffee Shop, and begin wrestling around.

I stopped my cruiser and activated my blue emergency lights. At this time, both of the males stood up and one of the males began heading east on Route 28. I asked the male still on location if he was ok, to which he replied 'yes'. I asked the male what happened and he could not recall.

Due to the large crowd between Perks and The Port (100+ people), and the altercation further amplifying the crowd, I advised the male to leave the area. His friends came out from Perks and they got in an Uber, departing from Harwichport.

I did not see any punches thrown during the altercation and neither party appeared to be injured. Officers stood by in the area for the next twenty minutes until the large crowd dispersed without further issues.

Respectfully Submitted,

Officer Ronald Ruggiero - #195

L

or Date: 06/13/2021 - Sunday

<u>all Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
1-6776	0104	DISTURBANCE	Services Rendered
Call Taker: 4006 - PSD Telecommunicator Kyleigh Sears			
Primary Id: 195 - Patrol Ronald D Ruggiero			
Location/Address: [HAR 1638] PERKS COFFEE SHOP - 545 RT 28			
ID: 195 - Patrol Ronald D Ruggiero			
Disp-01:05:33 Enrt-01:05:35 Arvd-01:05:37 Clrd-01:25:46			
ID: 139 - Patrol Supervisor Mark T Holmes			
Disp-01:05:39 Enrt-01:05:41 Arvd-01:09:34 Clrd-01:25:46			
ID: 205 - Patrol Christopher R Arrigo			
Disp-01:05:43 Enrt-01:05:45 Clid-01:09:11			
ID: 196 - Patrol Ryan J Fazzino			
Disp-01:06:13 Enrt-01:06:14 Arvd-01:08:57 Clrd-01:14:48			
Narrative: 06/13/2021 0105 PSD Telecommunicator Kyleigh Sears			
Fight in progress outside of the Port			
Narrative: 06/13/2021 0107 PSD Telecommunicator Kyleigh Sears			
Parties have gone their separate ways, large crowd still in the area, units staying on location			
Narrative: 06/13/2021 0120 PSD Telecommunicator Kyleigh Sears			
Crowd is thinning out			
Narrative: 06/13/2021 0126 PSD Telecommunicator Kyleigh Sears			
Crowd about cleared out, there does not appear to be any issues. Clear.			
Narrative: 06/13/2021 0126 Patrol Ronald D Ruggiero			
See formal report. .			
Refer To Incident: <u>21-6776-OF</u>			



**HARWICH**Police  
DEPARTMENT

183 Sisson Road, Harwich, MA 02645  
Tel 508-430-7541 Fax 508-432-2530

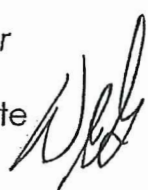


DAVID J. GUILLEMETTE  
Chief of Police

KEVIN M. CONSIDINE  
Deputy Chief

**Memorandum**

**TO:** Board of Selectmen  
Joseph Powers  
Town Administrator

**FROM:** David J. Guillemette   
Chief of Police

**DATE:** June 14, 2021

**SUBJECT:** Supplemental report regarding alleged noise violation at Perks

Attached is the supplemental report from Officer Brickley regarding case # 21-6413 which describes his observations while investigating an alleged incident of vandalism at The Port on June 5, 2021. The report does confirm that outside music was playing at Perks that night after 10 PM which would be an alleged violation of Perks entertainment license requirements.

N

Vandalism at the Port

I, Officer Brickley, report the following summary of facts,

On the evening of Saturday, June 05, 2021 at approximately 2300 hours, I was assigned to uniform patrol in fully marked Harwich Police cruiser G-20. I was assigned to the west sector within the Town of Harwich.

On the above date and time: Officers of the Harwich Police Department were busy booking an unruly male at the Harwich Police station that was in protective custody. The only available officer was driving another intoxicated party back to a sober adult in the Town of Orleans.

Harwich PD Communications stated The Port needed assistance with some type of vandalism. Officer Buttrick and I left the booking area of the police station to head to The Port.

Upon my arrival I made contact with Owner, Griff Brackett. Brackett stated that someone had cut the dividers on the property and he was going to need to replace them. Brackett believed the vandal or vandal(s) to be on the other side of the divider at abutting establishment, "Perks". Lastly, Brackett stated that Perks was still playing outside music in violation of the noise by-law.

Officer Buttrick and I made contact with Perks, owner, Taylor Powell. Taylor escorted us to the area where the damage had occurred and he believed it to be wind related. Taylor wanted to make a complaint about Brackett's fence height, drainage, and erosion issues. I told Taylor these complaints had nothing to do with me.

I spoke with the three men standing in the area of the damage and they claimed to have not even noticed the rips in the divider. I took pictures of the damage and included them within the completion of this report. I explained my findings to Brackett and he was satisfied with the documentation. Brackett requested that my report document the fact that outside music was playing at Perks.

No further action required.

Respectfully Submitted,

---

Officer B.R. Brickley (#189)

Supplemental Narrative Regarding HPD Case # 21-6413-OF

I, Officer Brickley, report the following summary of facts,

On Friday, June 11, 2021 at approximately 1200 hours, I received communication from Patrol Lieutenant Hutton that the Town of Harwich had received a "Request for Disciplinary Action" for Perks Beer Garden.

Lt. Hutton forwarded me the complaint drafted by Tomlinson Law and asked me to address three specific allegations germane to the incident.

First, I was asked to address my observations of Taylor Powell in speaking with him on this evening. Powell was cooperative in speaking with me and escorted me over to where the damage had occurred. In addition, Powell questioned several of the people inside the establishment if they saw anyone cut the privacy screens that divide his property from The Port Restaurant. Lastly, Powell thanked officers upon leaving his business.

I did not observe Powell drinking alcohol. Powell did not smell of alcoholic beverage.

Second, in regards to the damaged privacy screens; I find it unlikely that the damage could have naturally occurred. However, I cannot make a definitive determination on what side of the screen the damage took place.

Lastly, Perks had recorded (from a stereo/radio) music playing outside after 2200 hours. I do not know what the music was but it was limited to the premises and not "playing loudly". I did not even address the music issue with Powell due to more pressing matters (i.e. fist fights and disorderly/intoxicated persons in lockup etc.) and not enough police officers to handle the calls safely.

Respectfully Submitted,

---

Officer B.R. Brickley (#189)



**HARWICH BOARD OF SELECTMEN  
LIQUOR LICENSE REGULATIONS  
Adopted at a Public Hearing on June 13, 2011  
Amended at a Public Hearing on January 9, 2017  
Effective July 1, 2011**

**INTRODUCTION**.....1

1. Identification of the Town of Harwich.....1

2. Scope of and Statutory Basis for Promulgation of Rules.....1

3. Definitions.....1

**SECTION ONE: GENERAL LICENSING RULES FOR LICENSEES** .....2

1.00 Applicability of Rules and Regulations .....2

1.01 Availability of Rules and Regulations .....2

1.02 Filing Procedures and Responsibility of Applicant .....2

1.03 Posting and Signs.....3

1.04 Admissions to the Premises .....3

1.05 Hours of Operation .....6

1.06 Physical Premises.....6

1.07 Business Arrangements of Licensees.....7

1.08 Alcoholic Beverages Sales and Laws .....9

1.09 Entertainment at Licensed Premises .....11

1.10 Environs of Licensed Premises .....12

1.11 Inspections and Investigations .....13

1.12 Standards of Conduct on the Premises.....14

1.13 Illegal Activity on the Licensed Premises.....14

1.14 Injuries to Persons at the Premises.....15

1.15 Other Causes for Revocation, Suspension, and Modification .....15

1.16 Violations; Hearing Procedure.....16

1.17 Disciplinary Guidelines.....17

1.18 Service of Suspension Orders .....17

1.19 Permission to Close Premises Required; Non-use of License .....18

1.20 Bankruptcy and Court Proceedings.....19

1.21 Management.....19

1.22 Service Training.....19

**HARWICH BOARD OF SELECTMEN  
LIQUOR LICENSE REGULATIONS  
Adopted at a Public Hearing on June 13, 2011  
Amended at a Public Hearing on January 9, 2017  
Effective July 1, 2011**

**INTRODUCTION**

In issuing regulations, the Board of Selectmen, as the liquor licensing authority of the Town of Harwich, is setting forth the expectations of the citizens of Harwich as to the conduct of the Town's liquor license holders. A significant objective of the regulations is the prevention of violations. In familiarizing themselves with these regulations, license holders will realize that much is expected of them. The Board of Selectmen believes that violations will be prevented because these regulations will require liquor license holders to operate in accordance with a clearly defined, higher standard.

**1. Identification of the Town of Harwich Licensing Authority**

1. The Licensing Authority for the Town of Harwich shall consist of the Board of Selectmen. This authority is granted to the Board of Selectmen pursuant to G.L. c.138.

**2. Scope of and Statutory Basis for Promulgation of Rules**

1. The statutory basis for the promulgation of these rules is set forth within the applicable sections of G.L. c.138. Each reference to a statute shall include any amendment thereto.
2. These rules are supplementary to any statutory requirements and to the rules of the Alcoholic Beverages Control Commission.

**3. Definitions**

1. Whenever the word "**Applicant**" is used herein it shall mean an individual applicant; each member of a partnership applicant; each officer, director, manager, and stockholder of a corporate applicant; and any agent of an applicant.
2. Whenever the word "**Licensee**" is used herein it shall mean an individual licensee and each member of a partnership licensee and each officer, director, manager, and stockholder of a corporate licensee and any agent of a licensee including those employees who work in the public areas of the premises.
3. Whenever the word "**License**" is used herein it shall mean a revocable privilege granted by a licensing authority.



4. Whenever the words “**Licensing Authority**” or “**Authority**” are used herein it shall mean those groups having legal authority to grant licenses and/or regulate the operation of the licensed premises. The specific licensing authority for the Town of Harwich shall be the Board of Selectmen.
5. Whenever the word “**Patron**” is used herein it shall mean a customer who is legally on the licensed premises.
6. Whenever the word “**Premises**” is used herein it shall mean all land and buildings associated with the operation of the license.
7. Whenever the word “**Rules and Regulations**” is used herein it shall mean a compilation of regulations and laws set up by a licensing authority to regulate the manner in which businesses under its authority shall operate.

## **SECTION ONE: GENERAL LICENSING RULES FOR LICENSEES**

### **1.00 Applicability of Rules and Regulations**

- a. This section shall apply to all Town licensees, unless specifically provided otherwise.

### **1.01 Availability of Rules and Regulations**

- a. All licensees of the Licensing Authority for the Town of Harwich shall ensure that a copy of these Rules and Regulations is kept on the premises at all times and is available for inspection upon request by a member of the public or an agent of the Authority. These Rules and Regulations are to be kept in the office of the Manager or at the main cash register.
- b. The licensee is responsible for ensuring that all employees who work in the public areas of the premises read the Rules and Regulations of the Licensing Authority and comply with all rules and laws.

### **1.02 Liquor License Filing Procedures and Responsibility of Applicant**

- a. New applications and applications for license modifications must be filed in the Town Administrator’s Office in accordance with the Alcoholic Beverages Control Commission’s Matrix for Retail Transactions along with the local filing fee and abutters list fee (when applicable). Applicant is responsible for advertising costs as well as abutter notification and associated mailing costs.
- b. Copies of applications will be submitted to the Chief of Police for appropriate background investigations.

- c. The Town Administrator will require at least 2 business days to review an application to determine whether the filing is complete. Once it is determined that the application is complete as presented, the Town Administrator will place the Advertisement and at the same time distribute copies of the filing to each member of the Authority for review.
- d. The Authority may require additional information from the applicant prior to the public hearing (i.e. lease agreements, financing information, and/or additional background information).
- e. The hearing shall not be held sooner than ten days after advertising.
- f. The Authority may, with the consent of the applicant, continue the hearing to a future date in order to allow the applicant to provide additional information, or the Authority to investigate and consider whether the application is in the best interest of the Town.
- g. The Authority reserves the right to obtain updated information about a renewal applicant/manager/owner at the time of renewal.

### **1.03 Posting and Signs**

- a. Licenses issued by the Authority shall be posted in a conspicuous place easily seen by the public where they can read without difficulty and without the assistance of employees at the premises.
- b. All other licenses, permits, and certificates affecting the licensed premises shall be posted conspicuously; provided, however, that no such document shall be posted in such a way as to cover over any part of the license issued by the Authority.
- c. No dress code or preferred customer program or cover charge or other admissions policy shall be put into effect at the premises except upon proper posting pursuant to Section 1.04 below.
- d. The posting or presentation of any photographs, signs, posters, drawings or other matter that is of an improper or objectionable nature in the public areas of the licensed premises is prohibited. The material presented must be suitable for view by members of the general public in the same manner as if it were located in other public areas such as public ways, public parks, common carrier stations, other government offices, and business offices.

### **1.04 Admissions to the Premises**

- a. No licensee shall permit any rule, policy, or action, express or implied, which makes any distinction, discrimination, or restriction on account of race, color,

religious creed, national origin, sex, or ancestry, physical or mental disability, relative to the admission or treatment of persons from the general public or employees at the licensed premises; provided, however, that premises licensed pursuant to G.L. c.138, §12 may make rules regulating the admission of minors to the premises when such rules are not inconsistent with other rules and regulations stated herein; provided further that private club licensees shall not discriminate, as aforesaid, with regard to guests at the licensed premises or with regard to who may be invited to the premises as a guest.

- b. No licensee shall institute dress requirements of any kind except according to the following rules:
  - 1. A sign shall be posted at the entrance stating dress requirements or dress restrictions with specificity which may also include restrictions as to footwear. (Examples: "Jackets required"; "Ties and jackets required"; "Shirts with collars required, no sneakers").
  - 2. No signs shall be posted which state, "Proper dress required," or which otherwise announce a dress policy without stating specifically, item by item, what dress is required or what dress is prohibited.
- c. No licensee shall institute privileged entrance requirements of any kind except according to the following rules:
  - 1. A licensee may issue special passes.
  - 2. The special passes shall state the calendar year on the face of the pass.
  - 3. The special pass shall not entitle the passholder to free drinks or to a discount on drinks.
  - 4. The licensee shall keep a list of the names and addresses of all passholders and must have such list available if requested by the Authority.
  - 5. The licensee is responsible for ensuring that persons are picked to be passholders on a rational basis and not on any basis that is discriminatory in violation of law or these regulations.
- d. No licensee shall require any person to pay a minimum charge or cover charge unless a sign is conspicuously posted at every entrance to any dining room or rooms where such charge is required, in letters no less than one (1) inch in height, stating that a minimum charge or cover charge shall be charged and also stating the amount of charge; provided, however, that no such licensee shall require a person under thirteen (13) years of age to pay a minimum charge or cover charge. Such cover charge shall not be collected in advance of gaining entrance to the

licensed premises, and can only be charged upon a written or printed receipt, permanently recorded and numbered seriatim, presented to each individual customer or group of customers. Records of such receipts shall be kept by the licensee for a period not less than two (2) years. Cover charge shall mean all admission fees or admission charges. Such charges must also be posted on the outside of the licensed premises. Nothing in this regulation shall be construed to prohibit advance ticket sales.

- e. No minimum charge for the purpose of alcoholic beverages or minimum alcoholic beverage drinking requirement shall be imposed upon any customer of a G.L. c.138, §12 licensee.
- f. A licensee who charges a minimum charge for the purchase of food and/or non-alcoholic beverages shall include a specific statement in a posting stating that there is no minimum charge for alcoholic beverages. Such minimum charge for food and/or non-alcoholic beverages shall not be collected in advance of gaining entrance to the premises. No licensee shall impose a minimum charge for food and/or non-alcoholic beverages upon any customer who incurs charges for alcoholic beverages equal to or greater than the posted minimum charge for food and/or non-alcoholic beverages.
- g. Licensees shall refuse entrance to the premises to a person who appears to be intoxicated or unruly; and shall evict such a patron, except that in such a case the licensee should call the police and should offer assistance to an intoxicated person when possible.
- h. Licensees shall not permit entrance to the premises by more persons than the maximum occupancy limit established by the Building Department.
- i. Licensees who permit persons to wait in line for a table or a seat or for entrance to the premises shall obey the following rules:
  - 1. Persons who wait inside the premises shall be kept in an orderly line and must not be permitted to block fire aisles or exits. The number of such persons waiting inside the premises shall not exceed the number of persons allowed as standees.
  - 2. Persons who are permitted to wait in line outside the premises shall be supervised by an employee of the licensed premises. Such employee shall stand outside with the line during all times when the line exceeds ten (10) persons and shall announce no further admissions to the premises if persons in the line are being loud or disorderly or if the line is blocking the sidewalk or is of a size that could reasonably be expected to cause noise or other problems for residents of the area or for passersby. To the extent that lines in front of a licensed premises become the subject of public

complaints the licensee shall have been deemed to be inviting a public nuisance and shall be subject to disciplinary proceedings for same. It is recommended that licensees in residential areas discourage lines of more than ten persons.

- j. Licensees shall not lock the front door of the premises until the last patron has exited from the premises.
- k. Licensees shall not allow any patron or any guest or any employee who is not working that shift to enter the premises after the closing hour posted on the license or prior to the opening hour posted on the license.

#### **1.05 Hours of Operation**

- a. The hours of operation shall be restricted to those set by the Licensing Authority and stated on the face of the license. No patrons shall be on the premises before the official opening hours nor fifteen (15) minutes after the official closing hours. Customers must be up and on the way out once the closing hour of the licensed premises has been reached. No drink consumption time.
- b. The rules for employees on premises after closing hours are as follows: employees must be off the premises no later than sixty (60) minutes after the "Official Closing Hour," provided however, that such employees or other hired personnel may be on the premises at any time for the purpose of cleaning, making emergency repairs, providing security for the premises, or preparing food for the next day's business or opening or closing the business on an orderly manner. No other persons, friends or relatives may be on the premises with the owners, managers or employees of the licensed premises during the hours when the public is excluded from the premises.
- c. Licensees shall ensure that their patrons leave the premises in an orderly manner. Licensees who have a clientele that regularly fails to leave the area in a quiet and orderly manner should hire security personnel to police the leave-taking of the patrons at closing time.

#### **1.06 Physical Premises**

- a. No license shall be issued or shall be considered in good standing unless the licensed premises comply with all statutory requirements, including all applicable building codes and fire, health, safety, trash and other government regulations and laws.
- b. The licensed premises shall conform to the floor plan approved by the Authority with regard to the structures and the walls at the premises, as well as with regard to all tables, chairs, booths, bars, counters, bar stools, dance floors or areas, railing

partitions, and other barriers at the premises. Any changes in the floor plan or any renovations of any kind shall not be made without notification to the Authority and the approval of the Authority. This includes substantial changes in the arrangement of moveable furniture.

- c.. All premises covered by the license shall be kept in a clean and sanitary condition, with specific reference to fruit flies contaminating open liquor bottles.
- d. No outside area shall be used as a gathering place for patrons unless approved by the Authority and the Alcoholic Beverages Control Commission if alcohol is consumed.
- e. The premises shall be lighted in all public areas in a manner sufficient for the safety of the patrons and in a manner sufficient for the agents of the Authority to make observations at the premises without the need to identify themselves or the need to seek assistance.
- f. The actual capacity of the licensed premises will be established by the Licensing Authority and shall be the lowest set by septic or building capacity. That capacity shall be stated on the license.
- g. Licensees shall not invite the members of the general public to private areas of the premises which are approved by the Authority for storage or for an office or for a kitchen or for a music or video projection room or for any similar non-public use. Only owners and employees of the licensed premises shall be in these areas.
- h. No advertising matter, screen, curtain or other obstruction, which in the opinion of the Licensing Authority or its Agents, prevents a clear view of the interior of the premises shall be maintained in or on any window or door thereof after the Authority has ordered the removal of such obstruction.
- i. The interior of the premises shall be sufficiently lighted at all times and all exits shall be properly designated by lighted signs, “**Exit,**” as same may be mandated by the Building Inspector of the Town of Harwich or by the Fire Department of the Town of Harwich.

#### **1.07 Business Arrangements of Licensees**

- a. No person or entity shall obtain or renew a license unless the applicant for such license or for renewal of such license can demonstrate proof of a legal right to the licensed premises for the term of the license. Such proof shall include ownership papers or a tenancy document or a management contract; provided, however, that all parties to such ownership or leasehold interest or management contract shall be known to the Authority and the terms of such agreements or contracts shall be made known to the Authority.

- b. No licensee shall hire any employee or contract for goods or services in any name other than that of the licensee, nor shall the licensee pay for any such employment, goods, or services by any means other than its own cash or bank accounts in its own name. Cash transactions shall be recorded in a manner suitable for review by the Authority. Such records shall be kept for a period of three (3) years.
- c. No licensee shall permit any person to have a direct or indirect financial or beneficial interest in the licensed business or to receive any revenue from the business or to manage the premises other than the persons properly approved of by the Authority and the salaried employees of such persons.
- d. No licensee shall permit any person to work at the licensed premises or to hold themselves out as a person in a position of authority at the premises except for those persons who are owners and officers or who are salaried employees for whom payroll records are available. No licensee shall pay an employee any percentage of the profits of the business or pay an employee in any manner other than by salary or hourly rate except upon approval of the Authority.
- e. No licensee shall pay a landlord or creditor of any kind a percentage of the profits of the business except upon complete disclosure to the Authority and the receipt of the Authority's approval.
- f. No licensee shall lease out any part of the premises or any part of the business without the approval of the Authority. No licensee shall lease out the food or beverage service without the approval of the Authority.
- g. No licensee shall enter into an agreement with an independent contractor to provide beverages or food or entertainment or management at the premises without the approval of the Authority.
- h. No licensee shall pledge the stock in the licensed business or the license itself without the approval of the Authority pursuant to G.L. c.138 §15A. No licensee shall pledge a license without obtaining the approval of the Authority pursuant to G.L. c.138, §15A and the Board of Selectmen's Policy on Pledging of Alcoholic Beverages Licenses.
- i. No licensee shall take a loan secured by any equipment at the premises or secured by any direct or indirect interest in the licensed business without the approval of the Authority. This includes kitchen equipment, video or audio equipment, lighting equipment, furniture, or any other type of equipment.
- j. No licensee shall contract bills for its licensed premises under any corporation or trade name other than that under which it is licensed.

- k. Managers in licensed premises shall not be changed until the Authority and the Alcoholic Beverages Control Commission have approved such change.
- l. Any licensee intending to close its place of business shall notify the Authority in writing before such closing and state the reason for such closing.
- m. Assignment of the stock of corporate licensees for purposes of collateralizing loans or notes, etc., gives no right to the assignee to conduct the business of the licensee. Licensees shall immediately notify the Authority when the assignee forecloses under such assignment of stock or when other proceedings are brought which affect the economic and financial rights and abilities of the licensee.
- n. Licensees shall enter into no agreement or understanding which sets a minimum requirement for gross sales of food and beverages at the premises.
- o. Licensees shall not use any trade name, assumed name, or abbreviated name in connection with the licensed business unless the same appears on the license certificate issued by the Authority or unless written permission is first obtained from the Authority. The use of any unauthorized name on the books, records, stationery, or interior or exterior of the licensed premises or for advertising purposes or telephone listing is prohibited unless permission is first obtained from the Authority.
- p. Licensees are responsible for maintaining a legal right to access to and control of the premises which is covered by the license. Failure to have a legal right to the named licensed premises shall result in the revocation or non-renewal of the license.

**1.08 Alcoholic Beverages Sales and Laws**

- a. No alcoholic beverages shall be sold for less than the actual cost of the beverage to the licensee. An admission charge shall not be credited towards the purchase price of any alcoholic beverage.
- b. All licensees shall maintain a schedule of the prices charged for all drinks to be served and drunk on the licensed premises or in any room or part thereof. Such prices shall be effective for not less than one calendar week.
- c. No licensee or employee or agent or a licensee shall:
  - 1. offer or deliver any free drinks to any person or group of persons;
  - 2. deliver more than two (2) drinks to one person at one time;



3. sell, offer to sell or deliver to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the general public;
  4. sell, offer to sell, or deliver to any person an unlimited number of drinks during a set period of time for a fixed price, except at private functions not open to the general public;
  5. sell, offer to sell or deliver drinks to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public;
  6. sell, offer to sell or deliver malt beverages or mixed drinks by the pitcher except to two (2) or more persons at any one time;
  7. increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week;
  8. encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes;
  9. advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under this section.
- b. Nothing contained in the preceding section shall be construed to prohibit licensees from offering free food at any time; or to prohibit licensees from including a drink as part of a meal package; or to prohibit the sale or delivery of wine by the bottle or carafe when sold with meals or to more than one persons; or to prohibit those licensed under G.L. c.138, §15 from offering free wine tastings; or to prohibit those licensed under G.L. c.138, §12 from offering room services to registered guests.
- c. Licensees shall not permit alcoholic beverages to be brought on the licensed premises by patrons or employees.
- d. Licensees shall be responsible for ensuring that minors are not served alcoholic beverages and are not drinking alcoholic beverages on the licensed premises, whether served to them by an employee or handed to them by another patron. Licensees who do not have the ability to keep track of the drinking activity of minors at the premises shall exclude minors from coming onto the premises in order to meet the burden of ensuring that there is no underage drinking at the premises. Licensees who choose to permit minors on the premises shall be accountable if minors are found to be drinking alcoholic beverages on the

premises, whether or not the Authority's agents are able to prove that the licensee actually served the drink directly to the minor. Sufficient security personnel shall be employed to monitor the premises to ensure that patrons do not pass alcoholic beverages to minors.

- e. Any establishment licensed to sell alcoholic beverages to be drunk on the premises shall post a copy of the penalties for driving under the influence set forth in section G.L. c.90, §24. Establishments licensed to sell alcoholic beverages not to be drunk on the premises shall post a copy of the penalties for operating a motor vehicle while drinking from an open container. Said copies shall be posted conspicuously in said establishments. Said copies are available from the Alcoholic Beverages Control Commission.
- f. Food service shall be available in all areas of the licensed premises where alcoholic beverages are served, this to include dining areas and lounge areas. This does not include any area approved as a waiting area by the Licensing Authority.

#### **1.09 Entertainment at Licensed Premises**

- a. No licensee may provide entertainment of any kind unless the licensee holds an entertainment license issued pursuant to G.L. c.140, §183A. Such license must be held in the same name, by the same owners, and with the same manager as the food or beverage license; provided, however, that in cases where entertainment on the premises is to be conducted by a person or entity who is an independent contractor at the premises, the food or beverage licensee may seek the approval of the Licensing Authority for an exemption from this rule based upon a written contract with the independent contractor which gives control of the premises to the food or beverage licensee while allowing the independent contractor to book and/or to produce the entertainment.
- b. The food or beverage licensee shall be responsible for the actions of any independent contractor on the premises providing entertainment in addition to the responsibility held by the independent contractor pursuant to the entertainment license.
- c. The food or beverage licensee shall pay the independent contractor a fee according to the written contract, said fee to be commensurate with the market value of the services, and the independent contractor shall not be given any direct or indirect interest in the licensed premises other than the fee set out in the contract. Said fee shall not be based upon the number of patrons attending an entertainment event.
- d. Any food or beverage licensee who permits entertainment at the licensed premises pursuant to a license held by a person in violation of this rule will be subject to disciplinary action by the Authority.

- e. Inside Entertainment - No entertainment at the licensed premises may be conducted in a manner such that the noise from the entertainment is creating a nuisance and can be heard outside the boundaries of the premises.

Outside Entertainment – Noise from entertainment must be at reasonable sound levels which are not plainly audible at a distance of 150 feet from boundary line or source of sound amplification system whichever is further.

- f. No dancing by patrons is permitted except upon proper licensing pursuant to G.L. c.140, §183A, and confined to a particular dance floor area which has been approved by the Authority and which is not inconsistent with the entertainment license requirements.
- g. Entertainment shall not be conducted on the premises prior to the opening or subsequent to the closing hour set by the Authority for the exercise of the food or beverage license or during any period when the food or beverage license has been suspended.
- h. No licensee may have upon the premises any automatic amusement devices unless such machines have been approved and separately licensed by the Authority pursuant to G.L. c.140, §177A. Types of machines and location of machines upon the premises must be approved. The licensee must make application, not the distributor.
- i. Licensees shall not permit any games to be played at the premises for money, alcoholic beverages, or for any other prize. Games may be played for money at certain fundraising activities which have been approved by the Authority and for which the licensee holds other appropriate licenses.
- j. Licensees who hold licenses under G.L. c.138, §12 to serve alcoholic beverages for on premises consumption may petition the Authority for approval to allow dancing on Sundays between the hours of twelve midnight and one o'clock A.M. or two o'clock A.M. for the same hours for which the licensee is authorized to sell alcoholic beverages. (G.L. c.138, §33).

#### **1.10 Environs of Licensed Premises**

- a. It shall be the obligation of licensees to ensure that a high degree of supervision is exercised over the conduct of the licensed establishment at all times. Each licensee shall be accountable for all violations that are related to the licensed premises to determine whether or not the licensee acted properly in the given circumstances.

- b. Licensees shall act reasonably and diligently to disperse loiterers or patrons who attempt to congregate in front of or at the licensed premises. Failure of the licensee to keep persons from congregating at the licensed premises may lead to disciplinary action against the licensee for allowing a public nuisance. Action to be taken by the licensee shall include: (1) maintaining the front door in a closed position; (2) asking loiterers to disperse; (3) promptly notifying the police if loiterers refuse to disperse; (4) hiring a security guard or stationing a security employee at the front door to disperse loiterers; (5) refusing to allow patrons to walk in and out of the premises at short intervals; (6) maintaining order in lines of patrons waiting outside to get in; (7) announcing that no further patrons will be allowed into the premises if lines become too long or disorderly or loud.
- c. Licensees shall take such steps as are necessary to ensure that patrons or employees do not leave the premises with alcoholic beverages. Such steps shall include having an employee stationed at the door to watch patrons as they leave. When patrons are observed leaving the premises with beer bottles, beer cans, or cups or glasses filled with liquids that smell like alcoholic beverages to the Authority's agents, it shall be presumed that the vessels contain alcoholic beverages.
- d. When any noise, disturbance, misconduct, disorder, act or activity occurs in the licensed premises, or in the area in front of or adjacent to the licensed premises, or in any parking lot provided by the licensee for the use of its patrons, which in the judgment of the Authority adversely affects the protection, health, welfare, safety or repose of the residents of the area in which the licensed premises are located, or results in the licensed premises becoming the focal point for police attention, the licensee shall be held in violation of the license and subject to proceedings for suspension, revocation or modification of the license.

### **1.11 Inspections and Investigations**

- a. The licensed premises shall be subject to inspection by the members of the Licensing Authority and its duly authorized agents. Any hindrance or delay of such inspection caused by an employee of the licensee shall be cause for action against the licensee. It shall be the responsibility of the licensee to ensure that procedures are in place, be it posting a doorman or otherwise, to allow police and authorized agents of the Authority immediate entrance into the premises at any time employees are on the premises. Any delay in providing such access shall be cause for action against the license.
- b. Any person who hinders or delays any authorized investigator of the Alcoholic Beverages Control Commission or any investigator, inspector or any other authorized agent of the Licensing Authority in the performance of his duties, or who refuses to admit to or locks out any such investigator, inspector or agent from any place which such investigator, inspector or agent is authorized to inspect, or

who refuses to give to such investigator, inspector or agent such information as may be required for the proper enforcement of G.L. c.138, shall be punished by penalties as outlined in G.L. c.138.

- c. Licensees shall maintain a current list of all of their employees and shall have it available at all times for inspection upon the request of an authorized agent of the Authority. Licensees who contract with entertainment entities to provide entertainers must maintain a current list of the names of such entertainers and said entertainers shall be held to the same rules as other employees at the premises.
- d. No device or electronic equipment shall be utilized by a licensed premises for the purpose of signaling employees that agents of the Licensing Authority are present.
- e. All complaints and reports shall continue in force until they have been reviewed and disposed of by the Licensing Authority.

#### **1.12 Standards of Conduct on the Premises**

- a. It is forbidden to permit any employee or person in or on the licensed premises to promise, offer, suggest, or accept sexual acts or favors in exchange for money or for the purchase of any alcoholic beverages or other commodities.
- b. It is forbidden to encourage or permit any person in or on the licensed premises to touch, caress, or fondle the breasts, buttocks or genitals of any other person.
- c. No alcoholic beverages shall be sold to anyone under twenty-one (21) years of age. No service of alcoholic, wine/malt beverages shall be made to anyone under twenty-one (21) years of age.
- d. No manager or employee shall consume any alcoholic beverages while on the licensed premises while on duty or after the official closing hour.
- e. There shall be no disorder, prostitution, illegal gambling, illegal drug use or sales or possession, or other illegal activity on the licensed premises or any premises connected therewith by an interior communication.
- f. All other acts defined as criminal behavior by the Massachusetts General Laws are also prohibited on the premises.

#### **1.13 Requirement to Monitor and Prevent Illegal Activity on the Licensed Premises**

Licensees shall make all reasonable and diligent efforts to ensure that illegal activities do not occur at the licensed premises. Such efforts shall include:

- a. Frequent monitoring of restrooms and other nonpublic areas of the premises for

signs of drug activity or other illegalities;

- b. Paying attention to activities on the premises of known drug users or drug dealers or prostitutes or others who are known to have been convicted of crimes which may be conducted at a licensed premises;
- c. Monitoring of activities of persons who talk about weapons or who appear to be hiding a weapon;
- d. Calling for police assistance as necessary to protect patrons against injury or to evict unruly patrons or to uncover unlawful conduct or to give medical assistance and providing police with requested information;
- e. Hiring security personnel to deal with chronic unlawful activity at the premises such as prostitution or gambling or larceny from patrons or assaults and batteries or other problems associated with the premises.

#### **1.14 Injuries to Persons at the Premises**

- a. Licensees shall instruct their employees and security personnel that they are not to make bodily contact with a patron unless to protect other patrons or themselves from being subjected to body blows from an unruly patron. In all other circumstances, employees and security personnel are to call the police to have patrons removed from the premises when such patrons are being disruptive and they are unable to convince the patron to leave the premises voluntarily.
- b. Licensees shall call the police and an ambulance and take all other reasonable steps to assist patrons or persons who are injured in or on the licensed premises or whose injuries have occurred outside the premises but have been brought to the attention of the licensee.

#### **1.15 Other Causes for Revocation, Suspension, and Modification**

- a. Any license issued pursuant to G.L. c.138 may be modified, suspended, or revoked for any of the following causes:
  - 1. Violation by the licensee of any provision of the relevant General Laws of the Commonwealth, of the regulations of the Alcoholic Beverages Control Commission or of the regulations of the Licensing Authority;
  - 2. Fraud, misrepresentation, false material statement, concealment or suppression of facts by the licensee in connection with an application for a license or permit or for renewal thereof, or in connection with an application for the removal of the licensed premises or the alteration of the premises, or in connection with any other petition affecting the rights of

the licensee, or in any interview or hearing held by the Authority in connection with such petition, request, or application affecting the rights of the licensee;

3. Failure to operate the premises covered by the license without prior approval of the Licensing Authority;
4. Failure or refusal of the licensee to furnish or disclose any information required by any provision of the General Laws, or by any rule or regulation of the Alcoholic Beverages Control Commission, or by any rule or regulation of the Licensing Authority;
5. Licensees shall not give or offer any money or any article of value or pay for or reimburse or forgive the debt for services provided to any employee or agent of the Authority either as a gratuity or for any service;
6. Licensees may not fail to comply with any condition, stipulation or agreement upon which any license was issued or renewed by the Authority or upon which any application or petition relating to the premises was granted by the Authority. It shall be the duty of the licensee to ensure that all appropriate personnel at the licensed premises are familiar with the rules and regulations of the Authority and with any conditions on the license.
7. A license may be suspended or modified or revoked for the refusal by any licensee and, if a corporation, by a manager, officer, or director thereof to appear at an inquiry or hearing held by the Authority with respect to any application or matter bearing upon the conduct of the licensed business or bearing upon the character and fitness of such person to continue to hold a license.
8. Licensees shall properly serve suspension and modification orders.

#### **1.16 Violations; Hearing Procedure**

- a. Upon written notice from the Chief of Police or other source that an illegality has allegedly occurred at a licensed establishment or other matters that the Chief of Police deems should be brought to the attention of the Licensing Authority, the Authority will consider in open session whether or not a public hearing should be held.
- b. If it is determined that a public hearing will be held by vote of the Authority, the Town Administrator shall send written notice to the licensee by Certified Mail, Return Receipt Requested.

- c. At the hearing the Authority will first hear evidence from the Police Chief and his agents and/or witnesses or from other complaining parties, as may be appropriate. Then the licensee and the licensee's counsel will have an opportunity to present their response and evidence.
- d. After all testimony has been given, the Authority reserves the right to question all witnesses and parties and, if necessary, take under advisement all facts and vote either to render their decision or continue the hearing to a subsequent meeting of the Authority.

### **1.17 Disciplinary Guidelines**

- a. Licensees in violation of the applicable laws of the Commonwealth, regulations of the Alcoholic Beverage Control Commission and/or these regulations may be subject to the following range of discipline:
  - 1. First offense: warning to seven day suspension.
  - 2. Second offense: warning to thirty day suspension.
  - 3. Third offense: warning to revocation.
- b. Only offenses which have occurred within the two (2) years preceding the date of violation shall be used in calculating the number of offenses for purposes of the disciplinary guidelines.
- c. The disciplinary guidelines are only a guide. The Licensing Authority may use its discretion in determining whether the facts surrounding a violation warrant a penalty which is more lenient or severe than that suggested by the guidelines.
- d. The disciplinary guidelines shall not be construed so as to limit the Licensing Authority's authority to consider alternative dispositions, or further conditions on a license, or even alternate penalties (e.g. roll back of operating hours).

### **1.18 Service of Suspension Orders**

- a. When the Authority suspends the license or licenses of any licensee, it shall provide the licensee with an order of suspension for public display that must contain the words, "No alcohol served per order of the Board of Selectmen for the Town of Harwich." Such order shall be publicly displayed by the licensee in the following manner. If there is a door opening from the street into the licensed premises and a window facing the street upon which such door opens, such order shall be displayed in such window so that it may readily be seen from the street. If the licensed premises are otherwise located, such order shall be affixed to the



door of the entrance to the premises and displayed in such a way that it may be readily seen from the street.

- b. Suspension orders of the Authority, as above, shall remain affixed throughout the entire period of suspension. The removal, covering, defacement, or obliteration of the order of suspension or the failure to maintain the order of suspension in the manner and place required prior to the expiration of the suspension period shall be deemed the act of the licensee and shall be cause for further suspension, modification or revocation of the license.
- c. Suspension periods shall not be used as a time to do renovations at the licensed premises unless such renovations have previously been approved by the Authority.
- d. No members of the public may be on the premises at any time during suspension periods, with the exception that restaurants may be able to continue to service patrons without serving alcohol, with the approval of the Licensing Authority.

#### **1.19 Permission to Close Premises Required; Non-use of Licenses**

- a. Licenses are granted to serve the public need and, to that end, licensees are expected to operate the license for a substantial number of hours on all days when the premises are permitted to be open under the terms of the license. In the case of alcoholic beverages licenses, the number of which are limited according to statute, no licensee may close its place of business for any reason other than the following:
  - 1. Upon approval of a request to the Licensing Authority for closing in order to do renovations for a reasonable time;
  - 2. For all holidays and religious days;
  - 3. A closing of one (1) or more days per week upon approval of a request to the Authority and a showing by the licensee that it does not have adequate business upon such days.
  - 4. A closing due to an act of God, natural disaster, illness or some other business problem for which request has been made to the Authority and approval granted.
- b. Any licensee intending to close a place of business, whether on a temporary or permanent basis, must notify the Licensing Authority in writing before such closing stating the reason and length of such closing and obtain approval. Failure to provide such notice may result in the suspension or revocation of the license.

- c. If the Licensing Authority becomes aware of a license not being exercised, it may conduct a hearing to obtain a status update.
- d. The Authority reserves the right to require that the licensee appear before the Authority every three (3) months from that point until the business has commenced or resumed operations or the license has been transferred or turned back to the Town.
- e. The Authority reserves the right to revoke the license at any time if it deems that the public good is not being served.

#### **1.20 Bankruptcy and Court Proceedings**

- a. The licensee shall immediately notify, in writing, the Licensing Authority of any proceedings brought by or against the licensee under the bankruptcy laws or of any other court proceedings which may affect the status of the license.

#### **1.21 Management**

- a. Each corporate licensee must appoint a manager by a properly authorized and executed delegation.
- b. The responsibilities of every license holder and any manager shall be as follows:
  - 1. To obey all statutes of the Commonwealth, rules of the Alcoholic Beverages Control Commission, Rules and Regulations of the Licensing Authority;
  - 2. To promptly notify the police of any disturbances or illegal activity on the licenses premises of which he becomes aware;
  - 3. As to corporate licensees, to sign the annual application for renewal of license, unless unavailable;
  - 4. To cooperate with authorized agents of the Licensing Authority, including but not necessarily limited to, any police officer, in their investigation or inspection of the licenses premises.
- c. Any such notice sent to the manager as named in the records of the Licensing Authority or the owner at the address of the licensed premises shall constitute valid legal notice to the licensee.
- d. The licensee shall not change managers, change corporate officers, sell or transfer corporate stock, pledge corporate stock or liquor license as security, or accept a loan or credit from another licensee, without first obtaining the approval of the

Authority. No person may have a direct or indirect beneficial interest in a license without first obtaining the approval of the Authority.

## **1.22 Service Training**

- a. An employee training program on the proper procedures for verifying that patrons are at least twenty-one (21) years of age and not intoxicated shall be provided by the licensee. A written description of such program, along with a written policy outlining the employees' responsibilities and the disciplinary measures which will be taken against any employee for violating said policy, shall be provided to the Authority as part of the original or renewal application materials and maintained on the premises at all times.
- b. A signed certification of each employee who handles alcohol, indicating that the employee has received the described training and has reviewed and understands the written policy describing his or her responsibilities and the disciplinary action which will be taken for violations, shall be maintained on the premises at all times. Copies of all such documents and certifications shall be available to the licensing authority, or any authorized agent thereof, upon demand.
- c. Each new employee who handles alcohol shall obtain server training within thirty (30) days of commencing employment.
- d. Upon a finding by the Authority of a violation of the laws or regulations concerning service of alcohol to a minor or intoxicated person, the employees involved in the violation who continue to be employed by the licensee shall be retrained forthwith and receive a new server training certification.
- e. The training and certification referenced in Section 1.22 shall be pursuant to a training program approved by the Authority (e.g. TIPS or equivalent).

424317/HARW/0001

#1

50-79 E-1

State Highway

S79-22E 112.00

PERKS 545 A1 28  
Mrs Straw.

N7-45E 116.72

GREY  
GULL  
LOT

Heir of Ephraim Doane

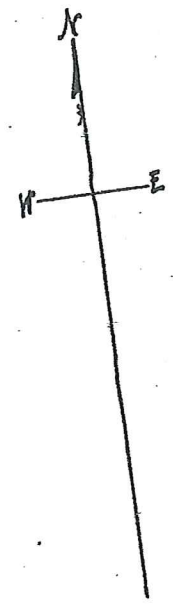
S06-8E 96.90

Iron pin

S30-9W 128.50  
1700 pin  
Iron pipe

S7-11-30W 102.80  
549 MARY Susie M. Gorham  
S. 8-29W 12.00

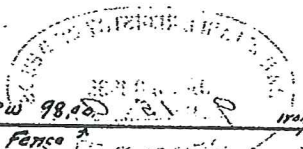
M Armo Jones et al.



549  
72  
28

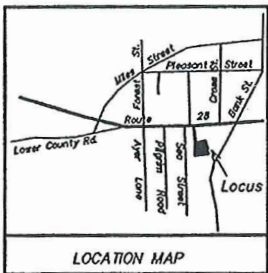
Iron pin

N81-09W 98.00



Heir of Benj Kelley. Land of Chas. E Furgess  
Hatwichtport Mass.

Scale 1 inch = 20 ft. Jan 9-1935  
Morse & Chase



UNRECORDED PLAN FOR COMMONWEALTH PROPERTIES DATED OCT. 30, 1987 BY MORAN ENGINEERING INC.



ROUTE 28  
STATE LAYOUT - 1902

FOR REGISTRY USE ONLY

#347 ROUTE 28  
N/F GARY & LISA B. SAWIN  
BK. 4532 PG. 291

PLAN REFERENCES:

UNRECORDED PLAN FOR COMMONWEALTH ASSOCIATES 10/30/1987 BY MORAN ENGINEERING  
PL. BK. 470 PG. 50  
PL. BK. 50 PG. 79  
PL. BK. 124 PG. 17

DEED REFERENCES:

BK. 18289 PG. 153

2015 JAN 23 1 P

Exist. Bldg.  
#551

PETITIONER/OWNER OF RECORD:

THERESE E. SIGNAIGO  
42 WALNUT ST.  
SOMERVILLE, MA 02143

#551 ROUTE 28  
N/F AMALGAMATED BUSINESS CORP.  
BK. 7122 PG. 141



*Terry Ann Warner*  
1/23/15

ZONE: C-V  
COMMERCIAL VILLAGE  
Map 14 Parcel V5

This plan has been prepared in conformity with the rules and regulations of the Registers of Deeds for the Commonwealth of Massachusetts.

1/23/15 *Terry Ann Warner*  
Date Professional Land Surveyor

PLAN OF LAND  
IN  
HARWICHPORT, MA

PREPARED FOR:  
THERESE E. SIGNAIGO

#549 ROUTE 28

SCALE: 1"=20' JANUARY 19, 2015

The property lines shown hereon are the lines dividing existing ownership. The lines of streets and ways shown are those of public or private streets and ways already established. No new lines for division of existing ownership or for new ways are shown.

1/23/15 *Terry Ann Warner*  
Date Professional Land Surveyor

The above is intended to meet Registry of Deeds requirements and is not a certification to the title or ownership of the property shown. Owners of properties shown are according to current town assessors' records.

#43A Sea Street  
N/F MAURA J. SHARRY  
BK. 21077 PG. 182

TERRY A. WARNER, P.L.S.  
22 LONG ROAD  
HARWICH, MA. 02645  
(508) 432-8309



From: Jay Psaros jaypsarosmusic@gmail.com  
Subject: Live Music Schedule  
Date: May 17, 2021 at 7:40:49 PM  
To: Perks Coffee Shop perkscoffeeandcafe@gmail.com

---

Hey guys, here's the live music schedule. Still a couple holes to fill and I haven't really started on Wednesdays yet. I also didn't note Thursdays and Sundays because you got those taken care of. Once I get the weekends worked out, I'll dive into Wednesdays and September. Really appreciate the opportunity to work with you guys on this. It's a big help!

PS: Once everything is locked in, I'll follow back with socials for everyone. Lots of these peeps have great content you guys can use to promote if you'd like

**MAY**

- 28. Jay Psaros
- 29. Steve Rondo

**JUNE**

- 4. TBD
- 5. TBD
- 11. Nico Rivers
- 12. Matt York
- 18. TBD
- 19. Steve Rondo
- 25. Carlin Tripp
- 26. Molly Kupris

**JULY**

- 2. Nico Rivers
- 3. TBD
- 5. Birch Swart
- 7. Steve Rondo
- 9. Kali Stoddard

10. TBD
12. Jay Psaros
14. Steve Rondo
16. Molly Kupris
17. Carlin Tripp
19. Jay Psaros
21. TBD
23. TBD
24. Matt York
26. Jay Psaros
28. TBD
30. TBD
31. Alec Delphenic

## **AUG**

2. Birch Swart
4. TBD
6. Birch Swart
7. Nico Rivers
9. Jay Psaros
11. Carlin Tripp Duo
13. Jason Spooner
14. Cherrywood
16. Jay Psaros
18. Steve Rondo
20. Kali Stoddard
21. Carlin Tripp
23. Jay Psaros
25. TBD
27. Kaylee Federman

30. Jay Psaros

--

**Jay Psaros**

617 838 1792

JayPsarosMusic.com

"Dear Jane Official Music Video"

\*\*NEW MUSIC ON SPOTIFY: FOLLOW HERE\*\*

FACEBOOK, TWITTER, INSTAGRAM, YOUTUBE, VIMEO



Hey gang,

Thank you so much for joining us at Perks Coffee and Beer Garden this season! The owners Taylor and Sarah super excited to have you! I've attached two PDF's with all of the info you need. Please read them and let me know if you have any questions. At a glance...

- Gigs are 6-9.
- They have House Sound but you will need Mics, stands, and cables.
- Perks is the only restaurant with an outdoor entertainment license! Please be aware of your volume and work with the owners on an appropriate level.
- You will be paid by me in check form the Monday after your gig.
- Instructions on how to use their house system are in the PDF.
- You on site contact will be either Taylor or Sarah Powell. They are great people!
- PUT OUT THAT TIP JAR! (tips here are really good)

And if any of you have any questions at any time, you can call or text me at 617-838-1792.

Live Music is BACK!

- Jay

--

**Jay Psaros**

**617 838 1792**

JayPsarosMusic.com

"Dear Jane Official Music Video"

**\*\*NEW MUSIC ON SPOTIFY: FOLLOW HERE\*\***

FACEBOOK, TWITTER, INSTAGRAM, YOUTUBE, VIMEO

## **ABOUT SOUND AT PERKS**

**SOUND SYSTEM:** The Mixer at PERKS is a Mackie PRO FX 10v. There is also a powered monitor to use as well. TO SET IT UP please plug one of the Main Outputs into the Monitor, and another output into the provided line for House Sound. Make sure all of the Pan settings are dialed in to "Center." Once you have your appropriate volume coming out of YOUR Monitor, the owner will then turn on your house sound and adjust their volume accordingly. By running sound this way, you ensure that what you hear on stage is what the patrons will hear.

### **PLEASE BE AWARE OF YOUR VOLUME!**

Perks is the only restaurant in town that has been allowed an outdoor entertainment license! That is because the owners, staff and musicians have been thoughtful and aware of their neighbors. Please be conscious of your volume at all times. Perks has worked hard to maintain an excellent relationship with the town and their neighbors. Lets help them keep it going!! With our current set up, you and their patrons should be able to hear themselves just fine!

**In The Matter Of:**  
*Lucky Labrador Inc.*  
*d/b/a Perks*

---

*Show Cause Hearing*  
*November 23, 2021*

---

*Beacon Court Reporting Services*  
*100 Independence Drive, Suite 7*  
*Hyannis, Massachusetts 02601*  
*www.beaconcourtreporting.com*  
*(774) 678-4255*



Original File 2021-1123\_Perks.txt

Min-U-Script®

Volume: 1 of 1  
Pages: 1- 119  
Exhibits: See Index

\*\*\*\*\*x

IN RE:

LUCKY LABRADOR INC. d/b/a PERKS

\*\*\*\*\*x

SHOW CAUSE HEARING  
BEFORE JOSEPH F. POWERS, TOWN ADMINISTRATOR  
Harwich Town Hall  
Griffin Room  
732 Main Street  
Harwich, Massachusetts  
Tuesday, November 23, 2021  
1:00 p.m. - 3:12 p.m.

Reported by: Janet L. Wynne, CSR No. 131793  
Registered Professional Reporter

Beacon Court Reporting Services  
100 Independence Drive, Suite 7  
Hyannis, Massachusetts 02601  
[www.beaconcourtreporting.com](http://www.beaconcourtreporting.com)

APPEARANCES:

Jeffrey T. Blake, Esq.  
KP Law  
101 Arch Street  
Boston, Massachusetts 02110  
(617) 556-0007  
jblake@k-plaw.com  
for Town of Harwich

Benjamin E. Zehnder, Esq.  
La Tanzi, Spaulding & Landreth  
8 Cardinal Lane  
P.O. Box 2300  
Orleans, Massachusetts 02653  
(508) 255-2133  
bzehnder@latanzi.com  
for Lucky Labrador Inc. d/b/a Perks

Present:

Danielle Delaney, Executive Assistant  
Town of Harwich Licensing

Caleb Ladue, Videographer  
Town of Harwich Channel 18

I N D E X

Witness:	Page
DETECTIVE SERGEANT ROBERT C. BRACKETT	
Examination by Mr. Blake.....	26
.....	89
.....	106
Examination by Mr. Zehnder.....	45
.....	96
LISA SAWIN	
Examination by Mr. Blake.....	53
Examination by Mr. Zehnder.....	59
TAYLOR POWELL	
Examination by Mr. Zehnder.....	65
Examination by Mr. Blake.....	75
Witness statement.....	107
SUMMATIONS	
by Mr. Blake.....	81
.....	111
by Mr. Zehnder.....	82
.....	113
PATROL OFFICER KEITH T. KANNALLY	
by Mr. Blake.....	85

TOWN'S EXHIBITS

Exhibit	Description	Page
A	Notice of show cause hearing October 20, 2021.....	13
B	Notice of show cause hearing November 23, 2021.....	13
C-1	Letter dated September 15, 2021, re notice of disciplinary hearing.....	13
C-2	Letter dated September 30, 2021, re notice of disciplinary hearing continuation.....	14
C-3	Letter dated November 2, 2021, re notice of disciplinary hearing.....	14
C-4	Letter dated November 25, 2021, re notice of disciplinary hearing continuation.....	14
D-1	License for alcoholic beverages.....	15
D-2	License for innholders, common victuallers and other keepers of restaurants and other establishments dated 5/3/2021.....	15
D-3	License for innholders, common victuallers and other keepers of restaurants and other establishments dated 6/28/2021.....	16
D-4	License for public entertainment on Sunday.....	16
D-5	2021 license for public entertainment on Sunday.....	17
D-6	Common victualler's license.....	18

TOWN'S EXHIBITS, continued

Exhibit	Description	Page
E-1	Memorandum dated August 3, 2020, re recommended action following disciplinary hearing held on June 30, 2020, re Go Industries Inc. d/b/a Perks entertainment license violations.....	18
E-2	Letter dated October 29, 2018, re disciplinary hearing for violations of entertainment license.....	19
E-3	Letter dated October 11, 2017, re notice of disciplinary action for violations of entertainment license.....	19
E-4	Letter dated October 3, 2016, re letter of warning for violations of an entertainment license.....	19
F-1	Memorandum dated August 30, 2021, re potential violations at Perks.....	20
F-2	Call log 21-9187 dated 07/24/2021.....	20
F-3	Narrative for Patrol Keith E. Lincoln, Ref. 21-9187-OF.....	20
F-4	Supplemental narrative for Patrol Keith E. Lincoln, Ref. 21-9187-OF.....	21
F-5	Estimate from Carter's Landscape Services.	21
F-6	Narrative for Detective Sergeant Robert C. Brackett, Ref. 21-9187-OF.....	21
F-6A-D	Photographs.....	40
F-7	Call log 21-9890 dated 08/07/2021.....	22
F-8	Narrative for Patrol Supervisor Keith T. Kannally, Ref. 21-9890-OF.....	22
F-9	Call log 21-10584 dated 08/24/2021.....	23



TOWN'S EXHIBITS, continued

Exhibit	Description	Page
F-10	Narrative for Patrol Supervisor Derek J. Dutra, Ref. 21-10584-OF.....	23
F-11	Call log 21-10941 dated 08/26/2021.....	23
F-12	Narrative for Patrol Christopher R. Arrigo, Ref. 21-10941 .....	23
G-1	Memorandum dated October 12, 2021, re potential noise violation at Perks.....	24
G-2	Call log 21-13152 dated 10/03/2021.....	24
G-3	Incident report 21-13152 .....	24
G-4	Narrative for Detective Sergeant Robert C. Brackett, Ref. 21-13152-OF .....	25
H	Harwich Board of Selectmen liquor regulations.....	25

LICENSEE'S EXHIBITS

Exhibit	Description	Page
1	Photograph.....	65
2	Photograph.....	65

## 1 PROCEEDINGS

2 (Hearing called to order Tuesday, November 23, 2021, at  
3 1:00 p.m.)

4 THE HEARING OFFICER: Good afternoon,  
5 everybody. Seeing that it is 1:00 p.m. on Tuesday,  
6 November 23, 2012, I will now call this show cause  
7 hearing to order relative to the establishment known as  
8 Lucky Labrador Incorporated doing business as Perks,  
9 located at 545 Route 28, Harwich Port,

10 First, I will read into the record the  
11 notice of show cause hearing. Then I'll go over some  
12 administrative matters. Then we'll introduce everybody  
13 for the record, get folks to sign in, and get underway.

14 I am Joe Powers, Town Administrator for  
15 the Town of Harwich, and as such I have been designated  
16 by the Harwich Board of Selectmen, who we know to be the  
17 local licensing authority -- they have designated me a  
18 hearing officer to sit in on this show cause hearing.

19 And the purpose of this hearing is for me  
20 to gather as much facts and information as all parties  
21 that are present and participating will present for the  
22 record and then for me to make determinations and follow  
23 up with the Board of Selectmen as the local licensing  
24 authority.

1                   The notice is as follows: "Harwich Board  
2 of Selectmen Notice of Show Cause Hearing, Alleged  
3 Violations of Conditions of Liquor License October 20,  
4 2021: The Town Administrator, acting as the Hearing  
5 Officer for the Board of Selectmen, will hold a show  
6 cause hearing on Wednesday, October 20, 2021, at  
7 1:00 p.m., for the purpose of consideration of alleged  
8 liquor license violations by Lucky Labrador Incorporated  
9 doing business as Perks, located at 545 Route 28,  
10 Harwich Port.

11                   "The Hearing Officer will consider  
12 possible penalties, including modifications, suspension,  
13 revocation, or cancellation of said license. All  
14 members of the public having an interest in the topic  
15 are cordially invited to attend the public hearing,  
16 which will be held in the Griffin Room at Harwich Town  
17 Hall, 732 Main Street, Harwich, Massachusetts 02645,"  
18 under my name, Joseph F. Powers, under my title, Town  
19 Administrator, as published in the Cape Cod Times on  
20 September 27, 2021.

21                   That matter was continued on November 10,  
22 2021; and that was continued on November 10, 2021, to  
23 this date of November 23, 2021, which brings us here  
24 today.

1                   Again, I have indicated for the record I  
2 am Joe Powers, Town Administrator and, for purposes of  
3 today, Hearing Officer. We are joined by administrative  
4 staff to my immediate left, Danielle Delaney, Executive  
5 Assistant for Licensing for the Town of Harwich; and to  
6 the end left, down the end, we are joined by Janet  
7 Wynne, who is providing stenography services for the  
8 Town of Harwich. That transcript will be relied upon by  
9 me and the Board of Selectmen, and that transcript will  
10 be made available to the parties present here today and  
11 all other interested parties. And then, beyond that, to  
12 Janet's left is Caleb Ladue. Caleb is here from the  
13 Town of Harwich on behalf of Channel 18, and he is  
14 providing video recording services. This hearing is  
15 being video recorded, but it is not being recorded for  
16 broadcast purposes. Rather, it will become another  
17 record -- item on the record that will be shared with  
18 all interested parties once available.

19                   The administrative matter -- you can see  
20 that we are basking in the daylight/sunlight and some  
21 additional lights over the mural, and that's because  
22 this room experienced an electrical fire earlier this  
23 morning that, mercifully, was only contained to the  
24 light switches. So that means that the lights do not

1 work. However, all other electrical outlets work; so  
2 that Janet's able to use her equipment and other folks  
3 are able to use their equipment and Caleb is able to  
4 record this.

5 I have spoken --

6 (Stenographer requests to go off the  
7 record.)

8 THE HEARING OFFICER: We'll take a moment  
9 so Janet can plug in.

10 All set. Janet has power, which means  
11 we're going to get back into it.

12 Where did I leave off, Danielle?

13 MR. BLAKE: You were talking about the  
14 power.

15 THE HEARING OFFICER: Oh, thank you.  
16 Yeah, power.

17 So I did have a conversation with the  
18 attorneys, both for the Town and for the licensee. They  
19 have been made aware of the situation. They have no  
20 objection. The Town has no objection. So we will  
21 proceed working with sunlight.

22 At this point in time I would ask the  
23 attorneys to present themselves for the record, and I  
24 will start with Attorney Blake for the Town.

1 MR. BLAKE: Jeffrey Blake here, Town  
2 counsel.

3 MR. ZEHNDER: And for the record, my name  
4 is Ben Zehnder, on behalf of Perks.

5 THE HEARING OFFICER: Thank you.

6 And, Attorney Zehnder, before you have  
7 your client come up, what I'd ask now is, everybody else  
8 that is present, we would ask you to come forward,  
9 please. And I want to emphasize we are asking you to  
10 print in -- by that we mean please don't sign. This is  
11 for the benefit of Ms. Delaney to create a record of all  
12 parties who are attending today. So we would ask you to  
13 print your name.

14 And are we asking for contact  
15 information?

16 MS. DELANEY: No.

17 THE HEARING OFFICER: Okay.

18 So if everyone would just come forward  
19 and print their names in on the sheet in front of us.

20 (Audience complies.)

21 THE HEARING OFFICER: Folks, we're  
22 looking for everyone present to be recorded on the  
23 record; so those of you whose names were not announced,  
24 please come up and print your name.

1 SPEAKER: I think some people already  
2 signed in.

3 MS. DELANEY: As long as everyone has  
4 signed in.

5 THE HEARING OFFICER: Say again.

6 MS. DELANEY: As long as everyone has  
7 signed in.

8 THE HEARING OFFICER: All right.  
9 So has everyone in the room signed the  
10 document?

11 Okay, great. Thanks, everybody.

12 At this point, Attorney Blake, I will  
13 turn it over to you to begin the proceedings with any  
14 introduction of exhibits and/or witnesses for the  
15 record, please.

16 MR. BLAKE: Thank you, Mr. Hearing  
17 Officer.

18 As you know, my name is Jeffrey Blake. I  
19 am going to start by taking care of the administrative  
20 part of this. We have a rather large packet of  
21 information today; so I'm going to try to just go  
22 through it relatively quickly.

23 I would like to have as Exhibit A the  
24 Harwich Board of Selectmen notice of show cause hearing

1 dated October 20, 2021, admitted as Exhibit A. You read  
2 that into the record earlier.

3           Additionally, for Exhibit B there is  
4 another Harwich Board of Selectmen notice of show cause  
5 hearing dated November 23, 2021. I would like to have  
6 that admitted into the record as Exhibit B.

7           THE HEARING OFFICER: Thank you. So  
8 recorded.

9           (Exhibit A, notice of show cause hearing  
10           October 20, 2021, so marked.)

11           (Exhibit B, notice of show cause hearing  
12           November 23, 2021, so marked.)

13           THE HEARING OFFICER: Please continue.

14           MR. BLAKE: With respect to letters to  
15 the establishment, I have a September 15, 2021, notice  
16 of disciplinary hearing to Lucky Labrador Inc. doing  
17 business as Perks. I would like that as C1.

18           THE HEARING OFFICER: That is entered as  
19 C-1.

20           (Exhibit C-1, letter dated September 15,  
21           2021, re notice of disciplinary hearing,  
22           so marked.)

23           MR. BLAKE: September 30, 2021, notice of  
24 a disciplinary hearing continuation to Lucky Labrador



1 Inc. doing business as Perks, that would be C2.

2 THE HEARING OFFICER: So entered. Thank  
3 you.

4 (Exhibit C-2, letter dated September 30,  
5 2021, re notice of disciplinary hearing  
6 continuation, so marked.)

7 MR. BLAKE: November 2, 2021, notice of  
8 disciplinary hearing, Lucky Labrador Inc. doing business  
9 as Perks, C3.

10 THE HEARING OFFICER: Thank you. C-3 so  
11 noted.

12 (Exhibit C-3, letter dated November 2,  
13 2021, re notice of disciplinary hearing,  
14 so marked.)

15 MR. BLAKE: November 25, 2021, notice of  
16 disciplinary hearing continuation, Lucky Labrador Inc.  
17 doing business as Perks, that would be C4.

18 THE HEARING OFFICER: Thank you. C-4 so  
19 entered.

20 (Exhibit C-4, letter dated November 25,  
21 2021, re notice of disciplinary hearing  
22 continuation, so marked.)

23 MR. BLAKE: Excuse me. With respect to  
24 the next exhibits, I'm going to start them with D. I

1 would ask that D1 be the alcoholic -- the license for  
2 alcoholic beverages, the licensing blah-blah-blah, all  
3 kinds of -- an all-alcohol license to be drunk on  
4 premises, dated March 24, 2001. That would be D1.

5 THE HEARING OFFICER: Thank you. So  
6 entered as D-1.

7 (Exhibit D-1, license for alcoholic  
8 beverages, so marked.)

9 MR. BLAKE: D2 would be the common vic  
10 license, number 19-08S, and it is dated May 3, 2021.  
11 That would be D2.

12 THE HEARING OFFICER: Thank you. So  
13 entered as D-2.

14 (Exhibit D-2, license for innholders,  
15 common victuallers and other keepers of  
16 restaurants and other establishments  
17 dated 5/3/2021, so marked.)

18 MR. BLAKE: D3 is a similar license, a  
19 common vic license for Lucky Labrador, and that is dated  
20 June 28, 2021.

21 D4 --

22 THE HEARING OFFICER: Counsel, hold on,  
23 if you would, please. Can you show me that one, please.  
24 All right. So --

1 MR. BLAKE: There's a different date on  
2 it.

3 THE HEARING OFFICER: I know. So I  
4 have -- what I marked as D2 has 5/3/2021 as the date?

5 MR. BLAKE: Yeah.

6 THE HEARING OFFICER: That is correct as  
7 D2?

8 MR. BLAKE: Yes.

9 THE HEARING OFFICER: And then D3 is  
10 6/28/2021?

11 MR. BLAKE: That's correct.

12 THE HEARING OFFICER: Thank you.

13 (Exhibit D-3, license for innholders,  
14 common victuallers and other keepers of  
15 restaurants and other establishments  
16 dated 6/28/2021, so marked.)

17 MR. BLAKE: The next one would be a  
18 license for public entertainment on Sundays. I'd like  
19 to mark this as D4, and this would be the Sunday public  
20 entertainment license.

21 D5 is another --

22 THE HEARING OFFICER: Thank you, Counsel.  
23 D4 is so entered.

24 (Exhibit D-4, license for public

1 entertainment on Sunday, so marked.)

2 MR. BLAKE: The other one is a public  
3 license -- entertainment license, but this one is for --  
4 this one is for Sundays as well. It would be D5.

5 THE HEARING OFFICER: So, Counsel, just  
6 to be clear, D-4 is a license for public entertainment  
7 on Sunday, and it indicates Sundays 6:00 p.m. to  
8 10:00 p.m., recorded music or live music with  
9 amplification for dancing.

10 And then D5 is understood to be for the  
11 public entertainment on Sunday, Sundays 3:00 p.m. to  
12 12:00 a.m., recorded music or live music with  
13 amplification inside, and then it further says Sundays  
14 1:00 p.m. to 12:00 a.m., ambient music and/or television  
15 inside. And that one is D-5; correct?

16 MR. BLAKE: Correct.

17 THE HEARING OFFICER: Thank you. So  
18 entered.

19 (Exhibit D-5, 2021 license for public  
20 entertainment on Sunday, so marked.)

21 MR. BLAKE: D6 would be another common  
22 victualler's license dated May 3, 2021.

23 THE HEARING OFFICER: Thank you. So  
24 entered as D-6.

1 (Exhibit D-6, common victualler's  
2 license, so marked.)

3 MR. BLAKE: Next, I'd like to go on to  
4 past discipline. For Exhibit E -- actually, it would be  
5 E1 -- a memorandum dated August 3, 2020, from -- to the  
6 Board of Selectmen from the Town -- at-the-time Town  
7 Interim Administrator regarding entertainment license  
8 violations.

9 THE HEARING OFFICER: Thank you. And for  
10 the record, E-1 is a three-page document; correct?

11 MR. BLAKE: It's a multi-page document.  
12 It's a three-page document.

13 THE HEARING OFFICER: Thank you. So  
14 entered.

15 (Exhibit E-1, memorandum dated August 3,  
16 2020, re recommended action following  
17 disciplinary hearing held on June 30,  
18 2020, re Go Industries Inc. d/b/a Perks  
19 entertainment license violations, so  
20 marked.)

21 MR. BLAKE: E2 would be a disciplinary  
22 hearing for violation -- subject: disciplinary hearing  
23 for violations of entertainment license dated  
24 October 29, 2018, and this goes to Mr. Taylor Powell.

1 THE HEARING OFFICER: So entered as E-2.  
2 (Exhibit E-2, letter dated October 29,  
3 2018, re disciplinary hearing for  
4 violations of entertainment license, so  
5 marked.)

6 MR. BLAKE: E-3 would be another --  
7 October 11, 2017, notice of disciplinary action for  
8 violations of entertainment license.

9 THE HEARING OFFICER: So entered as E-3.  
10 (Exhibit E-3, letter dated October 11,  
11 2017, re notice of disciplinary action  
12 for violations of entertainment license,  
13 so marked.)

14 MR. BLAKE: The next would be an  
15 October 3, 2016, letter of warning for violations of an  
16 entertainment license, again made out to Mr. Taylor  
17 Powell.

18 THE HEARING OFFICER: So entered as E-4.  
19 (Exhibit E-4, letter dated October 3,  
20 2016, re letter of warning for  
21 violations of an entertainment license,  
22 so marked.)

23 MR. BLAKE: Next are going to be the  
24 police reports. And, Mr. Hearing Officer, I'm just

1 going to go down through the police reports and then go  
2 back and look for live testimony on these -- but just to  
3 gets all the exhibits in.

4 I'd ask that this one be marked as  
5 Exhibit F1. It is a memorandum from the Chief to the  
6 Board of Selectmen and the Town Administrator dated  
7 August 30, 2021, regarding potential violations at  
8 Perks.

9 THE HEARING OFFICER: So entered as F-1.  
10 (Exhibit F-1, memorandum dated August 30,  
11 2021, re potential violations at Perks,  
12 so marked.)

13 MR. BLAKE: F-2 would be a, so-called,  
14 call log for log number 21-9187.

15 THE HEARING OFFICER: So entered as F-2.  
16 (Exhibit F-2, call log 21-9187 dated  
17 07/24/2021, so marked.)

18 MR. BLAKE: F3 is going to be a narrative  
19 from Patrol Keith Lincoln referencing 21-91870F.

20 And then a supplemental narrative for  
21 Patrol Keith Lincoln referencing 21-91870F.

22 THE HEARING OFFICER: So F-3 is entered  
23 into the record.

24 (Exhibit F-3, narrative for Patrol

1                   Keith E. Lincoln, Ref. 21-9187-OF, so  
2                   marked.)

3                   THE HEARING OFFICER: F-4 is a  
4 supplemental entered into the record; correct?

5                   MR. BLAKE: That's correct.

6                   THE HEARING OFFICER: They have the same  
7 dates. Thank you. So entered.

8                   (Exhibit F-4, supplemental narrative for  
9                   Patrol Keith E. Lincoln,  
10                  Ref. 21-9187-OF, so marked.)

11                  MR. BLAKE: F5 is an estimate from  
12 Carter's Landscaping Services.

13                  THE HEARING OFFICER: F-5. Thank you.  
14 So entered.

15                  (Exhibit F-5, estimate from Carter's  
16                  Landscaping Services, so marked.)

17                  MR. BLAKE: F6 is a narrative -- a  
18 narrative for Detective Sergeant Robert Brackett, the  
19 reference being 21-9187OF. And that's -- one, two,  
20 three -- four pages.

21                  THE HEARING OFFICER: Thank you. F-5  
22 [sic], a four-page document, is so entered.

23                  (Exhibit F-6, narrative for Detective  
24                  Sergeant Robert C. Brackett,



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

Ref. 21-9187-OF, so marked.)

MR. ZEHNDER: Um --

MR. BLAKE: Do you have the same thing?

MR. ZEHNDER: I think that's F-6.

MR. BLAKE: Yeah, that's F-6. Did I say "5"?

MR. ZEHNDER: No, no. The hearing officer said "F-5."

MR. BLAKE: Oh.

THE HEARING OFFICER: I certainly did. Thank you, Counsel. F-5 is a one-pager. F-6 is the four-pager.

MR. BLAKE: A multi-pager.

THE HEARING OFFICER: Thank you.

MR. BLAKE: F-7 would be a call log for 21-9890.

THE HEARING OFFICER: F-7 so entered. (Exhibit F-7, call log 21-9890 dated 08/07/2021, so marked.)

MR. BLAKE: F-8 is a narrative for Patrol Supervisor Keith Kannally referencing 21-9890.

THE HEARING OFFICER: F8 so entered. (Exhibit F-8, narrative for Patrol Supervisor Keith T. Kannally,

1 Ref. 21-9890-OF, so marked.)

2 MR. BLAKE: F9 is a call log for call  
3 number 21-10584.

4 THE HEARING OFFICER: F9 so entered.  
5 (Exhibit F-9, call log 21-10584 dated  
6 08/19/2021, so marked.)

7 MR. BLAKE: F10 is a narrative for Patrol  
8 Supervisor Derek Dutra referencing 21-10584-OF.

9 THE HEARING OFFICER: F10 is so entered.  
10 (Exhibit F-10, narrative for Patrol  
11 Supervisor Derek J. Dutra,  
12 Ref. 21-10584-OF, so marked.)

13 MR. BLAKE: F11 is a call log for  
14 21-10941.

15 THE HEARING OFFICER: F11 so noted.  
16 (Exhibit F-11, call log 21-10941 dated  
17 08/26/2021, so marked.)

18 MR. BLAKE: F12 is a narrative for Patrol  
19 Christopher Arrigo, and that's referencing 21-10941.

20 THE HEARING OFFICER: F12, so noted.  
21 (Exhibit F-12, narrative for Patrol  
22 Christopher R. Arrigo, Ref. 21-10941, so  
23 marked.)

24 MR. BLAKE: I would like to start with

1 Exhibit G-1 as a memorandum from the Chief to the Board  
2 of Selectmen and the Town Administrator regarding  
3 potential noise violations at Perks, dated October 12,  
4 2021.

5 THE HEARING OFFICER: Thank you. G-1 is  
6 so entered.

7 (Exhibit G-1, memorandum dated  
8 October 12, 2021, re potential noise  
9 violation at Perks, so marked.)

10 MR. BLAKE: The next one would be G-2,  
11 which is a call log 21-13152.

12 THE HEARING OFFICER: G-2 so entered.  
13 (Exhibit G-2, call log 21-13152 dated  
14 10/03/2021, so marked.)

15 MR. BLAKE: G3 is an incident report, I  
16 believe, number 21-13152.

17 THE HEARING OFFICER: And, again, that is  
18 G-3; correct?

19 MR. BLAKE: G-3, correct.

20 THE HEARING OFFICER: Thank you. So  
21 recorded.

22 (Exhibit G-3, incident report 21-13152,  
23 so marked.)

24 MR. BLAKE: G4 would be a narrative for

1 Detective Sergeant Robert C. Brackett regarding case  
2 number 21-13152OF. That's a two-page document.

3 THE HEARING OFFICER: Thank you. G-4 is  
4 so entered as two pages.

5 (Exhibit G-4, narrative for Detective  
6 Sergeant Robert C. Brackett,  
7 Ref. 21-13152-OF, so marked.)

8 MR. BLAKE: And then Exhibit H would be  
9 the Harwich -- the Board of Selectmen's liquor license  
10 regulations.

11 THE HEARING OFFICER: And Exhibit H is  
12 understood to be a 21-page document, with the first page  
13 being the table of contents and the remaining being  
14 20 pages, numbered. So recorded.

15 (Exhibit H, Harwich Board of Selectmen  
16 liquor license regulations, so marked.)

17 THE HEARING OFFICER: Counsel, if I may,  
18 if you don't have any more exhibits, I think it's  
19 prudent for me to ask, anyone that is expecting to  
20 provide testimony today, if you would please rise. If  
21 you would raise your right hand, please.

22 WITNESSES, sworn.

23 THE HEARING OFFICER: Attorney Blake,  
24 your witnesses.

1 MR. BLAKE: Thank you, Mr. Hearing  
2 Officer.

3 For my first witness I would like to call  
4 Patrol Keith Lincoln.

5 SPEAKER: Officer Lincoln is not here  
6 today.

7 MR. BLAKE: So then, I would like to call  
8 Detective Sergeant Robert Brackett.

9 DETECTIVE SERGEANT BRACKETT: Good  
10 afternoon, everybody.  
11 DETECTIVE SERGEANT ROBERT C. BRACKETT, previously sworn.

12 EXAMINATION

13 BY MR. BLAKE:

14 Q. Good afternoon, sir. How are you this  
15 afternoon?

16 A. I am doing well. Thank you.

17 Q. Sir, can you spell your last name for the  
18 record.

19 A. Absolutely. It's B-R-A-C-K-E-T-T.

20 Q. And, sir, do you know why you're here?

21 A. I do.

22 Q. What's your understanding of why you're  
23 here?

24 A. For an incident that occurred at

1 547 Route 28 on the night of July 24th -- or, the  
2 morning, I should say, of July 24th -- 2021.

3 Q. Okay. And did you investigate that  
4 incident?

5 A. The initial incident, I did not.

6 Q. Okay. But did you ultimately investigate --  
7 were you asked to investigate the incident?

8 A. I was.

9 Q. Okay. Let's -- I keep saying "the  
10 incident." Why don't you tell the hearing officer what  
11 your understanding of your assignment was for the  
12 investigation.

13 A. Sure. So, on the early morning hours of  
14 July 24th, at about 1:00 a.m., Officer Lincoln had  
15 investigated an incident that occurred at 547 Route 28.  
16 He had been flagged down by the residents of that  
17 address. It's a house that resides right -- to the east  
18 right next door and abutting the Perks Restaurant --  
19 well, Perks Beer Garden.

20 He had been stopped by people at that  
21 residence because there was a little commotion there in  
22 regards to a person that had broken the fence at that  
23 location that runs along Route 28 -- the front yard of  
24 547 Route 28.

1           It appeared that a gentleman that had  
2 left one of the establishments, whether Perks or the  
3 Port Restaurant, was intoxicated and either fell into or  
4 leaned on a PVC section of fencing that was in front of  
5 that residence.

6           A resident of that house, a Mr. Jay  
7 Sawin, was out -- had been on the front porch at that  
8 time, observed it, and then confronted the person that  
9 was involved in that. That person was subsequently  
10 identified as Andrew Bonavita (phonetic) of Longmeadow,  
11 Massachusetts. There was conversation between them.  
12 Officer Lincoln got involved in that conversation.

13           It was determined that Mr. Bonavita  
14 was -- had been -- was heavily intoxicated. He had  
15 caused damage to the fence. Whether he fell into it,  
16 sat on it, he caused damage. He had offered to pay for  
17 that fence.

18           Mr. Sawin spoke with Officer Lincoln  
19 subsequently. Officer Lincoln was not able to -- at the  
20 time, it was learned that Mr. Bonavita was intoxicated,  
21 had come from one of the establishments. He did not  
22 have any identification on him. His brother was there  
23 as well. His brother was sober at that time.

24           And then that was the end of that

1 incident that night. Mr. Lincoln had identified  
2 everybody -- Officer Lincoln identified everybody there.  
3 It was arranged that Mr. Bonavita would subsequently pay  
4 for that fence. And that was all that occurred at that  
5 time.

6 Subsequent to that, the Sawins had a  
7 meeting with Chief Guillemette, subsequent to that  
8 incident, and it was a meeting about that incident.  
9 Mr. Sawin and, I believe, his mother had revealed some  
10 more -- that they had some more information in regards  
11 to that incident that they revealed to Chief  
12 Guillemette. Chief Guillemette ultimately asked me to  
13 follow up with them to learn of what that information  
14 was.

15 Q. Okay. Well, did you follow up?

16 A. I did.

17 Q. And what did you learn in your follow-up?

18 A. Friday, July 30th, I contacted Jay Sawin by  
19 telephone.

20 Q. Who is Jay Sawin?

21 A. What's that?

22 Q. Who is Jay Sawin?

23 A. His family owns the residence located at  
24 547 Route 28. I believe it's commonly identified as



1 Grey Gull.

2 Q. Okay. And it's right beside the Perk?

3 A. If you're looking at it, it's just to the  
4 left on the east side of Perks Bar. That's correct.

5 So I spoke to Jay Sawin by telephone. He  
6 could identify that his family owns that residence, that  
7 it is right next to the Perks Restaurant -- I keep,  
8 sorry, referring to it as "restaurant" -- Perks Beer  
9 Garden. It's also -- just to the other side of Perks is  
10 the Port Restaurant and Bar as well.

11 He stated that, due to the ongoing issues  
12 that his family has at closing time of both  
13 establishments, they routinely try to have somebody stay  
14 outside on the front porch of their residence at closing  
15 time. They seem to have ongoing issues at closing time,  
16 and they have concerns of what -- they've had some  
17 issues in the past with closing time at their house.

18 He stated -- he went over the event that  
19 happened with Officer Lincoln. He further stated that  
20 his mother had taken photos of the interaction between  
21 Officer Lincoln and Mr. Bonavita and his brother at the  
22 time that Officer Lincoln was investigating that.

23 They further stated that his mother had  
24 also taken a video earlier in that evening from an

1 outbuilding that they have. They have an outbuilding  
2 that is behind the main residence. It's a two-story  
3 outbuilding. It has windows that overlook the open area  
4 of the outside bar of Perks Beer Garden. He stated that  
5 earlier that evening his mother had taken a video of the  
6 area of the outside bar at Perks. It was being taken  
7 just due to the ongoing issues that they have with Perks  
8 at closing time.

9           So he stated that, while they were  
10 reviewing that video, subsequent to this incident they  
11 had observed that the gentleman that had been speaking  
12 with Officer Lincoln, identified as Mr. Bonavita, they  
13 had also observed subsequently when reviewing the video  
14 that his mother, Mrs. Sawin, had taken of the outside  
15 area of the bar earlier in that evening. They had based  
16 that off of looking at the picture of the person that  
17 Officer Lincoln was talking to and reviewing the footage  
18 that they had taken earlier in the evening.

19           Mr. Sawin also was concerned because he  
20 knew that Mr. Bonavita -- he had learned during the  
21 investigation with Officer Lincoln that Mr. Bonavita was  
22 underage. He also learned that -- he had concerns that  
23 Mr. Bonavita was stating that he had been at the Port  
24 Restaurant, where he had been drinking, and then he had

1 obviously seen on the video that he was at Perks,  
2 instead of the Port.

3 He also raised concerns that he believed  
4 that Mr. Bonavita was a regular customer at Perks and  
5 that he believed that there was an underlying theme of,  
6 people that were drinking at Perks, that, if they got  
7 into any sort of issues subsequent to leaving Perks,  
8 that they were to say that they were at the Port  
9 Restaurant.

10 Q. Did you interview Bonavita?

11 A. I did not. Attempts for me to interview  
12 Bonavita went -- all calls went unanswered.

13 THE HEARING OFFICER: Detective, I'm  
14 sorry.

15 Can you repeat the question. I didn't  
16 hear your question.

17 MR. BLAKE: Oh, I'm sorry. I asked if he  
18 interviewed Mr. Bonavita.

19 THE HEARING OFFICER: And what was your  
20 answer?

21 THE WITNESS: Multiple attempts were made  
22 by me to contact Mr. Bonavita, and the calls all went  
23 unanswered. And his voicemail box was full; so I could  
24 never leave a message. Multiple attempts were made.

1 Q. Do you know if he is, in fact, underage?

2 A. He is underage based on the identification  
3 made by Officer Lincoln.

4 Q. I thought you said that he didn't have any  
5 identification with him.

6 A. He didn't. He was subsequently able to  
7 identify him with the assistance of his brother and  
8 through the registry of motor vehicles --

9 Q. Got it. Okay.

10 A. -- which provides -- you're able to get a  
11 picture ID when you run somebody's license status.

12 Q. I understand.

13 A. So Officer Lincoln was able to identify  
14 Mr. Bonavita as being 20 years of age.

15 MR. ZEHNDER: Mr. Hearing Officer, I  
16 would like to move to strike any testimony about the age  
17 of Mr. Bonavita unless the officer intends to put in any  
18 evidence or present a witness that gives evidence of his  
19 age.

20 THE HEARING OFFICER: So thank you,  
21 Attorney Zehnder. Recognizing that you haven't had a  
22 chance to sit through one of my hearings --

23 MR. ZEHNDER: Yes.

24 THE HEARING OFFICER: -- I will tell you

1 that I'm a hearing officer, I'm not a judge. This is  
2 not a court. So what I ask counsels to do is, as you  
3 have concerns, what you may consider to be objections,  
4 that you counter that in your cross-examination, for  
5 lack of a better phrase, and, as well, in your  
6 summations.

7 MR. ZEHNDER: I will. Thank you.

8 THE HEARING OFFICER: So I will not be  
9 responding to objections per se but, rather, look to you  
10 to bring up the concerns, as I'll call them, during your  
11 opportunity.

12 MR. ZEHNDER: Thank you, Mr. Powers.

13 THE HEARING OFFICER: Thank you.

14 Detective Sergeant, if you will continue,  
15 please.

16 THE WITNESS: Thank you.

17 A. I subsequently asked Jay Sawins if he could  
18 forward me any pictures or videos that he had regarding  
19 the incident.

20 That evening at about 5:23 p.m. I  
21 received an email from Mr. Sawins. It contained four  
22 images, as well as a video, in that. The first image  
23 that I reviewed was labeled -- it was labeled by Jay  
24 Sawin -- as it was provided me, it was labeled --

1 entitled "Officer Lincoln." The image appears to be a  
2 still photo that was taken from a video. The image is  
3 date-stamped "Saturday" and time-stamped "1:10 a.m."  
4 This time would be consistent with the time that Officer  
5 Lincoln would have been investigating the incident on  
6 Saturday morning, July 24th.

7 It should be noted that the image appears  
8 to be taken from an Apple iPhone. It's known that an  
9 iPhone does not date-stamp an image until that image is  
10 over a week old. So if you take a picture on a  
11 Saturday, it's going to say "Saturday" at the top until  
12 you pass the next Saturday, and then it will be  
13 titled -- it will be labeled with an actual day.

14 So, all the way up until the next  
15 Saturday, that picture in somebody's phone will be  
16 labeled "Saturday," as opposed to actually having a date  
17 stamp, if that makes sense to you.

18 Q. Mm-hmm.

19 A. So this picture was dated -- I received it  
20 on a Friday. This was dated "Saturday --" this was  
21 labeled "Saturday, 1:10 a.m." It should be noted, based  
22 on the --

23 THE HEARING OFFICER: Detective  
24 Sergeant --

1 THE WITNESS: Yes.

2 THE HEARING OFFICER: -- if you could  
3 yield for a minute.

4 Is this an exhibit, and is it going to be  
5 introduced as an exhibit?

6 MR. BLAKE: I've never seen it.

7 THE HEARING OFFICER: Okay. Neither have  
8 I, and we're talking about it. So how do we wish to  
9 address this?

10 MR. BLAKE: I think the report itself is  
11 fine.

12 THE HEARING OFFICER: So I don't know  
13 that it's proper at this point to show the photo unless  
14 we're going to share the photo.

15 MR. BLAKE: We have no -- the Rules of  
16 Evidence don't apply here.

17 THE HEARING OFFICER: No, I know. I'm  
18 telling you what I think is proper.

19 MR. BLAKE: Okay.

20 THE HEARING OFFICER: If the speaker is  
21 going to refer to it, let's make copies and share it.

22 MR. BLAKE: Okay.

23 THE HEARING OFFICER: Otherwise, it's  
24 either an exhibit or it's not.

1 MR. ZEHNDER: Mr. Powers --

2 THE HEARING OFFICER: Mr. Zehnder.

3 MR. ZEHNDER: -- I think a description of  
4 either the photos or a video, or a description of the  
5 technological aspects, is prejudicial to my client and  
6 we ask that it be admitted into evidence to be able to  
7 give details.

8 THE HEARING OFFICER: So you used the "E"  
9 word of "evidence." Again, I would say that I'm  
10 collecting exhibits and documents. And with regard to  
11 the concept of prejudicial, I'm not wired for that, so  
12 to speak. What I'm trying to get to is, we have a  
13 witness who's referring to a document, the document is  
14 not yet presented to the Town. Either we can present  
15 that to the Town counsel -- I would ask you to add it as  
16 an exhibit, if the Town wants to, so we can continue  
17 this discussion.

18 MR. BLAKE: We'll have to make copies, if  
19 you want to take a recess to copy it.

20 THE HEARING OFFICER: Yeah. So we'll do  
21 that. But what I would ask is if there is any other  
22 material that may be relied upon during testimony today  
23 that can be shared as exhibits. And that would be a  
24 statement to both sides.



1                   And to the gentleman that just came in,  
2 if you could just print your name on our form here so  
3 you can tell us who you are.

4                   So we're going to take a five-minute  
5 recess at 1:32, to come back at 1:37, and I would like  
6 to speak to both counsels, if I could, please.

7                   MR. BLAKE: Sure.

8                   THE HEARING OFFICER: And, Chief  
9 Guillemette, could you come over too, please.

10                   (Recess from 1:32 p.m. to 1:41 p.m.)

11                   THE HEARING OFFICER: Come back to order.  
12 It's 1:41. I apologize for the delay.

13                   There's a couple of things I want to get  
14 onto the record that I've had in conversation. First I  
15 just want to emphasize, for the benefit of everyone  
16 present, despite how I may come off, I do not intend to  
17 come across as a judge. I'm not. I'm not even an  
18 attorney. I only took two prelaw classes in undergrad.  
19 That is to say, I'm a town administrator who is a  
20 hearing officer who has a parliamentary background,  
21 which is a bad thing for these kind of hearings,  
22 meaning, while I talk about exhibits and witnesses and  
23 testimony and all that, this is not a judicial, or even  
24 a quasi judicial, hearing as is allowed under the

1 statutes. This is me as a hearing officer delegated by  
2 the board to try to amass facts, and so facts as the  
3 Town understands them to be presented, both in the form  
4 of documents, aka exhibits, as well as testimony  
5 provided, and facts as presented by representatives and  
6 counsel of the establishment in the same form of  
7 documents known as exhibits, so that objections and  
8 hearsay and admissibility and inadmissibility (making  
9 nonverbal sound), right over my head; so it's just  
10 whatever facts you want to put on the record. So thank  
11 you for that.

12 In a moment Attorney Blake is going to  
13 tell us that we're going to accept four new exhibits,  
14 which are four 8 1/2-by-11 sheets of paper with images  
15 on them.

16 And, Attorney Blake, are these addenda to  
17 F-6?

18 MR. BLAKE: Yes. They'll be F6A, F6B,  
19 F6C, and F6D.

20 THE HEARING OFFICER: So to further muddy  
21 the water, F-6 was presently added -- was previously  
22 added as a four-page exhibit, and now we're adding an  
23 additional four pages, and those will be recorded as  
24 F6A, F6B, F6C, and F6D.

1 Counsel, did you get all that?

2 MR. ZEHNDER: I did. Thank you.

3 THE HEARING OFFICER: Thank you.

4 And, Attorney Blake, let me just number  
5 these, and then we'll turn it back over to you for your  
6 witness.

7 MR. BLAKE: Thanks.

8 (Exhibits F-6A through F-6D, photographs,  
9 so marked.)

10 THE HEARING OFFICER: I thank everybody  
11 for their patience. It's 1:43, and we will resume the  
12 witness's presentation of testimony.

13 So, Attorney Blake -- Attorney Blake,  
14 excuse me, the witnesses are back to you.

15 MR. BLAKE: All right. Thank you.

16 BY MR. BLAKE:

17 Q. So, Detective Sergeant, you were indicating  
18 that you had investigated as -- I think what you were  
19 trying to say is as to whether or not the individual  
20 that broke the fence was, in fact, at Perks or at Port;  
21 is that correct?

22 A. That is correct.

23 Q. And you did an investigation?

24 A. I did.

1 Q. And did you ultimately come to a conclusion?

2 A. I did.

3 Q. What was your conclusion?

4 A. That the gentleman that was speaking to  
5 Officer Lincoln out in front of the residence at  
6 547 Route 28 on the night of July -- on the morning of  
7 July 24th who was identified as Andrew Bonavita, who, as  
8 provided in this report, Mr. Bonavita has a date of  
9 birth of 11/4 of 2000 --

10 Q. Yeah.

11 A. -- which makes him 20 years of age, I  
12 concluded that he had been present and was at the bar  
13 and served a drink at Perks Beer Garden.

14 Q. Now, when you say he was served a drink, how  
15 did you know that?

16 A. Based on video surveillance.

17 Q. And do you know if it was an alcoholic  
18 drink?

19 A. I do not. Based -- Mr. Bonavita, in the  
20 video that was provided to me, was observed to receive  
21 two cups -- what appeared to be clear plastic cups. One  
22 had a clear substance in it. The second one had a  
23 substance that had a greenish-yellowish tint to it.  
24 Both of those were given to Mr. Bonavita. He was at the

1 bar standing with a female. The female took possession  
2 of the clear plastic cup that had the clear liquid.

3 Mr. Bonavita took possession of the clear plastic cup  
4 that had a greenish-yellow-colored liquid in it.

5 Q. After your investigation, did you, in fact,  
6 go to the Perks Restaurant and talk to the manager?

7 A. I did not.

8 Q. Okay. Did anybody from the police  
9 department talk with him?

10 A. I do not believe they did.

11 Q. Okay. So the Perks doesn't even know of the  
12 allegation?

13 A. I have no idea what the Perks -- what they  
14 know or don't know about this incident.

15 Q. Sure. You said "in the video surveillance."  
16 What was the video -- who surveilled?

17 A. The video that was provided to me by the  
18 Sawin family. And I base it all on the video that was  
19 provided to me. I have no way of verifying that video.  
20 I have no way of verifying if anything had been edited  
21 from that video. And I don't -- when I use the term  
22 "edit," there's nothing to suggest to me that anything  
23 was altered in the video other than maybe edited for  
24 time frame and shortened down. But everything that I

1 saw in the video was consistent with the time and the  
2 date that it appeared that this incident happened.

3 Q. Okay. So we're also -- you speak of a  
4 video, but we just put into evidence four or five --  
5 four photographs. Are those photographs that you  
6 received from the complainant as well?

7 A. These were photographs that were provided to  
8 me by the Sawin family that were taken as still shots  
9 from the video.

10 Q. Okay. And did you identify those premises  
11 as the Perk?

12 A. They could be identified from the video, not  
13 from the still images.

14 Q. Okay. And the gentleman that is shown in  
15 that video, at least -- strike that -- that is shown in  
16 the photographs -- the first one I'm looking at, which  
17 is F6A, shows, it looks like -- is that Officer Lincoln,  
18 his shoulder?

19 A. It's the shoulder area of Officer Lincoln,  
20 yes.

21 Q. Okay. And is this the gentleman that we're  
22 talking about -- Andrew?

23 A. Andrew Bonavita would be identified as the  
24 gentleman on the left with the cranberry/burgundy-

1 colored long-sleeved T, the brownish-blond bushy hair,  
2 and the full beard.

3 Q. Okay. And subsequently -- these photographs  
4 are stills of a video, but you didn't take the video?

5 A. Correct.

6 Q. And have you ever been inside the Perk?

7 A. I have been, yes, in that area of the Perks.

8 Q. Do you recognize that as an area of the  
9 Perk?

10 A. I will say, based on what is in these  
11 photos, it's consistent with the Perks.

12 Q. But as a result of your investigation, did  
13 you charge Mr. Bonavita with underage drinking or --

14 A. No, he was not charged.

15 MR. BLAKE: All right. At this time I  
16 have no further questions.

17 THE HEARING OFFICER: Thank you.

18 Attorney Zehnder, you have the  
19 opportunity to ask questions. And I would offer that,  
20 if you want to -- and I apologize for not saying it  
21 earlier -- if you want to set yourself up at the table,  
22 you're free to do so because we want to have you on the  
23 microphone, and that way you can see the people you're  
24 talking to. Whatever you prefer.

1 MR. ZEHNDER: I'd rather stand, if that's  
2 okay. But is the sound in this room sufficient to hear  
3 what I speak if I'm -- but I can go behind the table.

4 THE HEARING OFFICER: Caleb, what say  
5 you?

6 THE VIDEOGRAPHER: I would prefer you be  
7 at the microphone.

8 MR. ZEHNDER: Okay.

9 THE WITNESS: Good afternoon, Counselor.

10 EXAMINATION

11 BY MR. ZEHNDER:

12 Q. Good afternoon, Detective Sergeant. How are  
13 you today?

14 A. I'm well. Thank you.

15 Q. My name is Ben Zehnder, and I, obviously,  
16 represent Perks.

17 So, Detective Sergeant, have you ever met  
18 Anthony Bonavita?

19 A. Anthony Bonavita?

20 Q. Is it -- Andrew Bonavita. Have you met him?

21 A. Andrew Bonavita, I have not.

22 Q. Okay. Do you know -- independent of the  
23 evidence that's been submitted, do you know what he  
24 looks like?



1           A. I don't. I only -- everything I have is  
2 referenced from these photos.

3           Q. Okay. Have you ever seen a driver's license  
4 for Andrew Bonavita?

5           A. I believe I have.

6           Q. Okay. Where did you see that?

7           A. I would have run -- I believe, at one point  
8 during this investigation, that I ran his registry  
9 information, which would have had a driver's license  
10 photo, and it was consistent with that. But I had not  
11 met him.

12          Q. Okay. So looking at photograph number F6A,  
13 which I don't believe you have in front of you -- do  
14 you?

15                           May I approach, Mr. Powers?

16                           THE HEARING OFFICER: Yes, but I do think  
17 he has it.

18          Q. Do you have F6A?

19          A. I do.

20          Q. Okay. So based on your own personal  
21 knowledge, do you know which, if any, of the individuals  
22 in this picture is Andrew Bonavita?

23          A. Based on what I believe, Andrew Bonavita is  
24 on the left, and his brother, Michael, is on the right.

1 Q. Okay. Thank you.

2 Okay. Now, other than what was  
3 represented to you by Officer Lincoln, do you have any  
4 personal knowledge as to whether or not Mr. Bonavita was  
5 intoxicated?

6 A. I don't.

7 Q. Okay.

8 Looking at photograph F6B, other than  
9 your review of the video, do you have any knowledge as  
10 to whether or not this bar area is within Perks?

11 A. So as I stated, based on the photographs  
12 only, the photographs showing a bar area that is  
13 consistent with Perks, I am not comfortable stating  
14 that, based on the photographs, that that is absolutely  
15 Perks.

16 Q. Okay. Thank you.

17 Now, Detective Sergeant, do you have any  
18 technological training in terms of understanding or  
19 analyzing iPhone data?

20 A. The short answer, based on that, I'd say  
21 no --

22 Q. Okay.

23 A. -- but I've done quite a bit with iPhones,  
24 but I have no formal training in iPhones.

1 Q. Okay. So looking at photograph number F6B,  
2 which is this shot of the bar, can you testify for the  
3 hearing officer as to when this photograph was taken?

4 A. Based on that, I do not. That individual  
5 picture is not date- and time-stamped, but based on --  
6 if you look at the photo that I have that is identified  
7 as image 0178, if you look at the top right, the  
8 handwriting --

9 Q. I see.

10 A. Do you have that?

11 Q. I do.

12 MR. BLAKE: Mm-hmm.

13 A. So that picture there is a screenshot --

14 THE HEARING OFFICER: Bob, if I could --  
15 sorry, Detective Sergeant -- if I could, I believe that  
16 we're looking at F-6D?

17 MR. ZEHNDER: I believe that we are.

18 THE HEARING OFFICER: Thank you.

19 A. So that image there is taken from a video of  
20 a screenshot from an iPhone that is titled "Saturday,  
21 12:39 a.m." So based on that picture, the picture  
22 you're referring to is a zoomed-in version of this  
23 screenshot that is from, presumably, the iPhone of Lisa  
24 Sawin, and that is date-stamped "Saturday" and

1 time-stamped "12:39 a.m."

2 So that is where I am referencing. That  
3 screenshot is just a panned-out version of this. The  
4 image that you initially referred to does not have a  
5 date and time stamp based on it being zoomed in in the  
6 format that it was sent to me. Does that make sense?

7 Q. It does make sense. Thank you very much.

8 Okay. So it's fair to say that, other  
9 than the representation on Exhibit F6D of the date and  
10 time, that's what you're relying upon to inform you of  
11 the date and time that photograph was taken?

12 A. That is correct.

13 Q. Okay. But you have no independent knowledge  
14 as to whether or not that photograph was taken at that  
15 date and time?

16 A. Based on the photographs without the video,  
17 no.

18 Q. Okay. Thank you. Okay.

19 Were you at the property on July 24th?

20 A. I was not.

21 Q. Okay. And based on your conversations with  
22 Officer Lincoln, were you aware of any noise violations  
23 at the property?

24 A. None. I was not aware of it.

1 Q. Were you aware -- other than this particular  
2 allegation, were you aware of service to underage  
3 patrons?

4 A. Could you repeat that, please.

5 Q. Other than this allegation of service to  
6 Mr. Bonavita, were you aware of any allegations of  
7 service to underage persons?

8 A. I am not.

9 Q. Okay. Were you aware of any other  
10 improprieties in the operation on the night of the 24th?

11 A. I was not.

12 Q. Okay. Are you aware of the steps that Perks  
13 took on the night of the 24th to manage their operations  
14 in any way?

15 A. No.

16 Q. Did Detective -- I'm sorry, Detective  
17 Sergeant, did Officer Lincoln relate to you any  
18 observations he made about the steps that the Perks  
19 employees took in the management operations that night?

20 A. Officer Lincoln stated he did not observe  
21 anybody from the establishment out there at closing time  
22 on that night.

23 Q. Okay, great. Okay.

24 Did your office -- and I think you

1 testified to this already -- open any investigation as  
2 to any underage drinking over there on the night of the  
3 24th?

4 A. No, not on that night.

5 Q. Okay. Are you aware of whether the ABCC  
6 opened up any investigation as to underage drinking?

7 A. I don't believe there was.

8 Q. Okay. Did your office open any  
9 investigation as to whether or not the video that was  
10 provided to you was prepared and taken in violation of  
11 state law?

12 A. There's no indication that it was.

13 Q. Are you aware of from where the video was  
14 taken?

15 A. I am.

16 Q. Okay. Where was that?

17 A. The outbuilding behind the Sawin residence.  
18 You have their residence, which is closer to Route 28.  
19 Out behind the residence they have a two-story -- I just  
20 described it as an outbuilding. It appeared -- and,  
21 again, I'm basing this off of what I was told by Jay  
22 Sawin -- that the video was taken from there.

23 In the video it does appear to be  
24 consistent with that. It looks like it's being taken --

1 you could see panes of glass in the video, maybe a shade  
2 being moved, a curtain that might keep blowing in, and  
3 then it's consistent with the location of where the beer  
4 garden is located. And where that is, it's all  
5 consistent. I have no reason to believe that it was  
6 taken from anywhere else.

7 Q. Did the video that you observed contain any  
8 sound elements?

9 A. It did have sound, yeah.

10 Q. Okay. And describe the sound that was in  
11 the video.

12 A. It was outdoor. It was the sound of the  
13 bar, not individualized to any one particular person.

14 Q. Did it pick up --

15 A. It was just the noise from the -- the  
16 background noise from outside of the bar area.

17 Q. Did it pick up any particular conversations?

18 A. No.

19 MR. ZEHNDER: No further questions.

20 THE HEARING OFFICER: Thank you.

21 Attorney Blake, any further witnesses?

22 And, Detective Sergeant, thank you. You  
23 may sit down but please remain.

24 Attorney Blake, do you have any other

1 witnesses to present?

2 MR. BLAKE: Is the person who took the  
3 video here?

4 SPEAKER: Yes, she is.

5 SPEAKER: Me.

6 MR. BLAKE: I would like to call her,  
7 briefly.

8 THE HEARING OFFICER: Sure. Yeah.

9 MR. BLAKE: Ma'am, did you put your hand  
10 on the --

11 SPEAKER: I did.

12 THE HEARING OFFICER: I do know that she  
13 was sworn; so please come forward.

14 SPEAKER: Yes.

15 THE HEARING OFFICER: Could you please  
16 identify yourself for the record.

17 SPEAKER: I'm Lisa Sawin.

18 THE HEARING OFFICER: I'm sorry, could  
19 you say the first name again, please.

20 SPEAKER: Lisa Sawin.

21 LISA SAWIN, previously sworn.

22 EXAMINATION

23 BY MR. BLAKE:

24 Q. Can you spell your last name for the record.



1 A. S-A-W-I-N.

2 Q. Ma'am, you heard the testimony of the  
3 Detective Sergeant; correct?

4 A. Yes, I did.

5 Q. Do you own the house that abuts Perks  
6 Restaurant?

7 A. I do.

8 Q. Perks Beer Garden. I'm sorry, I didn't  
9 mean to --

10 A. I do.

11 Q. And did you --

12 THE HEARING OFFICER: Counsel, if I may,  
13 I just want to add: Can you identify that residence by  
14 address, please.

15 THE WITNESS: 547 Route 28 --

16 THE HEARING OFFICER: Thank you.

17 THE WITNESS: -- Harwich Port.

18 THE HEARING OFFICER: Thank you.

19 Thank you, Counsel.

20 Q. And you heard talk about a video; correct?

21 A. Yes, I did.

22 Q. Did you provide the detective sergeant with  
23 a video?

24 A. Yes, I did.

1 Q. Did you take the video?

2 A. I did.

3 Q. I want you to take a look at a couple of  
4 documents. I'm going to walk up and I'm going to show  
5 them to you. Those documents have been labeled F6A, B,  
6 C, and D. Take a second and take a look at those.

7 Do you recognize those photographs?

8 A. Yes, I do.

9 Q. What are they?

10 A. F6A is -- that was taken after the  
11 establishment was closed and our fence --

12 Q. Well, hang on a second. Do you recognize  
13 those as part of the video that you took?

14 A. Yes.

15 Q. Okay. And when you say "after the  
16 establishment closed," do you recall what day?

17 A. The date?

18 Q. The date.

19 A. The 24th.

20 Q. Of?

21 A. July.

22 Q. Okay. Is that your best recollection, that  
23 it's the 24th of July?

24 A. Yes.

1 Q. Okay. And you say "after the establishment  
2 closed." The first photograph is one of, it looks like,  
3 Officer Lincoln speaking with two men; correct?

4 A. Correct.

5 Q. Did you know who those men were at the time?

6 A. At the time I was told that the one on the  
7 left was the one who broke the fence.

8 Q. Well, who told you that?

9 A. My son.

10 Q. Because your son observed it?

11 A. Jay Sawin. He sits on the porch at night.

12 Q. Gotcha. Okay. So your son told you that  
13 the one on the left broke the fence?

14 A. Correct, and that he had no identification  
15 and that the officer was trying to, you know, deal with  
16 it.

17 Q. Did your son observe where that gentleman  
18 came from?

19 A. He said he could not, in all honesty, say  
20 that he came from there, but he did come from that  
21 corner, but he can't say, you know, Perks or the Port.

22 Q. All right. Now, the subsequent  
23 photographs -- there's three of them -- they appear to  
24 show patrons at a -- what looks like a bar; is that

1 correct?

2 A. Correct.

3 Q. Where did you take that video and,  
4 ultimately, those stills from?

5 A. I have a back house behind our house that  
6 has rooms, and there is one window that overlooks the  
7 bar at Perks; and so I went up there and started taking  
8 video outside -- at that window of the bar area.

9 Q. Did you alter those videos at all?

10 A. I did not.

11 Q. Did you photoshop them --

12 A. I did not.

13 Q. -- to put in Perks Bar?

14 A. I have many other videos in my phone of this  
15 because there have been complaints of overcapacity, and  
16 I've -- and he -- Mr. Powell stood before the selectmen  
17 and said he followed a procedure at closing two weeks  
18 before. There is no procedure at closing. That's why  
19 I've been taking videos. I've been doing this for  
20 years, and I just happened to hit something.

21 Q. And those are true and accurate copies of --

22 A. Yes, they are --

23 Q. -- stills of a video that was taken on  
24 July 24th?

1           A. Well, this would have been the night -- this  
2 would have been the 23rd, that Friday.

3           Q. What time were the other three -- the first  
4 one, the A, was taken --

5           A. -- at, like, 1:10, 1:15.

6           Q. So that was on July 24th; correct?

7           A. Correct.

8           Q. And B, C, and D were taken before midnight;  
9 so they would have been the 23rd? Is that what you're  
10 saying to me?

11          A. No, I'm sorry, you're right, they would have  
12 been the 24th because I probably started videoing at,  
13 like, 12:20.

14          Q. Okay. And did you -- well, I guess you  
15 probably can't answer this, but were you able to  
16 identify -- I see that you've given us a video. There  
17 is not a face in that video of this gentleman. Were you  
18 able to identify him as being the same person that was  
19 speaking with Officer Lincoln after?

20          A. My son Jay and I had a meeting with the  
21 chief the Friday after this incident.

22          Q. Mm-hmm.

23          A. And that's when the chief informed us that  
24 he was not only underage but that Andrew Bonavita had

1 said that he had been drinking at the Port. And -- so  
2 the chief said there was essentially no evidence that he  
3 was at Perks; so we said that we had the video. And my  
4 son and I went home and went through the video, and  
5 that's when we found Andrew Bonavita in the video at  
6 12:39 at Perks.

7 MR. BLAKE: Okay. I have no further  
8 questions for this witness.

9 Thank you, ma'am. No, you -- he's going  
10 to --

11 THE WITNESS: Okay.

12 THE HEARING OFFICER: So thank you.

13 Attorney Zehnder, your witness --

14 MR. ZEHNDER: Thank you.

15 THE HEARING OFFICER: -- or whatever I'm  
16 supposed to say.

17 EXAMINATION

18 BY MR. ZEHNDER:

19 Q. Ms. Sawin, again, I'm Ben Zehnder. How are  
20 you?

21 A. I'm good. How are you?

22 Q. I'm well. Thank you.

23 Okay. So, first of all, have you ever  
24 made any formal complaint to the Harwich Police

1 Department about Perks?

2 A. Oh, numerous.

3 Q. Approximately how many complaints have you  
4 made?

5 A. If I had to guess, I'd say at least ten.

6 Q. Okay. And has anybody else in your family  
7 ever made any complaints to the police department?

8 A. Yes, they have.

9 Q. How many complaints have other family  
10 members made against Perks?

11 A. I would say between five and ten.

12 Q. And did you make a complaint to the police  
13 department on August 19th about somebody singing "Happy  
14 Birthday" at Perks?

15 A. Yes, I did.

16 Q. And did you make a complaint to the police  
17 department on August 27th about a horn honking in the  
18 street?

19 THE HEARING OFFICER: Sorry, Counsel, can  
20 you repeat that question. I didn't hear it.

21 Q. Did you make a complaint to the police  
22 department on or about August 27th of this year about a  
23 horn honking in the street -- a car horn honking in the  
24 street?

1 A. What day is August 27th?

2 Q. I can't tell you what day it is, but I can  
3 tell you that the report that we received in the packet  
4 was dated August 27th.

5 A. If it says I did, then I must have. But I  
6 go back home from work the third week of August; so --  
7 but if it says I did, then I must have been there.

8 Q. Now, did you see Andrew Bonavita on the  
9 night of July 24th?

10 A. I did.

11 Q. Okay. Did you see him fall through the  
12 fence?

13 A. No, I did not.

14 Q. Okay. Did you -- your videotaping, I think  
15 you testified that you taped from, like, a back building  
16 on your property. Did you take that with the window  
17 open or the window closed?

18 A. The window was closed.

19 Q. Okay. Do you normally take those videos  
20 with the windows closed or open?

21 A. Closed.

22 Q. And in those videos that you take, do they  
23 also record sound?

24 A. They do.



1 Q. Do they record individual conversations?

2 A. Not from that back house, no.

3 Q. Do you record individual conversations with  
4 your iPhone of Perks?

5 A. I have in the past.

6 Q. Okay. From where did you take those  
7 recordings?

8 A. From my back deck off of my bedroom.

9 Q. On approximately how many occasions have you  
10 recorded conversations from Perks from your back  
11 bedroom?

12 A. I don't know. Five or six.

13 Q. Do you know whether the drinks that were  
14 shown in the video that you provided to the police  
15 department to Mr. Bonavita were alcoholic or  
16 nonalcoholic?

17 A. I would have no idea.

18 MR. ZEHNDER: Okay. I have no further  
19 questions.

20 MR. BLAKE: I have nothing further for  
21 this witness.

22 THE HEARING OFFICER: Thank you.

23 Ms. Sawin, thank you for --

24 MR. BLAKE: Thank you.

1 THE HEARING OFFICER: -- coming forward  
2 today. I would ask you to please be seated but please  
3 remain.

4 THE WITNESS: Oh, thank you.

5 THE HEARING OFFICER: Thank you.

6 MR. BLAKE: Thank you. I appreciate it.

7 THE HEARING OFFICER: Attorney Blake, do  
8 you have any further witnesses to call?

9 MR. BLAKE: Well, I have further  
10 witnesses but not any further witnesses for the  
11 July 24th incident.

12 THE HEARING OFFICER: All right. What I  
13 would like to do is then proceed to Attorney Zehnder's  
14 exhibits and witnesses relative to the issue of  
15 July 24th. I'm trying to do these in chronological  
16 order so as not to confuse the hearing officer.

17 So, Attorney Zehnder, you now have the  
18 opportunity to offer exhibits and witnesses relative to  
19 the alleged violations alleged to have occurred on  
20 July 24th. How would you like to do this?

21 MR. ZEHNDER: I would like to ask  
22 Mr. Powell to come to the stand -- or, the podium.

23 MR. POWELL: Can I sit up here?

24 MR. ZEHNDER: Right here is good, if you

1 don't mind.

2 THE HEARING OFFICER: And I do know that  
3 Mr. Powell presented himself for oath; so I know he's  
4 been sworn.

5 Ben, do you have any exhibits to present  
6 at this time?

7 MR. ZEHNDER: Yeah. I have one set of  
8 exhibits, two photographs that are screenshots.

9 THE HEARING OFFICER: Would you like to  
10 use numbers?

11 MR. ZEHNDER: No. I think we can keep  
12 right on going. Was the last round F or G?

13 THE HEARING OFFICER: The last exhibit  
14 entered was H, as in "Henry."

15 MR. ZEHNDER: So I would ask that these  
16 be I1 and 2.

17 MR. BLAKE: Well, what we typically have  
18 been doing is doing yours 1, 2...

19 MR. ZEHNDER: So you just call them --

20 MR. BLAKE: -- Exhibit 1, 2...

21 MR. ZEHNDER: Fine.

22 MR. BLAKE: So then, you know, ours are  
23 letters and yours are numbers.

24 MR. ZEHNDER: That's fine. So those will

1 be Exhibits 1 and 2.

2 THE HEARING OFFICER: So Exhibit 1 --  
3 excuse me -- Exhibit No. 1 I will describe as -- it  
4 looks to be some sort of photograph on 8 1/2-by-11 paper  
5 that says "Tuesdays with Pat." And then the second one,  
6 item number 2, says "Add a caption" and has a date of  
7 Wednesday, August 11, 2021, 2:26 p.m. Is that correct  
8 as far as Exhibits 1 and 2?

9 MR. ZEHNDER: I believe it is.

10 THE HEARING OFFICER: And these are  
11 exhibits that relate to the allegations relative to the  
12 date of July 24, 2021?

13 MR. ZEHNDER: Yes.

14 THE HEARING OFFICER: Thank you. So  
15 entered.

16 (Exhibit 1, photograph, so marked.)

17 (Exhibit 2, photograph, so marked.)

18 THE HEARING OFFICER: Attorney Zehnder,  
19 please present any witnesses.

20 TAYLOR POWELL, previously sworn.

21 EXAMINATION

22 BY MR. ZEHNDER:

23 Q. Mr. Powell, could you please just tell the  
24 hearing officer your name.

1           A. Taylor Powell, manager on record/owner/  
2 operator of Perks Coffee Shop & Beer Garden.

3           Q. And, Mr. Powell, where were you on the night  
4 of July 24th?

5           A. I was working.

6           Q. Where were you working?

7           A. I was at Perks.

8           Q. Okay. And you have heard the testimony of  
9 Detective Sergeant Brackett?

10          A. Yes.

11          Q. Okay. And where were you at the time that  
12 this incident was occurring adjacent to Perks?

13          A. I was inside Perks, inside our property at  
14 Perks.

15          Q. Okay. Were you aware as to whether or not  
16 any of your employees were outside during this time?

17          A. Yes. The remark that there was no staff on  
18 the sidewalk is false. Officer Lincoln is not here for  
19 us to ask him that in person, but we had multiple people  
20 on the sidewalk trying to control the crowd and disperse  
21 the crowd that we usually always do.

22          Q. Okay. So describe --

23                   THE HEARING OFFICER: Attorney Zehnder,  
24 if you could yield for a minute, I do want to put on the

1 record that Officer Lincoln is not present, through no  
2 fault of his own, with circumstances far beyond his  
3 control. Thank you, Attorney Zehnder.

4 MR. ZEHNDER: Sure.

5 Q. Mr. Powell, would you please describe for  
6 the hearing officer the procedures -- any procedures  
7 that you have in place for controlling crowds and  
8 patrons at or around closing time.

9 A. We stop serving alcohol before 12:40 every  
10 night. 12:30, it's known, is last call, and we have all  
11 the bartenders get on that same page where they say,  
12 "Hey, that's it. Last call." We try to close out the  
13 tabs. We try to work on getting people out of there.

14 People are enjoying themselves, they want  
15 to stay. It's always difficult, but we make sure that  
16 there's not a single patron on the property after  
17 1:00 a.m. I believe the Town gives you until 1:15 as a  
18 grace period. We don't even want the 15-minute grace  
19 period. We want people gone by 1:00 a.m.

20 So we do everything in our power to do so  
21 and escort people out. You know, we politely in the  
22 beginning say, "Hey, time to wrap it up, time to go,  
23 finish up." People get the message, but I think, when  
24 we turn the lights on and we kill the fire pit, that

1 really sends a message like, okay -- it's kind of a  
2 spooky, eerie feeling -- it's time to go. We do that at  
3 about 12:40 -- try to get people out.

4 Q. Now, on the night of July 24th were there  
5 any of your employees outside on the sidewalk at the  
6 time of this incident?

7 A. Yeah. Jack Huber was. He's our lead  
8 bartender -- he's been working for us -- with us for  
9 five years. And my right and left hand is my wife,  
10 Sarah Powell. She was there and saw all the officers  
11 interacting with, what it looks like, Andrew Bonavita.

12 Q. On the night of July 24th did you interact  
13 with any police officers?

14 A. No. Nor did my staff, to my knowledge. I  
15 think one of them might have asked if they need any help  
16 with anything, but we definitely had staff on the  
17 sidewalk and were there.

18 Q. Okay. And have you read the police reports?

19 A. I sure have.

20 Q. Okay. Did you read the police report, as  
21 stated by Officer Lincoln, that Mr. Bonavita had offered  
22 to pay for the fence?

23 A. I sure did, yes.

24 Q. Okay. And did you read the police report

1 that the offer to pay for the fence was refused by the  
2 homeowner?

3 A. Yes, I read that. And I also got a second  
4 verbal from my staff member that overheard him say they  
5 didn't want to accept payment, they wanted to get us in  
6 trouble.

7 Q. Okay. On the night of July 24th, I think  
8 you testified that Mr. Huber was outside?

9 A. Correct.

10 Q. And your wife, Sarah, was outside?

11 A. Correct.

12 Q. Okay. Were they outside during the time  
13 that that incident occurred?

14 A. At the time they were, and after because  
15 there were officers there who were going to make sure  
16 that everyone had their Ubers and got out of the  
17 property. So they were probably there until 1:20 or  
18 1:30. I don't know the exact time but after closing  
19 hours, yeah.

20 Q. Are you aware whether there are any other  
21 establishments in the immediate vicinity of yours that  
22 serve alcohol?

23 A. There's five or six -- six, I think --  
24 licensed restaurants and bars.



1 Q. Let's go one by one. Closest to you, is  
2 there a bar that's closest to you?

3 A. Yeah. In spitting distance it's the Port  
4 Restaurant.

5 Q. Okay. Where is that in proximity to your  
6 restaurant?

7 A. It's on the western edge of our property.  
8 So they abut our property.

9 Q. Okay. Do they serve alcohol until  
10 1:00 a.m.?

11 A. Oh, yeah.

12 Q. Okay. Were they open on the night of  
13 July 24th?

14 A. Yes.

15 Q. Okay. Are there any other bars in the  
16 immediate vicinity of yours?

17 A. There's -- in between the Grey Gull's  
18 property and ours there's the Hot Stove Salon. They  
19 close at 1:00 as well, just like their license --  
20 everyone's license in town. Across the street from  
21 there is the 3 Monkeys Restaurant. And then on the back  
22 side of the building is the Mad Minnow Restaurant and  
23 Bar. 3 Monkeys is a restaurant and bar as well. And  
24 then down the street -- I believe the Sea Grille was

1 closed by then, but down the street is Ember Restaurant  
2 and Bar.

3 Q. Okay. Now, do you make observations of the  
4 area of Main Street in the vicinity of your bar at or  
5 around closing time, generally?

6 A. Yeah.

7 Q. Okay. Could you describe Main Street in  
8 that area at closing time, generally.

9 A. People are -- it's changed. It's different  
10 now. It's not like it was years ago because there's  
11 something new, and it's Uber. And people don't get in  
12 cars or worry about designated drivers, but people are  
13 looking for rides. Generally, people kind of funnel out  
14 of all the different places and the town is noisy, just  
15 like it's been since I've been living there. For over  
16 15 years I hear noise in the commercial district.

17 Q. Okay. What is the time period that people  
18 are looking for rides or are, as you say, noisy?  
19 Generally, what is the time period when you hear the  
20 noise?

21 A. After 1:00 a.m.

22 Q. Until when?

23 A. Until they get in their cars or they want to  
24 be quiet or make noise or not. I mean, people are --

1 like to talk with their friends while they're waiting  
2 for a ride.

3 Q. But is it an hour? two hours? three hours?

4 A. No, I don't -- I mean, I live above -- like,  
5 literally on 28; so all throughout the night I hear  
6 people walking down the street and making noise. It  
7 just doesn't go away. It never has, and I don't think  
8 it ever will because it's Downtown Harwich Port. But  
9 I'd say after 1:00 it's probably noisier because there's  
10 all six different restaurants and bars that are closing  
11 that people are looking for rides. But once they get  
12 their rides, it quiets down.

13 Q. So could you give a time period? Is it half  
14 an hour? 20 minutes? an hour?

15 A. Yeah. I would say, you know, 1:30-ish  
16 maybe, you know. It depends on the night. I think a  
17 weekend -- weekends are usually busier. And, again,  
18 this is all during the seasonal time on the Cape; so  
19 it's when the Cape is bustling and busy in the  
20 summertime.

21 Q. I'm going to show you what's been marked as  
22 Exhibit 1 and Exhibit 2. And can you tell the hearing  
23 officer what Exhibit 1 is.

24 A. Okay. Exhibit 1 is a screenshot, and it's

1 from the Port Restaurant's Instagram. And it says  
2 "Tuesdays at -- Tuesdays with Pat @nautibar," and then  
3 the tag -- this little -- what looks like a buoy, which  
4 is the little button on it that says "The Port," that's  
5 a geotag actually tagging the location of where it's at.  
6 And at the top you'll see it says "The Port Restaurant";  
7 so it is a screenshot from the Port's Instagram on our  
8 phone.

9 And the second, E2, or number 2, is what  
10 an iPhone can do to show you the timestamp and actually  
11 the time and date of when the screenshot was taken.

12 So if you look at the first one, it says  
13 20 hours ago. This is all within 20 hours, and it's the  
14 next day, which is August 11th at 2:26 a.m., that the  
15 story that the Port actually put up on their Instagram  
16 was screenshot. So this was not captured with any  
17 wiretapping, different illegal ways. This is just a  
18 screenshot off of an iPhone.

19 Q. How did you obtain this screenshot?

20 A. From following the restaurant.

21 Q. Following it on Instagram?

22 A. Yeah. It's a public Instagram account.

23 Q. Okay. And looking at the first exhibit, 1,  
24 do you see the four people in the screen?

1 A. Correct. Yeah.

2 Q. And what are they doing? What are the three  
3 at the counter doing?

4 A. They're taking shots off a device.

5 THE HEARING OFFICER: Counsel, if I may,  
6 I see five people.

7 MR. ZEHNDER: You're right. There's a  
8 set of shoulders there. I am so sorry, Mr. Powers.

9 THE WITNESS: You're right.

10 Q. Of the four complete bodies, you can see the  
11 three at the bar, the three complete. What are they  
12 doing?

13 A. They're drinking alcohol. It looks like  
14 they're all about to take a shot together.

15 Q. Okay. And, then, the gentleman standing up  
16 with something in his hand, what is he doing?

17 A. I would identify him as Andrew Bonavita.

18 Q. Okay. Thank you.

19 A. It looks like he's drinking alcohol, to  
20 answer your question. I don't know what's in the cup,  
21 though.

22 Q. And have you been -- since the night of  
23 January 24th -- I'm sorry, July 24th -- have you been  
24 served with any notice of violation from the police

1 department for underage drinking?

2 A. No. My first notice was when we got notice  
3 of this hearing.

4 Q. Okay. Have you received any notice from the  
5 ABCC about an investigation for underage drinking?

6 A. We've never had any issues with underage  
7 drinking at our establishment -- or over-serving.

8 MR. ZEHNDER: No further questions.

9 THE HEARING OFFICER: Thank you.

10 Attorney Blake, any questions?

11 MR. BLAKE: I do. I have a couple.

12 EXAMINATION

13 BY MR. BLAKE:

14 Q. Sir, I'm going to show you a picture that's  
15 been marked F6B.

16 A. Yes.

17 Q. Is that your bar?

18 A. Yep.

19 THE HEARING OFFICER: Attorney Blake,  
20 could you repeat that, please.

21 MR. BLAKE: I asked him if this was his  
22 bar, and he said, "Yep."

23 THE HEARING OFFICER: Which exhibit are  
24 we working off?

1 MR. BLAKE: F6B.

2 THE HEARING OFFICER: And what was the  
3 response?

4 MR. BLAKE: "Yep."

5 MR. ZEHNDER: The answer was "yes."

6 THE HEARING OFFICER: Thank you.

7 Q. Sir, you just testified, regarding the  
8 Exhibits 1 and 2, that the gentleman in the back  
9 standing up, in, what looks like, a blue shirt, with a  
10 glass, was Andrew Bonavita?

11 A. That's what they say his name is. Yeah. I  
12 don't know him personally.

13 Q. Is it Andrew -- Mr. Bonavita?

14 A. Right.

15 Q. Do you know him?

16 A. No.

17 Q. Then why did you say that?

18 A. Because I don't know him. I -- we have this  
19 because we know, when this night happened, we were on  
20 the sidewalk and identified him there and then said,  
21 "Hey, look, he's at the Port drinking"; so we screenshot  
22 it. That's why we have it.

23 Q. So you don't know the guy at all?

24 A. Not personally, no, I don't know him. But I

1 don't forget a face.

2 Q. Where did you see his face? Did you see his  
3 face in your bar that night?

4 A. I actually was on the sidewalk too. I saw  
5 him that night on the sidewalk. I didn't interfere with  
6 the police officers. I've seen this person before  
7 because I don't forget a face. So when we saw that he  
8 was at the establishment next door drinking alcohol, we  
9 took this picture, which is Exhibit 1 and 2.

10 Q. So you're saying this is alcohol; right?

11 A. I mean, I would guess yeah.

12 Q. Okay. So the photograph that I see here --

13 A. But I can't say for sure.

14 THE HEARING OFFICER: Folks, if you could  
15 hold for a second.

16 Could you just -- I don't see what you're  
17 holding up. Could you just tell me what you're --

18 MR. BLAKE: Photograph F6B.

19 THE HEARING OFFICER: And what was the  
20 other one you held up?

21 MR. BLAKE: Exhibit 1.

22 THE HEARING OFFICER: Thank you.

23 Q. F6B -- you're saying in Exhibit 1 that's  
24 alcohol?



1 A. I can't say either --

2 Q. Can we say this is alcohol in this one?

3 A. I want to be -- I cannot say either way if  
4 there's alcohol in his cup in any picture.

5 Q. Is this Mr. Bonavita? Do you remember --  
6 you never forget a face. Is that Mr. Bonavita?

7 A. It appears, to me, that it is him, yeah.

8 MR. BLAKE: All right. I have nothing  
9 further.

10 MR. ZEHNDER: Okay. Nothing further.

11 THE HEARING OFFICER: Okay.

12 I'm going to have some questions because  
13 I'm not following along, but I will reserve that for a  
14 little bit later.

15 Do you have any more witnesses?

16 MR. ZEHNDER: No further witnesses.

17 THE HEARING OFFICER: And do you have any  
18 more witnesses?

19 MR. BLAKE: I have nothing. Not in this  
20 instance. There's a couple others.

21 THE HEARING OFFICER: Thank you.

22 So I want to ask of the witness but also  
23 have both counsels ready to educate me -- I'm looking at  
24 Exhibit F-6B, as in "boy," and I can't make anybody out.

1 MR. BLAKE: He just testified that it was  
2 Bonavita.

3 THE HEARING OFFICER: Well, this is for  
4 the witness, if I may, Attorney Blake.

5 So you have just -- I thought I heard you  
6 say, in response to Attorney Blake's question, that you  
7 see the individual that has been referred to all day as  
8 Andrew Bonavita in F-6B. I would ask you to come  
9 forward and point out to me where you see him because  
10 you've testified that you saw him, and I'm having  
11 difficulty making out this photo.

12 THE WITNESS: Okay. Come forward?

13 THE HEARING OFFICER: Yeah.

14 THE WITNESS: Okay. So this is what this  
15 is all about. She's -- right above this is where she's  
16 been filming this; right?

17 THE HEARING OFFICER: Yeah. Where is  
18 Mr. Bonavita?

19 THE WITNESS: It looks like him. It's  
20 blurry, but that's who they're saying is him in these  
21 pictures.

22 THE HEARING OFFICER: This guy right  
23 here, is that who you claim is Mr. Bonavita?

24 THE WITNESS: It's the same person there,

1 is what I'm saying.

2 THE HEARING OFFICER: What I'm saying  
3 is -- Attorney Blake asked you do you see --

4 I believe you asked, Attorney Blake, if  
5 Mr. Powell sees Mr. Bonavita in Exhibit F-6B. Is that  
6 what you asked, Counsel, more or less?

7 MR. BLAKE: I did. And he responded  
8 "yes."

9 THE HEARING OFFICER: And this is the  
10 gentleman?

11 THE WITNESS: Yeah. Back here.

12 THE HEARING OFFICER: And, Attorney  
13 Zehnder, did you see who that was?

14 MR. ZEHNDER: I did.

15 THE HEARING OFFICER: Thank you.

16 I appreciate it, everybody.

17 Thank you, Taylor. You can be seated but  
18 please remain.

19 THE WITNESS: Sure.

20 THE HEARING OFFICER: So, to both  
21 counsel, what I'd like to do, unless you have  
22 concerns -- I'm not using the "O" word -- is a summation  
23 for both parties on the allegations regarding July 24th.

24 MR. BLAKE: I'm happy to give a

1 summation.

2 THE HEARING OFFICER: Thank you. So,  
3 Attorney Blake, we'll start with your summation as  
4 relates to the alleged violations on July 24, 2021.

5 SUMMATION

6 MR. BLAKE: The violations here are that  
7 there was an illegality at the Perk Restaurant. As you  
8 can see from the evidence, photographic and testimony,  
9 that there was an underage individual who was  
10 over-served somewhere, at either -- at the Perk or one  
11 of the other restaurants, and he was drunk, he fell into  
12 a fence, he broke a fence.

13 With respect to his service, we are sure  
14 that he was in the Perk Restaurant. The manager himself  
15 has identified him in the Perk Restaurant with, what  
16 appears to be, an alcoholic beverage in his hand. He  
17 got two beverages from the bar area.

18 In my opinion -- or, based on the  
19 evidence provided, the Perk has allowed an illegality at  
20 their restaurant; that is, they have served somebody who  
21 is underage.

22 THE HEARING OFFICER: Thank you. Does  
23 that conclude your closing?

24 MR. BLAKE: It does.

1 THE HEARING OFFICER: Thank you.

2 Attorney Zehnder?

3 MR. ZEHNDER: Thank you, Mr. Powers.

4 SUMMATION

5 MR. ZEHNDER: First of all, there's no  
6 evidence in front of the Court that he was underage.  
7 There is only the hearsay testimony of Officer --

8 THE HEARING OFFICER: For the record,  
9 there is no Court. There is just a hearing officer.

10 MR. ZEHNDER: I'm sorry, it's hard to  
11 break habits.

12 THE HEARING OFFICER: I know. It's old  
13 habits that are hard to break.

14 MR. ZEHNDER: It's hard to break habits.

15 Officer Lincoln didn't testify today.  
16 Detective Sergeant Brackett had no personal knowledge of  
17 Andrew Bonavita's presence on the property. There has  
18 been no testimony about his age. There has been no  
19 presentation of his driver's license or any information  
20 in front of the hearing officer. So the only thing in  
21 front of this board is the indirect evidence of the age  
22 of Mr. Bonavita.

23 There has been no investigation by the  
24 ABCC. Based on the investigation by the police

1 department, who was in the best position to examine  
2 Mr. Bonavita's driver's license, and the information  
3 that was presented to the police department, there was  
4 no investigation as to underage drinking. So I don't  
5 believe that there has been any demonstrated evidence of  
6 underage drinking on the property. Also, there has been  
7 no testimony about the ID, if any, that was presented by  
8 Mr. Bonavita to Perks.

9 Mr. Powell has testified about the  
10 procedures they took to be out there. He's testified  
11 about the closing operations there and that the  
12 activities of Perks have been reasonable. They have  
13 been consistent with the normal and usual activities  
14 undertaken by a drinking establishment to try to control  
15 activities by their patrons, but I don't believe that  
16 anything that's happened here has been improper in any  
17 way.

18 The only thing that's happened here is  
19 that a patron of either the Port or Perks, or both,  
20 based on the report that was submitted by Officer  
21 Lincoln, fell through a fence and offered to pay for the  
22 fence. It was refused to be paid for by the neighbors,  
23 who have made repeatedly -- who have made repeated  
24 complaints about the premises, including, you know,

1 singing "Happy Birthday," the honking of horns in the  
2 street, repeated videotaping.

3 So, clearly, the neighbors are not happy  
4 with this establishment, but normal and usual operations  
5 in and of themselves are not actionable by the Town.

6 Thank you.

7 THE HEARING OFFICER: Thank you. That  
8 concludes your summation? Thank you, Attorney Zehnder.

9 So, then, I would imagine we want to  
10 proceed with allegations relative to -- Attorney Blake,  
11 can you help me find the date on --

12 MR. BLAKE: It would be August 7th.

13 THE HEARING OFFICER: And, Attorney  
14 Blake, I'm going to ask that -- we were relying upon  
15 Exhibits F-7, F-8, F-9 --

16 MR. BLAKE: No. F-7 and 8. 9 appears to  
17 be August 19th.

18 THE HEARING OFFICER: Is that a third  
19 matter to be discussed?

20 MR. BLAKE: And there's a fourth one.  
21 F11 and F12 are also August 26th.

22 THE HEARING OFFICER: All right. So for  
23 this next date in question you're relying on  
24 Exhibits F-7 and F-8; correct?

1 MR. BLAKE: That is correct.

2 THE HEARING OFFICER: All right. So  
3 those exhibits have already been entered into the  
4 record; so at this point I'd ask you to call any  
5 witnesses relative to alleged violations alleged to have  
6 occurred on August 7, 2021.

7 MR. BLAKE: I'm going to call Keith  
8 Kannally -- Patrol Supervisor Kannally.

9 THE HEARING OFFICER: I do recognize  
10 Officer Kannally and know that he was sworn earlier.

11 PATROL SUPERVISOR KEITH T. KANNALLY, previously sworn.

12 EXAMINATION

13 BY MR. BLAKE:

14 Q. Good afternoon, sir.

15 A. Good afternoon.

16 Q. How are you this afternoon?

17 A. Very well.

18 Q. Can you spell your last name for the record,  
19 sir.

20 A. Sure. K-A-N-N-A-L-L-Y.

21 Q. Okay. And what is your current position?

22 A. Patrolman for the Town of Harwich.

23 Q. All right. And how long have you been  
24 patrolman?



1 A. 15 years.

2 Q. Sir, do you know why you're here?

3 A. I do.

4 Q. What's your understanding of why you're  
5 here?

6 A. It was an incident back on August 7, '21, a  
7 report of somebody urinating on somebody's property.

8 Q. Okay. Did you go out and investigate that  
9 incident?

10 MR. ZEHNDER: Mr. Powers, I'm sorry to  
11 interrupt, but the notice of hearing violation, I  
12 believe, has to do with incidents occurring on  
13 October 3rd.

14 THE HEARING OFFICER: What exhibit are  
15 you looking at?

16 MR. ZEHNDER: I'm looking at the  
17 November 2nd -- hold on, I better give you the exhibit  
18 number. It's the second notice of disciplinary hearing.  
19 Give me one moment, please. It's Exhibit C-3.

20 THE HEARING OFFICER: Attorney Blake, I  
21 see Exhibit C-1, September 15th, giving notice that  
22 October 20th would have been relative --

23 MR. BLAKE: -- to the July 24th.

24 THE HEARING OFFICER: July 24, 2021.

1 MR. BLAKE: Yeah.

2 THE HEARING OFFICER: C-2 is just notice  
3 that it's going to be continued. And C-3 is indicating  
4 alleged violations on October 3rd. Do we have any  
5 material that relates to violations alleged to have  
6 occurred on August 7th?

7 MR. BLAKE: I don't see anything in the  
8 hearing notices that reference allegations to the August  
9 violations; so we can skip over those and we can go  
10 right to the October 3rd violations, in which case I am  
11 going to ask Detective Sergeant Brackett to come back up  
12 to testify.

13 THE HEARING OFFICER: So, Officer  
14 Kannally, thank you.

15 Do we have an expectation that Officer  
16 Kannally is going to be a witness for any future matters  
17 to come before this hearing?

18 MR. BLAKE: I do not.

19 THE HEARING OFFICER: Is there any  
20 objection to releasing Officer Kannally?

21 MR. ZEHNDER: No.

22 MS. SAWINS: This was in our packet --  
23 August 7th.

24 MR. BLAKE: What is it?

1 THE HEARING OFFICER: If all witnesses  
2 could yield for a moment, please, and have a seat. So,  
3 folks, we're going to take a ten-minute recess and come  
4 back at 2:41.

5 (Recess from 2:32 p.m. to 2:41 p.m.)

6 THE HEARING OFFICER: Seeing as it's  
7 2:41 p.m., I call this hearing back to order on Tuesday  
8 November 23, 2021.

9 I just informed all present that the Town  
10 has, what is considered to be, a defective notice  
11 regarding alleged violations alleged to have occurred on  
12 August 7, 2021, and August 19, 2021; so the Town will  
13 evaluate that situation to determine the best next  
14 steps.

15 For the purposes of this hearing,  
16 however, we will now progress to the alleged violations  
17 alleged to have occurred on October 3, 2021. For the  
18 record, we had Officer Kannally and Officer Dutra.  
19 Given that they were witnesses for allegations regarding  
20 those two other dates, they have been dismissed.

21 So at this point, Attorney Blake, I'd  
22 turn it over to you for -- you have already entered  
23 exhibits into the record for allegations alleged on  
24 October 3rd; is that correct?

1 MR. BLAKE: I have. Those would be G1,  
2 2, 3, and 4.

3 THE HEARING OFFICER: All right. So we  
4 have Exhibits G1 through 4 that impact upon this part of  
5 the hearing. Those have already been entered into the  
6 record.

7 And, Attorney Zehnder, you have those as  
8 well; correct?

9 MR. ZEHNDER: I do.

10 THE HEARING OFFICER: And, then, at this  
11 point, Attorney Blake, are there any witnesses you want  
12 to have weigh in on this particular matter?

13 MR. BLAKE: I do. I'd like to have  
14 Detective Sergeant Brackett.

15 THE HEARING OFFICER: And so Detective  
16 Sergeant Brackett was sworn earlier.

17 Thank you, Detective Sergeant. Welcome  
18 back.

19 DETECTIVE SERGEANT BRACKETT: Thank you.  
20 Glad to be back.

21 DETECTIVE SERGEANT ROBERT C. BRACKETT, previously sworn.

22 EXAMINATION

23 BY MR. BLAKE:

24 Q. Good afternoon, sir. How are you this

1 afternoon?

2 A. I'm well. Thank you.

3 Q. Sir, you just heard the hearing officer  
4 reference allegations with respect to some noise and  
5 loud screaming at the Perk on October 30th -- strike  
6 that -- October 3, 2021. Did you have an opportunity to  
7 investigate those -- the loud screaming?

8 A. Yes, I did.

9 Q. Did you actually show up at the restaurant?

10 A. I was. I was actually working an overtime  
11 patrol shift on that evening -- at that date and time.

12 Q. Okay.

13 A. And at about 1:05 in the morning on Sunday,  
14 October 3rd, officers were dispatched to the area of  
15 Perks Coffee & Beer Garden for the report of loud  
16 screaming coming from the area of Perks Coffee & Beer  
17 Garden. The caller was advised and the reporting party,  
18 we were told, were calling from the area of Sea Street.

19 At the time that the call was dispatched  
20 I was on Braddock Street. I had just come from Bank  
21 Street Beach. I was coming up Braddock Street, and I  
22 had stopped to talk to a couple of gentlemen that had  
23 walked through a path. There's a pathway that cuts --  
24 in the 28 area that cuts through a couple of the yards

1 on Braddock that's commonly used to come through there.  
2 I happened to be talking to a couple of gentlemen there  
3 when the call came in; so I was parked -- stopped right  
4 in the area of number 42 Braddock.

5 So at the time of the call I stopped, put  
6 the windows down, shut the car off, and listened, and I  
7 was able to hear a lot of loud yelling and screaming.  
8 And it's important to note it wasn't like a fighting  
9 type of thing. It was more a jubilation than a  
10 fighting.

11 Q. About how far away was this from Perks?

12 A. So I was able on Google Maps to draw a line  
13 from the front of 42 Braddock to the area of Perks. It  
14 was approximately 550 feet in a straight line.

15 So when I say that the noise was coming  
16 from the area of Perks, I only referenced Perks in the  
17 sense of that's what the caller described. So at the  
18 time the noise was coming from that general area, but I  
19 referenced Perks because that's what the caller had  
20 said.

21 Q. And the Port's there as well -- correct? --

22 A. The Port is there, correct.

23 Q. -- with a variety of other restaurants;  
24 correct?

1 A. That is correct.

2 Q. Okay.

3 A. So I drove to the area. And as I was coming  
4 down, traveling west on Route 28, as I approached the  
5 area of Route 28 and Sea Street where Perks and the Port  
6 Restaurant are, there was a large group of people,  
7 probably about 30 people, in the road surrounding --  
8 there were, like, two vehicles in the road that the  
9 people were all surrounding. I'm not quite sure what  
10 was going on. I pulled up. I just put my blue lights  
11 on and stopped in the road. Once the blue lights went  
12 on, everybody kind of found their way to a sidewalk and  
13 the two cars moved along.

14 It was ultimately determined that those  
15 two cars were Ubers and that people had congregated  
16 around the cars to try to determine if they were their  
17 Ubers or not. So there was no type of altercation or  
18 anything like that on that.

19 Q. Was it obstructing the public way?

20 A. They were but there was nobody else on the  
21 road other than those two cars at that time and myself.  
22 But they were on the road. So as I got out there, there  
23 was, you know, a crowd of people on the sidewalk. I  
24 counted, you know -- unofficially, I counted -- I tried

1 to do a head count of what I could. There was about 60  
2 people on the sidewalk.

3 It's important to note that it's about a  
4 four-foot sidewalk width, and all the people were on  
5 that sidewalk in front of Perks and then over towards  
6 the Port and then in front of -- also over towards,  
7 like, 547 Route 28. Everybody was congregated on the  
8 sidewalk. It's important to note at that time that  
9 everybody was out of Perks; so Perks, the establishment,  
10 was empty. So this was all of the crowd from Perks.

11 Q. How do you know that?

12 A. It's open. You could see it. And all the  
13 personnel that was working at Perks were out on the  
14 sidewalk at that time. I believe I spoke to Taylor. He  
15 was out there, as well as three or four other people  
16 from Perks who were identified by shirts they were  
17 wearing. And they were out there trying to move the  
18 crowd along.

19 And it's important to note that that  
20 crowd was primarily all from Perks, both from speaking  
21 to Taylor and I had gone by there just a short while  
22 prior to that on my way prior to going down to Bank  
23 Street Beach. And the Port Restaurant was empty. There  
24 was barely anybody there at that time. Perks was



1 extremely busy. At that time there was also no noise  
2 violation or anything. It was busy. Perks was busy but  
3 calm. So that crowd was -- my determination, based on  
4 speaking to Taylor and the fact that the Port was empty,  
5 is that they were all from the Perks Beer Garden.

6 Taylor and his staff were busy working  
7 that crowd -- trying to move that crowd along. The  
8 crowd was very loud. They were being very boisterous  
9 and loud. It was primarily one small group. I  
10 shouldn't say "small group." There were probably about  
11 20 foreign visitors. I believe they were from Argentina  
12 or Venezuela. In speaking to them, there was a language  
13 barrier.

14 It was very hard to contain that group,  
15 to keep them on the sidewalk. They kept just -- they  
16 were based on the sidewalk, coming out onto the road; so  
17 we kept trying to -- we ultimately had to, myself, move  
18 them across the street just because it was a bigger area  
19 across the street.

20 The crowd was there. The crowd was loud  
21 and boisterous but not any -- it was not -- they were  
22 cooperative. This crowd of foreign visitors were all --  
23 you know, at one point it seemed like they were chanting  
24 soccer chants. I mean, they were just -- they were

1 having a good time. They were loud. And there was a  
2 language barrier there in trying to get them to  
3 understand they needed to be quiet.

4 Q. Did you stay until the area cleared?

5 A. I stayed there until about 1:43 before  
6 everybody cleared that area. And it was primarily that  
7 group of those foreign visitors waiting for multiple  
8 Ubers.

9 It's important to note -- it seems like  
10 we've experienced it in a good way -- that a lot of  
11 people that are exiting these establishments are taking  
12 Ubers. The problem is they -- nobody has control over  
13 that, but they order their Uber from the establishment;  
14 the Uber tells them they're going to pick them up right  
15 there; so everybody -- there's a large crowd of people  
16 that are waiting on those sidewalks not dispersing for  
17 purposes of waiting for an Uber. And while they're out  
18 there, they're loud.

19 Q. Now, are you saying -- I mean, it sounds to  
20 me like this isn't a new problem.

21 A. It's not.

22 Q. Have you had multiple complaints about this?

23 A. We get various complaints, but you do see at  
24 closing time at both establishments -- some nights it's

1 louder, some nights it's not, but there's a lot of  
2 people who wait for Ubers on those sidewalks, and on a  
3 busy night it could be -- some nights are louder than  
4 others. But in fairness, Taylor and his staff were out  
5 there trying to move that crowd along.

6 Q. So would you agree that the noise complaint  
7 was substantiated?

8 A. The noise complaint was valid. It was loud.

9 MR. BLAKE: Okay. I have nothing  
10 further.

11 THE HEARING OFFICER: Thank you.

12 Attorney Zehnder, your witness.

13 EXAMINATION

14 BY MR. ZEHNDER:

15 Q. Detective Sergeant.

16 A. Good afternoon.

17 Q. So it's fair to say that, based on your  
18 observations of distance, that there was a violation of  
19 a Harwich noise bylaw, meaning that there was clearly  
20 audible sound 150 feet away from the source?

21 A. There was.

22 Q. And also, based on your testimony, this was  
23 occurring after Perks had closed?

24 A. That's correct. Well, it was about 1:05.

1 Q. Okay. Based on your observation, it was by  
2 patrons on the street, and not within Perks, at the time  
3 they were making this noise?

4 A. That's correct. Perks was -- Perks --  
5 because, I believe, at one point I walked a little ways  
6 in, in speaking to Taylor, and you could see that there  
7 were no patrons still within the confines of Perks Beer  
8 Garden.

9 Q. Okay. And I think, based on your testimony,  
10 it's clear that the Perks employees were undertaking  
11 their responsibilities to try to disperse the crowd and  
12 move people along?

13 A. They were.

14 Q. Okay. And I think, based on your testimony,  
15 the people that were on the street were compliant with  
16 your orders?

17 A. No.

18 Q. Okay.

19 A. They really weren't. I mean, in fairness,  
20 they were -- even with us trying to keep them quiet in  
21 uniform, they were still being loud.

22 Q. They were still being loud, okay.

23 A. But they were -- it's hard to explain. They  
24 were cooperative people. They had just been drinking

1 all night and having a good time. It's loud.

2 Q. Okay. Was anybody cited for public  
3 intoxication?

4 A. No.

5 Q. Were you aware that anybody who was drinking  
6 was underage?

7 A. No.

8 Q. And I think you described this, for lack of  
9 a better term, phenomenon in which people are  
10 congregating for the purpose of trying to get into their  
11 Ubers or get their Ubers; correct?

12 A. I don't know if I'd call it a phenomenon,  
13 but it is what it is. I'm going to quote my inner Bill  
14 Belichick. It is what it is.

15 Q. It is what it is.

16 (Simultaneous talking.)

17 BY MR. ZEHNDER:

18 Q. Thank you. I guess what I'm saying is, this  
19 dynamic of people having to look at an Uber arriving,  
20 inquiring whether it's their Uber, and getting into the  
21 car creates an additional delay in terms of people  
22 getting into their cars, as opposed to, for example,  
23 people walking around the parking lot getting into their  
24 cars?

1 A. It's a very fair assessment.

2 Q. Okay. Thank you.

3 So would it also be fair to say that  
4 there really isn't something that an establishment like  
5 Perks can do to alleviate this concern, meaning, by this  
6 activity happening in the street in front of Perks after  
7 closing hours, it's not by reason of a fault of Perks in  
8 not complying with their liquor license obligations.  
9 Would that be a fair statement?

10 A. Well, I don't think I'm in a position to  
11 assess what can or cannot be done.

12 THE HEARING OFFICER: Can you repeat that  
13 again -- that last part.

14 MR. ZEHNDER: I can try.

15 Q. What I'm saying is, Perks has an obligation  
16 under the terms of their liquor license to undertake  
17 certain activities in terms of making sure that the  
18 patrons that come in are lawful; that people are not  
19 over-served; that, as people leave, they are dispersed.  
20 Can you identify a failure of Perks on this evening of  
21 October 3rd in terms of something that they did wrong in  
22 creating this particular dynamic out in the street?

23 A. I don't see that there was any -- I can  
24 agree with that statement. I don't think there was

1 anything in particular that they could have done  
2 different.

3 I think we're -- I think it's a tough  
4 situation for the neighborhood when you have -- not that  
5 it was, in effect, an issue on this particular night,  
6 but when you have two liquor establishments right next  
7 to each other that both close at the exact same time,  
8 with large capacities and a small sidewalk area, it's an  
9 issue that's difficult to deal with.

10 Q. So it's fair to say that that issue and  
11 those solutions are above your pay grade?

12 A. Yeah. It's out of my league. It's not in  
13 my position to say what can be done about that.

14 Q. Okay. And, finally, did you cite any of  
15 these individuals in the street for noise violations?

16 A. I did not.

17 MR. ZEHNDER: Okay. I have no further  
18 questions.

19 MR. BLAKE: I have nothing further.

20 THE HEARING OFFICER: Thank you.

21 Detective Sergeant, if you could remain  
22 for a moment, please, I want to go to Exhibit G-2, which  
23 is referred to as the Harwich call summary, printed  
24 10/5/2022 for date 10/3 -- excuse me, 10/5/2021 -- for

1 date 10/3/2021, Sunday, and the call number is 21-13152.

2 Do you have access to that?

3 THE WITNESS: I do.

4 THE HEARING OFFICER: Okay. Thank you.

5 The way I understand to read these is,  
6 first, at 0105 a.m. a noise complaint is called in to  
7 Dispatch. Is that a fair way for me to summarize that  
8 first line?

9 THE WITNESS: So that's a fair way to say  
10 that that is when the dispatcher entered it in.

11 THE HEARING OFFICER: Thank you.

12 THE WITNESS: Now, that time could be  
13 accurate because that -- they could back-time that if  
14 there was a delay, but that is -- should be the time of  
15 the call, correct.

16 THE HEARING OFFICER: All right. Thank  
17 you. Because -- that's very helpful because I go down  
18 to the bottom where it says "Narrative 10/03/2021 at  
19 1:11 a.m." and "dispersing crowd." And the reason I  
20 note that is -- is it fair to take that reference and  
21 then match it to your narrative, which is G4, page 2,  
22 item number 8? Do you have that in front of you?

23 THE WITNESS: I do.

24 THE HEARING OFFICER: And then you -- it



1 states in the last sentence "Detective Sergeant Brackett  
2 remained on location with this group until approximately  
3 1:43 a.m., until the last Uber arrived."

4 So my question is, is it reasonable for  
5 me to infer from that that you were on-scene, so to  
6 speak, for approximately a half hour helping with crowd  
7 control/dispersal?

8 THE WITNESS: Based on reading it, my  
9 arrival time at the location was 01:08:25. So  
10 1:08:25 seconds is my arrival time. My clearing time is  
11 1:43:12. And I was on location that whole time.

12 THE HEARING OFFICER: Thank you. And if  
13 I could, you're taking that from G-2 -- correct? --

14 THE WITNESS: That is from the call.

15 THE HEARING OFFICER: -- where the second  
16 phrase "ID" --

17 THE WITNESS: Under my ID number.

18 THE HEARING OFFICER: "118" is you;  
19 correct?

20 THE WITNESS: Yeah, that is correct.

21 THE HEARING OFFICER: I see what you're  
22 saying there, so "arrived," okay. Bear with me, I'm  
23 doing math. Always a bad thing.

24 For about 35 minutes you were on the

1 scene; correct?

2 THE WITNESS: That's accurate.

3 THE HEARING OFFICER: And can I infer  
4 from your narrative that during that time you were  
5 aiding in crowd dispersal, noise abatement, things of  
6 that nature?

7 THE WITNESS: I was.

8 THE HEARING OFFICER: Thank you.

9 And I want to pick up on -- and this goes  
10 back to questions by Attorney Zehnder a moment ago. And  
11 I want to draw everyone's attention to Exhibit H and  
12 specifically pages, what are numbered as, 12 and 13.  
13 And so page 12 indicates "1.10, Environs of Licensed  
14 Premises" and has a subsection A and subsection B, is  
15 what I gathered Attorney Zehnder's questions were  
16 getting to. So I just want to -- do you have the  
17 regulations in front you?

18 THE WITNESS: I do not.

19 THE HEARING OFFICER: Okay. So what I'd  
20 like to do is just read that. So what it says is, under  
21 B, "Licensees shall act reasonably and diligently to  
22 disperse loiterers or patrons who attempt to congregate  
23 in front of or at the licensed premises. Failure of the  
24 licensee to keep persons from congregating at the

1 licensed premises may lead to disciplinary action  
2 against the licensee for allowing a public nuisance.  
3 Action to be taken by the licensee shall include, (1),  
4 maintaining the front door in a closed position." Is  
5 that how you saw the front door to be? Closed?

6 THE WITNESS: There's no real door.

7 THE HEARING OFFICER: Okay.

8 THE WITNESS: It's a -- it's an open  
9 pathway area that they do have a rope or chain,  
10 something that I believe they put across when it's  
11 closed, which was in that position.

12 THE HEARING OFFICER: And then, "item 2,  
13 "asking loiterers to disperse; item 3, promptly  
14 notifying the police if loiterers refuse to disperse;  
15 (4), hiring a security guard or stationing a security  
16 employee at the front door to disperse loiterers; (5),  
17 refusing to allow patrons to walk in and out of the  
18 premises at short intervals; (6), maintaining order in  
19 lines of patrons waiting to get in; and, (7), announcing  
20 that no further patrons will be allowed into the  
21 premises if lines become too long or disorderly or  
22 loud."

23 And so I make that reference because I  
24 think it dovetailed with the questions that Attorney

1 Zehnder was asking, which amount somewhat to my  
2 questions. I don't recall the question from Attorney  
3 Zehnder specifically, but your response was that you  
4 felt that -- and this is my paraphrase -- nothing more  
5 could be done by the Perks staff. And that was in  
6 relation to getting the crowd to move.

7 THE WITNESS: I don't know if I was that  
8 clear-cut about it, but they were doing -- they were  
9 doing what I felt -- I mean, anything more they could do  
10 without physically grabbing these people -- I mean, they  
11 were telling these people to move along, telling them to  
12 move along. They were trying to get as many as they  
13 could to cross the street, even, to go into the  
14 schoolhouse parking lot. The problem is people were  
15 waiting for their Ubers; so they would not do that. I  
16 think that's the -- that was the issue they were running  
17 into. They were trying to get these people to move on.

18 THE HEARING OFFICER: Thank you. I  
19 appreciate that. That was helpful.

20 MR. BLAKE: I've got one follow-up on  
21 that.

22 THE HEARING OFFICER: Sure, Attorney  
23 Blake.

24 ///

1 RE-EXAMINATION

2 BY MR. BLAKE:

3 Q. Did you receive a call from Perks Restaurant  
4 to help you disperse these folks?

5 A. We did not.

6 Q. When you got there, did they ask you to help  
7 them disperse the folks?

8 A. I had conversation, when we first got there,  
9 with -- I think Taylor walked out towards the road to  
10 me. I don't think he specifically asked, but he  
11 indicated that they were -- you know, they had been  
12 trying to move these people along. I mean, he didn't  
13 come outright and ask, but he did say, you know, more of  
14 in a defiant -- you know, like a defeated way, "We've  
15 been trying to move these people along."

16 MR. BLAKE: Thank you.

17 THE HEARING OFFICER: Attorney Zehnder,  
18 I'll offer you the same. Based on my questions, is  
19 there anything you'd like to ask?

20 MR. ZEHNDER: No. I have no further  
21 questions of Detective Sergeant. Thank you.

22 THE HEARING OFFICER: Attorney Blake, we  
23 go back to you. Is there anything else?

24 MR. BLAKE: I have nothing further.

1 THE HEARING OFFICER: No further  
2 witnesses.

3 Attorney Zehnder, this is your  
4 opportunity now to present exhibits and/or witnesses  
5 regarding alleged violations alleged to have occurred on  
6 October 3rd.

7 MR. ZEHNDER: Mr. Powers, I have no other  
8 exhibits to offer in this matter. I would ask that  
9 Taylor Powell be allowed to address the hearing officer.

10 THE HEARING OFFICER: Certainly. And  
11 Mr. Powell was sworn earlier.

12 So, Taylor, please come up to the  
13 microphone.

14 And, Attorney Zehnder, the witness is  
15 yours.

16 MR. ZEHNDER: Rather than ask questions,  
17 I'd like to give him an opportunity to address the  
18 hearing officer before the hearing is closed.

19 THE HEARING OFFICER: Sure.

20 TAYLOR POWELL, previously sworn.

21 THE WITNESS: So on that night Sergeant  
22 Detective Brackett was accurate in saying we did  
23 everything we could. I don't know the exact words, but  
24 we were doing everything we could. There was a language

1 barrier. We did ask some other officers that were  
2 there, "What should we do with the people?"

3 They said, "I don't care. Just keep them  
4 out of the street."

5 We were trying to get them to be quiet.  
6 They just wouldn't be quiet. So it was really just out  
7 of our control.

8 But in this process I appreciate  
9 everyone's time. I want to thank you all and wish you  
10 all a Happy Thanksgiving -- for you and your families.  
11 But before I get away from the mic, I did want to  
12 include -- some questions were asked about me and our  
13 procedures about getting people out, but nothing was  
14 asked about what our procedures are on letting people  
15 in; that no one is served alcohol in our place without  
16 proper identification -- nobody. We don't serve  
17 underage people, period. Otherwise, there would have  
18 been a long trail of this in the past. We just don't do  
19 it.

20 We ask for backups. We have a doorman,  
21 which is important to know. The doorman checks people's  
22 identification. If there's any suspect of that  
23 identification being false, that whole group isn't  
24 allowed entry into our place. We again -- check it

1 again at the bar. If someone has a fake ID, we don't  
2 take it from them. We asked the police and ABCC,  
3 "Should we be taking people's fake IDs?" We don't do  
4 that. We just escort them out. So we, under oath, do  
5 not serve anybody underage knowingly and willingly, nor  
6 will we ever.

7 And there is -- it's a hard job when kids  
8 are out there trying to get in places and have fake  
9 identification. So if you can look at the facts, I just  
10 wanted to include that -- that we don't serve underage  
11 people, period. We check, we double check, we triple  
12 check.

13 I have pictures of what a fake ID looks  
14 like, and it's almost impossible to tell these days. I  
15 didn't include that in the evidence, but I just wanted  
16 to share that with you guys. That's all.

17 THE HEARING OFFICER: So thank you. But  
18 I do have a question, then, based on that.

19 THE WITNESS: Sure.

20 THE HEARING OFFICER: A moment ago I  
21 heard you say something along the lines of "We --"  
22 meaning, of course, you and your staff -- "We asked  
23 police and ABCC if we should confiscate fake IDs."

24 THE WITNESS: There is an alcohol meeting



1 that happens every year, usually before season. The  
2 question comes up. It's not -- just it's a public,  
3 open -- all the restaurant licensees are required -- or,  
4 asked to attend. I don't know if it's required.

5 THE HEARING OFFICER: Is this the one  
6 that the Town sponsors at the public safety building?

7 THE WITNESS: Exactly. Exactly. In -- I  
8 don't know which year, but in the past a question has  
9 been asked about IDs. And I've asked some officers on  
10 the side, too, "Should we be taking them?" And they  
11 said, you know, "That's probably not the best idea."  
12 But if they want us to take them, I guess we can take  
13 people's IDs.

14 But one thing we also do --

15 THE HEARING OFFICER: If I may, Taylor,  
16 real quick.

17 THE WITNESS: Sure.

18 THE HEARING OFFICER: So what is the  
19 answer that you believe you've heard in the past?  
20 Should you confiscate them?

21 THE WITNESS: No.

22 THE HEARING OFFICER: Thank you.

23 THE WITNESS: Everyone that works for us  
24 has an alcohol certification training that they go

1 through, which also goes over fraudulent identification  
2 and ways to serve and not over-serve. And no one works  
3 for us unless they've passed this state registry course.

4 THE HEARING OFFICER: Thank you.

5 Any further witnesses, exhibits, anything  
6 to present at this time, Attorney Zehnder?

7 MR. ZEHNDER: No.

8 THE HEARING OFFICER: Thank you.

9 Thank you, Mr. Powell. You may be  
10 seated, but please remain.

11 And, Attorney Blake, I'll turn it over to  
12 you for a summation or closing.

13 MR. BLAKE: Sure.

14 SUMMATION

15 MR. BLAKE: You heard the evidence,  
16 Mr. Hearing Officer, that on October 3rd there was a  
17 loud, boisterous crowd outside of Perk. They came from  
18 the Perk. You could hear them over 500 -- or,  
19 approximately 500 feet away.

20 The Perk Restaurant -- or, Beer Garden --  
21 would like to throw up their hands and say, "Sorry. We  
22 brought all these people into this town, all these  
23 people into this neighborhood, and -- do you know  
24 what? -- once we've made our money off them and they

1 leave, it's your problem."

2           The Perk Restaurant, as is all  
3 establishment owners, are responsible for making sure  
4 that the patrons that leave their facility, their  
5 establishments, do so in an orderly fashion. You,  
6 yourself, pointed out in the regulation that we have  
7 even gone further -- we, being the Town, have gone  
8 further to talk about acting reasonably and diligently  
9 in dispersing loiterers or patrons. And one of those is  
10 to ask loiterers to disperse -- apparently, there was  
11 some evidence that they did -- but then also promptly  
12 notify the police. They never notified the police. We  
13 had to get a complaint and we had to come. It is their  
14 responsibility.

15           Now, I think it's an oversimplification  
16 for somebody to say, "Look, there's nothing we can do.  
17 Once we bring all these people in here and get all their  
18 money and give them alcohol and they walk out, I'm  
19 sorry, there's nothing we can do."

20           Well, there is something they can do.  
21 They can put in practices and procedures to prevent  
22 that. It is a violation. It's a disturbance. It's a  
23 public nuisance. It's a public disturbance, and they  
24 are responsible for those patrons leaving their

1 establishment.

2                   There's no evidence whatsoever that those  
3 patrons came from anywhere but the Perks Restaurant. I  
4 don't think it's disputed that there was a huge  
5 disturbance out in the street. For that reason I  
6 believe you should find a violation in respect to this  
7 incident.

8                   THE HEARING OFFICER: Thank you, Attorney  
9 Blake.

10                   Attorney Zehnder, your opportunity for a  
11 closing and summation.

12                   MR. ZEHNDER: I do.

13   SUMMATION

14                   MR. ZEHNDER: I'm not sure I can muster  
15 the same enthusiasm for my closing as my brother, but  
16 it's not Perks bringing large groups of people into the  
17 town of Harwich; it's the town of Harwich bringing  
18 people into the town of Harwich. This is not just  
19 Perks. This is a number of nightclubs. It's  
20 restaurants. It's gift shops. It's cultural  
21 activities. We invite people to come to Harwich in the  
22 summer to relax and recreate and to enjoy themselves and  
23 to spend their money here and to stay here and to live  
24 here and to be part of the community.

1           And so there are a number of weeks every  
2 year when we all suffer. And, again, I'm a Wellfleet  
3 guy; so maybe I don't know what you're going through.  
4 But, you know, people come to this part of Harwich on  
5 summer evenings to spend their money and to enjoy  
6 themselves and relax. And periodically a group of those  
7 people, whether it's a wedding or a graduation or a  
8 sporting event -- or, in this case, I believe, it was a  
9 group of MIT graduates or MIT students, foreign  
10 students, who wanted to come -- they're going to enjoy  
11 themselves.

12           The question isn't whether or not  
13 somebody is too loud in the town of Harwich, because the  
14 police certainly could have cited those individuals for  
15 noise violations, but there's a procedure in the noise  
16 bylaw for addressing noise violations, and it says that,  
17 when a police officer identifies a noise violation, they  
18 ask the person to abate it. If they don't abate it,  
19 then they can take the next step of citing them.

20           These people did ultimately cooperate  
21 with the police. They got in their Ubers as quickly as  
22 those Ubers came, and they left the premises, and then  
23 the property was quiet again.

24           So the question isn't whether or not

1 there was noise. The question was whether or not Perks  
2 acted unreasonably or violated the terms of their  
3 license or the noise bylaw or the licensing bylaws in  
4 not addressing and being responsible about the patrons  
5 that came out of their property.

6 And Detective Sergeant Brackett, I  
7 thought, was very clear in his testimony that, when he  
8 arrived after closing time, the restaurant was empty;  
9 that there were multiple employees of Perks out there  
10 dispersing people; that the Perks employees followed the  
11 instructions of the police officers in trying to move  
12 people across the street and trying to move people out  
13 of the street; and that Detective Sergeant Brackett, I  
14 think, undertook the yeoman's work in staying with those  
15 people and making sure it was a safe environment.

16 So there is going to be -- in any  
17 nightclub there are going to be those odd nights when  
18 people are too loud. That doesn't mean that somebody  
19 did something wrong. It just means that that particular  
20 night that group of people, for that confluence of  
21 factors, you know, whether it's a language barrier, a  
22 sporting event, or, you know, a happy group -- or maybe  
23 even they were -- had some alcohol. You know, that's  
24 part of what happens.

1           And when we create zoning districts --  
2 the central village zoning district, that allows, as a  
3 right, restaurants to be in that district, and when you  
4 put three or four in one location, it will draw the  
5 crowds. And you hope that it does draw the crowds, and  
6 you hope that people enjoy themselves.

7           So as I used to say to my ex-wife -- and  
8 maybe this is why she's my ex-wife -- "Just because  
9 you're mad, it doesn't mean I did something wrong." And  
10 in this particular case Perks acted in accordance with  
11 the terms of their license, and I hope that the hearing  
12 officer recommends two things: One, that they're not  
13 responsible for creating or fostering any illegal  
14 activity on the property, but, also, that the selectmen  
15 might want to look at a global look at this district to  
16 see whether there are things that can happen to address  
17 these concerns.

18           And that's really -- as I said to  
19 Detective Sergeant Brackett, it's above his pay grade.  
20 And it's above Perks' pay grade. So I'm hoping that the  
21 Court finds -- the hearing officer recommends to the  
22 selectmen there be no violation in this particular  
23 matter.

24           Thank you all. And, globally, thank you

1 all for your time.

2 THE HEARING OFFICER: Thank you, Attorney  
3 Zehnder.

4 I will ask formally, Attorney Blake, is  
5 there anything else you wish to bring forward to this  
6 hearing at this time?

7 MR. BLAKE: This is nothing.

8 THE HEARING OFFICER: Attorney Zehnder,  
9 is there anything you are looking to present for the  
10 hearing at this time?

11 MR. ZEHNDER: There is not.

12 THE HEARING OFFICER: All right.

13 So in a moment, folks, I'm going to gavel  
14 this hearing to a close and adjourn. Before I do, first  
15 I want to thank everybody for sitting in a -- on an  
16 autumn day with some twilight sunlight coming in and a  
17 terrible collection of office lamps. But I want to  
18 thank everybody for their presence and participation  
19 today, and I certainly want to thank Caleb Ladue, on  
20 behalf of Channel 18; Janet Wynne and Danielle Delaney  
21 for their efforts; and everybody who sat in today and  
22 participated today.

23 So with that, I wish everybody a very  
24 happy, healthy, safe, and enjoyable Thanksgiving. It is



1 3:12 p.m. This hearing is now adjourned.

2 (Whereupon the hearing was adjourned at  
3 3:12 p.m.)  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

C E R T I F I C A T E

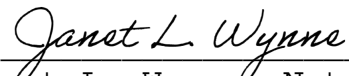
COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

I, Janet L. Wynne, CSR No. 131793, Registered Professional Reporter, a Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing transcript, pages 7 through 118, is a complete and accurate transcript of my stenographic notes.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of December, 2021.



Janet L. Wynne, Notary Public  
My Commission Expires:  
February 15, 2024

# **EXHIBITS**

A

**HARWICH BOARD OF SELECTMEN  
NOTICE OF SHOW CAUSE HEARING**

**ALLEGED VIOLATIONS OF CONDITIONS OF LIQUOR LICENSE  
OCTOBER 20, 2021**

The Town Administrator, acting as the Hearing Officer for the Board of Selectmen, will hold a Show Cause Hearing on Wednesday, October 20, 2021 at 1:00 P.M., for the purpose of consideration of alleged liquor license violations by Lucky Labrador Inc. d/b/a Perks, located at 545 Route 28, Harwich Port. The Hearing Officer will consider possible penalties including modifications, suspension, revocation or cancellation of said license. All members of the public having an interest in the topic are cordially invited to attend the Public Hearing which will be held in the Griffin Room at the Harwich Town Hall, 732 Main Street, Harwich MA 02645.

Joseph F. Powers  
Town Administrator

Cape Cod Times  
September 27, 2021

B

**HARWICH BOARD OF SELECTMEN  
NOTICE OF SHOW CAUSE HEARING**

**ALLEGED VIOLATIONS OF CONDITIONS OF LIQUOR LICENSE  
NOVEMBER 23, 2021**

The Town Administrator, acting as the Hearing Officer for the Board of Selectmen, will hold a Show Cause Hearing on Tuesday, November 23, 2021 at 1:00 P.M., for the purpose of consideration of alleged liquor license violations by Lucky Labrador Inc. d/b/a Perks, located at 545 Route 28, Harwich Port. The Hearing Officer will consider possible penalties including modifications, suspension, revocation or cancellation of said license. All members of the public having an interest in the topic are cordially invited to attend the Public Hearing which will be held in the Griffin Room at the Harwich Town Hall, 732 Main Street, Harwich MA 02645.

Joseph F. Powers  
Town Administrator

Cape Cod Times  
November 10, 2021

C-1

Phone (508) 430-7513

Fax (508) 432-5039



**OFFICE OF THE TOWN ADMINISTRATOR**

Joseph F. Powers, *Town Administrator*  
Meggan Eldredge, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645

September 15, 2021

VIA CERTIFIED MAIL AND EMAIL

Taylor Powell, Manager of Record  
Lucky Labrador Inc.  
d/b/a Perks  
545 Route 28  
Harwich Port, MA 02646

Re: Notice of Disciplinary Hearing  
Lucky Labrador Inc. d/b/a Perks

Dear Mr. Powell:

On Wednesday, October 20, 2021 at 1:00 pm at the Harwich Town Hall, acting on behalf of the Harwich Board of Selectmen as local licensing authority, I will conduct a Show Cause Hearing, in accordance with Massachusetts General Laws, Chapter 138, Sections 23 and 64, to determine whether you have violated the terms of the Liquor License for Lucky Labrador Inc. d/b/a Perks.

The specific charges are as follows: Violation of 204 CMR 2.05 (2): Permitting a disorder, disturbance or illegality to take place on the licensed premises. The Town reserves the right to consider and/or levy additional charges that may arise during the hearing process.

The facts underlying these allegations arise from an incidents occurring on or about July 24, 2021, as described in detail in the Harwich Police Incident Report attached hereto. Also, attached are the Town of Harwich Liquor License regulations.

Purpose of said hearing is to review the findings of Chief of Police and Officers as well as to determine if any additional facts may warrant additional allegations of violations, to that end, you are directed to provide copies of any material documentation, CCTV video within establishment, records of any and all receipts of tabs, credit card transactions and any other such material which the town may rely upon to determine if added violations are contemplated.

You are invited to participate in the hearing and be represented by counsel at your own expense if you wish. At that time you may produce any documentation and/or witnesses which show that you did not commit the violations described herein. Please provide copies of any documents and a list of participants to Danielle Delaney at [ddelaney@town.harwich.ma.us](mailto:ddelaney@town.harwich.ma.us) by the close of business on Wednesday, October 13, 2021.

The allegations, if proven, may result in a recommendation to the Board of Selectmen for disciplinary action, including warning, suspension, revocation or modification of the above-referenced license.

Sincerely,

  
Joseph F. Powers  
Town Administrator

CC: Board of Selectmen  
Licensing File  
Certified mail #7002 2030 0004 0933 4371

C-2

**OFFICE OF THE TOWN ADMINISTRATOR**

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Town Administrator*  
Meggan Eldredge, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645



September 30, 2021

VIA CERTIFIED MAIL AND EMAIL

Taylor Powell, Manager of Record  
Lucky Labrador Inc.  
d/b/a Perks  
545 Route 28  
Harwich Port, MA 02646

Re: Notice of Disciplinary Hearing – Continuation  
Lucky Labrador Inc. d/b/a Perks

Dear Mr. Powell:

Please be advised that the disciplinary hearing scheduled for October 20, 2021 at 1:00 P.M. will not be going forward. The hearing is to be rescheduled for November 10, 2021 at 9:00 A.M. The Hearing Officer will open the disciplinary hearing on October 20, 2021 at 1:00 P.M. for the sole purpose of continuing the hearing on the record to November 10, 2021 at 9:00 A.M. You are welcome to attend the continuation hearing, but your presence is not needed and there will be no testimony taken or any evidence presented by either you or the Town

Sincerely,

Joseph F. Powers  
Town Administrator

CC: Board of Selectmen  
Licensing File  
Certified mail #7015 0920 0000 9749 1664

C-3

**OFFICE OF THE TOWN ADMINISTRATOR**

Phone (508) 430-7513

Fax (508) 432-5039



Joseph F. Powers, *Town Administrator*  
Meggan Eldredge, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645

November 2, 2021

VIA CERTIFIED MAIL AND EMAIL

Taylor Powell, Manager of Record  
Lucky Labrador Inc.  
d/b/a Perks  
545 Route 28  
Harwich Port, MA 02646

Re: Notice of Disciplinary Hearing  
Lucky Labrador Inc. d/b/a Perks

Dear Mr. Powell:

On Tuesday, November 30, 2021 at 1:00 pm at the Harwich Town Hall, acting on behalf of the Harwich Board of Selectmen as local licensing authority, I will conduct a Show Cause Hearing, in accordance with Massachusetts General Laws, Chapter 138, Sections 23 and 64, to determine whether you have violated the terms of the Liquor License for Lucky Labrador Inc. d/b/a Perks.

The specific charges are as follows: Violation of 204 CMR 2.05 (2): Permitting a disorder, disturbance or illegality to take place on the licensed premises. The Town reserves the right to consider and/or levy additional charges that may arise during the hearing process.

The facts underlying these allegations arise from an incidents occurring on or about October 3, 2021, as described in detail in the Harwich Police Incident Report attached hereto. Also, attached are the Town of Harwich Liquor License regulations.

Purpose of said hearing is to review the findings of Chief of Police and Officers as well as to determine if any additional facts may warrant additional allegations of violations, to that end, you are directed to provide copies of any material documentation, CCTV video within establishment, records of any and all receipts of tabs, credit card transactions and any other such material which the town may rely upon to determine if added violations are contemplated.

You are invited to participate in the hearing and be represented by counsel at your own expense if you wish. At that time you may produce any documentation and/or witnesses which show that you did not commit the violations described herein. Please provide copies of any documents and a list of participants to Danielle Delaney at [ddelaney@town.harwich.ma.us](mailto:ddelaney@town.harwich.ma.us) by the close of business on Tuesday, November 23, 2021.



C-4

**OFFICE OF THE TOWN ADMINISTRATOR**

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Town Administrator*  
Meggan Eldredge, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645



November 5, 2021

VIA CERTIFIED MAIL AND EMAIL

Taylor Powell, Manager of Record  
Lucky Labrador Inc.  
d/b/a Perks  
545 Route 28  
Harwich Port, MA 02646

Re: Notice of Disciplinary Hearing – Continuation  
Lucky Labrador Inc. d/b/a Perks

Dear Mr. Powell:

Please be advised that the disciplinary hearing scheduled for November 10, 2021 at 9:00 A.M. and November 30, 2021 at 1:00 P.M. will not be going forward. The hearing is to be rescheduled for November 23, 2021 at 1:00 P.M. The Hearing Officer will open the disciplinary hearing on November 10, 2021 at 9:00 A.M. for the sole purpose of continuing the hearing on the record to November 23, 2021 at 1:00 P.M. You are welcome to attend the continuation hearing, but your presence is not needed and there will be no testimony taken or any evidence presented by either you or the Town

Sincerely,

Joseph F. Powers  
Town Administrator

CC: Board of Selectmen  
Licensing File  
Certified mail #70081830000252171313

D-1

No.: 00088-GP-0506

**LICENSE**  
**ALCOHOLIC BEVERAGES**  
**THE LICENSING BOARD, TOWN OF HARWICH, MASSACHUSETTS**  
**HEREBY GRANTS A**  
**GENERAL ON PREMISE**  
**License to Expose, Keep for Sales, and to Sell**  
**All Kinds of Alcoholic Beverages**  
.....  
**To Be Drunk On The Premises**  
.....

**To: Lucky Labrador Inc.**  
**DBA: Perks**

Date: 03/24/2021

License Duration Type: Seasonal All Alcohol

Manager: Taylor Powell

**License Conditions (description of premise)**

545 Route 28, Harwich MA 02645

Café located on first floor rear of building with three entrances (2 on north side & 1 on south side).

Patio area with exterior seating and porch area with exterior seating.

**On the following described premises:**

This license is granted and accepted upon the express condition that the licensee shall in all respects, conform to all the provisions of the Liquor Control Act, Chapter 138 of the General Laws, as amended, and any rules or regulations made expires **January 15, 2022**, unless earlier suspended, cancelled or revoked.

IN TESTIMONY WHEREOF, the undersigned have thereunto affixed their official signatures.

The Hours during which Alcoholic Beverages  
may be sold are From:

8:00AM – 1:00AM WEEKDAYS

10:00AM – 1:00AM SUNDAYS & HOLIDAYS

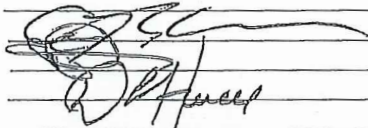
LICENSE  
granted by:

\_\_\_\_\_  
*L. Ballantien*  
\_\_\_\_\_  
*[Signature]*  
\_\_\_\_\_  
*[Signature]*  
\_\_\_\_\_  
*[Signature]*

This License Shall be Displayed on the Premises in a  
conspicuous position where it can be easily read

LICENSING AUTHORITIES

D-2

NUMBER <u>19-08S</u>	THE COMMONWEALTH OF MASSACHUSETTS <b>TOWN OF HARWICH</b>	FEE <u>\$75.00</u>
<b>LICENSE FOR INNHOLDERS, COMMON VICTUALLERS AND OTHER KEEPERS OF RESTAURANTS AND OTHER ESTABLISHMENTS</b>		
In accordance with the provisions of Chapter 140 of the General laws as amended by Chapter 299 of the Acts of 1926, and amendments thereto, LICENSE is hereby granted to:		
<u>Lucky Labrador Inc. d/b/a Perks</u>		
to conduct the amusements as herein described in connection with his regular business of innholder, common victualler, or owner, manager or controller of a café, restaurant or other eating or drinking establishment, on the premises owned by <u>Same</u>		
of <u>Harwich Port</u> located at <u>545 Route 28</u>		
Description of Premises: <u>Same</u>		
Description of amusements to be conducted: <u>Recorded or live music with use of amplification - outside</u> <u>Dancing by Patrons</u>		
To be conducted between the hours of: <u>11:30 a.m. – 10:00 p.m.</u> <u>Mondays to Saturdays</u>		
This LICENSE is granted as subject to the provisions of the General Laws, chapter one hundred and forty, sections twenty-two to thirty-two inclusive, and of chapter two hundred and seventy-two, sections twenty-five to twenty-seven inclusive, and amendments thereto, and shall not be valid for a location other than as herein described.		
Date: <u>05/03/2021</u>		License granted by: _____
<b>EXPIRES DECEMBER 31, 2021</b>		

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE

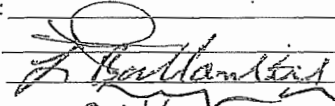
Outside Entertainment – Noise from entertainment must be at reasonable sound levels which are not plainly audible at a distance of 150 feet from boundary line or source of sound amplification system whichever is further.

*Suggested Minimum Regulations which will be required by the Licensing Authorities before approval of Licenses issued in accordance with the provisions of Chapter 299, Acts of 1926 and amendments thereto.*

1. This license is granted and approved subject to compliance with the laws of this Commonwealth relative to the exposing, sale and keeping of liquor or other intoxicating beverages and with compliance with the following conditions: —
2. The premises shall be open at all times to inspection by any police officer or constable of the town, or by any State Police Officer.
3. No person or persons under the influence of intoxicating liquor or other intoxicating beverage, or having the appearance thereof, shall be granted admittance to or be permitted to remain in or upon any of the premises described in this license.
4. No dialogue, gesture, song, language or conversation of any description which is directly or indirectly obscene, lascivious or suggestive, shall be permitted to be used by any person or persons while in or upon the premises.
5. Muscle or suggestive dancing or any description or form is prohibited.
6. Gaming of any description, games at which a prize is offered, any game where money is exposed as a prize or inducement, wheels of change and jingle boards are prohibited.
7. Private dining rooms, booths or enclosures for the accommodation of less than four persons shall not be permitted and not less than four persons shall be allowed or permitted to occupy any such room or enclosure.
8. Rooms used for dining rooms and for dancing shall be so lighted as to render it possible to distinguish any person by every other person therein at all times.
9. The license will be suspended for non-compliance with any of the laws of this Commonwealth relating to this particular establishment, and may, after a hearing, be revoked.
10. Non-compliance with the provisions of any of the above regulations will be sufficient cause for suspension, and after hearing the license may be revoked.

By authority of and in compliance with the provisions of Chapter 299, Acts of 1926, and amendments thereto, the above minimum rules and regulations are hereby prescribed and approved.

Board of Selectmen

NUMBER 19-08S	THE COMMONWEALTH OF MASSACHUSETTS <b>TOWN OF HARWICH</b>	FEE \$75.00
<b>LICENSE FOR INNHOLDERS, COMMON VICTUALLERS AND OTHER KEEPERS OF RESTAURANTS AND OTHER ESTABLISHMENTS</b>		
In accordance with the provisions of Chapter 140 of the General laws as amended by Chapter 299 of the Acts of 1926, and amendments thereto, LICENSE is hereby granted to:		
Lucky Labrador Inc. d/b/a Perks		
to conduct the amusements as herein described in connection with his regular business of innholder, common victualler, or owner, manager or controller of a café, restaurant or other eating or drinking establishment, on the premises owned by <u>Same</u>		
of <u>Harwich Port</u> located at <u>545 Route 28</u>		
Description of Premises: <u>Same</u>		
Description of amusements to be conducted: <u>Recorded or live music with use of amplification -- Inside</u>		
To be conducted between the hours of: <u>12:00 p.m. – 12:00 a.m.</u>		
<u>Mondays to Saturdays</u>		
This LICENSE is granted as subject to the provisions of the General Laws, chapter one hundred and forty, sections twenty-two to thirty-two inclusive, and of chapter two hundred and seventy-two, sections twenty-five to twenty-seven inclusive, and amendments thereto, and shall not be valid for a location other than as herein described.		
Date: <u>06/28/2021</u>		
		License granted by: _____  _____
<b>EXPIRES DECEMBER 31, 2021</b>		

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE

Outside Entertainment – Noise from entertainment must be at reasonable sound levels which are not plainly audible at a distance of 150 feet from boundary line or source of sound amplification system whichever is further.

*Suggested Minimum Regulations which will be required by the Licensing Authorities before approval of Licenses issued in accordance with the provisions of Chapter 299, Acts of 1926 and amendments thereto.*

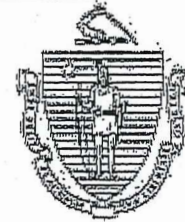
1. This license is granted and approved subject to compliance with the laws of this Commonwealth relative to the exposing, sale and keeping of liquor or other intoxicating beverages and with compliance with the following conditions: —
2. The premises shall be open at all times to inspection by any police officer or constable of the town, or by any State Police Officer.
3. No person or persons under the influence of intoxicating liquor or other intoxicating beverage, or having the appearance thereof, shall be granted admittance to or be permitted to remain in or upon any of the premises described in this license.
4. No dialogue, gesture, song, language or conversation of any description which is directly or indirectly obscene, lascivious or suggestive, shall be permitted to be used by any person or persons while in or upon the premises.
5. Muscle or suggestive dancing or any description or form is prohibited.
6. Gaming of any description, games at which a prize is offered, any game where money is exposed as a prize or inducement, wheels of change and jingle boards are prohibited.
7. Private dining rooms, booths or enclosures for the accommodation of less than four persons shall not be permitted and not less than four persons shall be allowed or permitted to occupy any such room or enclosure.
8. Rooms used for dining rooms and for dancing shall be so lighted as to render it possible to distinguish any person by every other person therein at all times.
9. The license will be suspended for non-compliance with any of the laws of this Commonwealth relating to this particular establishment, and may, after a hearing, be revoked.
10. Non-compliance with the provisions of any of the above regulations will be sufficient cause for suspension, and after hearing the license may be revoked.

By authority of and in compliance with the provisions of Chapter 299, Acts of 1926, and amendments thereto, the above minimum rules and regulations are hereby prescribed and approved.

Board of Selectmen

D-4

THE COMMONWEALTH OF MASSACHUSETTS  
TOWN OF HARWICH



State Fee: \$ 50/\$100  
Municipal Fee: \$ 85/\$175

LICENSE

For  
PUBLIC ENTERTAINMENT ON SUNDAY

The Name of the Establishment is Lucky Labrador Inc. DBA Perks in or on the property at No. \_\_\_\_\_  
545 Route 28, Harwich Port MA 02646 (address)

The Licensee or Authorized representative, Taylor Powell in  
accordance with chapter 136 of the General Laws, as amended, hereby request a license for the following program or entertainment:

DATE	TIME	Proposed dancing or game, sport, fair, exposition, play, entertainment or public diversion
Sundays	6PM-10PM	Recorded music or live music with amplification and dancing

Hon. A. Ballantyne Mayor/ Chairman of Board of Selectman, \_\_\_\_\_ (City or Town)

Fees per occurrence (Individual Sunday(s)): Regular Hours (Sunday 1:00pm – Midnight): \$2.00 Special Hours (Sunday 12:00 am- Midnight): \$5.00. Annual Fee (For Operating on every Sunday in calendar year): Regular Hours (Sunday 1:00pm – Midnight): \$50.00 Special Hours (Sunday 12:00 am- Midnight): \$100.00

This license is granted and accepted, and the entertainment approved, upon the understanding that such entertainment that the licensee shall comply with the laws of the Commonwealth applicable to licensed entertainments, and also to the following terms and conditions: The licensee shall at all times allow any person designated in writing by the Mayor, Board of Selectmen, or Commissioner of Public Safety, to enter and inspect his place of amusement and view the exhibitions and performances therein; shall permit regular police officers, detailed by the Commissioner of Public Safety or Chief of the local Police Department to enter and be about this place of amusement during performances therein; may employ to preserve order in his place of amusement only regular or special police officers designated therefore by the Chief of Police, and shall pay to said Chief of Police for the services of the regular police officers such amount as shall be fixed by him; shall permit at all times to enter and be about his place of amusement such members of the Fire Department as shall be detailed by the Chief of the Fire Department to guard against fire; shall keep in good condition, go as to be easily accessible, such standpipes, hose, axes, chemical extinguishers and other apparatus as the fire department may require; shall allow such members of the fire department in case of any fire in such place, to exercise exclusive control and direction of his employees and of the means and apparatus provided for extinguishing fire therein; shall permit no obstruction of any nature in any aisle, passageway or stairway of the licensed premises, nor allow any person therein to remain in any aisle passageway or stairway during an entertainment; and shall conform to any

other rules and regulations at any time made by the Mayor or Board of Selectmen. This license shall be kept on the premise where the entertainment is to be held, and shall be surrendered to any regular police officer or authorized representative of the Department of Public Safety. This license is issued under the provisions of Chapter 136 of the General Laws, as amended, and is subject to revocation at any time by the Mayor, Board of Selectmen, or Commissioner of Public Safety.

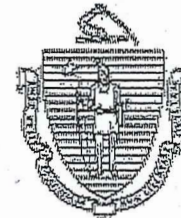
This application and program must be signed by the licensee or authorized representative of entertainment to be held. No Change to be made in the program without permission of the authorities granting and approving the license.

Do not write in this box

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE ON THE PREMISES

5  
D-1

THE COMMONWEALTH OF MASSACHUSETTS  
TOWN OF HARWICH



State Fee: \$ 50/\$100  
Municipal Fee: \$ 85/\$175

2021 LICENSE

For  
PUBLIC ENTERTAINMENT ON SUNDAY

The Name of the Establishment is Lucky Labrador Inc. DBA Perks in or on the property at No. 545 Route 28, Harwich Port MA 02646 (address)

The Licensee or Authorized representative, Taylor Powell in accordance with chapter 136 of the General Laws, as amended, hereby request a license for the following program or entertainment:

DATE	TIME	Proposed dancing or game, sport, fair, exposition, play, entertainment or public diversion
Sundays	3PM-12AM	Recorded music or live music with amplification inside
Sundays	1PM - 12AM	Ambient Music and/or television inside

Hon. [Signature] Mayor/ Chairman of Board of Selectman, Harwich (City or Town)

Fees per occurrence (Individual Sunday(s)): Regular Hours (Sunday 1:00pm - Midnight): \$2.00 Special Hours (Sunday 12:00 am- Midnight): \$5.00. Annual Fee (For Operating on every Sunday in calendar year): Regular Hours (Sunday 1:00pm - Midnight): \$50.00 Special Hours (Sunday 12:00 am- Midnight): \$100.00

This license is granted and accepted, and the entertainment approved, upon the understanding that such entertainment that the licensee shall comply with the laws of the Commonwealth applicable to licensed entertainments, and also to the following terms and conditions: The licensee shall at all times allow any person designated in writing by the Mayor, Board of Selectmen, or Commissioner of Public Safety, to enter and inspect his place of amusement and view the exhibitions and performances therein; shall permit regular police officers, detailed by the Commissioner of Public Safety or Chief of the local Police Department to enter and be about this place of amusement during performances therein; may employ to preserve order in his place of amusement only regular or special police officers designated therefore by the Chief of Police, and shall pay to said Chief of Police for the services of the regular police officers such amount as shall be fixed by him; shall permit at all times to enter and be about his place of amusement such members of the Fire Department as shall be detailed by the Chief of the Fire Department to guard against fire; shall keep in good condition, go as to be easily accessible, such standpipes, hose, axes, chemical extinguishers and other apparatus as the fire department may require; shall allow such members of the fire department in case of any fire in such place, to exercise exclusive control and direction of his employees and of the means and apparatus provided for extinguishing fire therein; shall permit no obstruction of any nature in any aisle, passageway or stairway of the licensed premises, nor allow any person therein to remain in any aisle passageway or stairway during an entertainment; and shall conform to any

other rules and regulations at any time made by the Mayor or Board of Selectmen. This license shall be kept on the premise where the entertainment is to be held, and shall be surrendered to any regular police officer or authorized representative of the Department of Public Safety. This license is issued under the provisions of Chapter 136 of the General Laws, as amended, and is subject to revocation at any time by the Mayor, Board of Selectmen, or Commissioner of Public Safety.

This application and program must be signed by the licensee or authorized representative of entertainment to be held. No Change to be made in the program without permission of the authorities granting and approving the license.

Do not write in this box

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE ON THE PREMISES

D-6

NUMBER  
19-05S

FEE  
\$50.00

THE COMMONWEALTH OF MASSACHUSETTS

TOWN OF HARWICH

This is to Certify that Lucky Labrador Inc. d/b/a Perks  
545 Route 28, Harwich Port

IS HEREBY GRANTED A  
COMMON VICTUALLER'S LICENSE

in said **Harwich Port** and at that place only and expires **December 31, 2021** unless sooner suspended or revoked for violation of the laws of the Commonwealth respecting the licensing of common victuallers. This license is issued in conformity with the authority granted to the licensing authorities by General Laws, Chapter 140, and amendments thereto.

In Testimony Whereof, the undersigned have hereunto affixed their official signatures.

LICENSING AUTHORITIES:

Z. Ballantyne  
[Signature]  
[Signature]

DATE: 05/03/2021

EXTRACTS FROM GENERAL LAWS, CHAPTER 140

*Section 8.* A common victualler who, upon request, on any day but Sunday, refuses to supply food to a stranger or traveler shall be punished by a fine of not more than fifty dollars.

*Section 9.* If, in the opinion of the licensing authorities, a licensee as an innholder or a common victualler ceases to be engaged in the business he is licensed to pursue, or fails to maintain upon his premises the implements or facilities required by this chapter, they shall immediately revoke his license. If a licensee at any time conducts his licensed business in an improper manner, the licensing authorities, after notice to the licensee and reasonable opportunity for a hearing, may upon satisfactory proof thereof suspend or revoke his license. A common victualler who violates section eight shall forfeit his license. \* \* \* A licensee who is convicted a second time of the violation of any of the provisions of sections six to eighteen, inclusive, shall forfeit his license.

*Section 18.* Every innholder and common victualler shall at all times have a board or sign affixed to his house, shop, cellar or store, or in a conspicuous place near the same, with his name legibly inscribed thereon, in large letters and the business for which he is licensed inscribed thereon, and upon neglect thereof shall forfeit twenty dollars.

*Section 20.* Whoever assumes to be an innholder or common victualler without being licensed as such under this chapter shall forfeit one hundred dollars.

*Section 21.* Whoever is convicted a third time of a violation of any provision of the preceding sections, except those contained in sections seven and eight, shall, in addition to the penalties before provided, be punished by imprisonment for not more than three months.

E-1

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Interim Town Administrator*

732 MAIN STREET, HARWICH, MA



MEMO

TO: Board of Selectmen

FROM: Joseph F. Powers, *JFP* Interim Town Administrator

CC: David J. Guillemette, Chief – Police  
 Gregg J. Corbo, Esq. – KP Law  
 Taylor B. Powell – Perks, Manager of Record

RE: Recommended action following disciplinary hearing held on June 30, 2020  
 re: Go Industries Inc., d/b/a Perks, Entertainment License Violations

DATE: August 3, 2020

---

The following is my report on a disciplinary hearing held on June 30, 2020 for alleged violations of the entertainment license for Go Industries Inc., d/b/a Perks, located at 545 Route 28, Harwich Port.

**Violations alleged:**

Specifically, the allegations of violations were:

- One (1) entertainment license violations, in the form of live or recorded music being played at Perks in a manner that was plainly audible beyond 150 feet — Sunday, September 1, 2019 (Police warning Saturday, July 4, 2019).

**Hearing summary:**

The enclosed hearing summary outlines the manner in which the hearing was conducted, the witnesses who provided sworn testimony, their testimonies, as well as discussions that ensued between the town’s counsel, the licensees and the hearing office.

**Legal Standard:**

I applied the following legal standard, as suggested by Town Counsel, in making my recommendation:

- Restaurants are permitted to offer live or recorded music if authorized by a license issued by the Board of Selectmen in accordance with Massachusetts General Laws, Chapter 140, Section 183A.



- The statute allows the Board to modify, revoke or suspend such a license if it finds that the licensed activity causes an unreasonable level of noise in the area, for any violation of law, or for any violation of the rules and regulations of the licensing authority.
- Chapter 189 of the Town's General Bylaws makes it "unlawful for any person or persons to cause or allow any noise which emanates from any building, boat, structure, vehicle, premises, or any sound amplification system, which is plainly audible at a distance of 150 feet from any such building, boat, structure, vehicle, premises or sound amplification system."
- The standard set forth in the Bylaw is adopted as a regulation of the Board of Selectmen, Section One, Subsection 1.09(e), and is set forth as a condition on the license.

**Statement of findings:**

I find that the licensed establishment did, in fact, cause an unreasonable level of noise in the area and that it violated the Bylaw, regulation and license condition with regard to the manner in which it presented outside entertainment on the date outlined above.

This finding is based on testimony and evidence that on the date in question, an officer of the Harwich Police Department observed that live music being played at the establishment was plainly audible from a distance of greater than 150 feet. This observation is described in greater detail in Harwich Police Incident Reports admitted into evidence at the hearing, which reports are consistent with the sworn testimony offered by the officer and which I credit as true.

Further, I considered evidence verifying that the location from which the officer heard the music as being plainly audible was from a distance of more than 150 feet from the source of the music. The manner in which this verification was determined is described in greater detail in the Harwich Police Incident Reports admitted into evidence and the hearing, which reports are consistent with the sworn testimony of the officers and which I credit as true.

Further, I credit the testimony of the owners of the establishment that they made honest attempts to limit the extent of the noise generated from the establishment, that all of the complaints appear to originate from the same location and that they in good faith believed that the location of the complaints was closer than 150 feet from the establishment.

Notwithstanding the testimony of the owners, based on my review of the licensing file for the establishment, I find that the establishment was the subject of disciplinary hearings for similar noise violations in each of 2016, 2017 and 2018, with a total of five (5) violations being confirmed and one (1) additional violation being unconfirmed and with a total of three (3) written warnings and one (1) day of suspension being served.

**Recommended disciplinary action:**

Whereas, there were two offenses found to have occurred during the 2019 operating season; and

Whereas, the licensee was issued a written warning for the first offense; and

Whereas, the licensee was issued a one (1) day suspension for similar violations occurring in 2017, but that the last of said violations occurred on August 19, 2017, more than two years prior to the date of the subject violation.

Therefore, I recommend the following discipline be rendered against the licensee as follows:

That the licensee serve a one (1) day suspension of all entertainment, both indoors and outdoors, on a day to be chosen by the licensee to be served prior to Monday, September 14, 2020.

E-2

OFFICE OF THE SELECTMEN

PHONE (508) 430-7513  
FAX (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



October 29, 2018

COPY

Mr. Taylor Powell  
Perks  
545 Route 28  
Harwich Port, MA 02646

Subject: Disciplinary Hearing for Violations of Entertainment License

Dear Mr. Powell:

At a meeting of the Board of Selectmen held on Monday, October 29, 2018, the Board voted to issue you the following notice relating to the disciplinary hearing held on October 18, 2018 for violations of the conditions of Perks' Weekday Entertainment License on July 27, 2018 and August 26, 2018:


With regard to the incident on July 27, 2018, this was a first violation for which you received a letter of warning from the Police Department, which is standard procedure, and no disciplinary action is warranted.


With regard to the incident on August 26, 2018, testimony indicated a minor technical violation but not sufficient to warrant any discipline.


The Board has the highest expectation that in the future you will comply with the conditions of your license.

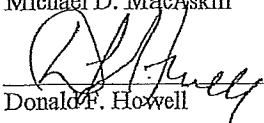
Sincerely,

  
Julie E. Kavanagh, Chair

  
Larry G. Ballantine

  
Edward J. McManus

  
Michael D. MacAskill

  
Donald F. Howell

cc: Chief David Guillemette

E-3

OFFICE OF THE SELECTMEN

PHONE (508) 430-7513  
FAX (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



October 11, 2017

VIA USPS AND EMAIL

Mr. Taylor Powell  
Perks  
15345 SW 88 Ave.  
Palmetto Bay, FL 33157

Subject: Notice of Disciplinary Action – Violations of Entertainment License


Dear Mr. Powell:

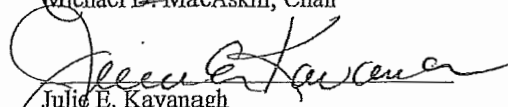
At a meeting of the Board of Selectmen held on Tuesday, October 10, 2017, the Board voted to approve the recommendation of the Town Administrator to suspend your Weekday Entertainment License for one day on Monday, June 25, 2018. This suspension is related to the two violations of your Weekday Entertainment License on August 19, 2017.

The Board recognizes that you previously received a warning for violations to your Weekday Entertainment License in 2016 and intends to follow a progressive course of discipline, if needed, up to and including revocation of Entertainment and /or Liquor License for any future violations.

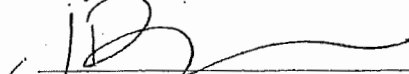
The Board has the highest expectation that in the future you will comply with the conditions of your license.

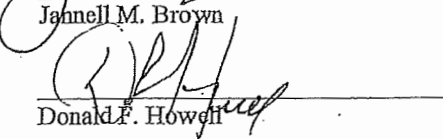
Sincerely,

  
Michael D. MacAskill, Chair

  
Julie E. Kavanagh

  
Larry Ballantine

  
Jannell M. Brown

  
Donald F. Howell

cc: Chief David Guillemette

E-4

THE SELECTMEN

PHONE (508) 430-7513  
FAX (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



October 3, 2016

Mr. Taylor Powell  
Perks  
545 Route 28  
Harwich Port, MA 02646

Subject: Letter of Warning – Violations of Entertainment License


Dear Mr. Powell:

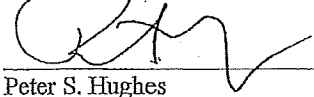
At a meeting of the Board of Selectmen held on Monday, October 3, 2016, the Board voted to issue you the following warning notice relating to violations of the conditions of Perks' Weekday Entertainment License on July 6, 2016 and August 10, 2016, per the recommendation of the Town Administrator:

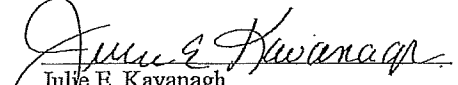
**You are hereby notified that the Board intends to follow a progressive course of discipline, if needed, up to and including revocation of Entertainment License and/or Liquor License for any future violations.**

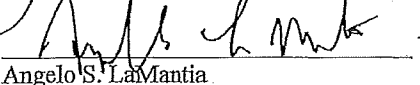
The Board recognizes that this season was the first with significant complaints and has the highest expectation that in the future you will comply with the conditions of your license.

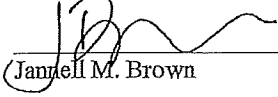
Sincerely,

  
\_\_\_\_\_  
Michael D. MacAskill, Chair

  
\_\_\_\_\_  
Peter S. Hughes

  
\_\_\_\_\_  
Julie E. Kavanagh

  
\_\_\_\_\_  
Angelo S. LaMantia

  
\_\_\_\_\_  
Jannell M. Brown

cc: Chief David Guillemette



**HARWICH**Police  
DEPARTMENT

183 Sisson Road, Harwich, MA 02645

Tel 508-430-7541 Fax 508-432-2530




DAVID J. GUILLEMETTE  
Chief of Police

KEVIN M. CONSIDINE  
Deputy Chief

## Memorandum

TO: Board of Selectmen  
Joseph Powers  
Town Administrator

FROM: David J. Guillemette   
Chief of Police

DATE: August 30, 2021

SUBJECT: Potential Violations at Perks

Mr. Powers and members of the Board:

Attached please find a number of police reports regarding potential liquor regulation violations at Perks on various dates in July and August. Reporting of the July 24<sup>th</sup> incident was delayed because a follow up investigation was being conducted by Det. Sgt. Brackett.

Please do not hesitate to contact me should you have any questions.

F-2

For Date: 07/24/2021 - Saturday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
21-9187	0107	SUSPICIOUS ACTIVITY	Investigated
Call Taker:		4004 - PSD Telecommunicator Theodore Monteiro	
Primary Id:		156 - Patrol Keith E Lincoln	
Location/Address:		[HAR 3931	AT 28
Involved Party:			3 - HARWICH, MA 026
Involved Party:			
Involved Party:			MA 01106
Involved Party:			MA 0110
ID:		156 - Patrol Keith E Lincoln	Arvd-01:07:00 Clrd-01:25:10
ID:		198 - Patrol Daniel J Donovan	Disp-01:08:07 Enrt-01:08:11 Arvd-01:12:10 Clrd-01:23:33
Narrative:		07/24/2021 0108 PSD Telecommunicator Theodore Monteiro	
Modified By:		PSD Telecommunicator Theodore Monteiro	
		Flagged down by homeowner for a Party who fell through their fence.	
Narrative:		07/24/2021 0125 PSD Telecommunicator Theodore Monteiro	
		Parties involved were identified and agreed to pay for damage.	
Narrative:		07/24/2021 0204 Patrol Keith E Lincoln	
		Flagged down the homeowner. He was restraining and reporting the male party fell through his fence. Parties identified, peace restored. See formal report.	
Refer To Incident:		<u>21-9187-OF</u>	

This report is by Officer Keith Lincoln regarding a disturbance in front of [redacted]. Damage was reported to their front fence do to the crowds from the closing liquor establishments in the area.

On the morning of July 24, 2021 at approximately 1:00am, I was flagged down by a male subject, later identified as [redacted]. He was reporting vandalism to his family property, the front fence of their family owned [redacted]. [redacted] was restraining another male, identified as [redacted], by holding him in place with a hand on his chest. [redacted] yelled out that [redacted] had fallen through his front fence. Due to traffic in the area, I needed to go west to find a place to turn and return to [redacted] and Mr. [redacted].

Exiting my cruiser in front of 547 Rt 28, I observed two groups of people arguing about the fence. [redacted] and a female were yelling [redacted] and his brother, identified as [redacted] was telling [redacted], he was going to jail for breaking the fence and [redacted] was offering to pay for the damage using his Venmo account. I was able to separate the two males and collect information and get statements.

[redacted] was complaining about the large crowd gathered on the sidewalk in front of his parents house. There was a large number of patrons from Perks and the Port standing on both sides of the road after closing. [redacted] stated, [redacted] and his group were standing by the fence and [redacted], who was highly intoxicated, fell through a section of fence, a 4x8 PVC picket style fence. [redacted] was demanding immediate action be taken. I was then able to speak with [redacted] and his brother [redacted] though intoxicated stated, he lost his balance when he was standing in the group and fell through the fence. [redacted] was more than willing to pay at the moment using his Venmo account, but was not able to make rational decisions at the moment. Another male, [redacted] brother [redacted] spoke with me. [redacted] was not showing any signs of intoxication and restated, that his brother and a group of friends were standing by the fence and [redacted] got his feet caught up in the group and lost his balance do to his intoxication. [redacted] also stated, they were more than willing to pay for any damages as it was an accident.

The owner of the [redacted] in came out front after [redacted] went inside to get her. She was not happy with the fact no one was being arrested and was filming with her cell phone. I explained to her the fence was broken do to an accident and not done maliciously. I told her both the males involved were more than willing to pay to have the fence repaired. She began getting agitated and complaining about all the issues in the area and past issues she's had on her property. I told her there needs to be some changes, but the proper channel for her was to attend all the hearings going on involving the establishments next door. [redacted] was advised to get a copy of the report on or after July 27th and reach out to the males involved to work on getting her fence repaired.

Neither Perks nor the Port had any easily recognizable staff out on the side walks monitoring or dispersing the large crowds after closing their establishments. The area the fence was broken was just east of the entrance to Perks.

This report is respectfully submitted by;

Officer Keith Lincoln #156  
Harwich Police Department



F-4

This supplemental narrative is by Officer Keith Lincoln regarding a follow up phone call with about the events on the morning of July 24, 2021 at 1:07am.

On July 28, 2021 at 1:00pm, I made contact with on his cell phone to further talk to him about the events of July 24th concerning the damaged fence belonging to Main st. Harwichport.

I wanted to speak with about where he had been prior to him accidentally falling through the fence. He was near two of the local liquor establishments, Perks and The Port, when I first made contact with him. It was clearly apparent was highly intoxicated by his slurred speech, his unsteadiness and strong odor of an alcoholic beverage standing in front of me.

I directly asked M where he had been and how he was served underage. was more than cooperative and stated, "I was at the Port". He continued to on stating, he had dinner at the Port with family and never left. I asked him if anyone of the staff of the Port checked his ID inside the establishment and he stated "no".

asked me what he should do next about getting the fence repaired. I told him, he was free to reach out to the homeowners and again try to resolve the issue. stated, "I'll even repair it myself" As stated in the original report, tried to use his Venmo account at the time of the incident to pay for the damage he caused.

This report is respectfully submitted by;

Officer Keith Lincoln#156  
Harwich Police Department

# ESTIMATE



**CARTER'S  
LANDSCAPING**

F-5

**Carter's Landscaping Services**

P.O. Box 761  
N Eastham  
MA 02651

**BILL TO**

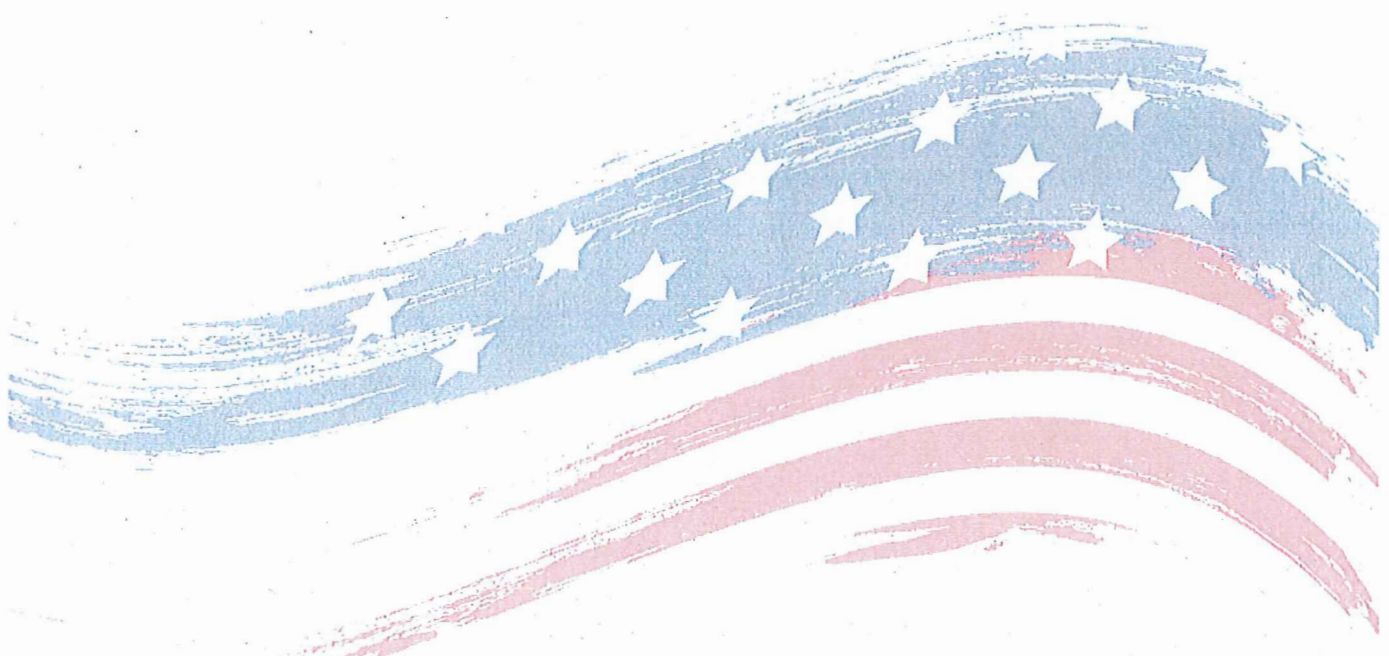
28  
Harwich Port MA 02646

**ESTIMATE #** 1227

**ESTIMATE DATE** 08/14/2021

\*\*\*\*\*

<b>DESCRIPTION</b>	<b>AMOUNT</b>
Replacing one fence panel.	147.00
Labor.	250.00
	Subtotal 397.00
	MA 6.25% 24.82
	<b>TOTAL \$421.82</b>



*Thank you*

**TERMS & CONDITIONS**

Your payment is now due.

## NARRATIVE FOR DETECTIVE SERGEANT ROBERT C BRACKETT

Ref: 21-9187-OF

F-6

To: Harwich Police Department Case Number 21-9187-OF

From: Detective Sergeant Bob Brackett

Date: August 24, 2021

Subject: Conversation with [redacted] on July 30, 2021

1. On Tuesday July 27, 2021, Detective Sergeant Brackett was asked by Harwich Police Chief David Guillemette to contact [redacted] Route 28 in Harwich Port, Ma. Chief Guillemette stated that [redacted] had further information regarding an incident that had been reported to the Harwich Police Department on July 24, 2021 (Harwich Police Department Case #21-9187-OF).
2. On Friday July 30, 2021, Detective Sergeant Brackett spoke with [redacted] via telephone. [redacted] advised that his family are the owners of the residence located at [redacted] Route 28 in Harwich Port, Ma. The residence is located next door to, and is an abutter of Perks Coffee Shop and Beer Garden located at #545 Route 28 in Harwich Port, Ma. [redacted] went on to explain that they had an incident at his residence on July 24, 2021 at approximately 1:00am where an intoxicated individual had broken a section of fence in front of his family residence. This incident was investigated/handled by Officer Keith Lincoln. Officer Lincoln identified the intoxicated individual as being [redacted] of Longmeadow, Ma. It was learned during the investigation that [redacted] is only 20 years of age and that he had no forms of identification on his person. Officer Lincoln also described [redacted] as being heavily intoxicated. It should be noted that the residence is not only located directly next door to Perks Coffee and Beer Garden, but that The Port Restaurant is located directly next door (#541 Route 28 Harwich Port, Ma) to Perks Coffee and Beer Garden to the West. Both of these establishments serve alcohol and have a 1:00am closing time. This incident was occurring as both establishments were in the process of closing.
3. [redacted] stated that due to the on-going issues at the closing time of these establishments, a member of his family makes it a point to stay out on the front porch at closing time in an effort to help deter any property damage and/or unruly behavior. [redacted] stated that at the time of this incident he believed that [redacted] had come from Perks Coffee and Beer Garden. [redacted] stated that earlier in the evening on the night of the incident his [redacted] had taken video from inside an out building on their property. This outbuilding is a 2 story building that has windows that directly overlook the outdoor bar of Perks Coffee and Beer Garden. [redacted] had been taking video in an effort to document the noise and activities at closing time to demonstrate the impact of the establishment on her residence. [redacted] additionally stated that [redacted] had pictures of Officer Lincoln interacting with [redacted].
4. [redacted] stated that he and [redacted] were subsequently reviewing the video she had taken on that night from Perks Coffee and Beer Garden and found video of [redacted] inside of Perks Coffee and Beer

## NARRATIVE FOR DETECTIVE SERGEANT ROBERT C BRACKETT

Ref: 21-9187-OF

F-6

Garden. Detective Sergeant Brackett requested copies of any video and/or photographs to be sent.

5. [redacted] was also concerned that he believed that [redacted] had subsequently stated to Officer Lincoln that he had been drinking at The Port and had not been at Perks Coffee and Beer Garden. [redacted] believed that [redacted] was a regular customer of Perks and that [redacted] was intentionally claiming to have been drinking at The Port so as to shift the blame onto The Port as there have been on-going issues between The Port and Perks.
6. On Friday July 30, 2021, at approximately 5:23pm, Detective Sergeant Brackett received Four (4) images and One (1) video via e-mail from [redacted].
7. The first image reviewed by Detective Sergeant Brackett was labeled "Officer Lincoln". The image appears to be a still photo taken from a video. The image is date stamped "Saturday" and time stamped 1:10am. This time would be consistent with the time that Officer Lincoln would have been investigating the incident on Saturday July 24, 2021. It should also be noted that the images appear to be from an Apple "iPhone". It is known that an iPhone does not "date stamp" until the image is a week old. Therefore an image taken on a "Saturday" will be date stamped "Saturday" up and until you get to the next Saturday and then images/videos from the prior Saturday will have an actual Date (i.e. July 24). As this image is date stamped "Saturday" and it was screen shot on or before Friday July 30, 2021 it is reasonable to conclude that the "Saturday" would be Saturday July 24, 2021. In this image you can depict two (2) individuals speaking with Officer Lincoln. Based upon the background imagery and the direction of the camera footage that the image was taken in and around the vicinity of: [redacted] Route 28 in Harwich Port, Ma. The individuals speaking with Officer Lincoln were identified by Officer Lincoln as being [redacted] and his brother [redacted]. [redacted] in the photo is seen wearing a reddish/cranberry colored long sleeve T-Shirt, dark colored shorts and has brownish blond hair and a full beard.
8. The next two (2) images reviewed by Detective Sergeant Brackett were labeled "IMG\_0174 and IMG\_0177" respectively. These images appear to be still photos taken from a video and zoomed in. Both images are very similar in appearance and background and show numerous people both seated and standing at a bar presumably the outside bar at Perks Coffee and Beer Garden, although there is nothing in these images to identify that. These two (2) images have no date and/or time stamps. In the images it can clearly be seen that the same individual that had been identified as being [redacted] in the prior image speaking with Officer Lincoln, could be observed standing at the bar in these images holding a cup/beverage.
9. The next image reviewed by Detective Sergeant Brackett was labeled "IMG\_0178". The image also appears to be a still photo taken from a video. The image is also date stamped "Saturday" and time stamped 12:39am. This time would be consistent with the time that [redacted] stated that his mother [redacted] had been taking video of the outdoor bar area of Perk Coffee and Beer Garden. This image shows the same as prior images labeled "IMG\_0174 and IMG\_0177" but is not as zoomed in. The only significant difference is that this image carries a date/time stamp.

## NARRATIVE FOR DETECTIVE SERGEANT ROBERT C BRACKETT

Ref: 21-9187-OF

F-6

10. Detective Sergeant Brackett then reviewed the video that was provided. The video was labeled "video" and was not date and/or time stamped. The video is approximately 38 seconds long. Although the video did not have a date/time stamp it was clearly evident that the video was the same that was used to produce the prior still images that were, in fact, date/time stamped. It should be noted that the screen shots used for the prior still images showed this video and this video was, in fact date and time stamped "Saturday" at 12:39am.. This video did not have the date/time stamp due to the format it was sent. As evidenced in the prior images the video was, in fact date and time stamped in the iPhone that it was taken on. The video provided was clearly being taken through a window that was overlooking what appeared to be the outdoor bar at Perks Coffee and Beer Garden. The bar can clearly be identified in the video. There is a television playing behind the bar that is airing what appears to be the Red Sox/Yankees game on NESN. It should be noted that the Red Sox did, in fact, play the Yankees on the night of this reported incident. Although official box scores from Major League Baseball list the game as finishing at approximately 10:36pm, it should be noted that NESN routinely replays the "Sox in 2" at midnight following every Red Sox game. "Sox in 2" is a condensed 2 hour replay of the earlier game. In the video it can clearly be observed that the individual presumably identified as [REDACTED] is standing at the bar with a female. [REDACTED] is wearing the same clothing as in the image speaking with Officer Lincoln. At approximately the 10 second mark of the video the female bartender is observed to serve two (2) drinks to [REDACTED]. The drinks are in what appear to be clear plastic cups. One drink appears to be clear in color and the other appears to have a green/yellow tint to it. [REDACTED] is observed to pick up the drink with the green/yellow tint and the female picks up the drink that is clear in color. Both [REDACTED] and the female then walk away from the bar and out of the frame of the video. It should be noted that the video goes out of focus at the time [REDACTED] is served the drinks. Although it is still plainly identifiable that he is served the drinks you can not identify whether [REDACTED] or the female paid for the drinks. Although it may have been done at a prior time, at no time in this video does it appear that the bartender inquires of identification of [REDACTED].
11. It should be noted that the videos and images referenced in this report and provided to Detective Sergeant Brackett were produced from videos taken by [REDACTED] at approximately 12:39am and approximately 1:10am. [REDACTED] took the videos and the videos appear to have been time stamped for "Saturday" at 12:39am and 1:10am. These time stamps are based off of the phone from which they were taken and could not be verified. These videos were subsequently used to produce the still images. The videos as provided to Detective Sergeant Brackett may or may not have been edited for the length of time of the video. At the time, the video of inside of Perks was not being taken for purposes of [REDACTED]. The incident involving [REDACTED] had not yet happened. The video was being taken for general purposes to memorialize and document the general conditions that the [REDACTED] family deal with regarding Perks Coffee and Beer Garden. It was only after the incident involving [REDACTED] in which another video was taken, that [REDACTED] was able to identify that the same gentleman that Officer Lincoln was speaking with was also in the video that [REDACTED] had taken earlier. The identification of [REDACTED] inside of Perks at approximately 12:39am is based upon him being identified by Officer Lincoln outside of the [REDACTED] residence at approximately 1:10am.
12. Although the video's can not be authenticated by Detective Sergeant Brackett for exact times and dates and what may or may not have been edited out, there is nothing to suggest that what was presented is not an accurate representation of what occurred on the night of this incident. There is enough detail in the video's to

## NARRATIVE FOR DETECTIVE SERGEANT ROBERT C BRACKETT

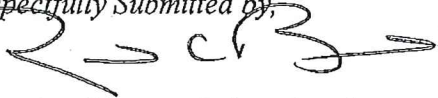
Ref: 21-9187-OF

F-6

identify the locations and separate corroboration of the times of the incident based upon records from the Harwich Police Department and the report of Officer Lincoln. It is important to note that when the term "edited" is being used in reference to the video there is nothing to suggest that anything other than shortening the video may have been done. There is no suspicion of any other type of editing being conducted.

13. Although \_\_\_\_\_ stated to Officer Lincoln that he had been at The Port, the only evidence to place anywhere shows him to be at Perks Coffee and Beer Garden.
14. Detective Sergeant Brackett made attempts to contact \_\_\_\_\_ by phone to further discuss where he had been drinking on the night of this incident. These calls have gone unanswered and the voicemail box of \_\_\_\_\_ is full and messages were unable to be left.
15. All images and video were saved on HPD server.

*Respectfully Submitted by,*



*Detective Sergeant Robert Brackett  
Harwich Police Detective Division*



Saturday

1:10 AM

Edit

F-69A

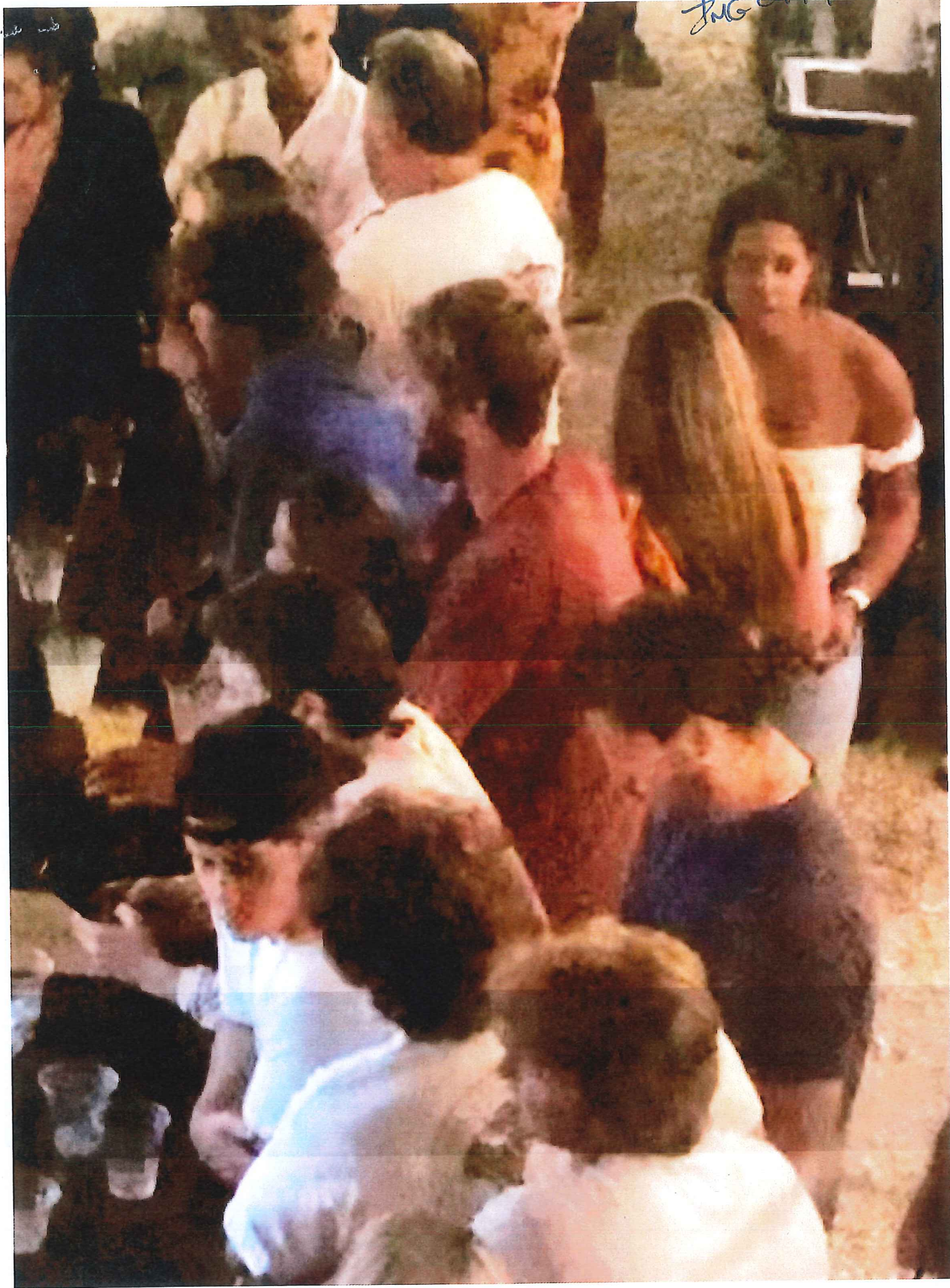


IMB 0174

F-6B







JNG 07/11

F-6C

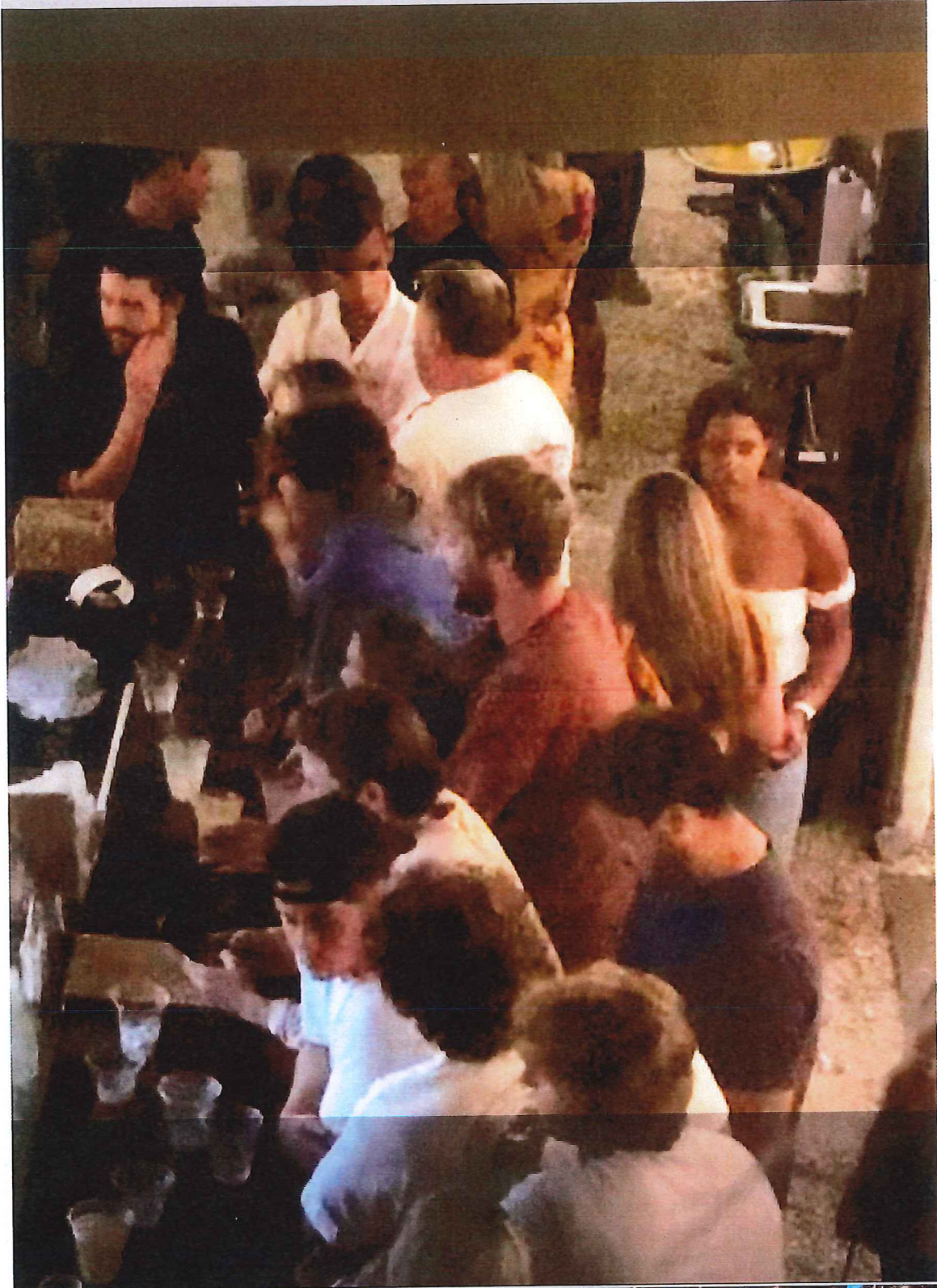


Saturday

12:39 AM

Edit

*F-6D*



For Date: 08/07/2021 - Saturday

F-7

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
21-9890	0108	GENERAL SERVICES	Investigated
Call Taker:		4005 - PSD Telecommunicator JADE ROSS	
Primary Id:		181 - Patrol Supervisor Keith T Kannally	
Location/Address:		HAR 38	
Calling Party:			- HARWICH, MA 026
ID:		181 - Patrol Supervisor Keith T Kannally	
		Disp-01:09:30 Enrt-01:09:33 Arvd-01:10:05	Clrd-01:12:25
ID:		116 - Patrol Robert D Hadfield	
		Disp-01:09:35 Enrt-01:09:37	Clrd-01:12:25
Narrative:		08/07/2021 0110 PSD Telecommunicator JADE ROSS	
		RP had some men come out from perks and urinate on their lawn.	
Narrative:		08/07/2021 0113 PSD Telecommunicator JADE ROSS	
		Clear, guys left prior to arrival in an uber	
Narrative:		08/07/2021 0240 Patrol Supervisor Keith T Kannally	
		Rp stated a female urinated beside the building, Rp stated female and male companions left in an Uber headed East on Rt 28. See formal report.	

Refer To Incident: 21-9890-OF

F-8

This report submitted by Officer Keith T. Kannally regarding the report of Public Urination at th

On Saturday August 7, 2021 at approximately 0108 hours I was dispatched to the ...  
for the report of a male urinating on the property, the reporting party said the male walked out of Perks Beer  
Garden and onto her property. I arrived a short time later and spoke with the reporting party L... ..  
M... .. told me the people just left in an Uber headed east. ... showed me where on the side of the  
building the female was urinating, I advised ... that I was told it was males, ... stated it was a  
female. ... asked her to stop she did not and the male parties waiting for her were laughing. It should be  
noted that it was closing time for the bars in the area, there were a small group of people in front of Perks who  
appeared to be waiting for Ubers, I was unable to decipher if there were any Perk's employees out front with the  
group.

... only description was a young female with a halter top and was last seen in the Uber headed  
East on Rt. 28.

Respectfully Submitted

#181

Officer Keith T. Kannally

F-11

For Date: 08/26/2021 - Thursday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
21-10941	2345	Noise Complaint	Investigated
Call Taker:		2373 - PSD Telecommunicator IRIS G MCINALLY	
Primary ID:		205 - Patrol Christopher R Arrigo	
Location/Address:		[HAR 1638] PERKS COFFEE SHOP - 545 RT 28	
Calling Party:		- HARWICH, MA 02	
Involved Party:		- HARWICH, MA	
ID:		205 - Patrol Christopher R Arrigo	
Dispatched By:		181 - Patrol Supervisor Keith T Kannally	
Enroute By:		4006 - PSD Telecommunicator Kyleigh Sears	
Arrived By:		4006 - PSD Telecommunicator Kyleigh Sears	
Cleared By:		4006 - PSD Telecommunicator Kyleigh Sears	
ID:		198 - Patrol Daniel J Donovan	
Dispatched By:		181 - Patrol Supervisor Keith T Kannally	
Enroute By:		4006 - PSD Telecommunicator Kyleigh Sears	
Arrived By:		4006 - PSD Telecommunicator Kyleigh Sears	
Cleared By:		4006 - PSD Telecommunicator Kyleigh Sears	
Narrative:		08/26/2021 2347 PSD Telecommunicator IRIS G MCINALLY	
		Rp complaint of loud voices, screaming and loud noises including a car horn, at Perks.	
Narrative:		08/27/2021 0011 PSD Telecommunicator Kyleigh Sears	
		All quiet, nothing loud going on, doorman at Perks reported that a driver was traveling up and down the road honking his horn earlier- potentially the source of the complaint. Clear.	

Refer To Incident: 21-10941-OF

F-12

The following is a narrative regarding an unfounded noise complaint at Perk's Coffee:

On August 26, 2021 at approximately 2347 hours, I, Officer Christopher Arrigo, was dispatched to 545 Rt 28, Perk's Coffee, for a report of loud voices and screaming coming from the restaurant as well as a car beeping in the area.

Upon my arrival to the area, I could not hear any loud voices emanating from the restaurant. I exited my cruiser and approached the restaurant. I was not able to hear the voices of the patrons of the restaurant until I was on the sidewalk located directly in front of the establishment. I spoke to a doorman and informed him why I was there and I requested to speak to a manager. The doorman informed me that he would get an owner, and he informed me that the beeping car horn came from a passing motor vehicle.

A short time later, Sarah Powell, the owner of Perk's, came out to speak with me. I informed her why I was there and informed her that there was no violations. This was a positive interaction.

Respectfully Submitted,

---

Officer Christopher Arrigo #205

F-9

For Date: 08/19/2021 - Thursday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
21-10584	2228	Noise Complaint	Investigated
Call Taker:		199 - Patrol Charles Brooks	
Primary Id:		135 - Patrol Supervisor Derek J Dutra	
Location/Address:		[HAR 1638] PERKS COFFEE SHOP - 545 RT 28	
Calling Party:		- HARWICH, MA 0264	
Involved Party:		- HARWICH, MA 026	
ID:		190 - Patrol Tyler J Vermette	
		Disp-22:30:27 Enrt-22:30:31 Arvd-22:39:57 Clrd-23:21:27	
ID:		135 - Patrol Supervisor Derek J Dutra	
		Disp-22:30:29 Enrt-22:31:13 Arvd-22:39:51 Clrd-23:21:25	
ID:		127 - Sergeant Aram V Goshgarian	
		Disp-22:44:01 Enrt-22:44:04 Arvd-22:44:05 Clrd-23:21:20	
Narrative:		08/19/2021 2230 Patrol Charles Brooks	
		RP states there is loud voices and screaming coming from Perks. When asked if it could possibly be coming from a different establishment she said she was right next to Perks and said it was them. RP wished to remain anonymous but provided her address.	
Narrative:		08/19/2021 2321 Patrol Charles Brooks	
		Clear, investigated.	
Narrative:		08/19/2021 2339 Patrol Supervisor Derek J Dutra	
		See formal...	
Refer To Incident:		<u>21-10584-OF</u>	

F-10

This report is submitted by Officer Dutra regarding a noise complaint called in against Perks Coffee Shop located at 545 RT 28 in Harwichport on August 19, 2021.

While assigned to the 4-12 shift Officer Vermette and I were dispatched to Perks Coffee Shop regarding a report of loud crowd noise coming from the business. The Rp in this case was 1 RT 28. On arrival M 1 met us at the front of her property, facing RT 28, and advised us we could hear the crowd noise coming from Perks more distinctly in her back yard. For context Perks Coffee Shop is on the west side of her property and inside the 150 foot rule. When Officer Vermette and I made it to her backyard we could both hear what would be described as normal crowd noise coming from Perks. 1 stated that level of crowd noise was not the reason for her call. She stated people were signing happy birthday and he's a jolly good fellow very loudly prior to our arrival. Officer Vermette and I were in the backyard and spoke to 1 for approximately 15-20 minutes. During that time we did not hear that type of crowd noise/signing coming from Perks.

I advised 1 the incident would be documented and looked it to see if this would be considered a violation for Town purposes.

After we left her residence we met Sgt. Goshgarian in front of Perks Coffee Shop. Sgt. Goshgarian was speaking to one of the owners, Sarah Powell. He had already notified her of the noise complaint. Sarah said she did not hear signing of any kind while she was on the property and assured us if that had happened she would have addressed it.





**HARWICH**Police  
DEPARTMENT

183 Sisson Road, Harwich, MA 02645

Tel 508-430-7541 Fax 508-432-2530




DAVID J. GUILLEMETTE  
Chief of Police

KEVIN M. CONSIDINE  
Deputy Chief

**Memorandum**

**TO:** Board of Selectmen  
Joseph Powers  
Town Administrator

**FROM:** David J. Guillemette   
Chief of Police

**DATE:** October 12, 2021

**SUBJECT:** Potential noise violation at Perks

Mr. Powers and members of the Board:

Attached please find a police report regarding a potential crowd noise violation that occurred at Perks on October 3, 2021 at closing time (1 am).

Please do not hesitate to contact me should you have any questions.

G-2

For Date: 10/03/2021 - Sunday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
21-13152	0105	Noise Complaint	Services Rendered
Call Taker:	4004 - PSD Telecommunicator Theodore Monteiro		
Primary Id:	118 - Detective Sergeant Robert C Brackett		
Location/Address:	[HAR 1638] PERKS COFFEE SHOP - 545 RT 28		
Calling Party:	SEA ST - HARWICH, MA 02645		
ID:	193 - Patrol John J Larivee		
	Disp-01:07:52	Enrt-01:07:59	Clrd-01:08:35
ID:	118 - Detective Sergeant Robert C Brackett		
	Disp-01:08:22	Arvd-01:08:25	Clrd-01:43:12
ID:	193 - Patrol John J Larivee		
	Disp-01:09:35	Enrt-01:09:39	Arvd-01:14:05
			Clrd-01:30:17
Arrived By:	193 - Patrol John J Larivee		
ID:	180 - Sergeant Amy R Walinski		
		Arvd-01:13:41	Clrd-01:29:04
Narrative:	10/03/2021 0107 PSD Telecommunicator Theodore Monteiro		
	RP who lives on Sea St. complains of loud screaming coming from the area of Perks.		
Narrative:	10/03/2021 0109 PSD Telecommunicator Theodore Monteiro		
	Large group of people in the roadway		
Narrative:	10/03/2021 0111 PSD Telecommunicator Theodore Monteiro		
	Dispersing crowd		
Refer To Incident:	<u>21-13152-OF</u>		



Harwich Police Department  
Incident Report

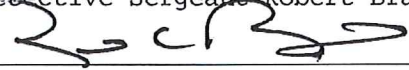
Page: 1  
10/11/2021

Incident #: 21-13152-OF  
Call #: 21-13152

G-3

Date/Time Reported: 10/03/2021 0105  
Report Date/Time: 10/11/2021 2028  
Status: No Crime Involved

Reporting Officer: Detective Sergeant Robert Brackett  
Approving Officer: Detective Sergeant Robert Brackett

Signature: 

Signature: \_\_\_\_\_

# EVENTS(S)

LOCATION TYPE: Restaurant/Cafeteria                      Zone: HARWICHPORT  
PERKS COFFEE SHOP  
545 RT 28  
HARWICH MA 02645

1 Disturbance - NOISE VIOLATION

# PERSON(S)                      PERSON TYPE                      SEX    RACE    AGE                      SSN                      PHONE

1 PERKS COFFE AND BEER GARDEN                      BUSINESS  
545 RT 28  
HARWICH MA 02645

To: Harwich Police Department Case #21-13152-OF

From: Detective Sergeant Bob Brackett

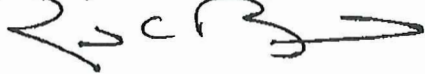
Date: October 5, 2021

Subject: Noise Violation at Perks Coffee and Beer Garden on October 3, 2021.

1. On Sunday October 3, 2021, at approximately 1:05am, Officers were dispatched to the area of Perks Coffee and Beer Garden for the report of "loud screaming" coming from the area of Perks Coffee and Beer Garden. The caller and reporting party were said to be calling from Sea Street.
2. At the time of the call being dispatched, Detective Sergeant Brackett was patrolling Braddock Street in Harwich Port, Ma in the vicinity of #42 Braddock Street. Detective Sergeant Brackett stopped and listened for any noise. Detective Sergeant Brackett was able to hear noise that would be best described as "yelling and cheering" coming from the area of where Perks Coffee and Beer garden would be located. Detective Sergeant Brackett subsequently utilized Google Maps to measure this distance and found it to be approximately 550 feet in a straight line.
3. Detective Sergeant Brackett proceeded to the area of Perks Coffee and Beer Garden. Upon traveling West on Route 28 approaching the area, there was a large crowd observed to be in the road surrounding a couple of vehicles that were in the travel lane on Route 28. These vehicles were stopped due to the crowd. Detective Sergeant Brackett activated the lights on his vehicle in an effort to disperse the crowd. The crowd left the roadway and the vehicles were able to proceed. It was later learned that these vehicles were UBER cars picking up patrons. Detective Sergeant Brackett estimated there to be approximately thirty (30) people in the roadway in front of Perks Coffee and Beer Garden and The Port Restaurant.
4. The crowd dispersed from the roadway to the sidewalk in front of Perks Coffee and Beer Garden. Detective Sergeant Brackett counted the crowd (as best as possible) and there were approximately sixty (60) people on the sidewalk area. Detective Sergeant Brackett stayed on location in an attempt to keep the patrons from standing in the road as there was not enough room on the sidewalk. Due to the lack of room on the sidewalk many patrons would unknowingly wander out into the street with traffic driving by. Many patrons subsequently crossed the street and were gathered on the sidewalk by the municipal parking lot.
5. It should be noted that although the crowd was loud and boisterous they were cooperative. The crowd had come from Perks Coffee and Beer Garden. Detective Sergeant Brackett had previously driven by this location and there were hardly any patrons at The Port restaurant while Perks Coffee and Beer Garden was very busy. Staff members from Perks also confirmed that the patrons had come from their establishment.
6. It should also be noted that upon the initial arrival of Detective Sergeant Brackett Perks was empty of all patrons and Perks had multiple staff members out on the sidewalk of Route 28 attempting to move the crowd along including, but not limited to, the owner Taylor Powell. Staff members were doing their best to move along the crowd.

7. The cause of the crowds on the sidewalk was patrons waiting for UBER rides to pick them up. Patrons were not leaving as they wanted to make sure they got their UBER ride.
8. The primary cause of the noise was a very large group of foreign visitors that were waiting for multiple UBER rides. There was a language barrier with this group and they were very boisterous and loud completely unaware of their actions. Detective Sergeant Brackett remained on location with this group until approximately 1:43am until the last UBER arrived.
9. In fairness to Perks Coffee and Beer Garden, they had cleared their establishment of patrons at closing time and staff was doing due diligence in an attempt to clear the crowds from the sidewalk. The crowds of people were due to people waiting for UBER rides. The crowd was loud but not rowdy. The primary issue was the group of foreign visitors and the language barrier. Perks staff showed great frustration over being unable to solve the problem of what to do about the people waiting for UBER rides and subsequently being responsible for the noise that they create while they are out along Route 28.

*Respectfully Submitted by,*



*Detective Sergeant Robert Brackett  
Harwich Police Detective Division*

H

**HARWICH BOARD OF SELECTMEN  
LIQUOR LICENSE REGULATIONS  
Adopted at a Public Hearing on June 13, 2011  
Amended at a Public Hearing on January 9, 2017  
Effective July 1, 2011**

**INTRODUCTION.....1**

1. Identification of the Town of Harwich.....1

2. Scope of and Statutory Basis for Promulgation of Rules.....1

3. Definitions.....1

**SECTION ONE: GENERAL LICENSING RULES FOR LICENSEES .....2**

1.00 Applicability of Rules and Regulations .....2

1.01 Availability of Rules and Regulations .....2

1.02 Filing Procedures and Responsibility of Applicant .....2

1.03 Posting and Signs.....3

1.04 Admissions to the Premises .....3

1.05 Hours of Operation .....6

1.06 Physical Premises.....6

1.07 Business Arrangements of Licensees.....7

1.08 Alcoholic Beverages Sales and Laws .....9

1.09 Entertainment at Licensed Premises .....11

1.10 Environs of Licensed Premises .....12

1.11 Inspections and Investigations .....13

1.12 Standards of Conduct on the Premises.....14

1.13 Illegal Activity on the Licensed Premises.....14

1.14 Injuries to Persons at the Premises.....15

1.15 Other Causes for Revocation, Suspension, and Modification .....15

1.16 Violations; Hearing Procedure.....16

1.17 Disciplinary Guidelines.....17

1.18 Service of Suspension Orders .....17

1.19 Permission to Close Premises Required; Non-use of License .....18

1.20 Bankruptcy and Court Proceedings.....19

1.21 Management.....19

1.22 Service Training.....19

**HARWICH BOARD OF SELECTMEN  
LIQUOR LICENSE REGULATIONS  
Adopted at a Public Hearing on June 13, 2011  
Amended at a Public Hearing on January 9, 2017  
Effective July 1, 2011**

**INTRODUCTION**

In issuing regulations, the Board of Selectmen, as the liquor licensing authority of the Town of Harwich, is setting forth the expectations of the citizens of Harwich as to the conduct of the Town's liquor license holders. A significant objective of the regulations is the prevention of violations. In familiarizing themselves with these regulations, license holders will realize that much is expected of them. The Board of Selectmen believes that violations will be prevented because these regulations will require liquor license holders to operate in accordance with a clearly defined, higher standard.

**1. Identification of the Town of Harwich Licensing Authority**

1. The Licensing Authority for the Town of Harwich shall consist of the Board of Selectmen. This authority is granted to the Board of Selectmen pursuant to G.L. c.138.

**2. Scope of and Statutory Basis for Promulgation of Rules**

1. The statutory basis for the promulgation of these rules is set forth within the applicable sections of G.L. c.138. Each reference to a statute shall include any amendment thereto.
2. These rules are supplementary to any statutory requirements and to the rules of the Alcoholic Beverages Control Commission.

**3. Definitions**

1. Whenever the word "**Applicant**" is used herein it shall mean an individual applicant; each member of a partnership applicant; each officer, director, manager, and stockholder of a corporate applicant; and any agent of an applicant.
2. Whenever the word "**Licensee**" is used herein it shall mean an individual licensee and each member of a partnership licensee and each officer, director, manager, and stockholder of a corporate licensee and any agent of a licensee including those employees who work in the public areas of the premises.
3. Whenever the word "**License**" is used herein it shall mean a revocable privilege granted by a licensing authority.

4. Whenever the words “Licensing Authority” or “Authority” are used herein it shall mean those groups having legal authority to grant licenses and/or regulate the operation of the licensed premises. The specific licensing authority for the Town of Harwich shall be the Board of Selectmen.
5. Whenever the word “Patron” is used herein it shall mean a customer who is legally on the licensed premises.
6. Whenever the word “Premises” is used herein it shall mean all land and buildings associated with the operation of the license.
7. Whenever the word “Rules and Regulations” is used herein it shall mean a compilation of regulations and laws set up by a licensing authority to regulate the manner in which businesses under its authority shall operate.

## **SECTION ONE: GENERAL LICENSING RULES FOR LICENSEES**

### **1.00 Applicability of Rules and Regulations**

- a. This section shall apply to all Town licensees, unless specifically provided otherwise.

### **1.01 Availability of Rules and Regulations**

- a. All licensees of the Licensing Authority for the Town of Harwich shall ensure that a copy of these Rules and Regulations is kept on the premises at all times and is available for inspection upon request by a member of the public or an agent of the Authority. These Rules and Regulations are to be kept in the office of the Manager or at the main cash register.
- b. The licensee is responsible for ensuring that all employees who work in the public areas of the premises read the Rules and Regulations of the Licensing Authority and comply with all rules and laws.

### **1.02 Liquor License Filing Procedures and Responsibility of Applicant**

- a. New applications and applications for license modifications must be filed in the Town Administrator’s Office in accordance with the Alcoholic Beverages Control Commission’s Matrix for Retail Transactions along with the local filing fee and abutters list fee (when applicable). Applicant is responsible for advertising costs as well as abutter notification and associated mailing costs.
- b. Copies of applications will be submitted to the Chief of Police for appropriate background investigations.



- c. The Town Administrator will require at least 2 business days to review an application to determine whether the filing is complete. Once it is determined that the application is complete as presented, the Town Administrator will place the Advertisement and at the same time distribute copies of the filing to each member of the Authority for review.
- d. The Authority may require additional information from the applicant prior to the public hearing (i.e. lease agreements, financing information, and/or additional background information).
- e. The hearing shall not be held sooner than ten days after advertising.
- f. The Authority may, with the consent of the applicant, continue the hearing to a future date in order to allow the applicant to provide additional information, or the Authority to investigate and consider whether the application is in the best interest of the Town.
- g. The Authority reserves the right to obtain updated information about a renewal applicant/manager/owner at the time of renewal.

### **1.03 Posting and Signs**

- a. Licenses issued by the Authority shall be posted in a conspicuous place easily seen by the public where they can read without difficulty and without the assistance of employees at the premises.
- b. All other licenses, permits, and certificates affecting the licensed premises shall be posted conspicuously; provided, however, that no such document shall be posted in such a way as to cover over any part of the license issued by the Authority.
- c. No dress code or preferred customer program or cover charge or other admissions policy shall be put into effect at the premises except upon proper posting pursuant to Section 1.04 below.
- d. The posting or presentation of any photographs, signs, posters, drawings or other matter that is of an improper or objectionable nature in the public areas of the licensed premises is prohibited. The material presented must be suitable for view by members of the general public in the same manner as if it were located in other public areas such as public ways, public parks, common carrier stations, other government offices, and business offices.

### **1.04 Admissions to the Premises**

- a. No licensee shall permit any rule, policy, or action, express or implied, which makes any distinction, discrimination, or restriction on account of race, color,

religious creed, national origin, sex, or ancestry, physical or mental disability, relative to the admission or treatment of persons from the general public or employees at the licensed premises; provided, however, that premises licensed pursuant to G.L. c.138, §12 may make rules regulating the admission of minors to the premises when such rules are not inconsistent with other rules and regulations stated herein; provided further that private club licensees shall not discriminate, as aforesaid, with regard to guests at the licensed premises or with regard to who may be invited to the premises as a guest.

- b. No licensee shall institute dress requirements of any kind except according to the following rules:
  - 1. A sign shall be posted at the entrance stating dress requirements or dress restrictions with specificity which may also include restrictions as to footwear. (Examples: "Jackets required"; "Ties and jackets required"; "Shirts with collars required, no sneakers").
  - 2. No signs shall be posted which state, "Proper dress required," or which otherwise announce a dress policy without stating specifically, item by item, what dress is required or what dress is prohibited.
  
- c. No licensee shall institute privileged entrance requirements of any kind except according to the following rules:
  - 1. A licensee may issue special passes.
  - 2. The special passes shall state the calendar year on the face of the pass.
  - 3. The special pass shall not entitle the passholder to free drinks or to a discount on drinks.
  - 4. The licensee shall keep a list of the names and addresses of all passholders and must have such list available if requested by the Authority.
  - 5. The licensee is responsible for ensuring that persons are picked to be passholders on a rational basis and not on any basis that is discriminatory in violation of law or these regulations.
  
- d. No licensee shall require any person to pay a minimum charge or cover charge unless a sign is conspicuously posted at every entrance to any dining room or rooms where such charge is required, in letters no less than one (1) inch in height, stating that a minimum charge or cover charge shall be charged and also stating the amount of charge; provided, however, that no such licensee shall require a person under thirteen (13) years of age to pay a minimum charge or cover charge. Such cover charge shall not be collected in advance of gaining entrance to the

licensed premises, and can only be charged upon a written or printed receipt, permanently recorded and numbered seriatim, presented to each individual customer or group of customers. Records of such receipts shall be kept by the licensee for a period not less than two (2) years. Cover charge shall mean all admission fees or admission charges. Such charges must also be posted on the outside of the licensed premises. Nothing in this regulation shall be construed to prohibit advance ticket sales.

- e. No minimum charge for the purpose of alcoholic beverages or minimum alcoholic beverage drinking requirement shall be imposed upon any customer of a G.L. c.138, §12 licensee.
- f. A licensee who charges a minimum charge for the purchase of food and/or non-alcoholic beverages shall include a specific statement in a posting stating that there is no minimum charge for alcoholic beverages. Such minimum charge for food and/or non-alcoholic beverages shall not be collected in advance of gaining entrance to the premises. No licensee shall impose a minimum charge for food and/or non-alcoholic beverages upon any customer who incurs charges for alcoholic beverages equal to or greater than the posted minimum charge for food and/or non-alcoholic beverages.
- g. Licensees shall refuse entrance to the premises to a person who appears to be intoxicated or unruly; and shall evict such a patron, except that in such a case the licensee should call the police and should offer assistance to an intoxicated person when possible.
- h. Licensees shall not permit entrance to the premises by more persons than the maximum occupancy limit established by the Building Department.
- i. Licensees who permit persons to wait in line for a table or a seat or for entrance to the premises shall obey the following rules:
  - 1. Persons who wait inside the premises shall be kept in an orderly line and must not be permitted to block fire aisles or exits. The number of such persons waiting inside the premises shall not exceed the number of persons allowed as standees.
  - 2. Persons who are permitted to wait in line outside the premises shall be supervised by an employee of the licensed premises. Such employee shall stand outside with the line during all times when the line exceeds ten (10) persons and shall announce no further admissions to the premises if persons in the line are being loud or disorderly or if the line is blocking the sidewalk or is of a size that could reasonably be expected to cause noise or other problems for residents of the area or for passersby. To the extent that lines in front of a licensed premises become the subject of public

complaints the licensee shall have been deemed to be inviting a public nuisance and shall be subject to disciplinary proceedings for same. It is recommended that licensees in residential areas discourage lines of more than ten persons.

- j. Licensees shall not lock the front door of the premises until the last patron has exited from the premises.
- k. Licensees shall not allow any patron or any guest or any employee who is not working that shift to enter the premises after the closing hour posted on the license or prior to the opening hour posted on the license.

#### **1.05 Hours of Operation**

- a. The hours of operation shall be restricted to those set by the Licensing Authority and stated on the face of the license. No patrons shall be on the premises before the official opening hours nor fifteen (15) minutes after the official closing hours. Customers must be up and on the way out once the closing hour of the licensed premises has been reached. No drink consumption time.
- b. The rules for employees on premises after closing hours are as follows: employees must be off the premises no later than sixty (60) minutes after the "Official Closing Hour," provided however, that such employees or other hired personnel may be on the premises at any time for the purpose of cleaning, making emergency repairs, providing security for the premises, or preparing food for the next day's business or opening or closing the business on an orderly manner. No other persons, friends or relatives may be on the premises with the owners, managers or employees of the licensed premises during the hours when the public is excluded from the premises.
- c. Licensees shall ensure that their patrons leave the premises in an orderly manner. Licensees who have a clientele that regularly fails to leave the area in a quiet and orderly manner should hire security personnel to police the leave-taking of the patrons at closing time.

#### **1.06 Physical Premises**

- a. No license shall be issued or shall be considered in good standing unless the licensed premises comply with all statutory requirements, including all applicable building codes and fire, health, safety, trash and other government regulations and laws.
- b. The licensed premises shall conform to the floor plan approved by the Authority with regard to the structures and the walls at the premises, as well as with regard to all tables, chairs, booths, bars, counters, bar stools, dance floors or areas, railing

partitions, and other barriers at the premises. Any changes in the floor plan or any renovations of any kind shall not be made without notification to the Authority and the approval of the Authority. This includes substantial changes in the arrangement of moveable furniture.

- c.. All premises covered by the license shall be kept in a clean and sanitary condition, with specific reference to fruit flies contaminating open liquor bottles.
- d. No outside area shall be used as a gathering place for patrons unless approved by the Authority and the Alcoholic Beverages Control Commission if alcohol is consumed.
- e. The premises shall be lighted in all public areas in a manner sufficient for the safety of the patrons and in a manner sufficient for the agents of the Authority to make observations at the premises without the need to identify themselves or the need to seek assistance.
- f. The actual capacity of the licensed premises will be established by the Licensing Authority and shall be the lowest set by septic or building capacity. That capacity shall be stated on the license.
- g. Licensees shall not invite the members of the general public to private areas of the premises which are approved by the Authority for storage or for an office or for a kitchen or for a music or video projection room or for any similar non-public use. Only owners and employees of the licensed premises shall be in these areas.
- h. No advertising matter, screen, curtain or other obstruction, which in the opinion of the Licensing Authority or its Agents, prevents a clear view of the interior of the premises shall be maintained in or on any window or door thereof after the Authority has ordered the removal of such obstruction.
- i. The interior of the premises shall be sufficiently lighted at all times and all exits shall be properly designated by lighted signs, "Exit," as same may be mandated by the Building Inspector of the Town of Harwich or by the Fire Department of the Town of Harwich.

#### **1.07 Business Arrangements of Licensees**

- a. No person or entity shall obtain or renew a license unless the applicant for such license or for renewal of such license can demonstrate proof of a legal right to the licensed premises for the term of the license. Such proof shall include ownership papers or a tenancy document or a management contract; provided, however, that all parties to such ownership or leasehold interest or management contract shall be known to the Authority and the terms of such agreements or contracts shall be made known to the Authority.

- b. No licensee shall hire any employee or contract for goods or services in any name other than that of the licensee, nor shall the licensee pay for any such employment, goods, or services by any means other than its own cash or bank accounts in its own name. Cash transactions shall be recorded in a manner suitable for review by the Authority. Such records shall be kept for a period of three (3) years.
- c. No licensee shall permit any person to have a direct or indirect financial or beneficial interest in the licensed business or to receive any revenue from the business or to manage the premises other than the persons properly approved of by the Authority and the salaried employees of such persons.
- d. No licensee shall permit any person to work at the licensed premises or to hold themselves out as a person in a position of authority at the premises except for those persons who are owners and officers or who are salaried employees for whom payroll records are available. No licensee shall pay an employee any percentage of the profits of the business or pay an employee in any manner other than by salary or hourly rate except upon approval of the Authority.
- e. No licensee shall pay a landlord or creditor of any kind a percentage of the profits of the business except upon complete disclosure to the Authority and the receipt of the Authority's approval.
- f. No licensee shall lease out any part of the premises or any part of the business without the approval of the Authority. No licensee shall lease out the food or beverage service without the approval of the Authority.
- g. No licensee shall enter into an agreement with an independent contractor to provide beverages or food or entertainment or management at the premises without the approval of the Authority.
- h. No licensee shall pledge the stock in the licensed business or the license itself without the approval of the Authority pursuant to G.L. c.138 §15A. No licensee shall pledge a license without obtaining the approval of the Authority pursuant to G.L. c.138, §15A and the Board of Selectmen's Policy on Pledging of Alcoholic Beverages Licenses.
- i. No licensee shall take a loan secured by any equipment at the premises or secured by any direct or indirect interest in the licensed business without the approval of the Authority. This includes kitchen equipment, video or audio equipment, lighting equipment, furniture, or any other type of equipment.
- j. No licensee shall contract bills for its licensed premises under any corporation or trade name other than that under which it is licensed.

- k. Managers in licensed premises shall not be changed until the Authority and the Alcoholic Beverages Control Commission have approved such change.
- l. Any licensee intending to close its place of business shall notify the Authority in writing before such closing and state the reason for such closing.
- m. Assignment of the stock of corporate licensees for purposes of collateralizing loans or notes, etc., gives no right to the assignee to conduct the business of the licensee. Licensees shall immediately notify the Authority when the assignee forecloses under such assignment of stock or when other proceedings are brought which affect the economic and financial rights and abilities of the licensee.
- n. Licensees shall enter into no agreement or understanding which sets a minimum requirement for gross sales of food and beverages at the premises.
- o. Licensees shall not use any trade name, assumed name, or abbreviated name in connection with the licensed business unless the same appears on the license certificate issued by the Authority or unless written permission is first obtained from the Authority. The use of any unauthorized name on the books, records, stationery, or interior or exterior of the licensed premises or for advertising purposes or telephone listing is prohibited unless permission is first obtained from the Authority.
- p. Licensees are responsible for maintaining a legal right to access to and control of the premises which is covered by the license. Failure to have a legal right to the named licensed premises shall result in the revocation or non-renewal of the license.

#### **1.08 Alcoholic Beverages Sales and Laws**

- a. No alcoholic beverages shall be sold for less than the actual cost of the beverage to the licensee. An admission charge shall not be credited towards the purchase price of any alcoholic beverage.
- b. All licensees shall maintain a schedule of the prices charged for all drinks to be served and drunk on the licensed premises or in any room or part thereof. Such prices shall be effective for not less than one calendar week.
- c. No licensee or employee or agent or a licensee shall:
  - 1. offer or deliver any free drinks to any person or group of persons;
  - 2. deliver more than two (2) drinks to one person at one time;

3. sell, offer to sell or deliver to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the general public;
  4. sell, offer to sell, or deliver to any person an unlimited number of drinks during a set period of time for a fixed price, except at private functions not open to the general public;
  5. sell, offer to sell or deliver drinks to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public;
  6. sell, offer to sell or deliver malt beverages or mixed drinks by the pitcher except to two (2) or more persons at any one time;
  7. increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week;
  8. encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes;
  9. advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under this section.
- b. Nothing contained in the preceding section shall be construed to prohibit licensees from offering free food at any time; or to prohibit licensees from including a drink as part of a meal package; or to prohibit the sale or delivery of wine by the bottle or carafe when sold with meals or to more than one persons; or to prohibit those licensed under G.L. c.138, §15 from offering free wine tastings; or to prohibit those licensed under G.L. c.138, §12 from offering room services to registered guests.
- c. Licensees shall not permit alcoholic beverages to be brought on the licensed premises by patrons or employees.
- d. Licensees shall be responsible for ensuring that minors are not served alcoholic beverages and are not drinking alcoholic beverages on the licensed premises, whether served to them by an employee or handed to them by another patron. Licensees who do not have the ability to keep track of the drinking activity of minors at the premises shall exclude minors from coming onto the premises in order to meet the burden of ensuring that there is no underage drinking at the premises. Licensees who choose to permit minors on the premises shall be accountable if minors are found to be drinking alcoholic beverages on the



premises, whether or not the Authority's agents are able to prove that the licensee actually served the drink directly to the minor. Sufficient security personnel shall be employed to monitor the premises to ensure that patrons do not pass alcoholic beverages to minors.

- e. Any establishment licensed to sell alcoholic beverages to be drunk on the premises shall post a copy of the penalties for driving under the influence set forth in section G.L. c.90, §24. Establishments licensed to sell alcoholic beverages not to be drunk on the premises shall post a copy of the penalties for operating a motor vehicle while drinking from an open container. Said copies shall be posted conspicuously in said establishments. Said copies are available from the Alcoholic Beverages Control Commission.
- f. Food service shall be available in all areas of the licensed premises where alcoholic beverages are served, this to include dining areas and lounge areas. This does not include any area approved as a waiting area by the Licensing Authority.

#### **1.09 Entertainment at Licensed Premises**

- a. No licensee may provide entertainment of any kind unless the licensee holds an entertainment license issued pursuant to G.L. c.140, §183A. Such license must be held in the same name, by the same owners, and with the same manager as the food or beverage license; provided, however, that in cases where entertainment on the premises is to be conducted by a person or entity who is an independent contractor at the premises, the food or beverage licensee may seek the approval of the Licensing Authority for an exemption from this rule based upon a written contract with the independent contractor which gives control of the premises to the food or beverage licensee while allowing the independent contractor to book and/or to produce the entertainment.
- b. The food or beverage licensee shall be responsible for the actions of any independent contractor on the premises providing entertainment in addition to the responsibility held by the independent contractor pursuant to the entertainment license.
- c. The food or beverage licensee shall pay the independent contractor a fee according to the written contract, said fee to be commensurate with the market value of the services, and the independent contractor shall not be given any direct or indirect interest in the licensed premises other than the fee set out in the contract. Said fee shall not be based upon the number of patrons attending an entertainment event.
- d. Any food or beverage licensee who permits entertainment at the licensed premises pursuant to a license held by a person in violation of this rule will be subject to disciplinary action by the Authority.

- e. Inside Entertainment - No entertainment at the licensed premises may be conducted in a manner such that the noise from the entertainment is creating a nuisance and can be heard outside the boundaries of the premises.  
  
Outside Entertainment – Noise from entertainment must be at reasonable sound levels which are not plainly audible at a distance of 150 feet from boundary line or source of sound amplification system whichever is further.
- f. No dancing by patrons is permitted except upon proper licensing pursuant to G.L. c.140, §183A, and confined to a particular dance floor area which has been approved by the Authority and which is not inconsistent with the entertainment license requirements.
- g. Entertainment shall not be conducted on the premises prior to the opening or subsequent to the closing hour set by the Authority for the exercise of the food or beverage license or during any period when the food or beverage license has been suspended.
- h. No licensee may have upon the premises any automatic amusement devices unless such machines have been approved and separately licensed by the Authority pursuant to G.L. c.140, §177A. Types of machines and location of machines upon the premises must be approved. The licensee must make application, not the distributor.
- i. Licensees shall not permit any games to be played at the premises for money, alcoholic beverages, or for any other prize. Games may be played for money at certain fundraising activities which have been approved by the Authority and for which the licensee holds other appropriate licenses.
- j. Licensees who hold licenses under G.L. c.138, §12 to serve alcoholic beverages for on premises consumption may petition the Authority for approval to allow dancing on Sundays between the hours of twelve midnight and one o'clock A.M. or two o'clock A.M. for the same hours for which the licensee is authorized to sell alcoholic beverages. (G.L. c.138, §33).

#### **1.10 Environs of Licensed Premises**

- a. It shall be the obligation of licensees to ensure that a high degree of supervision is exercised over the conduct of the licensed establishment at all times. Each licensee shall be accountable for all violations that are related to the licensed premises to determine whether or not the licensee acted properly in the given circumstances.

- b. Licensees shall act reasonably and diligently to disperse loiterers or patrons who attempt to congregate in front of or at the licensed premises. Failure of the licensee to keep persons from congregating at the licensed premises may lead to disciplinary action against the licensee for allowing a public nuisance. Action to be taken by the licensee shall include: (1) maintaining the front door in a closed position; (2) asking loiterers to disperse; (3) promptly notifying the police if loiterers refuse to disperse; (4) hiring a security guard or stationing a security employee at the front door to disperse loiterers; (5) refusing to allow patrons to walk in and out of the premises at short intervals; (6) maintaining order in lines of patrons waiting outside to get in; (7) announcing that no further patrons will be allowed into the premises if lines become too long or disorderly or loud.
- c. Licensees shall take such steps as are necessary to ensure that patrons or employees do not leave the premises with alcoholic beverages. Such steps shall include having an employee stationed at the door to watch patrons as they leave. When patrons are observed leaving the premises with beer bottles, beer cans, or cups or glasses filled with liquids that smell like alcoholic beverages to the Authority's agents, it shall be presumed that the vessels contain alcoholic beverages.
- d. When any noise, disturbance, misconduct, disorder, act or activity occurs in the licensed premises, or in the area in front of or adjacent to the licensed premises, or in any parking lot provided by the licensee for the use of its patrons, which in the judgment of the Authority adversely affects the protection, health, welfare, safety or repose of the residents of the area in which the licensed premises are located, or results in the licensed premises becoming the focal point for police attention, the licensee shall be held in violation of the license and subject to proceedings for suspension, revocation or modification of the license.

### **1.11 Inspections and Investigations**

- a. The licensed premises shall be subject to inspection by the members of the Licensing Authority and its duly authorized agents. Any hindrance or delay of such inspection caused by an employee of the licensee shall be cause for action against the licensee. It shall be the responsibility of the licensee to ensure that procedures are in place, be it posting a doorman or otherwise, to allow police and authorized agents of the Authority immediate entrance into the premises at any time employees are on the premises. Any delay in providing such access shall be cause for action against the license.
- b. Any person who hinders or delays any authorized investigator of the Alcoholic Beverages Control Commission or any investigator, inspector or any other authorized agent of the Licensing Authority in the performance of his duties, or who refuses to admit to or locks out any such investigator, inspector or agent from any place which such investigator, inspector or agent is authorized to inspect, or

who refuses to give to such investigator, inspector or agent such information as may be required for the proper enforcement of G.L. c.138, shall be punished by penalties as outlined in G.L. c.138.

- c. Licensees shall maintain a current list of all of their employees and shall have it available at all times for inspection upon the request of an authorized agent of the Authority. Licensees who contract with entertainment entities to provide entertainers must maintain a current list of the names of such entertainers and said entertainers shall be held to the same rules as other employees at the premises.
- d. No device or electronic equipment shall be utilized by a licensed premises for the purpose of signaling employees that agents of the Licensing Authority are present.
- e. All complaints and reports shall continue in force until they have been reviewed and disposed of by the Licensing Authority.

#### **1.12 Standards of Conduct on the Premises**

- a. It is forbidden to permit any employee or person in or on the licensed premises to promise, offer, suggest, or accept sexual acts or favors in exchange for money or for the purchase of any alcoholic beverages or other commodities.
- b. It is forbidden to encourage or permit any person in or on the licensed premises to touch, caress, or fondle the breasts, buttocks or genitals of any other person.
- c. No alcoholic beverages shall be sold to anyone under twenty-one (21) years of age. No service of alcoholic, wine/malt beverages shall be made to anyone under twenty-one (21) years of age.
- d. No manager or employee shall consume any alcoholic beverages while on the licensed premises while on duty or after the official closing hour.
- e. There shall be no disorder, prostitution, illegal gambling, illegal drug use or sales or possession, or other illegal activity on the licensed premises or any premises connected therewith by an interior communication.
- f. All other acts defined as criminal behavior by the Massachusetts General Laws are also prohibited on the premises.

#### **1.13 Requirement to Monitor and Prevent Illegal Activity on the Licensed Premises**

Licensees shall make all reasonable and diligent efforts to ensure that illegal activities do not occur at the licensed premises. Such efforts shall include:

- a. Frequent monitoring of restrooms and other nonpublic areas of the premises for

signs of drug activity or other illegalities;

- b. Paying attention to activities on the premises of known drug users or drug dealers or prostitutes or others who are known to have been convicted of crimes which may be conducted at a licensed premises;
- c. Monitoring of activities of persons who talk about weapons or who appear to be hiding a weapon;
- d. Calling for police assistance as necessary to protect patrons against injury or to evict unruly patrons or to uncover unlawful conduct or to give medical assistance and providing police with requested information;
- e. Hiring security personnel to deal with chronic unlawful activity at the premises such as prostitution or gambling or larceny from patrons or assaults and batteries or other problems associated with the premises.

#### **1.14 Injuries to Persons at the Premises**

- a. Licensees shall instruct their employees and security personnel that they are not to make bodily contact with a patron unless to protect other patrons or themselves from being subjected to body blows from an unruly patron. In all other circumstances, employees and security personnel are to call the police to have patrons removed from the premises when such patrons are being disruptive and they are unable to convince the patron to leave the premises voluntarily.
- b. Licensees shall call the police and an ambulance and take all other reasonable steps to assist patrons or persons who are injured in or on the licensed premises or whose injuries have occurred outside the premises but have been brought to the attention of the licensee.

#### **1.15 Other Causes for Revocation, Suspension, and Modification**

- a. Any license issued pursuant to G.L. c.138 may be modified, suspended, or revoked for any of the following causes:
  - 1. Violation by the licensee of any provision of the relevant General Laws of the Commonwealth, of the regulations of the Alcoholic Beverages Control Commission or of the regulations of the Licensing Authority;
  - 2. Fraud, misrepresentation, false material statement, concealment or suppression of facts by the licensee in connection with an application for a license or permit or for renewal thereof, or in connection with an application for the removal of the licensed premises or the alteration of the premises, or in connection with any other petition affecting the rights of

the licensee, or in any interview or hearing held by the Authority in connection with such petition, request, or application affecting the rights of the licensee;

3. Failure to operate the premises covered by the license without prior approval of the Licensing Authority;
4. Failure or refusal of the licensee to furnish or disclose any information required by any provision of the General Laws, or by any rule or regulation of the Alcoholic Beverages Control Commission, or by any rule or regulation of the Licensing Authority;
5. Licensees shall not give or offer any money or any article of value or pay for or reimburse or forgive the debt for services provided to any employee or agent of the Authority either as a gratuity or for any service;
6. Licensees may not fail to comply with any condition, stipulation or agreement upon which any license was issued or renewed by the Authority or upon which any application or petition relating to the premises was granted by the Authority. It shall be the duty of the licensee to ensure that all appropriate personnel at the licensed premises are familiar with the rules and regulations of the Authority and with any conditions on the license.
7. A license may be suspended or modified or revoked for the refusal by any licensee and, if a corporation, by a manager, officer, or director thereof to appear at an inquiry or hearing held by the Authority with respect to any application or matter bearing upon the conduct of the licensed business or bearing upon the character and fitness of such person to continue to hold a license.
8. Licensees shall properly serve suspension and modification orders.

#### **1.16 Violations; Hearing Procedure**

- a. Upon written notice from the Chief of Police or other source that an illegality has allegedly occurred at a licensed establishment or other matters that the Chief of Police deems should be brought to the attention of the Licensing Authority, the Authority will consider in open session whether or not a public hearing should be held.
- b. If it is determined that a public hearing will be held by vote of the Authority, the Town Administrator shall send written notice to the licensee by Certified Mail, Return Receipt Requested.

- c. At the hearing the Authority will first hear evidence from the Police Chief and his agents and/or witnesses or from other complaining parties, as may be appropriate. Then the licensee and the licensee's counsel will have an opportunity to present their response and evidence.
- d. After all testimony has been given, the Authority reserves the right to question all witnesses and parties and, if necessary, take under advisement all facts and vote either to render their decision or continue the hearing to a subsequent meeting of the Authority.

### **1.17 Disciplinary Guidelines**

- a. Licensees in violation of the applicable laws of the Commonwealth, regulations of the Alcoholic Beverage Control Commission and/or these regulations may be subject to the following range of discipline:
  - 1. First offense: warning to seven day suspension.
  - 2. Second offense: warning to thirty day suspension.
  - 3. Third offense: warning to revocation.
- b. Only offenses which have occurred within the two (2) years preceding the date of violation shall be used in calculating the number of offenses for purposes of the disciplinary guidelines.
- c. The disciplinary guidelines are only a guide. The Licensing Authority may use its discretion in determining whether the facts surrounding a violation warrant a penalty which is more lenient or severe than that suggested by the guidelines.
- d. The disciplinary guidelines shall not be construed so as to limit the Licensing Authority's authority to consider alternative dispositions, or further conditions on a license, or even alternate penalties (e.g. roll back of operating hours).

### **1.18 Service of Suspension Orders**

- a. When the Authority suspends the license or licenses of any licensee, it shall provide the licensee with an order of suspension for public display that must contain the words, "No alcohol served per order of the Board of Selectmen for the Town of Harwich." Such order shall be publicly displayed by the licensee in the following manner. If there is a door opening from the street into the licensed premises and a window facing the street upon which such door opens, such order shall be displayed in such window so that it may readily be seen from the street. If the licensed premises are otherwise located, such order shall be affixed to the

door of the entrance to the premises and displayed in such a way that it may be readily seen from the street.

- b. Suspension orders of the Authority, as above, shall remain affixed throughout the entire period of suspension. The removal, covering, defacement, or obliteration of the order of suspension or the failure to maintain the order of suspension in the manner and place required prior to the expiration of the suspension period shall be deemed the act of the licensee and shall be cause for further suspension, modification or revocation of the license.
- c. Suspension periods shall not be used as a time to do renovations at the licensed premises unless such renovations have previously been approved by the Authority.
- d. No members of the public may be on the premises at any time during suspension periods, with the exception that restaurants may be able to continue to service patrons without serving alcohol, with the approval of the Licensing Authority.

#### **1.19 Permission to Close Premises Required; Non-use of Licenses**

- a. Licenses are granted to serve the public need and, to that end, licensees are expected to operate the license for a substantial number of hours on all days when the premises are permitted to be open under the terms of the license. In the case of alcoholic beverages licenses, the number of which are limited according to statute, no licensee may close its place of business for any reason other than the following:
  - 1. Upon approval of a request to the Licensing Authority for closing in order to do renovations for a reasonable time;
  - 2. For all holidays and religious days;
  - 3. A closing of one (1) or more days per week upon approval of a request to the Authority and a showing by the licensee that it does not have adequate business upon such days.
  - 4. A closing due to an act of God, natural disaster, illness or some other business problem for which request has been made to the Authority and approval granted.
- b. Any licensee intending to close a place of business, whether on a temporary or permanent basis, must notify the Licensing Authority in writing before such closing stating the reason and length of such closing and obtain approval. Failure to provide such notice may result in the suspension or revocation of the license.



- c. If the Licensing Authority becomes aware of a license not being exercised, it may conduct a hearing to obtain a status update.
- d. The Authority reserves the right to require that the licensee appear before the Authority every three (3) months from that point until the business has commenced or resumed operations or the license has been transferred or turned back to the Town.
- e. The Authority reserves the right to revoke the license at any time if it deems that the public good is not being served.

**1.20 Bankruptcy and Court Proceedings**

- a. The licensee shall immediately notify, in writing, the Licensing Authority of any proceedings brought by or against the licensee under the bankruptcy laws or of any other court proceedings which may affect the status of the license.

**1.21 Management**

- a. Each corporate licensee must appoint a manager by a properly authorized and executed delegation.
- b. The responsibilities of every license holder and any manager shall be as follows:
  1. To obey all statutes of the Commonwealth, rules of the Alcoholic Beverages Control Commission, Rules and Regulations of the Licensing Authority;
  2. To promptly notify the police of any disturbances or illegal activity on the licenses premises of which he becomes aware;
  3. As to corporate licensees, to sign the annual application for renewal of license, unless unavailable;
  4. To cooperate with authorized agents of the Licensing Authority, including but not necessarily limited to, any police officer, in their investigation or inspection of the licenses premises.
- c. Any such notice sent to the manager as named in the records of the Licensing Authority or the owner at the address of the licensed premises shall constitute valid legal notice to the licensee.
- d. The licensee shall not change managers, change corporate officers, sell or transfer corporate stock, pledge corporate stock or liquor license as security, or accept a loan or credit from another licensee, without first obtaining the approval of the

Authority. No person may have a direct or indirect beneficial interest in a license without first obtaining the approval of the Authority.

## **1.22 Service Training**

- a. An employee training program on the proper procedures for verifying that patrons are at least twenty-one (21) years of age and not intoxicated shall be provided by the licensee. A written description of such program, along with a written policy outlining the employees' responsibilities and the disciplinary measures which will be taken against any employee for violating said policy, shall be provided to the Authority as part of the original or renewal application materials and maintained on the premises at all times.
- b. A signed certification of each employee who handles alcohol, indicating that the employee has received the described training and has reviewed and understands the written policy describing his or her responsibilities and the disciplinary action which will be taken for violations, shall be maintained on the premises at all times. Copies of all such documents and certifications shall be available to the licensing authority, or any authorized agent thereof, upon demand.
- c. Each new employee who handles alcohol shall obtain server training within thirty (30) days of commencing employment.
- d. Upon a finding by the Authority of a violation of the laws or regulations concerning service of alcohol to a minor or intoxicated person, the employees involved in the violation who continue to be employed by the licensee shall be retrained forthwith and receive a new server training certification.
- e. The training and certification referenced in Section 1.22 shall be pursuant to a training program approved by the Authority (e.g. TIPS or equivalent).

#1



theportrestaurant 20h



Tuesdays with Pat

@nautibar

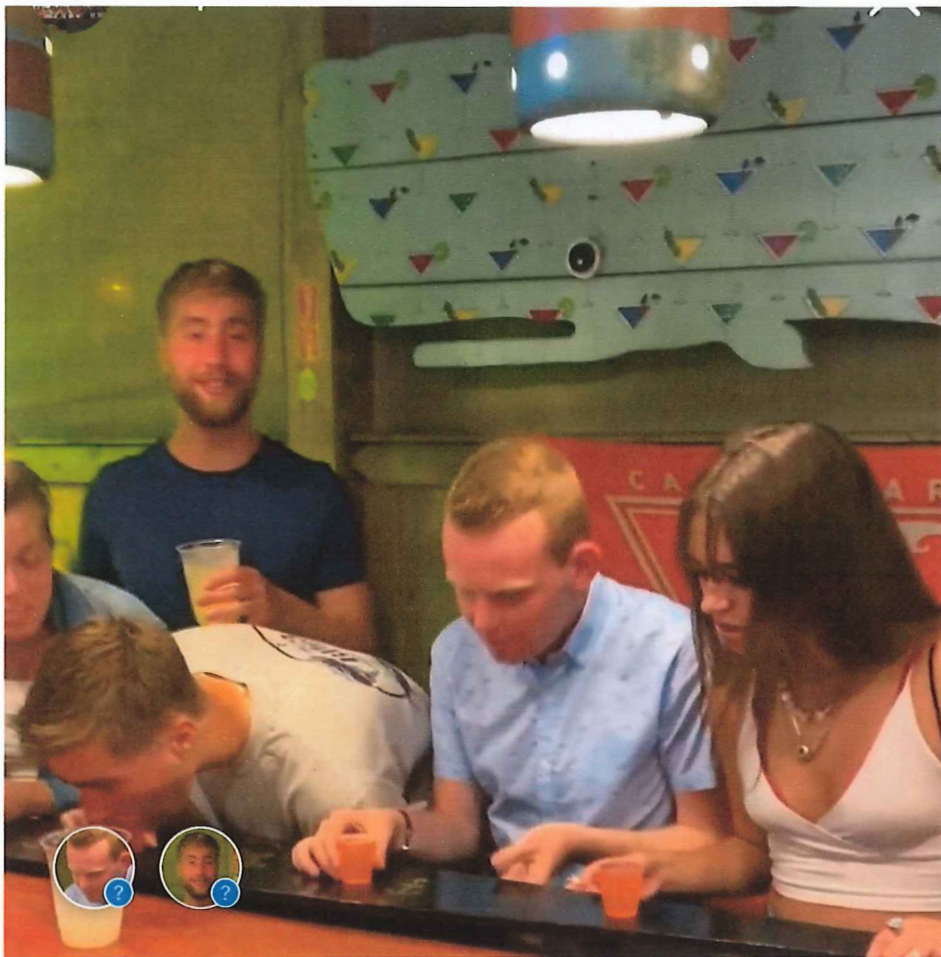
THE PORT

@pconnelley

Send Message



#2



Add a caption

Wednesday • Aug 11, 2021 • 2:26 PM

[Adjust](#)

IMG\_6019

Screenshot

PNG



No lens information

3 MP • 1125 x 2436 • 8.9 MB

- | - | - | - | -

[Add a location...](#)

[Show in All Photos](#)

