

Executive Session 5:00 P.M.

Public Hearing 5:35 P.M.

Monday, March 22, 2021

REMOTE PARTICIPATION ONLY

Please join my meeting from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/891218997>

You can also dial in using your phone.

United States: [+1 \(872\) 240-3311](tel:+18722403311)

Access Code: 891-218-997

I. **CALL TO ORDER**

II. **EXECUTIVE SESSION – ADDED AT 12:10 P.M.**

A. Executive Session pursuant to G.L. c. 30A, §21(a) (3) to discuss litigation strategy with respect to the case of 3137, LLC, et al. (Ember and Port) v. Town of Harwich, et al., United States District Court, C.A. No. 1:21-CV-10473, if discussing the matter in open session will have a detrimental effect on the Town’s litigating position and the chair so declares.

III. **PUBLIC HEARING (NO EARLIER THAN 5:35 P.M.)**

A. Port Restaurant and Bar, 541 Rt. 28 - Public hearing on applications for renewal of the Seasonal All Alcoholic Beverages License and the Seasonal Entertainment License; discussion and possible vote to order discipline based on Town Administrator’s February 8, 2021 findings and recommendations.

IV. **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: _____

March 19, 2021

HEARING NOTICE

**HARWICH BOARD OF SELECTMEN
NOTICE OF PUBLIC HEARING
Port Restaurant and Bar**

LIQUOR AND ENTERTAINMENT LICENSES

MARCH 22, 2021

The Board of Selectmen of the Town of Harwich, will hold a Public Hearing on Monday, March 22, 2021 at 5:35 pm, for the purpose of hearing applications for renewal of the Annual Entertainment and Seasonal All Alcoholic Beverages licenses for Port Restaurant and Bar, Inc., 541 Route 28 in Harwich Port. The Board will hear evidence and testimony from interested parties, including from members of the public, and will decide whether to renew, not renew or to modify said licenses. The hearing will be held via remote video streaming only. All members of the public having an interest in the topic are cordially invited to log-in and view the hearing. Information for logging into and viewing the hearing is below and will be posted on the Town's website prior to the hearing.

Mon, Mar 22, 2021 5:35 PM

Please join my meeting from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/891218997>

You can also dial in using your phone.

United States: [+1 \(872\) 240-3311](tel:+18722403311)

Access Code: 891-218-997

Joseph F. Powers
Town Administrator

Cape Cod Chronicle
March 11, 2021

BALLARIN FACTORS

**BOARD OF SELECTMEN
ACTING AS THE LOCAL LICENSING
AUTHORITY**

Ballarin Factors

- In reviewing and rendering a decision on this application, the board will consider MGL c.138, § 23 which speaks to the public need, common good and adequate number of locations.
- The Board will also use the Ballarin factors in its deliberations.

The Ballarin factors come from the MA Appeals Court case:
Ballarin, Inc. v. The Licensing Board of Boston.

The Ballarin case clearly articulates the factors that will be used by this board to form a basis in this application to determine the issuance or denial of the requested license.

The Ballarin factors are:

- 1) Public need, meaning a consideration of the public want and the appropriateness of a liquor license at a particular location
- 2) Consideration of the number of existing dispensaries in a locality;
- 3) Views of the inhabitants of the locality in which a license is sought;
- 4) Traffic;
- 5) Noise;
- 6) Size;
- 7) The sort of operation that carries the license;
- 8) Consideration of the reputation of the applicant

Procedures that will be followed:

- 1) Open the public hearing (by a motion);
- 2) Application documentation and comments from responding town departments will be reviewed;
- 3) The applicant will be given the opportunity to offer a presentation;
- 4) The board will have the opportunity to ask questions;
- 5) The board will hear comments from:
 - those individuals present in favor of the application,
 - those individuals present in opposition of the application;
- 6) Close the public hearing (by a motion)
- 7) Discussion by the board
- 8) Motion will be made regarding the application.

LICENSE APPLICATIONS



Jean M. Lorizio, Esq.
Commission Chairman

Commonwealth Of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, MA 02150-2358

2021
Retail License Renewal

License Number: 00074-RS-0506

Municipality: HARWICH

License Name : Port Restaurant And Bar Inc

License Class: Seasonal

DBA :

License Type: Restaurant

Premise Address: 541 Route 28 Harwich, MA 02646

License Category: All Alcoholic Beverages

Manager: Justin R Brackett

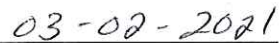
I hereby certify and swear under penalties of perjury that:


1. I am authorized to sign this renewal pursuant to M.G.L. Chapter 138;
2. The renewed license is of the same class, type, category as listed above;
3. The licensee has complied with all laws of the Commonwealth relating to taxes; and
4. The premises are now open for business (if not, explain below).



Signature


Printed Name



Date


Title

Please sign this form only in the month of March and return to your Local Licensing Authority.

Additional Information:

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

MEMO

TO: Board of Selectmen

FROM: Danielle Delaney, Executive Assistant – Licensing

CC: Joseph F. Powers, Town Administrator
Meggan M. Eldredge, Assistant Town Administrator

RE: 2021 Seasonal Entertainment License Renewals

DATE: March 22, 2021

The licensee below was contacted via email to outline the times and location (inside or outside) of where they are requesting to have entertainment.
All information below was emailed directly to staff. Included below is what the Board of Selectmen approved in 2020.

Port Restaurant & Bar
541 Route 28, Harwich Port

Requesting: Weekday 10AM – 10PM Outside & 10AM – 12AM Inside
Sunday 10AM – 10PM Outside & 10AM – 12AM Inside

Recorded or Live Music with amplification

Approved in 2020 by the Board of Selectmen
Weekday: 6PM – 10PM Outside
Sunday: 10AM-12AM Inside & 10AM-10PM Outside



HARWICHPolice

DEPARTMENT

183 Sisson Road, Harwich, MA 02645

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

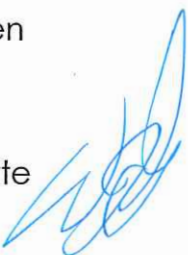


DAVID J. GUILLEMETTE
Chief of Police

KEVIN M. CONSIDINE
Deputy Chief

Memorandum

TO: Board of Selectmen

FROM: David J. Guillemette
Chief of Police 

DATE: March 17, 2021

SUBJECT: Application for renewal of Entertainment Licenses for weekday and Sunday entertainment both inside and outside at The Port.

Mr. Chairman and members of the Board. I have major concerns about issuing the above requested entertainment licenses to The Port. During last spring and summer The Port was allowed to extend into their back parking area with a large tent. This resulted in increased complaints of noise from crowds inside the tent, increased traffic on Sea Street because of the limited parking, ongoing reports of COVID violations and reports of intoxicated individuals causing disturbances at closing time. People living in the area described it as a "night club atmosphere" that was extremely disturbing.

Through my correspondence with neighbors in the area and my review of calls for service from last season, it is readily apparent that steps need to be taken to reduce the impact of this establishment on the neighborhood.

I will make myself available for any questions regarding my concerns.



OFFICE OF THE SELECTMEN
732 MAIN STREET
HARWICH, MA 02645
508-430-7513

APPLICATION FOR ENTERTAINMENT LICENSE

- Weekday Entertainment (\$75) _____ 1 day (\$25) _____
_____ Batters Box (\$50)
_____ Go Carts (\$50)
_____ Miniature Golf (\$50)
_____ Trampolines (\$25)
_____ Theater (\$150 per cinema)
_____ Automatic Amusement:
_____ Juke Box (\$100 each)
_____ Video Games (\$100 each) _____ Other _____
- New application _____
Renewal
Annual _____
Seasonal
Opening Date April 1, 2021

Business Name THE PORT Phone 508-430-5410
Business Address 541 ROUTE 28
Mailing Address HARWICH, MA 02646
Owners Name & Address JARED BRACKETT
Email Address Jgbrackett@aol.com
Managers Name & Address _____

TIMES AND DAYS OF WEEK FOR ENTERTAINMENT (Please note this application does not cover Sundays. You can obtain a Sunday license application at the Selectmen's Office):

ENTERTAINMENT TYPE: (Check all appropriate boxes)

- _____ Concert _____ Dance _____ Exhibition _____ Cabaret _____ Public Show _____ Other
_____ Dancing by Patrons
_____ Dancing by Entertainers or Performers
 Recorded or Live Music
 Use of Amplification System
_____ Theatrical Exhibit, Play or Moving Picture Show
_____ A Floor Show of Any Description
_____ A Light Show of Any Description
_____ Any Other Dynamic Audio or Visual Show, Whether Live or Recorded

At any time during this concert, dance exhibition, cabaret or public show, will any person(s) be permitted to appear on the premises in any manner or attire as to expose to the public view any portion of the body as described in Mass. General Laws Chapter 140, Section 183A, Para. 3.

___ Yes No

If Yes, answer questions 1 through 4 below. Attach a separate sheet and/or exhibits if necessary:

1. Describe in complete detail the extent of exposure during the performance and the nature of the entertainment: _____

2. Furnish additional information concerning the condition of the premises and how they are suitable for the proposed entertainment: _____

3. Fully describe the actions you will take to prevent any adverse effects on public safety, health, or order: _____

4. Identify whether and how you will regulate access by minors to the premises: _____

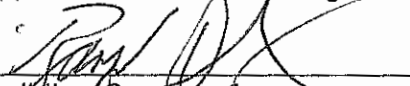

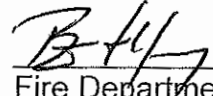
Days/Hours of Business Operation _____


Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

Signature of applicant & title	Federal I.D. #
Signature of individual or corporate name	Federal I.D. #
Signature of Manager	Federal I.D. #
Signature of Partner	Federal I.D. #

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

 Building Commissioner	 Board of Health	 Fire Department
--	--	--


Police Department

comments: See attached
MEMO

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN STREET
HARWICH, MA 02645
508-430-7513

APPLICATION FOR SUNDAY ENTERTAINMENT LICENSE

- | | |
|--|--|
| <input type="checkbox"/> Music 1PM or After (Municipal Fee \$85/State \$50) | New application <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Music prior to 1PM (Municipal Fee \$175/State \$100) | Renewal <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Go Carts (\$50) | Annual <input type="checkbox"/> |
| <input type="checkbox"/> Miniature Golf (\$50) | Seasonal <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Trampolines (\$25) | Opening Date <u>April 1, 2008</u> |
| <input type="checkbox"/> Theater (\$150 per cinema) | |
| <input type="checkbox"/> Automatic Amusement (\$100) | |
| <input type="checkbox"/> Juke Box (\$100 each) | |
| <input type="checkbox"/> Video Games (\$100 each) | Other _____ |

Business Name THE PORT Phone 508-430-5410

Business Address 541 ROUTE 28

Mailing Address HARWICH, MA 02646

Owners Name & Address JARED Brackett

Email Address Jbrackett@aol.com

Managers Name & Address _____

TIMES OF ENTERTAINMENT (Please specify where music will be located on your property and what type of entertainment such as live, DJ, recorded)

ENTERTAINMENT TYPE: (Check all appropriate boxes)

- Concert Dance Exhibition Cabaret Public Show Other
- Dancing by Patrons
- Dancing by Entertainers or Performers
- Recorded or Live Music
- Use of Amplification System
- Theatrical Exhibit, Play or Moving Picture Show
- A Floor Show of Any Description
- A Light Show of Any Description
- Any Other Dynamic Audio or Visual Show, Whether Live or Recorded

At any time during this concert, dance exhibition, cabaret or public show, will any person(s) be permitted to appear on the premises in any manner or attire as to expose to the public view any portion of the body as described in Mass. General Laws Chapter 140, Section 183A, Para. 3.

___ Yes No

If Yes, answer questions 1 through 4 below. Attach a separate sheet and/or exhibits if necessary:

1. Describe in complete detail the extent of exposure during the performance and the nature of the entertainment: _____

2. Furnish additional information concerning the condition of the premises and how they are suitable for the proposed entertainment: _____

3. Fully describe the actions you will take to prevent any adverse effects on public safety, health, or order: _____

4. Identify whether and how you will regulate access by minors to the premises: _____

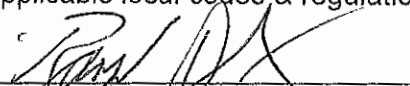
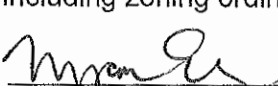
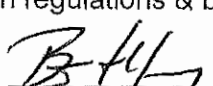
Days/Hours of Business Operation _____

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

Signature of applicant & title	_____	Federal I.D. #	_____
Signature of individual or corporate name	_____	Federal I.D. #	_____
Signature of Manager	_____	Federal I.D. #	_____
Signature of Partner	_____	Federal I.D. #	_____

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

 Building Commissioner	 Board of Health	 Fire Department
--	--	--


Police Department

comments: See attached
MEMO

Required signatures to be obtained by the applicant prior to submission of new applications.

2021

Request for continued Expansion of Outdoor Table Service

Establishment name: THE PORT

Establishment address: 541 ROUTE 28

If your establishment would like to continue expanded outdoor table service, please fill out below.

Please note this form is only for establishments that have completed the Board of Selectmen's application process.

Indicate that you are requesting to continue with expanded outdoor table service. YES

Indicate that you are continuing with what was previously approved by the town. If you would like to further expand your outdoor seating area, please contact staff for an application. SAME

Indicate if you will or will not be serving alcohol on the expanded outdoor premise. WILL

Indicate the dates from start to end of season when you will be utilizing the expanded outdoor area. May 28 - Oct 11

Manager: 

Date: 3-2-2021

WRITTEN
COMPLAINTS
FROM RESIDENTS

From: Joe Ganley [mailto:jganley@townofharwich.us]
Sent: Friday, March 19, 2021 9:45 AM
To: Larry Ballantine <lballantine@townofharwich.us>; Ed McManus <emcmanus@townofharwich.us>; Michael D. MacAskill <mmacaskill@townofharwich.us>; Stephen Ford <sford@townofharwich.us>; Don Howell <dhowell@townofharwich.us>
Cc: Joe Powers <jpowers@town.harwich.ma.us>; gcorbo@k-plaw.com
Subject: Port Hearing Exhibits

Mr. Chairman:

In anticipation of next Monday's hearing regarding the liquor license renewal for the establishment dba: The Port Restaurant and Bar 541 Route 28 Harwich Port, I respectfully submit the following exhibits. Reference is made to my correspondence with the Town Administrator on March 5th through which I sought clarification for the proper procedure for submitting evidence. In that correspondence I was instructed to address testimony and evidence to the Board of Selectmen. No further guidance as to timing or procedure was given. It is my expectation that these exhibits will be included in the record, and as part of the Board's consideration of these matters.

- Exhibit 1: Photo from Port Instagram account from summer of 2020 showing customers participating in "shotski" multi-person drink (note lack of masks and social distancing)
- Exhibit 2: Photo from Port Instagram account from summer of 2020 showing customers participating in "slapshot" multi-person drink (not lack of masks and social distancing)
- Exhibit 3: Photo from Port Instagram account from summer of 2020 showing customers participating in "shotski" multi-person drink at table (note lack of food on table, lack of masks, lack of social distancing)
- Exhibit 4: Photo from Port Instagram account showing "staff photo" from summer of 2020 (not lack of masks, no social distancing)
- Exhibit 5: Photo from Port Instagram account showing patrons sitting at bar at outdoor shack, which Port management has represented is not a bar, but rather a host stand. (note appearance of drinks on the bar, and set up behind bar for active service)
- Exhibit 6: Home screen of Port Instagram account advertising "2 outside" bars. (This is inconsistent with the Port management's representations to the Town that the shack is a host stand, and inconsistent with the establishment's licensed footprint.)
- Exhibit 7: Photo from "capefifteen" Instagram account showing live amplified music during summer of 2020.
- Exhibit 8: Photo from Port Instagram account teasing live music schedule set to be released for summer of 2021.

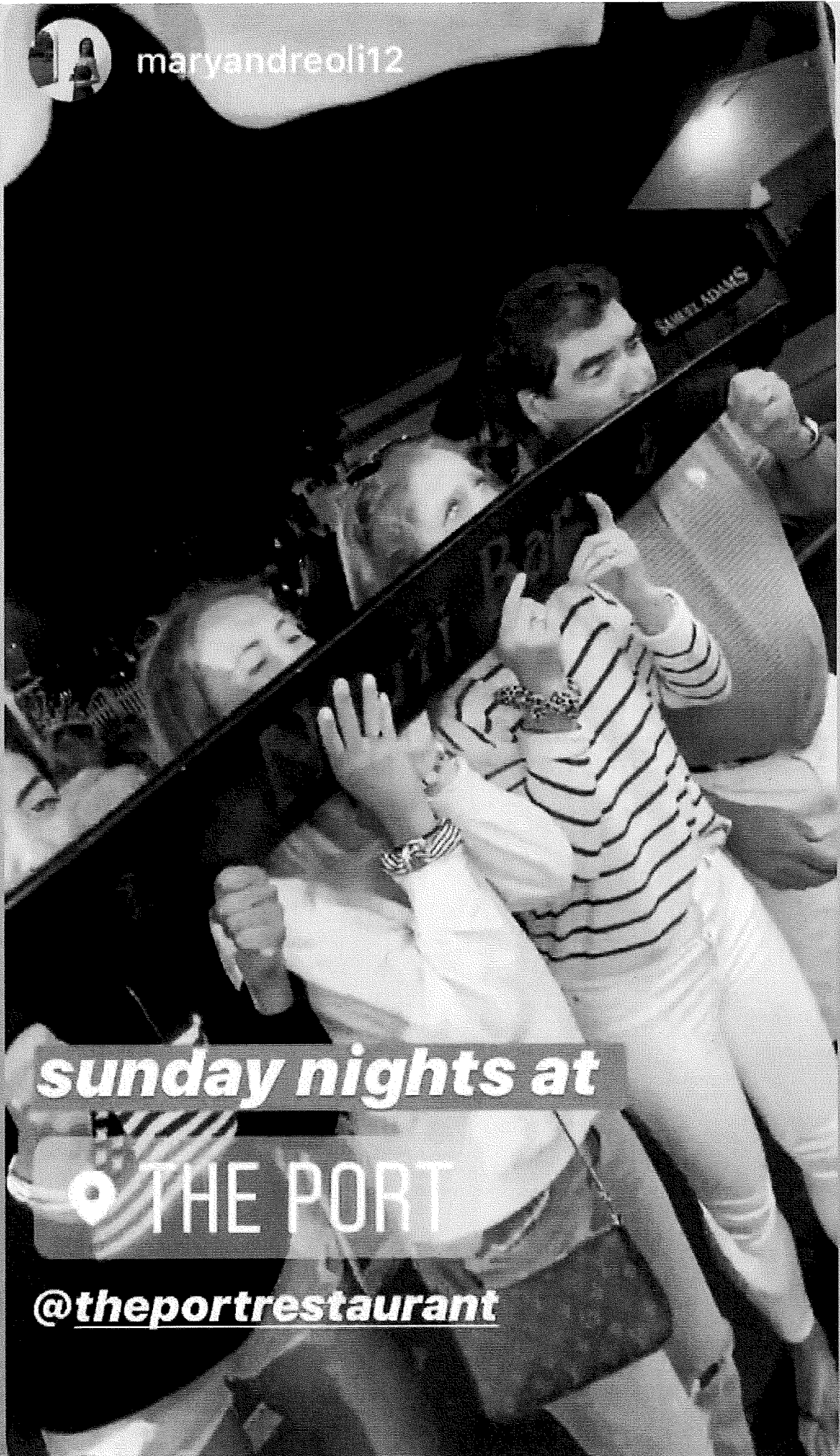
As you know, in addition to these exhibits, I have previously submitted video evidence and extensive written testimony. I look forward to participating in the public portion of the hearing on Monday.

Thank you for your consideration of these issues.

Joe Ganley



maryandreoli12



sunday nights at

📍 THE PORT

@theportrestaurant

SLAPSHOTS



THE PORT



theportrestaurant 46m



Port Nights ✨



📍 THE PORT



Send Message



...

The Port on Instagram: "Port Ni... x The Port on Instagram: "Port Ni... x +

instagram.com/p/CFN7eYmIx371gshid=sp0fcrw036g

Instagram Log In Sign Up



theportrestaurant • Follow
The Port

theportrestaurant Port Nights 🌟
#harwichport #foodiesofinstagram
#local #locallove #02846 #capecod
#capecodsummers #wickedcapecod
#capecodinsta #capelife
#capecodimages #capecodfoodies
#foodiesofinstagram #harwich #geats
#foodnation #capecodsummers

View

kendramiddleton I love these hats 📍
View · 1 like · Reply

131 likes
SEPTEMBER 16, 2015

Type here to search

10:14 AM
1/16/2015



735 posts 4,510 followers 1,922 following

Follow

The Port

Harwich Port, Cape Cod. The Original Oyster Happy Hour. 4 Bars ~ 2 Inside/2 Outside. Live Music 🎵🎵 Reservations call 508-430-5410

www.theportrestaurant.com/

Followed by **lgearan, petegori, mlganley** + 1 more



Highlights



Highlights



Highlights



Highlights

Instagram post interface showing a photo of a person wearing a hat, with a white van and a speaker in the background. The post is by user **capefifteen** and includes a caption, tags, and replies.

Instagram Log In Sign Up

capefifteen • Follow
The Post

capefifteen A Saturday night well spent. @theperfectdancerit #persights. #harwickport @disinterestedgentleman #capecod #capefifteen #cordurostrucker

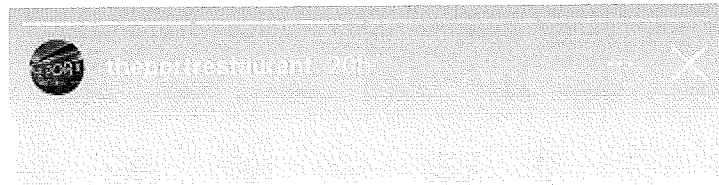
metal_and_beads Who was playing?
1w Reply

hillsperry That guy nps!
2w 2 likes Reply

disinterestedgentleman Yeeeeeooooo
@metal_and_beads itme

219 likes
11/11/2021

Type here to search



3:04 PM

Reacted to your story



From: Laurel Beloin [<mailto:>]
Sent: Thursday, March 18, 2021 1:06 PM
To: Larry Ballantine <lballantine@townofharwich.us>; Michael D. MacAskill <mmacaskill@townofharwich.us>; Don Howell <dhowell@townofharwich.us>; Ed McManus <emcmanus@townofharwich.us>; Stephen Ford <sford@townofharwich.us>
Cc: Joe Powers <jpowers@town.harwich.ma.us>; Chief David J. Guillemette <dguillemette@harwichpolice.com>
Subject: Comments for The Port hearing 3/22/2021

Members of The Board of Selectmen
Town of Harwich
Harwich Town Hall
732 Main Street
Harwich Center, MA 02645

Chairman Ballantine and Members of the Board,

We are writing to address the March 22, 2021 public hearing regarding violations of the COVID-19 regulations and noise issues by the licensed establishment DBA The Port Restaurant and Bar, 541 Route 28 Harwich Port, MA. It is our understanding that the hearing by the Board of Selectmen is for the renewal of The Port's seasonal liquor license. We thought it would be best to send this information before the hearing to save time with public comment and to have a complete record that addresses our noise issues.

We own a house on Route 28 in Harwich Port. We bought our home and became residents in January, 2015 prior to the ongoing noise issues that we have been addressing for the past 6 spring/summer/fall seasons. Yes, we understood there would be some noise in the front of our house from Route 28 including car traffic, people conversing along the sidewalks while enjoying our little village, the Hot Stove kitchen vent BUT it can not be said that "we knew what we were getting into". We loved the residential location as we could walk to the beach, restaurants and shopping. We were pleasantly surprised as to how quiet our back yard and deck were being only steps to 28 and the commercial area.

Since we purchased our home, the town with Board of Selectmen approval has allowed the operations of The Port to go from an indoor fine dining restaurant to now include the outdoor "Nautibar", a rowdy, disruptive temporary now permanent outdoor bar. The outdoor entertainment has included some "headliners" from the Boston area that promote yelling and crowd participation.

The weekend of June 12-14, 2020 we could have called all three days for noise violations. We called Friday, June 12th around 10:20pm as we could hear music in our upstairs bedroom coming from The Port. The report reads that a patron was playing music on their phone, advised to shut it off, NO VIOLATION. We find it hard to imagine that the volume of music we heard over 150 feet away from The Port was from a cell phone as the officer stated in the report.

The following link is a recording of this incident. Please note the sound level of patron noise in addition to the level of the music.

<https://youtu.be/tWxNs8WkTyQ>

1. More importantly, even if it is stated that the music was coming from a patron cell phone, it was after 10 pm so why didn't the manager and/or waitstaff find out where it was coming from and ask to have the music turned off?
2. And why wouldn't the establishment who holds the liquor/entertainment license be charged for a violation even if it's from a patron's cell phone in their outdoor bar/parking lot area?

This video makes it hard to believe that the music came from a cell phone. We can only assume the music came from the speakers mounted on the outside of the The Port building.

Saturday, June 13th the music was extremely loud well over the 150' allowable distance. Yes, looking back we should have called but assumed others would call. The police finally did get a couple of calls at 9:18pm from patrons having dinner at the Cape Sea Grille. The Cape Sea Grille is at least 450' away. An officer arrived at 9:25pm and the report states there was no music was playing at all, clear, NO VIOLATION. I emailed Mr. Ballantine with a small clip of how loud the music was and to say that it was at an unacceptable noise level. He emailed me back and agreed. Attached with this letter are those emails.

<https://youtube.com/playlist?list=PL5PebOfenQX6n3WrfdAigKqU42rxGZtOg>

These are just a few examples of why we believe The Port should be required to maintain an acceptable level of music and patron noise as part of their granting of a liquor/outdoor entertainment license. The following factors need to be taken into consideration when granting licenses .

Violations of the Noise Ordinance/Public Nuisance

Noise issues have been an ongoing problem for residents living around commercial establishments in Harwich Port since 2016 and in West Harwich prior to that time. Last summer, when the Board of Selectmen allowed for expansion of COVID-19 safe outdoor dining, the noise issues with The Port were made substantially worse.

We've started documenting and will continue to document any examples of loud music or patron noise from The Port. The live/amplified music along with the occasional beat box sometimes start at a "reasonable" level but as the night progresses and the crowd size increases, the musician(s) seem to increase their volume to be heard over the crowd noise until it is "not reasonable". It is only at this point that we call the police. After 10pm, even without live music, the rowdy patron noise often continues until close and at times has been so loud that it has woken us up. The problem was exacerbated last summer by allowing the expansion of The Port footprint into their rear parking lot which included a newly built shed, a huge open air tent with picnic tables along with many Adirondack chairs spread around the rest of the parking lot. They promoted the expanded COVID-19 area with a new Instagram account "theporttent" boasting it as "Cape Cod's New Hot Spot".



theporttent



1 Post

115 Followers

28 Following

The Port Tent

Cape Cod's New Hot Spot 🚩 @theportrestaurant
portcapecod.com

Followed by theportrestaurant, capeology and nautibar

Follow

Message



Sort of Operation that Carries the License and Reputation of the Applicant

In May, 2017, Attorney Matt Kelley and Justin Brackett went before the Board of Selectmen requesting an outdoor entertainment license. Mr. Clark, at the time, stressed that the establishment must maintain a three foot corridor for egress and questioned how they would deal with the crowd to maintain that egress. Mr. Brackett stated that there is no increase to the seating. He explained that they are requesting this license due to the competition in Harwich Port and they want to keep people entertained while they wait for tables. He stated that the area does not impede any egress.

https://www.harwich-ma.gov/sites/g/files/vyhli3236/f/minutes/minutes-file/may_8_2017_bos_meeting.pdf

As you can see below in 2017 and 2018 from photos posted on The Port Instagram account the ramp egress is not being maintained :



10:04 AM

80%



Video



theportrestaurant
The Port



967 views

theportrestaurant Solid Time

@robbellamusic 🍷 #theport #harwichport

JULY 2, 2017





Photo



 Liked by nautibar and 73 others

theportrestaurant Hype Man ~ Best Party in Town 🔥🔥🔥 #nautibar #theport #harwichport #robbellamy #whereyouat

View 1 comment

SEPTEMBER 3, 2017





Photo



Liked by nautibar and 90 others

theportrestaurant Place to be this Sunday 🎵

🍺 🇺🇸 Live Music until 10pm

SEPTEMBER 3, 2017





Photo



 Liked by cleatandanchor and 119 others

theportrestaurant Place to be ~ what a show
@daltonsheriffs #theport #capecodsummers
#harwichport

[View all 6 comments](#)

AUGUST 10, 2018



In the early Summer, 2020, Marna Bates, the Brackett brother's mother, stopped by our house. She wanted to know if on Sept. 19, 2019 we had called the police on The Port. She said our name was not on the report but our address was. She was not confrontational but I was extremely uncomfortable with her just stopping by to ask about a noise complaint directed toward her son's business. I sent an email to the Chief, which is attached, so he was aware. We should feel safe in our home and be able to call the police without incidents like this happening again. Attached with this letter is the email.

Suggested Recommendations to address these issues:

1. **Enforcement of the Noise Ordinance:** The Town of Harwich should aggressively enforce the outdoor entertainment license for liquor establishments. We recommend no amplification of live music. If the Board of Selectmen still choose to keep the amplified music, it should not be plainly audible at a distance of 150 feet from the source of amplification. We would also like the outdoor entertainment license wording to include the plainly audible definition as it reads in the Town Noise Bylaw.
2. **Capacity Enforcement:** We have noticed even after live entertainment ends at 10pm crowd noise has been an ongoing issue. The likely cause is no regulation of the capacity limits set by the town for the establishments. As this over capacity issue will likely continue to be a problem, random inspections by the appropriate town dept. should be implemented to address this issue.
3. **Return to the Original Footprint:** When the Town of Harwich approved new temporary rules for restaurant/bars because of Covid-19, it is clear that The Port took advantage of the Town. There is a new "shed" in the parking lot area built in the Spring, 2020. The shed includes a bar top on two sides with chairs where patrons were being served. This appears to be a permanent expansion of their pre-COVID-19 footprint and was not part of what the town approved in 2017.
4. **Paid Detail on Friday/Saturday nights and holiday weekends:** In order to help the police enforce the public nuisances of loud music and rowdy patron noise for the surrounding neighborhood, the establishment should be required, at their expense, to pay for security detail.

Member of the Board of Selectmen, we are homeowners and taxpayers that have had concerns for the past 4 years about how our issues with music and noise have been escalating and have not been addressed. As homeowners and taxpayers, we will continue to report unreasonable noise violations to the Police. We would

suggest that the situation need a higher level of involvement by the Board of Selectmen that have allowed this establishment to change from an indoor fine dining restaurant to 2 indoor and 2 outdoor bars with rowdy, unmanageable patrons.

Thank you for your attention to this matter.

Regards,
Michael and Laurel Beloin

Danielle Delaney

From: Danielle Delaney on behalf of Joe Powers
Sent: Thursday, March 18, 2021 2:49 PM
To: Danielle Delaney
Subject: FW: Ember hearing 3/22

From: Patricia ONEILL [mailto:
Sent: Thursday, March 18, 2021 2:30 PM
To: Larry Ballantine <lballantine@townofharwich.us>
Cc: Michael D. MacAskill <mmacaskill@townofharwich.us>; Don Howell <dhowell@townofharwich.us>; Ed McManus <emcmanus@townofharwich.us>; Stephen Ford <sford@townofharwich.us>; Joe Powers <jpowers@town.harwich.ma.us>
Subject: Ember hearing 3/22

2/18/22

Dear Mr. Ballantine,

I will be virtually attending the hearing for Port and Embers [on 3/22](#). I know time is short during these meetings, so I wanted to express my concerns in writing. Please include this letter in the public record and any packet being prepared for the hearing.

problems.





The above pictures say a lot about Ember. All the precautions we were all supposed to be taking, but there is their group photo from the start of the 2020 season, no masks. Then a nice shot of a waitress following protocol with her mask hanging half way down her face. I'm sure Embers will try to justify this behavior, they have been feeding you excuses for years.

It is simple. Ember is a bad neighbor. I question if they add anything at all to the community. I have lived in Harwich on Bayview Road since 1977. There has always been a restaurant on that corner. The neighborhood was never impacted by local businesses until Ember moved in. I should qualify that; the trouble really started when their outside space was enlarged; the outside bar was installed; and the music began.

I used to look forward to the Summer, but living down the street from a noisy and raucous bar has changed that. I never thought it would still be an issue after all these years, but they have brazenly continued to ignore town and state laws. It feels like they just do what they want. And listening to them 7 days a week is not just unpleasant, it is stressful.

They obviously have no respect for this community. Their behavior during the Summer of 2020 is just further proof of their complete disregard for the town's authority. I know you have heard this many times, but have you really listened? Because their behavior has not changed. I am relieved that next Summer might be near normal for the businesses in

town. But I wish Ember wasn't coming back because their behavior has a consistent negative impact on our quality of life.

This is what it means to live near Ember, Summer after Summer

- You never open your windows on a Summer night because the Ember's music and customers are too noisy
- If you call to ask Ember management that the music be turned down you are treated rudely.
- Then you call the police and quite often the dispatcher is also rude. And they just don't seem to think noise matters. I usually feel like the guilty party by the time I get off the phone.
- You hope the police are dispatched. Then you hope they do something. Then you hope the music is not turned back up when the police drive away.
- If you are lucky and the music stops [at 10:00](#) then there is still the crowd noise.
- Then it is closing time. I have had people puke in my front yard. Run through my yard in a game of chase or hide and seek at one o'clock in the morning, **Why do people do these things on their way home from Ember? Because they are very drunk.**
- And although Massachusetts has an open container law there are always party cups, cans and bottles littering the streets around Embers the morning after and everyday is the morning after when you live near Ember. There is never a break.
- Entertaining guests is an exercise in embarrassment. You cannot sit outside and often the music and crowd noise is audible in the house.

And on top of all that they violated Covid law. Plus, their ridiculous delay tactics when Mr. Powers did his best to accommodate them in a fair hearing.

Embers is a bad citizen. And there is documentation to prove it. You have of complaints to the board and the police from neighbors on record. Please punish them accordingly, I wish they would lose their entertainment license and liquor license, but I know that will probably not happen yet. Please at least consider limiting the entertainment license. It really adds to the problems and the level of drinking that occurs. And that leads to more noise.

Perhaps another consideration is to grant them a beer and wine license and eliminate hard liquor. Excessive alcohol consumption, which Ember's appears to encourage certainly exacerbates the situation. It's time for the town to act.

Thank you for your time. We have many restaurants and bars in this town. So why always Ember and The Port who cause the problems?

Sincerely,

Patricia O'Neill

March 9, 2021

Dear Mr. Chairman,

It is my understanding that a hearing will be held later this month concerning The Port restaurant and bar regarding COVID regulation violations and that public nuisance issues regarding noise, traffic and scope of operations will also be discussed. I hope to attend the meeting, but public comments will probably be limited and I hope this letter can be entered into the minutes.

I have a home at 43 Sea St and am therefore a direct abutter to the business. I purchased my home in 2009 when no businesses on Main Street had outdoor liquor or entertainment licenses. Besides a little parking lot noise there were very few issues at that time.

I have written to and spoken in front of the selectman in the past, thus this letter will be short. It is frustrating that these issues persist and that I must repeat myself.

This past summer, despite COVID restrictions, the noise from the PORT and the drunkenness in the adjoining parking lot were worse than ever. The obvious violations were stunning in their arrogance. Two outdoor bars were open (I believe the plans allow one.). People were standing around drinking with no food in sight. Drinking until closing time despite the restaurant being closed were clear violations occurring nightly. The noise was fantastic. The business, which used to be a fine restaurant, is now just a rowdy bar. Drunks yelling and cheering and carrying on the celebration to the parking lot are ongoing problems. This is not an appropriate establishment in a mixed residential and commercial area. Despite repeating warnings and hearings as well as a pandemic, the situation has become worse. While early focus has been on entertainment, the overall crowd noise itself is now overwhelming and in violation of the local ordinance. As well, public drunkenness is rampant. There appears to be no serving limits.

It is my understanding that the local licensing authority has discretion when reapplication occurs, and that traffic, noise, reputation and size of the applicant's establishment are considerations. It seems to me that this establishments brazen abuse of its license warrants intense scrutiny.

At first, when the outdoor bar and entertainment were allowed I thought that, if the rules were followed, coexistence would be possible. I now doubt that. The fact is that the nature of this business has changed. It no longer caters to the neighbors and high-end diners. It's just another rowdy bar that over serves and doesn't care about the effects on its neighbors. Management makes no attempt to control the noise or the crowd. Even a pandemic that killed over half a million people didn't matter.

My neighbor, Joseph Ganley, has sent a letter extensively listing the violations he has observed. I concur with his observations. I urge you to view the video he has posted. Littering, public drunkenness, noise, traffic at night and deliveries in the early morning are all consistent problems not suited to a residential area. I have observed people clearly intoxicated drive away after leaving The Port. I have observed minors texting their friends because "no one is carding." (Also at Perks but that is for another time.)

I have testified and written to the selectman before about these problems and it seems to me nothing has been done except a few minor punishments. Management has brushed them aside. Instead of working with neighbors and the town The Port has become more brazen in its failure to adhere to both the letter and the spirit of local ordinances. The problems have worsened over the course of years and during a pandemic when we all should share responsibility for the health of our neighbors and community. The fact is that the management is arrogant and does not care. I hope a significant penalty is levied and rules put in place that are enforceable. I have a right to peace in my home. I should not wake to beer bottles and vomit on my property.

I do not have a specific understanding of the legal issues. The problems are way beyond the noise of outdoor entertainment. Frankly, as a public health nuisance alone I think that the liquor license should not be approved. Joseph Ganley's letter clearly identifies the depth of the problems and how Ballin Factors can be applied. As a more practical note I believe it's only a matter of time before a parking lot fight or drunk driving incident results in serious injury. At the very least, for peace in our homes the outdoor area should be enclosed and security should be visible in the parking area. (Is it even legal for Port customers to use the Porte Center parking lot?) Again, this business in its current state is not suitable for a mixed commercial/residential area. It's overt violations of public health policy during a pandemic call for severe punishment.

Sincerely,

William Vranos

From: Contact form at Harwich MA [mailto:cmsmailer@civicplus.com]
Sent: Tuesday, January 19, 2021 9:56 AM
To: Joe Powers <jpowers@town.harwich.ma.us>
Subject: [Harwich MA] Town Administrator position (Sent by Laurel Beloin,

Hello jpowers,

Laurel Beloin _____) has sent you a message via your contact form (<https://www.harwich-ma.gov/user/1733/contact>) at Harwich MA.

If you don't want to receive such e-mails, you can change your settings at <https://www.harwich-ma.gov/user/1733/edit>.

Message:

Dear Mr. Powers,

I watched your interview with the Yarmouth selectmen for their Town Administrator open position. You were very impressive and qualified to be Town Administrator. I'm hoping you consider staying in Harwich if our BOS offer you a contract. It amazes me that they haven't done so already! Shame on them!

My husband and I own a home in Harwich Port but are unfortunately not full time voting residents. We have been negatively impacted by the music and patron noise from The Port and Perk for the past 6 years as I'm sure you know by now. I listened in on the hearings for The Port and Ember last week. We need you in the TA position as you will be fair but are willing to challenge these businesses when they don't follow the rules and regulations set by the state or town. I don't want our quaint village we use to enjoy to continue on a path to honky-tonk without strong leadership and strong punishments to stop it.

Regards,
Laurel Beloin

October 3, 2019

To the noise committee:

I will be unable to attend the next meeting so I hope that this letter can be entered into the record.

I live at 43 Sea Street and am a direct abutter to The Port and Perks. I have many thoughts about the noise problems in the neighborhood but I think initially, in this letter, I would like to express to the committee the problems created for myself and my family due to excess noise from these establishments.

To keep this in context, I believe the committee should understand that when I purchased my home the Port was a four star restaurant with only side walk seating and Perks did not exist in his current form. It is upsetting to hear people suggest that I should have to tolerate excess noise because of the location of my house.

Also I believe the community should understand that I am not anti music or anti business. I am anti excessive noise.

Since these establishments have been allowed to employ outside entertainment, the lives of me and my family has changed dramatically. We have been forced to put window unit air conditioners and fans in all the rooms so that "white noise " can drown out the noise from these businesses. I did not buy a 2nd home near the ocean with the expectation that I would not be able to open the windows in the summer.

Many evenings, we have been forced indoors from cook outs and other social activities because of the noise. When we have guests with small children who go to bed early or on evenings when I will commute from work from this house and need to go to bed before 10 o'clock, sleep is disrupted. Due to this, we have spent less time at our home the past couple of summers. Sometimes it is just not relaxing to be there. Think about that. We feel forced from our own home.

I have, quite frankly, given up on calling the police. The officers are either so confused about the ordinance or show up when things have quieted down, that the call is ineffective. It is a tremendously frustrating situation for me and I believe for the officers.

There are evenings, when the entertainer is high quality and the noise level is low, that it can be pleasant have music played next door. Other evenings, it seems poor quality entertainers make up for their lack of talent by being loud and exhorting the crowd to make noise as well. One even handed out cowbells. As a starting point, I think we can all agree that this type of entertainment is not suitable for a mixed commercial/residential area.

I think a large part of the problem is the current wording of the noise ordinance. I do believe that the businesses have capitalized on the confusion. "Plainly audible" at 150 feet is confusing at times (although not so confusing that it should not be enforced when there is clear violation). For instance how does a cowbell get factored in and what good is it if the officer shows up once the cowbells are done being played? Also, I once asked an officer where he thought 150 feet was and he walked me down the road to a spot that was almost 150 yards away. Furthermore, where someone lives distance wise, should not affect the officer's response. If it is too loud for a reasonable person to be able to enjoy his own property, the noise ordinance should protect that person. Laws and ordinances are designed to protect individuals' privacy and safety. Because patrons like loud noise and the town likes tax collection, does not mean that the rights of individuals can be abused.

It seems to me, that with properly written, easily understood, and thus enforceable ordinance, which sets a reasonable noise level, everyone can be happy. I understand that I may have to put up with some background noise but the establishment should understand that the entertainers they hire and crowds need to stay within certain boundaries as well. These are not large venues; it seems solvable.

Sincerely,

William Vranos

As much as we would love to be there on Tuesday at 5PM the day/time is problematic for us due to work commitments, but nonetheless we would love to share our experience living next door to a strictly outside venue.

First and foremost we purchased our guest house in 1982 living next door to a Leather Shop and private residence where Perks is now located. Since Perks started serving alcohol and having live entertainment in their driveway we have been unable to rent rooms- because let's face it you rent a room to sleep!

We are unable to remove our storm windows on that side of the house due to the music/noise, our porch on that side which has become unusable.

We have been threatened by patrons for using a weed whacker at 6PM while music was playing. The owner has also threatened us for calling the police.

Every night we shut all of our windows and doors and hunker down in the middle of our house where the music/noise is somewhat muffled but still audible. The music is so loud that the patrons talk over it. Our animals are also frightened by the loud sounds.

After 10PM when the music stops there is still no reprieve from it all- Perks becomes a frat party/gong show audition till 1AM. That's when corn hole and Large Jenga games start, loud singing from patrons, people cheering each other on while game playing, cow bells are ringing, yelling up the driveway to people passing by etc. At 1AM people start yelling on their way out of the driveway and this continues down the street.

Family members have changed bedrooms to be on other sides of the house but it can still be heard even on the other side. There's no going to bed early in our house down there!

We actually have 2 buildings on our property- our back building has become totally unusable due to the music/noise from Perks. You can actually hear every conversation that takes place at the bar from many of the rooms.

Every time we come down we are so excited to open our windows and enjoy the peace and quiet while inhaling the sea air- the only time we were able to enjoy that this year was Easter and one day in August when it rained in the evening.

Visiting for a week is one thing but 7 nights a week during the summer is absurd to those who live around it.

There has never been any attempt by the owner of Perks to keep the music/noise at a reasonable level that would be considerate to his neighbors. We believe that the first permit given out years ago stated "Acoustic Music" what has changed?

Lisa and Gary Sawin

-----Original Message-----

From: cmsmailer@civicplus.com [mailto:cmsmailer@civicplus.com]

Sent: Wednesday, October 28, 2020 12:34 PM

To: Joe Powers <jpowers@town.harwich.ma.us>

Subject: [Harwich MA] Harwich Port Noise (Sent by William Vranos)

Hello jpowers,

William Vranos _____ has sent you a message via your contact form (<https://www.harwich-ma.gov/user/1733/contact>) at Harwich MA.

If you don't want to receive such e-mails, you can change your settings at <https://www.harwich-ma.gov/user/1733/edit>.

Message:

Joe,

I live at _____ Harwich Port and am a direct abutter to The Port and Perks. I have spoken in the past at noise community meetings and at Board of Selectman's meeting. I understand the noise issue will be brought up at the next board meeting as well.

It is not clear to me what type of public input will be permitted at that meeting.

I would just like to reiterate my previous issues. Noise from establishments continues to be a serious issue. While the committees discuss various interpretations of the noise statute any observer with common sense would see things are totally out of control. Music is only a small part of the problem. In particular the Port encourages a rowdiness that has patrons screaming and whooping throughout the evening. They leave and urinate in the parking lot and throw trash on our lawn. They yell at the top of their lungs because, apparently, being drunk makes one hard of hearing. I believe my neighbor, Joe Ganley, caught some of this on video and submitted it. I saw his testimony at the last noise committee meeting and can fully endorse it's content. It's a total violation of our expectation of peace in our own home.

I really don't know how many letters and appearances we need to make. These establishments are not good neighbors. They also should not be the type of business that should be encouraged/endorsed by the selectman. The Port used to be a four star restaurant. Now it's The Nauti Bar and google reviews call it a tourist trap. Perks, in the past, is consistently over capacity and allows underage patrons most nights. I was at a meeting where that was denied but I actually go to Perks when there is no music and watch the teens text out that "no one is carding".

I believe both of these businesses did fine without the addition of music and rowdiness to their business model. Some nights the music is quite good and the artist does not endorse crowd encouragement or participation. I actually do not mind those nights, although infrequent. Other nights it's crowd participation and escalating noise that worsens when the music stops. It's just inappropriate for a mixed commercial/residential neighborhood.

When we moved in The Port was a restaurant (it's a bar now that may serve a little food) and Perks did not exist. Any suggestion that we should accept the current situation because of our location is not fair or reasonable.

I am happy to submit this in a more formal manner or speak if public comments are allowed.

Sincerely
William Vranos

Harwich Port

Hello jpowers,

Joseph Ganley _____ has sent you a message via your contact form (<https://www.harwich-ma.gov/user/1733/contact>) at Harwich MA.

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Message:

Mr. Powers:

My name is Joe Ganley, our extended family owns two properties on _____ in Harwich Port. I have been in communication with Steve Ford from the Board of Selectmen regarding the Port Restaurant. The short version of the story is that we have filed numerous complaints with both the Harwich Police and the Harwich Health Department all summer because the Port was being operated in flagrant violation of the COVID restrictions. (They operated the parking lot as a noisy outdoor bar all summer in violation of the requirement that alcohol must accompany food prepared on premises). These complaints have been well document through emails to the Board of Health, videos taken on site, and complaints to the HPD. I am wondering if I could learn from you what the process is for following up on these complaints. I have heard that hearings may be scheduled to deal with these types of issues, and I certainly would not want to miss the opportunity to submit testimony at such a hearing if that is permitted.

Moreover, many of my neighbors and I would strongly object to the Port being allowed to operate food and beverage in the parking lot after the COVID state of emergency has concluded. We do support many area restaurants who have expanded to outdoor dining, but who have done so in collaboration and consideration of their neighbors (Cape Sea Grille, Mad Minnow, Three Monkeys, Hot Stove, etc). What distinguishes these establishments is that they operated within the confines of the law and regulations, and they generally care about the balanced commercial/residential nature of the neighborhood.

By contrast, the Port operated a rowdy tailgate-like outdoor bar with drunken patrons pouring out of the establishment, urinating in our yard, or in the adjacent parking lot, cursing and swearing and screaming till approximately 1:00 am.

I am curious what the procedure is for filing a formal complaint, and for providing documentation and testimony in support of the complaint.

Thank you very much.

Joe

Hello jpowers,

William Vranos (j) has sent you a message via your contact form (<https://www.harwich-ma.gov/user/1733/contact>) at Harwich MA.

If you don't want to receive such e-mails, you can change your settings at <https://www.harwich-ma.gov/user/1733/edit>.

Message:

Joe,
I live at [redacted] : Harwich Port and am a direct abutter to The Port and Perks. I have spoken in the past at noise community meetings and at Board of Selectman's meeting. I understand the noise issue will be brought up at the next board meeting as well.

It is not clear to me what type of public input will be permitted at that meeting.

I would just like to reiterate my previous issues. Noise from establishments continues to be a serious issue. While the committees discuss various interpretations of the noise statute any observer with common sense would see things are totally out of control. Music is only a small part of the problem. In particular the Port encourages a rowdiness that has patrons screaming and whooping throughout the evening. They leave and urinate in the parking lot and throw trash on our lawn. They yell at the top of their lungs because, apparently, being drunk makes one hard of hearing. I believe my neighbor, Joe Ganley, caught some of this on video and submitted it. I saw his testimony at the last noise committee meeting and can fully endorse it's content. It's a total violation of our expectation of peace in our own home.

I really don't know how many letters and appearances we need to make. These establishments are not good neighbors. They also should not be the type of business that should be encouraged/endorsed by the selectman. The Port used to be a four star restaurant. Now it's The Nauti Bar and google reviews call it a tourist trap. Perks, in the past, is consistently over capacity and allows underage patrons most nights. I was at a meeting where that was denied but I actually go to Perks when there is no music and watch the teens text out that "no one is carding".

I believe both of these businesses did fine without the addition of music and rowdiness to their business model. Some nights the music is quite good and the artist does not endorse crowd encouragement or participation. I actually do not mind those nights, although infrequent. Other nights it's crowd participation and escalating noise that worsens when the music stops. It's just inappropriate for a mixed commercial/residential neighborhood.

When we moved in The Port was a restaurant (it's a bar now that may serve a little food) and Perks did not exist. Any suggestion that we should accept the current situation because of our location is not fair or reasonable.

I am happy to submit this in a more formal manner or speak if public comments are allowed.

Sincerely
William Vranos

March 1, 2021

Mr. Larry Ballantine
Chairman
Board of Selectmen
Town of Harwich
Harwich Town Hall
732 Main Street
Harwich Center, MA 02645

VIA EMAIL

Dear Mr. Chairman:

I am writing to follow up on the recent enforcement hearing regarding violations of the COVID 19 regulations by the licensed establishment DBA *The Port Restaurant and Bar*, (hereinafter "The Port") 541 Route 28 Harwich Port, MA. It is my understanding that the Board of Selectmen will be conducting a public hearing on the topic of renewal of The Port's seasonal liquor license. While I reserve the right to offer testimony at such a hearing, I thought it would be efficient to send this information in advance of said hearing to 1) inform the Board of Selectmen's deliberations regarding the application for renewal of the establishment's license, and 2) to document a complete record in anticipation of further proceedings.

My family owns two properties on _____ in Harwich Port. We first became residents in 1975, so with respect to issues arising from operations at The Port, it cannot be said that "we knew what we were getting into". At the time our first home was purchased, the property, that is now The Port, was a clothing store.

In the past decades, the transformation of Harwich Port, and in particular, the commercial corridor between Lower County Road and Bank Street has been overwhelmingly positive. My family frequents many of the restaurants and shops in this area and we welcome the vibrant energy that these establishments have brought to our village. The nature of a mixed residential and commercial area such as Harwich Port requires cooperation between the commercial establishments and the residents.

Absent such good faith cooperation and mutual respect, a successful mixed-use area requires the appropriate town authorities to vigorously enforce the zoning, licensing and other regulations that were promulgated to ensure that the needs of commercial businesses are balanced with the desire of residents to quietly enjoy their property absent public nuisance.

Summary

The public nuisance issues that have been raised related to operations at The Port have been well-documented and communicated to the Board, the Health Department, the Harwich Police, the Ad Hoc Noise Committee and the Town Administrator. They relate to traffic, noise, the size (ever expanding), and the sort of operation (also consistently evolving) that carries the license. These issues have been getting worse instead of better in recent years and have been largely unaddressed by the local licensing authority, with the exception of occasional minor penalties such as a license suspension during non-peak times.

The Town has allowed the operations of this establishment to transform from what was once a fine dining establishment to a rowdy outdoor bar that often operates in violation of state and local regulations and license requirements.

It is now appropriate for the Board, acting in its capacity as local licensing authority to use the tools at its discretion to 1) force this establishment to comply with these regulations and licensing requirements 2) impose appropriate conditions on the establishment's license to mitigate long-standing and well documented public nuisance issues, and 3) adopt a more open and transparent dialogue with residents who wish to engage with the Town's elected and appointed leadership to address these quality of life issues.

Discussion

First and foremost, the Port routinely operates in open and flagrant violation of the Regulations of the Alcoholic Beverages Control Commission. 204 CMR 2.05 (2) I would suggest that a violation of this regulation could be identified on nearly any summer weekend inspection of the facility. Service of intoxicated persons, underage drinking, public nuisance noise, unruly crowds, are just some of the examples that have been personally witnessed by neighbors over the past several years.

Naturally then, the question becomes one of enforcement. As has been discussed at various public meetings, in considering an application for a liquor license or a renewal of a liquor license, the Board of Selectmen, acting in its capacity as local licensing authority, may consider the so-called "Ballarin Factors" arising from the Massachusetts Appellate Court in the *Ballarin, Inc v. Licensing Board of Boston* 49 Mass. App. Ct. 506 (2000).

In that decision, the Court ruled that local licensing authority's consideration may include: "...an assessment of public want and the appropriateness of a liquor license at a particular location..." (Id). The Court further held: "In making its discretionary determination, a licensing authority may take into account a wide range of factors - such as traffic, noise, size, the sort of operation that carries the license, and the reputation of the applicant." (Emphasis added) See *Connolly v. Alcoholic Bevs. Control Commn.*, supra; *Great Atlantic & Pac. Tea Co. v. Board of License Commrs. of Springfield*, 387 Mass. 833, 837 (1983); *Beacon Hill Civic Assn. v. Ristorante Toscano, Inc.*, supra; *Hub Nautical Supply Co. v. Alcoholic Bevs. Control Commn.*, 11 Mass. App. Ct. 770, 772-774 (1981).

At the Board of Selectmen meeting on February 16, 2021, the Board was advised by the Town's Counsel that although a license renewal generally carries a presumption that it will be granted, the Board may, at its discretion, reconsider the application (applying the Ballarin factors) to make a determination about whether to renew the license.

TOWN ADMINISTRATORS
RECOMMENDATION
PACKET

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Town Administrator*

732 MAIN STREET, HARWICH, MA



MEMO

TO: Board of Selectmen

FROM: Joseph F. Powers, *Town Administrator*

CC: David J. Guillemette, Chief – Police
Gregg J. Corbo, Esq. – KP Law

RE: Recommended action following disciplinary hearing held on
January 12, 2021 re: Port Restaurant and Bar, Liquor License Violations

DATE: February 8, 2021

The following is my report on a disciplinary hearing held on January 12, 2021 for alleged violations of the liquor license for Port Restaurant and Bar, Inc., 541 Route 28, Harwich, MA.

Violations alleged:

Specifically, the alleged violations were: four (4) violations of 204 CMR 2.05(2), permitting a disorder, disturbance or illegality to take place on the licensed premises, to wit: violations of the Governor's COVID-19 orders and guidance on May 22, May 24, July 16 and July 17, 2020.

Hearing summary:

The hearing was originally commenced on August 12, 2020, with all participants joining the hearing via the Go to Meeting remote video platform. Participating in the hearing were four members of the Harwich Police Department: Chief Guillemette, Deputy Chief Considine, Officer Nolan and Officer Dutra; the General Counsel of the Alcoholic Beverages Control Commission, Kyle Gill, Alcoholic Beverages Control Commission Investigator Binienda, the licensee and his attorney, Raymond Tomlinson, Jr.

At various times during the original hearing, it became apparent that Attorney Tomlinson's connection to the Go to Meeting platform was not working. He repeatedly claimed that he was unable to hearing witnesses, Town Counsel and the Hearing Officer. No other participants appeared to have the same level of difficulty. However, as a result of Attorney Tomlinson's alleged inability to effectively participate in the hearing, the Hearing Officer decided to suspend the hearing.

The hearing was reconvened on January 12, 2021. To alleviate the difficulties experienced by Attorney Tomlinson, the Hearing Officer made arrangements to have him and his client participate from

a separate location within Town Hall, connected to the other participants by a closed-circuit video feed. The arrangement was reviewed and approved by the Town's Health Director. Attorney Tomlinson, however, refused to participate in the hearing, claiming that he would be unavailable until March, 2021 due to a medical condition. Based on the numerous delays already experienced, the Hearing Officer chose not to reschedule the hearing and informed Attorney Tomlinson of his decision in writing.

Neither Attorney Tomlinson nor his client appeared for the hearing on January 12, 2021. The Hearing Officer commenced the hearing from the beginning (without reference to anything that occurred during the original hearing), and heard oral testimony from ABCC Investigator Binienda, Officer Nolan and Officer Dutra. The hearing officer also considered exhibits labeled A through Q.

Legal Standard:

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

- 204 CMR 2.05(2), prohibits license holders from permitting any disorder, disturbance or illegality to take place on the licensed premises.
- On March 10, 2020, Governor Baker declared a State of Emergency in the Commonwealth due to the COVID-19 pandemic, and he issued numerous executive orders designed to prevent the spread of the virus.
- The Governor's orders have the force of law.
- On March 23, 2020, the Governor issued COVID-19 Emergency Order No. 13, in which he allowed restaurants to be open to the public for take-out and delivery only, but prohibiting the on-premises consumption of food and beverages.
- On April 3, 2020, the ABCC issued an advisory informing all license holders that all alcohol sales must be part of a take-out order.
- On May 18, 2020, the ABCC issued an advisory reminding all license holders that all on-premises consumption was prohibited until June 8, 2020 at the earliest.
- On June 1 and June 6, 2020, the Governor issued orders allowing restaurants to open for outdoor table service on June 8, 2020, and on June 19, 2020, the Governor issued COVID-19 Emergency Order No. 40 in which he allowed restaurants to be open for indoor dining on June 22, 2020, subject to guidance and standards issued by the Department of Public Health.
- On June 22, 2020, the Department of Public Health issued guidance for indoor table service, which included requirements that tables be spread at least six feet apart, that table sizes be limited to six guests, that customers may not be seated at bars or served while standing, that gaming areas remain closed and that all customers and employees be wearing masks when not seated at tables.
- On July 6, 2020, the Department of Public Health issued updated safety standards for restaurants which clarified that establishments must provide seated service of food that is prepared on site if they wished to open for indoor table service.
- On August 10, 2020, the ABCC issued an advisory reminding all licensees that they were required to provide seated food service along with the sale of alcohol.

Statement of findings:

I find that the licensed establishment did, in fact, permit a disorder disturbance or illegality to take place on the licensed premises by violating the Governor's orders and guidance relative to the operation of restaurants during the COVID-19 State of Emergency on three of the four dates in question, May 22, July 16 and 17, 2020, as follows:

- On May 22, 2020, Harwich Police Officer Nolan observed numerous individuals congregating on the outdoor patio area of the establishment, drinking from open containers, as well as the operation of what appeared to be a full service bar in violation of the Governor's orders prohibiting on-premises consumption.
- On May 24, 2020, Harwich Police Officer Dutra observed an individual on the outdoor patio area of the establishment with a container that appeared to contain an alcoholic beverage in violation of the Governor's orders prohibiting on-premises consumption. Although Officer Dutra's initial call log indicated that he observed this individual drinking from the container, during hearing he clarified that he did not observe the container to be open and he did not observe the individual taking a drink. I, therefore, find no violation with respect to this report.
- On July 16, 2020, investigators from the ABCC observed numerous violations of DPH guidance for on-premises service, including the consumption of alcohol without food, the service of alcohol without food prepared on site, and individuals standing at outdoor bar areas consuming alcoholic beverages.
- On July 17, 2020, investigators from the ABCC observed numerous violations of DPH guidance for on-premises service, including patrons walking around the establishment without facial coverings, customers playing in gaming areas, more than six people at tables and customers consuming alcoholic beverages without food prepared on site.

These observations are described in greater detail in reports admitted into evidence at the hearing, which reports are consistent with the sworn testimony offered by the witnesses and which I credit as true and which establish that the licensee permitted disorders, disturbances or illegalities to take place on the licensed premises.

Recommended disciplinary action:

Based on the facts admitted into evidence at the public hearing, I find that three (3) violations of the laws of the Commonwealth have been violated. The licensee does not have a history of violations occurring within two years of the date of the violations described herein. However, the Hearing Officer is aware of numerous public complaints about the manner in which the establishment is operated, and that the Board intends to conduct a public hearing to determine whether or not the license should be renewed. Therefore, I will hold my recommendation in abeyance until after that hearing.

**HEARING SUMMARY
SHOW CAUSE HEARING
PORT RESTAURANT AND BAR
JANUARY 12, 2021 – 9:00 A.M.
HELD REMOTELY VIA GO TO MEETING
AND CLOSED CIRCUIT AT HARWICH TOWN HALL
732 MAIN STREET
HARWICH, MA 02645**

Present

Joseph F. Powers, Interim Town Administrator and Hearing Officer
Gregg Corbo, Town Counsel, KP Law
Danielle Delaney, Executive Assistant – Licensing
Jamie Goodwin, Director, Channel 18
David Guillemette, Chief of Police
Kevin Considine, Deputy Police Chief
Neil Nolan, Police Officer
Derek Dutra, Police Officer
Kyle Gill, Counsel, Alcoholic Beverages Control Commission
Jamie Binienda, Special Investigator, Alcoholic Beverages Control Commission
Bill Galvin, Reporter, Cape Cod Chronicle
Bob Nickerson, Harwich Resident
Laurel Beloin, Harwich Resident
Dale & Martha Kennedy, Harwich Resident
Joe Ganley, Harwich Resident

Hearing Overview

The Hearing Officer opened the hearing for Port Restaurant and Bar promptly at 9:00AM. He explained the hearing process and introduced all people present in the room; Gregg Corbo, KP Law, Danielle Delaney, Executive Assistant – Licensing and Jamie Goodwin, Director of Channel 18. The Hearing Officer states that he is present in the Griffin Room at Harwich Town Hall and the town has made arrangements for a closed circuit hearing for the licensee and their representatives to avail themselves of that opportunity. The Hearing Officer asks all callers to identify themselves for the record and state their affiliation. All callers comply. The Hearing Officers asks, for the record, if there are any representatives from the licensed establishment present. There was no response, therefore indicating no representatives present. The Hearing Officer states let the record reflect that at 9:06 A.M. no individuals presented themselves.

Attorney Corbo starts the hearing and would like the record to show that on December 28, 2020 via hand delivery and electronic mail, Justin Brackett, manager of Port Restaurant and bar, was provided Notice of Hearing. He would further like the record to show that subsequent thereto, their counsel, Attorney Raymond Tomlinson requested a continuance of this hearing. By written correspondence dated January 7, 2021, that continuance was denied. The Hearing Officer

confirms Attorney Corbo would like to add these items to the record. Attorney Corbo states Exhibit A is the December 28, 2020 Notice of Hearing to Port Restaurant and Bar and Exhibit B is the January 7, 2021 correspondence to Attorney Tomlinson.

Attorney Corbo states as indicated in the Notice of Hearing, the charges that will be considered today are whether the licensee has violated the terms of their license as well as the regulations of the Alcoholic Beverages Control Commission; specifically 204CMR2.05, sub-section 2 by permitting a disturbance or illegality to take place on the licensed premises. He proceeds to state that the evidence will show that the charges arise from incidents occurring on or about May 22 and 24, 2020, as described in detail in the Harwich Police incident reports that are part of the record. Also, occurring on or about July 16 and 17, 2020, as detailed in the Alcoholic Beverages Control Commission Investigative Report. The Hearing Officer confirmed this information was noted.

Attorney Corbo proceeded with calling on and swearing in the first witness, Jamie Binienda, Special Investigator with the Alcoholic Beverages Control Commission. Attorney Corbo asked if Mr. Binienda, in his role as Special Investigator, investigated The Port Restaurant and Bar on July 16, 2020 and continued the investigation on July 17, 2020. Mr. Binienda confirmed that statement is correct. Attorney Corbo asked if Mr. Binienda is familiar with the written report of Investigator Nicole Smith, dated July 17, 2020, and if it accurately describes the events that took place and he confirmed that to be correct. Mr. Binienda confirmed he had the report in front of him presently. Attorney Corbo asks Mr. Binienda if there are any additional facts he wishes to add to the record and Mr. Binienda stated, no, not at this time. Attorney Corbo proceeded to add the Investigative Report by Nicole Smith as Exhibit C and was read into the record. Attorney Corbo asks Mr. Binienda again if this report accurately describes the events of that July 16 and July 17, 2020 and Mr. Binienda stated yes, it does. Mr. Binienda stated he would like to clarify one thing in the report on the second page, fourth paragraph, where it says approximately at 11:30 P.M. Mr. Binienda advised the Manager of their observations and that he responded that he had tried to remind customers to wear masks and then stated “people get drunk and stupid, well not overserved, but drunk and stupid”. Mr. Binienda stated he wanted to clarify that was the manager’s statement. Attorney Corbo states since there are no representatives from the licensee present that he has no further questions. The Hearing Officer states for the record the empty chairs that can be seen on the screen labeled Town of Harwich is a safe and secure place for the licensee to participate and let the record show there is no one from the licensee present on Go To Meeting. The Hearing Officer confirms that Mr. Binienda is excused and states he would like to thank the Inspector and Attorney for their patience, time and participation.

Attorney Corbo proceeds to the events on May 22, 2020. He states Exhibit D is the Harwich Police Department Call Summary and reads the narrative for all parties. The Hearing Officer confirms Exhibit D is added to the record. Attorney Corbo states Exhibit E is a Harwich Police Department Incident Report 20-5518-OF, Call 20-5518. The Hearing Officer states Exhibit E has been entered into the record.

Attorney Corbo calls his next witness which is Officer Nolan, Harwich Police Department. Officer Nolan states his full name and title and is sworn in by Attorney Corbo. Officer Nolan confirms he is the author of the police report and that he has a copy of the report with him

presently. Attorney Corbo reads the report into the record and confirms with Officer Nolan that the report is accurate. Attorney Corbo asks Officer Nolan if he has any additional information or clarifications he would like to add. Officer Nolan responded he did not. Attorney Corbo states he has no further questions for the Officer and there are no representatives from the Port present therefore he would like to excuse the Officer.

The Hearing Officer states an individual has joined the hearing and asks the individual to state their name for the record. The Hearing Officer asks again and states for the record, at 9:26 A.M. the individual is removed from the hearing as they will not state their name for the record.

Attorney Corbo proceeds to the events on May 24, 2020. He states Exhibit F is the Harwich Police Department Call summary and reads the narrative for all parties. The Hearing Officer confirms this document has been added to the record. Attorney Corbo states Exhibit G is the Harwich Police Department Incident Report 20-5567-OF, Call 20-5567 reported by Supervisor Derek Dutra. Officer Dutra states his full name, affiliation and is sworn in. Officer Dutra confirms he is the author of the report and that he has the report presently. Attorney Corbo reads the report into the record. Officer Dutra confirms the report is accurate. Attorney Corbo states he has one clarifying question for Officer Dutra. He proceeds to ask that Officer Dutra reported he saw a male party sitting at a wooden table, near the entrance, with a Bud Light bottle and would like to know if Officer Dutra observed if the bottle was opened or closed. Officer Dutra states he could not see if bottle was open or closed. Attorney Corbo asked Officer Dutra if he observed the individual drinking from the bottle. Officer Dutra stated one error in his report that he would like to point out is that he did not see drinking.

The Hearing Officer states a caller, by the name of Trish, has joined the hearing. The Hearing Officer asks if they can identify themselves, which they do, Patricia Neal, Resident. The hearing proceeds.

Attorney Corbo states he has one more clarifying question and asks if the patron had food with him. Officer Dutra states no, just a beverage. Attorney Corbo states he has no further questions and Officer Dutra has nothing further to add. Attorney Corbo states there are no representatives from the licensed establishment present and asks the Officer to be excused.

Attorney Corbo states he has no further witnesses in this matter and proceeds to read the following exhibits into record. Attorney Corbo and the Hearing Officer discuss what was going to be listed at Exhibit H and decided this document will not be entered into the record as an Exhibit.

Exhibit I: Covid Order 13 from Governor Baker dated March 23, 2020

Attorney Corbo directs attention to the second page, section one, paragraph three and reads the section for all parties.

Exhibit J: Alcoholic Beverages Control Commission Advisory regarding on premise licensees selling for off premise consumption dated April 3, 2020

Attorney Corbo directs attention to the third paragraph and reads for all parties.

Exhibit K: Alcoholic Beverages Control Commission Advisory on the continued prohibition of selling alcohol for on premise consumption dated May 18, 2020

Attorney Corbo points out the bold underlined language in the second paragraph and reads paragraph for all parties.

Exhibit L: Covid Order 35 from Governor Baker June 1, 2020

Attorney Corbo reads an overview on page three of the order along with page six, paragraph four which continues on page seven.

Exhibit M: Covid Order 37 from Governor Baker dated June 6, 2020

Attorney Corbo directs attention to page three, step two and reads paragraph.

Exhibit N: Covid Order 40 from Governor Baker dated June 19, 2020

Attorney Corbo directs attention to the second page, step 2 and reads paragraph.

Exhibit O: Alcoholic Beverages Control Commission Advisory regarding indoor service at on premise locations dated June 19, 2020

Attorney Corbo directs attention to the second paragraph and reads for all parties.

Exhibit P: Restaurants Massachusetts safety standards dated June 22, 2020

Attorney Corbo directs attention to the first paragraph and reads for all parties.

Exhibit Q: Sector Specific Workplace Safety Standards for restaurants to address Covid-19 updated July 6, 2020

Attorney Corbo directs attention to the end of first page along with the following paragraphs and reads for all parties.

The Hearing Officer states for the record, at 9:44 A.M. on January 12, 2021, we are in a hearing for alleged violations against the Port Restaurant and Bar in Harwich Port and there remain no representatives from the licensed establishment. He proceeds to say we have heard testimony provided in support of the allegations through questioning by Attorney Corbo.

Attorney Corbo gives Police Chief David Guillemette and Deputy Chief Kevin Considine a chance to speak if they have anything to add. The Police Chief states he has nothing to add. Deputy Chief Considine states that Harwich Police Report 20-5567 was initiated by a call to him from the Harwich Health Director who received a complaint. Attorney Corbo states the reference is to Exhibit F.

Attorney Corbo completes his closing statements and reads the charges that the licensee has been charged with and the dates they allegedly occurred. He briefly describes alleged violations for both dates. Attorney Corbo explains the Governors COVID-19 Orders and that the Alcoholic Beverages Control Commission investigative report show numerous violations.

The Hearing Officer thanks Attorney Corbo and confirms the record can be closed. The Hearing Officer states for the record, it is 9:50 A.M. on Tuesday, January 12, 2021 and reiterates for the record that no representatives from the licensed establishment are present despite numerous efforts made by the town to accommodate. The Hearing Officer states at this time he considers the record to be closed and will take this matter under advisement and will be submitting his report to the Board of Selectmen. The licensed establishment will be advised when the Board is set to meet on this matter.

The Hearing Officer thanks Town of Harwich staff for their efforts and shares the town did not spare expense to provide a safe and efficient method for all who wished to participate in this matter.

Hearing is closed 9:52AM.

Respectfully Submitted,

Danielle Delaney
Executive Assistant – Licensing

OFFICE OF THE TOWN ADMINISTRATOR

Joseph F. Powers, *Interim Town Administrator*

Phone (508) 430-7513

Fax (508) 432-5039

732 MAIN STREET, HARWICH, MA



December 28, 2020

VIA HAND-DELIVERY AND EMAIL

Justin Bracket, Manager
Port Restaurant and Bar, Inc.
541 Route 28
Harwich Port, MA 02646

Re: Notice of Liquor License Disciplinary Hearing
Port Restaurant and Bar, Inc.

Dear Mr. Bracket:

On **Tuesday, January 12, 2021, at 9:00 am**, 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 Alcoholic Beverages License for Port Restaurant and Bar, Inc.

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 facts underlying this charge arise from incidents occurring on or about May 22 and 24, 2020, as described in detail in the Harwich Police Incident Report attached hereto, and occurring on or about July 16 and 17, 2020, as described in detail in the Alcoholic Beverages Control Commission Investigative Report attached hereto.

As you are aware, I attempted to begin this hearing on August 12, 2020, using a remote video platform to accommodate your Attorney's request to not have to appear in person due to concerns relating to COVID-19. However, after commencement of the hearing, and despite numerous efforts cure the alleged deficiencies, your attorney claimed that technical difficulties prevented him from participating. Although these difficulties did not appear to effect other remote participants, I decided to suspend the hearing. On January 12, 2021, I will start the hearing anew, using the following arrangements to ensure that all interested parties can participate in the hearing, while also ensuring that they can properly distance so as to avoid any risks that may be associated with COVID-19.

Specifically, the hearing will be conducted in separate locations within the Harwich Town Hall, 732 Main Street, Harwich, MA, which will be connected by closed-circuit, two-way video broadcast. The licensee and its counsel, should they choose to attend, will be located in the small hearing room, while me, Town Counsel and Ms. Delaney will be located in the Griffin Room. The two locations will be equipped with cameras and monitors to enable two-way communication. This system has been tested and proven effective. Members of the Town's Police Department and the ABCC will be

permitted to participate via GoToMeeting, and both Town Hall locations will have the ability to interact with them.

These measures have been tested and approved by the Town's Health Director, and it is my opinion that they represent a reasonable accommodation to guard against the risks associated with indoor gatherings, while also providing the licensee and its attorney with a reasonable opportunity to participate in the hearing. Therefore, I will not agree to further suspend or delay the hearing for anyone who chooses not to participate under these circumstances.

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 by the close of business January 8, 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.

Very truly yours,



Joseph F. Powers
Interim Town Administrator

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Interim Town Administrator*

732 MAIN STREET, HARWICH, MA



January 7, 2021

Raymond H. Tomlinson, Jr.
Tomlinson Law
1170 Main Street, Suite #1
West Barnstable, MA 02668

Dear Attorney Tomlinson:

I am writing in response to your request to postpone the disciplinary hearings for the above-referenced establishments. With all due sympathy to your medical condition, I find your request to postpone the hearings to mid-March to be wholly unreasonable. The incidents which are the subject of these hearings occurred in May, 2020. When I originally attempted to schedule the hearings in July of 2020 you objected and suggested that they be postponed to September or October because you believed that it was not safe for you to attend an in-person hearing. I attempted to accommodate your request by making arrangements for the hearing to be conducted by remote video platform, at significant expense to the Town. However, when I attempted to conduct the hearings remotely, they had to be stopped due to technical difficulties on your end. Notably, you were the only participant to have such difficulties.

After much deliberation as to how to proceed with these hearings in a manner that would allow you to safely participate, I arranged for you to participate on January 12, 2020 from a separate location within Town Hall linked to the other participants via closed-circuit video feed, again at significant expense to the Town. Despite my efforts, you again objected, first stating that you are not available any day prior to 1:00 pm, and then stating that you are not available at all due to a medical procedure.

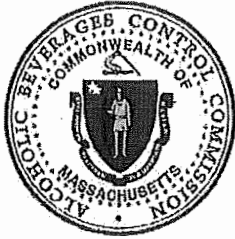
I have gone to great lengths to provide you with a reasonable opportunity to participate in these hearings, only to have you obstruct the process at every turn. Therefore, I plan to proceed with the hearings as originally scheduled on January 12, 2020. Although I have made arrangements for you and your client to participate from a location within Town Hall, I will allow Mr. Bracket to participate remotely, at his own risk. Please be advised, however, that I will not stop or reschedule the hearings if he experiences technical difficulties.

If you are unable to attend, I will accept any written material you wish to submit on your clients' behalf.

Thank you for your attention to this matter.

Sincerely,

Joseph F. Powers
Interim Town Administrator



The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Chelsea, MA 02150

Investigative Report

To: Chief Investigator Frederick Mahony

From: Investigator Nicole Smith

Licensee: Port Restaurant and Bar, Inc. **DBA:** Port Restaurant and Bar
541 Route 28
Harwich, MA 02646

Date: Friday, July 17, 2020

On Thursday July 16, 2020 at approximately 9:00PM Special Investigators Smith, Binienda and Temple investigated a complaint regarding the Port Restaurant and Bar. Smith approached the premises and asked the manager how late food would be available and he advised that the kitchen would close at 10:00PM.

At approximately 11:00PM Smith, Binienda and Temple entered the establishment and observed individuals seated or standing at two outdoor bar locations and an outdoor area with Adirondack chairs. Individuals in these areas were consuming what appeared to be alcoholic beverages but Investigators did not observe any indication of food service.

Investigator Binienda informed the manager that the Phase 2 Sector Specific Safety Standards require that Restaurants comply with the following distancing standards: Restaurants may not seat any customers at a bar; all customers must be seated and eat-in service to standing customers (e.g., around bar areas) is prohibited; Restaurants must require face coverings for all customers and workers at all times and Ensure separation of 6 feet or more between all individuals.

The manager stated that they offer slices of pizza to guests that remain on the premises after 10:00PM when their kitchen closes. Binienda informed him that the Safety Standards require that restaurants serve alcoholic beverages only to customers that order food for seated dining and he indicated that he would make changes to ensure compliance with the Safety Standards.

On July 17, 2020 at approximately 9:00PM, Smith and Binienda returned to the Port Restaurant and Bar where they observed at least 25 individuals walking throughout the licensed premises without facial coverings and did not observe any Port staff to take any corrective action.

Smith and Binienda observed several individuals without facial coverings playing a ring and hook game on the premises in violation of the Safety Standards which require that areas not employed for food and beverage service (dance floors, pool tables, playgrounds, etc.) be closed.

Smith and Binienda observed two tables with seven customers. Per the Governor's Phase 2 Sector Specific Safety Standards, the size of the party cannot exceed 6 people.

Smith and Binienda further observed at least 6 tables in the outdoor area where individuals were consuming what appeared to be alcoholic beverages without ordering or consuming food. At approximately 10:30PM a vehicle delivered several boxes of pizza to the premises.

At approximately 11:30PM Binienda advised the manager of our observations; he responded that he had been trying to remind customers to wear a mask and then stated, "People get drunk and stupid, well not overserved, but drunk and stupid and forget".

Smith pointed out to the manager that several customers were walking around without facial coverings; to which he responded, "if I wasn't talking to you, I would be telling them to wear their masks". Smith also pointed out a table of 6 individuals where at least 4 other individuals without facial coverings stopped to engage in conversation and the waitress did not take any corrective action.

Binienda asked the manager about the pizza delivery and he again indicated that that he offers slices of pizza to guests that remain on the premises after 10:00PM when the kitchen closes. The manager indicated that the pizza was delivered from Ember, a nearby restaurant.

Investigators informed the manager, identified as Jake, that a violation report would be filed with the Chief Investigator for further review.

Respectfully Submitted,

Nicole Smith

Special Investigator Nicole Smith

For Date: 05/22/2020 - Friday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
20-5518	1908	GENERAL SERVICES	Services Rendered
Call Taker:		1608 - PSD Telecommunicator DIANE NICHOLSON	
Location/Address:		[HAR 48] THE PORT - 541 RT 28	
Initiated By:		123 - Patrol Supervisor Neil A Nolan	
ID:		123 - Patrol Supervisor Neil A Nolan	

Arvd-19:08:00 CIRD-19:08:44

Narrative: 05/22/2020 2336 Patrol Supervisor Neil A Nolan
Complaint of The Port having outside patio bar service with guests standing around drinking. Complaint observed to be valid. Contact made with on sight manager who told me that he was only serving "sealed take out" beverages and that the guests then decided to open while waiting for take out food order. Manager advised that the current arrangement was in violation of state of emergency allowances of the liquor license. Instructed that no alcohol was to be consumed on premises and that any "to go" alcohol sales should be provided with to go food order and then removed from premises.



Harwich Police Department
Incident Report

Page: 1
05/29/2020

Incident #: 20-5518-OF
Call #: 20-5518

Date/Time Reported: 05/22/2020 1908
Report Date/Time: 05/28/2020 1835
Status: No Crime Involved

Reporting Officer: Patrol Supervisor Neil Nolan

Signature: _____

EVENTS(S)

LOCATION TYPE: Restaurant/Cafeteria Zone: HARWICHPORT
THE PORT
541 RT 28
HARWICH MA 02645

1 LIQUOR LAW VIOLATIONS

PERSON(S) PERSON TYPE SEX RACE AGE SSN PHONE

1 THE PORT BUSINESS
541 RT 28
HARWICH MA 02645

*****This report is being submitted by Officer Nolan.*****

On 5-22-20 I was assigned to uniformed patrol and the Officer-in-Charge (OIC) of the 4-12 shift. I was contacted on the phone by dispatch and was advised that there was a complaint about The Port restaurant and possible issues regarding Covid 19 restriction violations. Dispatch was advised that unless there was a disturbance, complaints of any "social distancing" were a health department concern. Dispatch then advised that the complaint also included the service and consumption of alcohol that appeared to be in violation of the "take out" alcohol sales provision enacted during the covid crisis.

I responded to the area of The Port to make observations. I parked across the street to the rear of the restaurant in order to observe the patio area. I immediately noticed 5-6 people standing around an outside bar structure on the property. A male subject was drinking from a brown bottle that I observed to be a Budwieser beer. A female subject was drinking from a canned beverage that I could not make out. I continued to observe other people actively socializing and moving about, some with beverage containers in their hands. I did observe a few people leaving with take out food as well.

I decided that I would contact management to make some inquiries regarding my observations. When I got to the rear patio area I observed approximately 15-17 people sitting at picnic tables or standing around. It is important to note that the rear deck/patio area is very narrow due to its location between the building and a fence separating a neighboring property. I observed a number of different open alcoholic beverage containers either in peoples hands or on table/ledge/railing in front of people. I observed a number of Bud Light bottles, some canned beverages and a number of clear plastic bottles with red caps and bottom with no labeling. In addition to the outside bar structure I observed there was also a bar setup to the rear of the building. There were 4-5 people crammed around this bar area. This bar was setup as an active service location.

I made contact with the manager on location. His response to my inquiry of the active consumption of alcohol on premises was that they were serving sealed "to go" beverages as customers waited for their take out food orders. After a brief conversation I explained that the consumption on premises was not the intent of the "to go" allowance of alcohol sales at this time. I told him that alcohol orders need to be served at the same time as the take out orders and are to be removed from premises.

For Date: 05/24/2020 - Sunday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
20-5567	1727	GENERAL SERVICES	Investigated
Call Taker:		135 - Patrol Supervisor Derek J Dutra	
Primary Id:		135 - Patrol Supervisor Derek J Dutra	
Location/Address:		[HAR 48] THE FORT - 541 RT 28	
Initiated By:		135 - Patrol Supervisor Derek J Dutra	
ID:		135 - Patrol Supervisor Derek J Dutra	
			Arvd-17:32:21 Clrd-17:34:09
Narrative:		05/24/2020 1732 Patrol Supervisor Derek J Dutra	
Modified By:		Patrol Supervisor Derek J Dutra	
		Member of the Admin received a complaint of a live band playing on the property. I checked the area, did not hear music nor did I see a band. There were people standing near the back bar area and there was one male party sitting at a picnic type table near the rear entrance drinking a bud light beer. (COVID-19 Guidance - not following).	

Refer To Incident: 20-5567-OF



Incident Report

05/27/2020

Incident #: 20-5567-OF
Call #: 20-5567

Date/Time Reported: 05/24/2020 1727
Report Date/Time: 05/24/2020 2022
Status: No Crime Involved

Reporting Officer: Patrol Supervisor Derek Dutra
Approving Officer: Sergeant Paul Boorack

Signature: _____

Signature: _____

EVENTS(S)

LOCATION TYPE: Restaurant/Cafeteria Zone: HARWICHPORT
THE PORT
541 RT 28
HARWICH MA 02645

1 COVID-19 GUIDANCE VIOLATION

PERSON(S) PERSON TYPE SEX RACE AGE SSN PHONE

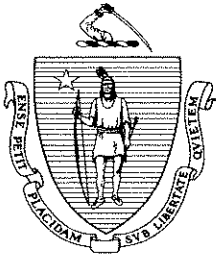
1 THE PORT BUSINESS
541 RT 28
HARWICH MA 02645

This report is submitted by Officer Dutra regarding a possible non-compliance act that took place at The Port Restaurant on May 24, 2020 at approximately 5:27 pm.

While assigned to the 4-12 shift our department was notified about a possible non-compliance act, live band playing on the property. The non-compliance issue would have to do with the current guidelines set forth by the Governor pertaining to the Covid-19 pandemic. I checked the rear of the business, at that time I did not hear any music nor did I see a band. While conducting that check I did see a male party sitting at a wooden table near the rear entrance area with a Bud Light bottle in front of him. As I was driving by the front of the establishment I slowed down and saw several patrons in the rear outer bar area. They could be seen down the narrow walkway, side of the Oyster Bar. I did not see anyone holding any bottles or cups so I'm not sure if they were just waiting for food orders or drinking.

For Date: 05/24/2020 - Sunday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
20-5574	2227	GENERAL SERVICES	Investigated
Call Taker:		2373 - PSD Telecommunicator IRIS G MCINALLY	
Primary Id:		130 - Sergeant Paul P Boorack	
Location/Address:		[HAR 48] THE PORT - 541 RT 28	
Calling Party:		ANONYMOUS @ ***UNKNOWN**	
ID:		130 - Sergeant Paul P Boorack	
		Disp-22:30:26 Enrt-22:30:30 Arvd-22:31:51 Clrd-22:45:35	
Cleared By:		130 - Sergeant Paul P Boorack	
Narrative:		05/24/2020 2230 PSD Telecommunicator IRIS G MCINALLY	
		Anonymous complaint from female reporting 15+ people on the deck drinking alcohol.	
Narrative:		05/24/2020 2245 Sergeant Paul P Boorack	
		Upon my arrival, I did not observe anyone on or around the deck, not even an employee. As I was there, 3 employees walked out of the rear of the building and walked to thier respective vehicles which were parking in the lot across the street.	
Narrative:		05/24/2020 2251 PSD Telecommunicator IRIS G MCINALLY	
		G10 clear, no one at the building in the rear or inside. 3 employees left to leave in their cars.	



OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

**ORDER ASSURING CONTINUED OPERATION OF ESSENTIAL SERVICES
IN THE COMMONWEALTH, CLOSING CERTAIN WORKPLACES,
AND PROHIBITING GATHERINGS OF MORE THAN 10 PEOPLE**

COVID-19 Order No. 13

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”);

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the number of presumptive positive and confirmed cases of COVID-19 continues to rise exponentially in the Commonwealth. As of March 22, 2020, the Department of Public Health had reported 646 cases of COVID-19, including 5 deaths, with 13 of the 14 counties in the Commonwealth impacted;

WHEREAS, the Department of Public Health is urging all residents of the Commonwealth to limit activities outside of the home and to practice social distancing at all times, both inside and outside of the home to limit the spread of this highly contagious and potentially deadly virus;

WHEREAS, on March 19, 2020, the Federal Cybersecurity and Infrastructure Security Agency issued guidance to assist States that identifies 14 critical infrastructure sectors whose workers provide services and functions that are essential to maintain in order to support a strong response to the COVID-19 pandemic;

WHEREAS, as Governor, I have identified additional services and functions that likewise are essential to promote the public health and welfare of the Commonwealth, and

therefore it is imperative to ensure that workers providing critical services and functions in these State and Federally designated sectors may continue to work to ensure community resilience and continuity of response efforts; and

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to authority over public assemblages in order to protect the health and safety of persons, regulating the sale of articles of food and household articles, and policing, protection, and preservation of public and private property;

NOW, THEREFORE, in order to minimize all unnecessary activities outside of the home during the state of emergency, I hereby order the following:

1. Maintaining Operation of COVID-19 Essential Services and Workforces

The production and service sectors identified in Exhibit A are hereby designated as “COVID-19 Essential Services.” The workforces engaged and working in these production and service sectors are hereby designated as “COVID-19 Essential Workforces.” I shall amend and publish updates to Exhibit A as I determine necessary in response to conditions as they develop.

Businesses and other organizations that provide the services and functions identified as COVID-19 Essential Services in Exhibit A are urged to continue operations during the state of emergency, but to do so with allowance for social distancing protocols consistent with guidance provided by the Department of Public Health.

Restaurants, bars, and other retail establishments that sell food and beverage products to the public provide COVID-19 Essential Services and are designated as such in Exhibit A. These establishments are therefore encouraged to continue to offer food and beverages for take-out and by delivery provided that they follow the social distancing protocols set forth in Department of Public Health guidance. Restaurants, bars, or other establishments that offer food or beverages to the public shall not permit on-premises consumption of food or beverages.

2. Temporary Closing of Other Businesses and Organizations

All businesses and other organizations that do not provide COVID-19 Essential Services shall close their physical workplaces and facilities (“brick-and-mortar premises”) to workers, customers, and the public as of 12:00 noon on March 24, 2020 and shall not re-open to workers, customers, or the public before 12:00 noon on April 7, 2020. Churches, temples, mosques, and other places of worship shall not be required to close their brick and mortar premises to workers or the public; provided, however, that such institutions shall be required to comply with all limitations on gatherings established in section 3 below.

Businesses and other organizations that do not provide COVID-19 Essential Services are encouraged to continue operations where they are able to operate through remote means that do not require workers, customers, or the public to enter or appear at the brick-and-mortar premises closed by this Order.

3. Limitations on Gatherings

Gatherings of more than 10 people are prohibited throughout the Commonwealth. Gatherings subject to this Order include, without limitation, community, civic, public, leisure, faith-based, or sporting events, concerts, conferences, conventions, fundraisers, parades, fairs, festivals, weddings, funerals, and any similar event or activity that brings together more than 10 persons in any confined indoor or outdoor space. This limitation shall not apply to the operations or activities of any business or organization in its provision or delivery of COVID-19 Essential Services.

This Order does not prohibit gatherings of more than 10 people in an unenclosed, outdoor space such as a park, athletic field, or parking lot.

Athletic and recreational activities that bring participants into close, physical contact are prohibited even when involving 10 or fewer people and regardless of where conducted.

4. Exceptions

(a) This Order shall not apply to any municipal legislative body or to the General Court or to the Judiciary.

(b) This Order shall not apply to residential schools for special needs students. This Order also does not apply to public and private elementary and secondary (K-12) schools in the Commonwealth, which are subject to the March 15, 2020 Order Temporarily Closing All Public and Private Elementary and Secondary Schools, as may be subsequently amended, which suspended all normal, in-person instruction.

(c) This Order does not apply to the operation of child care programs in the Commonwealth, which are subject to the March 18, 2020 Order Temporarily Closing All Child Care Programs and Authorizing the Temporary Creation and Operation of Emergency Child Care Programs, as may be subsequently amended.

5. Implementing Guidance and Enforcement

The Commissioner of Public Health is directed to issue guidance (“DPH Guidance”), subject to my approval, to implement the terms of this Order. The DPH Guidance shall include a requirement that grocery stores and other retailers with substantial retail grocery sales establish special limited access hours during which elderly and other vulnerable populations may have exclusive access to make grocery purchases.

The Department of Public Health, along with any board of health or authorized agent pursuant to G. L. c. 111, § 30, shall enforce this Order and if necessary may do so with the assistance of State or municipal police. Violation of the terms of this Order or the DPH Guidance may result in a criminal penalty pursuant to Section 8 of Chapter 639 of the Acts of 1950 or a civil fine of up to \$300 per violation, in the manner provided for non-criminal disposition of violations of municipal by-law, ordinance, rule, or regulation pursuant to G. L. c. 40, § 21D. A criminal complaint for violation of or a motion for an injunction to enforce this Order or the DPH Guidance shall be filed in the district court with jurisdiction for the municipality in which the violation has been charged.

In addition, I hereby direct the Commissioner of Public Health to act under the authority of G. L. c. 17, § 2A and G. L. c. 111, § 6 or any other appropriate authority to supplement the terms of this Order in the event she determines additional measures are required to ensure that the terms of this Order are observed.

This Order supersedes and makes inoperative any order or rule issued by a municipality that will or might in any way impede or interfere with the achievement of the objectives of this Order. With respect to work and travel in particular, any order or rule issued by a municipality is hereby made inoperative to the extent: (1) such municipal order or rule will or might interfere with provisions of this Order ensuring the continued operation of COVID-19 Essential Services; or (2) such municipal order or rule will or might interfere with the free travel anywhere within the Commonwealth of any person who is a member of any COVID-19 Essential Workforce where such travel is made in connection with the ongoing operation of COVID-19 Essential Services.

This Order rescinds and revokes the Order Prohibiting Gatherings of More than 25 People and On-Premises Consumption of Food or Drink, issued March 15, 2020.

If any provision of this Order or the application thereof to any person or entity or circumstance is determined to be invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Order or the application thereof to other persons, entities, and circumstances.

This Order shall be effective at 12:00 noon March 24, 2020 and shall remain in effect through 12:00 noon on April 7, 2020 unless further extended.

Given in Boston at 9:15 AM this 23rd day
of March, two thousand and twenty

A handwritten signature in black ink, appearing to read "Charles D. Baker", written over a horizontal line.

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150*

Jean M. Lorizio, Esq.
Chairman

**ALCOHOLIC BEVERAGES CONTROL COMMISSION ADVISORY REGARDING
ON-PREMISES LICENSEES SELLING FOR OFF-PREMISES CONSUMPTION**

Today, April 3, 2020, Governor Charlie Baker signed a bill authorizing on-premises licensees to sell malt beverages and wine for off-premises consumption for the duration of the Governor's declared state of emergency, issued March 10, 2020.¹

Effective immediately and until the end of the state of emergency, all on-premises licensees (M.G.L. c. 138, § 12 bars, restaurants, general on premises, hotels, taverns, clubs, war veterans' clubs, and continuing care retirement communities) may sell up to 192 ounces of malt beverages and 1.5 liters of wine for off-premises consumption only as part of a transaction for the purchase of food.

The sale of malt beverages and wine by § 12 licensees may only be done from opening until 12:00 am midnight, or the licensee's closing time previously approved by the Local Licensing Authority, whichever is earlier. All wine must be in its original sealed container and all malt beverages must be in sealed containers. All licensees must verify that both the purchaser and recipient of alcohol are at least 21 years old.

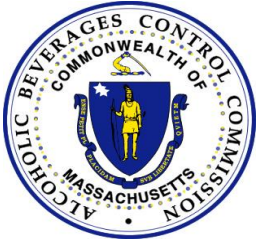
Sales must be made as part of a takeout order by way of pickup, including curbside pickup, or delivery. Licensees do not need to obtain a separate transportation permit under M.G.L. c. 138, § 22, in order to make deliveries. Licensees are advised to check with their Local Licensing Authority on any additional requirements in order to sell alcohol for curbside pickup.

All sales must be accompanied by a receipt reflecting the purchase of food along with alcohol, and licensees must keep copies of all receipts for inspection by licensing authorities.

As always, all licensees must ensure that they comply with the laws of the Commonwealth of Massachusetts, and that sales of alcoholic beverages take place only as authorized by federal, state, and local law. All questions should be directed to the ABCC Executive Director Ralph Sacramone at rsacramone@tre.state.ma.us or (617) 727-3040 x 731.

(Issued April 3, 2020)

¹ The Governor's March 10, 2020, declaration of a state of emergency can be found [HERE](#).



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150*

Jean M. Lorizio, Esq.
Chairman

ALCOHOLIC BEVERAGES CONTROL COMMISSION ADVISORY
ON THE CONTINUED PROHIBITION OF
SELLING ALCOHOL FOR ON-PREMISES CONSUMPTION

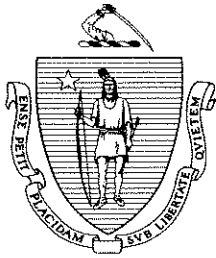
On May 18, 2020, Governor Charlie Baker issued a plan, Reopening Massachusetts, which provides a four-phase reopening of businesses in the Commonwealth including retail alcohol licensees for on-premises consumption. The text of the Governor's Plan can be found [HERE](#).

Please be advised that all on-premises consumption licensees remain prohibited from selling alcohol for on-premises consumption to the public until June 8, 2020 at the earliest, awaiting further notice by the Governor. This includes restaurants, bars, hotels, general-on-premises, clubs, war veterans' clubs, continuing care retirement communities, pub-brewers (M.G.L. c. 138, §§ 12 and 19D), farmer-series pouring permits, and manufacturer's pouring permits (M.G.L. c. 138, §§ 19(b), 19B(n), 19C(n), and 19E(o)). These establishments are also prohibited from serving any food or drinks for on-premises consumption; only takeout and delivery are permitted. Please refer to the ABCC's April 3, 2020, Advisory for how § 12 licensees may sell wine and malt beverages for off-premises consumption during the state of emergency, which can be found [HERE](#)

Please note that this Advisory does not apply to licenses for off-premises consumption, including grocery stores, pharmacies, package stores, direct wine shippers, and farmer-series licensees (M.G.L. c. 138, §§ 15, 19B(g)(2), 19C(g)(7), 19E(g)(7), and 19F).

As always, all licensees must ensure that they comply with the laws of the Commonwealth of Massachusetts, and that sales of alcoholic beverages take place only as authorized by federal, state, and local law. All questions should be directed to the ABCC at (617) 727-3040.

(Issued May 18, 2020)



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CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

**ORDER CLARIFYING THE PROGRESSION OF THE COMMONWEALTH'S
PHASED WORKPLACE RE-OPENING PLAN AND AUTHORIZING
CERTAIN RE-OPENING PREPARATIONS AT PHASE II WORKPLACES**

COVID-19 Order No. 35

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus ("COVID-19");

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the Federal Centers for Disease Control have advised that COVID-19 is spread mainly by person to person contact and that the best means of slowing the spread of the virus is through practicing social distancing and protecting oneself and others by minimizing personal contact with environments where this potentially deadly virus may be transmitted;

WHEREAS, on March 23, 2020, in order to restrict all non-essential person-to-person contact and non-essential movement outside the home as a means of combatting the spread of COVID-19 within the Commonwealth, I issued COVID-19 Order No. 13, which designated certain COVID-19 Essential Services, as defined in the Order, temporarily closed the brick-and-mortar premises of businesses and organizations that do not provide COVID-19 Essential Services, and prohibited gatherings of more than 10 people;

WHEREAS, on March 31, 2020, April 28, 2020, and May 15, 2020, I issued COVID-19 Orders No. 21, 30, and 32, respectively, which extended the period in which COVID-19 Order No. 13 would continue to restrict the operation of businesses and organizations that do not provide COVID-19 Essential Services;

WHEREAS, recent public health data indicate continued improvement in key areas of measurement as a result of the extraordinary efforts of health care providers in the Commonwealth and the public's unselfish compliance with the restrictions imposed in COVID-19 Order No. 13 and other measures implemented in response to the COVID-19 health crisis;

WHEREAS, on May 18, 2020, I issued COVID-19 Order No. 33, which authorized the re-opening of certain brick-and-mortar premises designated as "Phase I" workplaces ("Phase I enterprises"), subject to the requirement that all such workplaces comply with workplace safety rules and standards implemented to protect against the risk of the COVID-19 virus and which otherwise further extended the period in which COVID-19 Order No. 13 will continue to restrict the operations of businesses and organizations that do not provide Essential Services or that have not been designated as Phase I workplaces;

WHEREAS, a sustained trend of improvement in public health data will permit a continuing, carefully phased relaxation of certain restrictions that COVID-19 Order No. 13 has placed on businesses and other organizations, provided that any adjustment can only be maintained or expanded on the basis of continuing improvements in the public health data, and further provided that any adjustment must reflect the reality that the Commonwealth remains in the midst of a public health emergency, as demonstrated by reporting from the Department of Public Health that as of May 31, 2020, 1,824 persons remain hospitalized in the Commonwealth as a result of COVID-19 and 436 of these patients are receiving treatment in intensive care units;

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to authority over assemblages in order to protect the health and safety of persons, transportation and travel by any means or mode, regulating the sale of articles of food and household articles, variance of the terms and conditions of licenses and permits issued by the Commonwealth or any of its agencies or political subdivisions, and policing, protection, and preservation of public and private property;

NOW, THEREFORE, I hereby order the following:

1. Advance Preparations by Phase II Enterprises

Beginning immediately, businesses and other organizations that are included within Phase II of the re-opening plan, as defined in Section 2 below, may open their physical workplaces and facilities ("brick-and-mortar premises") to workers for the purpose of preparing for a Phase II re-opening when authorized. In preparing their premises for re-opening, Phase II businesses and other organizations ("Phase II enterprises") must at all times comply with all generally applicable COVID-19 workplace safety rules and any relevant sector-specific COVID-

19 workplace safety rules issued pursuant to Section 2 of COVID-19 Order No. 33 or otherwise by the Department of Labor Standards (“DLS”), the Department of Public Health (“DPH”), or any other agency authorized to issue similar health and safety rules.

Phase II enterprises may not open their premises to customers and the public generally until authorized to do so by subsequent Order.

2. Designation of Phase II Enterprises

Phase II enterprises are businesses or other organizations that meet each of the following conditions:

They are

- not currently permitted to open their premises as an Essential Service or Phase I enterprise pursuant to Section 1 of COVID-19 Order No. 33;
- not closed by any COVID-19 Order separate from or in addition to COVID-19 Order No. 13;
- not excluded or excepted from the terms of this Order in Section 4; and
- not designated on the chart below as a Phase III or Phase IV enterprise.

	All Phase II, III, and IV enterprises will be required to comply with general and, where applicable, sector-specific COVID-19 workplace safety rules administered by DPL, DPH, and local boards of health. Workplace safety rules will include a variety of mandatory context-specific COVID-19 safety measures such as occupancy limitations, operational modifications, social distancing rules, and specialized cleaning requirements.
Phase II	<p>Enterprises that meet all of the conditions specified above and including</p> <ul style="list-style-type: none"> • Retail Stores including stores in enclosed shopping malls • Restaurants providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000, including beer gardens/wineries/distilleries meeting these criteria • Hotels, motels, inns, and other short-term lodgings (no events, functions, or meetings) • Limited organized youth and adult amateur sports activities and programs—no contact and no games or scrimmages, and indoor facilities limited to youth programs • Professional sports practice and training programs--no inter-team games and no admission for the public • Personal Services provided at a fixed place of business or at a client location <ul style="list-style-type: none"> ○ Step 1: Services involving no close personal contact (photography, window washers, individual tutoring, home cleaning, etc.) ○ Step 2: Services involving close personal contact (massage, nail salons, personal training for individuals or no more than 2 persons from same household, etc.) • Non-athletic instructional classes in arts/education/life skills for youths under 18 years of age in groups of fewer than 10 • Driving schools and flight schools • Outdoor historical spaces—no functions or gatherings and no guided tours • Funeral homes—increased capacity to permit 40% occupancy for one service at a time within the facility

	<ul style="list-style-type: none"> • Warehouses and distribution centers • Golf facilities including outdoor driving ranges • Other outdoor recreational facilities <ul style="list-style-type: none"> ○ pools, playgrounds and spray decks ○ mini golf, go karts, batting cages, climbing walls, ropes courses • Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools <ul style="list-style-type: none"> ○ for the limited purposes of permitting students to complete a degree, program, or prerequisite for employment, or other similar requirement for completion, for summer youth programming including athletic facilities, and any necessary supporting services • Day Camps including sports and arts camps • Public libraries
Phase III	<ul style="list-style-type: none"> • Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools—general operations • Casino gaming floors • Horse racing simulcast facilities (no spectators) • Indoor recreational and athletic facilities for general use (not limited to youth programs) • Fitness centers and health clubs including <ul style="list-style-type: none"> ○ cardio/weight rooms/locker rooms/inside facilities ○ fitness studios (yoga, barre, cross-fit, spin classes, general fitness studios) ○ indoor common areas ○ indoor swimming pools ○ indoor racquet courts and gymnasiums ○ locker rooms/shower rooms ○ excluding saunas, hot-tubs, steam rooms • Museums • Indoor historic spaces/sites • Aquariums • Outdoor theatres and performance venues of moderate capacity • Indoor theatres, concert halls, and other performance venues of moderate capacity • Sightseeing and other organized tours (bus tours, duck tours, harbor cruises, whale watching) • Fishing and hunting tournaments and other amateur or professional derbies • Weddings/events/gatherings in parks, reservations, and open spaces with allowance for moderate capacity • Overnight camps • Indoor non-athletic instructional classes in arts/education/life skills for persons 18 years or older • Indoor recreational businesses: batting cages, driving ranges, go karts, bowling alleys, arcades, laser tag, roller skating rinks, trampolines, rock-climbing <p>This listing is subject to amendment.</p>
Phase IV	<ul style="list-style-type: none"> • Amusement parks, theme parks, indoor or outdoor water parks • Saunas, hot-tubs, steam rooms at fitness centers, health clubs, and other facilities • Bars, dance clubs, and nightclubs—venues offering entertainment, beverages, or dancing and not providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000 • Beer gardens/breweries/wineries/distilleries not providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000 • Large capacity venues used for group or spectator sports, entertainment, business, and cultural events including

	<ul style="list-style-type: none"> ○ Theaters and concert halls ○ Ballrooms ○ Stadiums, arenas, and ballparks ○ Dance floors ○ Exhibition and convention halls ● Private party rooms ● Street festivals and parades and agricultural festivals ● Road races and other large, outdoor organized amateur or professional group athletic events <p>This listing is subject to amendment.</p>
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3. Rules for Phase II Limited Organized Sports Activities and Programs

Amateur Sports: Effective immediately, organizers of sports activities and programs for youths and adults and facilities that host such programs or activities may open their premises to employees to begin preparations, consistent with the provisions of Section 1, for authorized Phase II activities. In addition to complying with generally applicable COVID-19 workplace safety rules, organizers of sports activities and programs for youths and adults and facilities that host such programs or activities shall be subject to the following directives during Phase II:

- a. Programs for contact sports must limit activities exclusively to no-contact drills and practices. Programs for no contact sports where ordinary play allows for social distancing may include ordinary play.
- b. Games, scrimmages, and tournaments shall not be permitted for any organized sports activities.
- c. Programs must separate participants into groups of no more than 10 participants, including coaches and staff.
- d. Indoor athletic facilities shall be open and available exclusively for the use of supervised sports programs, including sports camps, for youths under the age of 18.

The Secretary of the Executive Office of Energy and Environmental Affairs (“EEA”) shall issue guidance to implement these directives and all generally applicable COVID-19 workplace standards for organizers of youth and adult sports programs and operators of facilities that host those programs. Organizers of youth and adult sports programs shall follow the EEA guidance; provided, however, that when the program is governed by formal league rules or other binding agreements or affiliations, the organizer shall comply with any COVID-19 and other health and safety rules applicable under those authorities. The requirements of items (a) – (d) above shall apply in all circumstances.

Professional Sports: Effective immediately, professional sports organizations may open their premises to employees and other workers for the activities provided for in Section 1 and may also open their premises to employees for on-premises athletic practices and training,

subject to adoption of COVID-19 health and safety rules implemented under the authority of formal league rules or other binding agreements or affiliations.

Professional sports organizations may not engage in inter-team games within the Commonwealth and may not open any facilities within the Commonwealth to the public until further Order.

4. Preparations and Accommodation for Outdoor Restaurant Dining Service

Restaurants will be authorized to provide outdoor table service at the commencement of Phase II of the Commonwealth's phased re-opening of workplaces. If the public health data reflects continued positive progression, restaurants will be authorized at a later date and by a subsequent Phase II Order to commence indoor table service. In each case, restaurants will be required to comply with sector-specific COVID-19 workplace safety rules for restaurants.

"Outdoor table service" shall mean service that is provided outside the restaurant building envelope, whether on a sidewalk, patio, deck, lawn, parking area, or other outdoor space. Outdoor table service may be provided under awnings or table umbrellas or other cover from the elements, provided, however, that at least 50 percent of the perimeter of any covered dining space must remain open and unobstructed by any form of siding or barriers at all times.

Notwithstanding the provisions of chapter 40A of the general laws, or any special permit, variance or other approval thereunder, or any other general or special law to the contrary, a city or town may approve requests for expansion of outdoor table service, including in the description of licensed premises as described below. Prior to such approval, the mayor, select board, or chief executive as established by charter or special act, shall establish the process for approving such requests. Such process need not comply with the notice and publication provisions of section 11 of chapter 40A.

Any such approval may be exercised immediately upon filing of notice thereof with the city or town clerk, without complying with any otherwise applicable recording or certification requirements.

In order to provide improved opportunities for outdoor table service, for any type of license that permits the sale of alcoholic beverages for on-premises consumption, a local licensing authority ("LLA") may grant approval for a change in the description of the licensed premises for the purpose of permitting outdoor alcohol service as the LLA may deem reasonable and proper, and issue an amended license to existing license holders, without further review or approval by the Alcoholic Beverages Control Commission ("ABCC") prior to issuance. Upon approval of an amended license, the LLA shall provide notice of the amended license to the ABCC. Nothing in this Order shall prevent the ABCC from exercising its statutory or regulatory enforcement authority over any such amended license issued.

On November 1, 2020 or the date this Order is rescinded, whichever is sooner, any approval issued under this Section, including any amended license issued by an LLA as a result of this Order, shall automatically revert back to its status prior to the approval of the change for expansion of outdoor table service or in the description of a licensed premises.

5. Sector-Specific Rules

The Director of Labor Standards and the Commissioner of Public Health shall issue, subject to my approval, COVID-19 workplace safety rules for certain, specific Phase II enterprise workplace sectors (“Sector-Specific Rules”) to address the particular circumstances and operational needs of those specific workplace sectors. These Phase II Sector-Specific Rules shall supplement the generally applicable COVID-19 safety rules applicable to all workplaces in the Commonwealth. Phase II enterprises shall adopt and comply with all Sector-Specific Rules applicable to their workplaces.

6. Limitations on Gatherings

A Phase II enterprise that is authorized to open its brick-and-mortar premises to workers under the terms of this Order shall not be subject to the 10-person limitation on gatherings established in Section 3 of COVID-19 Order No. 13 in its normal operations of those premises; provided, however, that Phase II enterprises must comply with the social distancing requirements in the Commonwealth’s generally applicable COVID-19 workplace safety rules, any more specific limitations on gatherings and meeting sizes included in any applicable Sector-Specific Rules, and any other similar restrictions specified in this Order.

Section 3 of COVID-19 Order No. 13 shall otherwise remain in effect for businesses or organizations not permitted to open their brick-and-mortar premises as COVID-19 Essential Services, or Phase I or Phase II enterprises.

4. Exceptions

This Order shall have no application to any of the following businesses, organizations, workplaces, or facilities:

- a. Any municipal legislative body, the General Court, or the Judiciary
- b. Federal governmental entities
- c. Any health care facility or provider licensed by the Department of Public Health or the Board of Registration in Medicine
- d. Any of the following workplaces or facilities with specialized functions and populations:
 - Public and private elementary and secondary (K-12) schools
 - Residential and day schools for special needs students

- Licensed, approved, or exempt child care programs and any emergency child care centers and emergency residential programs operating under emergency authorization
- Facilities operated by the Department of Correction or any Sheriff
- Facilities operated or licensed by the Department of Mental Health or the Department of Developmental Services
- And any other facilities or workplaces that the Commissioner of Public Health may in writing exempt from the terms of this Order

This Order is effective immediately and shall remain in effect until rescinded or until the state of emergency is ended, whichever occurs first.

Given in Boston at 2:20 PM this 1st day
of June, two thousand and twenty



CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts



OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

ORDER AUTHORIZING THE RE-OPENING OF PHASE II ENTERPRISES

COVID-19 Order No. 37

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”);

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the Federal Centers for Disease Control and Prevention have advised that COVID-19 is spread mainly by person to person contact and that the best means of slowing the spread of the virus is through practicing social distancing and protecting oneself and others by minimizing in-person contact with others and with environments where this potentially deadly virus may be transmitted including, in particular, spaces that present enhanced risks because of limited ventilation or numbers of persons present or passing through who may spread the virus through respiratory activity or surface contacts;

WHEREAS, on March 23, 2020, in order to restrict all non-essential person-to-person contact and non-essential movement outside the home as a means of combatting the spread of COVID-19 within the Commonwealth, I issued COVID-19 Order No. 13, which designated certain COVID-19 Essential Services, as defined in the Order, temporarily closed the brick-and-mortar premises of businesses and organizations that do not provide COVID-19 Essential Services, and prohibited gatherings of more than 10 people;

WHEREAS, on March 31, 2020, April 28, 2020, and May 15, 2020, I issued COVID-19 Orders No. 21, 30, and 32, respectively, which extended the period in which COVID-19 Order No. 13 would continue to restrict the operation of businesses and organizations that do not provide COVID-19 Essential Services;

WHEREAS, recent public health data indicate continued improvement in key areas of measurement as a result of the extraordinary efforts of health care providers in the Commonwealth and the public’s unselfish compliance with the restrictions imposed in COVID-19 Order No. 13 and other measures implemented in response to the COVID-19 health crisis;

WHEREAS, on May 18, 2020, I issued COVID-19 Order No. 33, which authorized the re-opening of certain brick-and-mortar premises designated as “Phase I” workplaces (“Phase I enterprises”), subject to the requirement that all such workplaces comply with workplace safety rules and standards designed to protect against the risk of the COVID-19 virus and which otherwise further extended the period in which COVID-19 Order No. 13 would continue to restrict the operations of businesses and organizations that do not provide Essential Services or that were not designated as Phase I workplaces;

WHEREAS, a sustained trend of improvement in public health data permits a continued, carefully phased relaxation of certain restrictions on businesses and other organizations, provided that any adjustment can only be maintained or expanded on the basis of continuing improvements in the public health data, and at present the Commonwealth remains in the midst of a public health emergency, as demonstrated by reporting from the Department of Public Health on June 5, 2020 that 1,533 persons remain hospitalized in the Commonwealth as a result of COVID-19 and 350 of these patients are receiving treatment in intensive care units;

WHEREAS, according to the Centers for Disease Control and Prevention, a precipitous removal of targeted restrictions that have proven effective in combatting the spread of COVID-19 could result in a recurrence of the virus spread, as has been the experience in certain States and countries; and

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to authority over assemblages in order to protect the health and safety of persons, transportation and travel by any means or mode, regulating the sale of articles of food and household articles, variance of the terms and conditions of licenses and permits issued by the Commonwealth or any of its agencies or political subdivisions, and policing, protection, and preservation of public and private property;

NOW, THEREFORE, I hereby order the following:

1. Opening of Phase II Enterprises Generally

Businesses and other organizations that are Phase II enterprises, as defined below, are permitted to open and operate from their physical workplaces and facilities (“brick-and-mortar premises”) according to the progressive, two-step schedule specified in Section 2. Phase II

enterprises may open those premises to workers, customers, and the public when authorized under the two-step schedule in Section 2 provided they comply with all workplace safety rules and standards issued or maintained pursuant to Section 3 and all other terms of this Order.

Phase II enterprises are businesses or other organizations that are designated as such on the chart attached as Schedule A or businesses and other organizations that meet each of the following conditions:

- a. not previously permitted to open their premises as an Essential Service or Phase I enterprise pursuant to Section 1 of COVID-19 Order No. 33;
- b. not closed by any COVID-19 Order separate from or in addition to COVID-19 Order No. 13;
- c. not excluded or excepted from the terms of this Order in Section 5; and
- d. not designated as a Phase III or Phase IV enterprise on the chart attached as Schedule A.

Businesses and other organizations that are designated as Phase III and Phase IV enterprises on the chart attached as Schedule A must keep their brick-and-mortar premises closed to workers, customers, and the public and may not conduct Phase III and IV activities except as remote means permit. Phase III and IV enterprises shall not re-open their brick-and-mortar premises until specifically authorized to do so by subsequent Order. Phase III and IV enterprises may, however, open their premises to workers to the degree reasonably necessary to perform critical tasks that cannot be conducted remotely, such as ensuring on-going maintenance of the premises, preservation of inventory and equipment, and compliance with legal obligations.

2. Two-Step Progression of Phase II Openings

Step 1: On June 8, 2020, Phase II enterprises that are not designated as Step 2 enterprises may open their brick-and-mortar premises to workers, customers, and the public.

Restaurants are authorized to provide outdoor table service beginning with the June 8 commencement of Step 1. For the purposes of this Order, the term “restaurant” shall mean an establishment that provides seated food service that is prepared on-site and under a retail food permit issued by a municipal authority pursuant to 105 CMR 590.000.

“Outdoor table service” shall mean service that is provided outside the restaurant building envelope, whether on a sidewalk, patio, deck, lawn, parking area, or other outdoor space. Outdoor table service may be provided under awnings or table umbrellas or other cover from the elements, provided, however, that at least 50 percent of the perimeter of any covered dining space must remain open and unobstructed by any form of siding or barriers at all times.

Step 2: If the public health data reflects continued positive progression, Step 2 will be announced by a subsequent Phase II Order. Effective upon the commencement of Step 2

- a. close contact personal services, as defined below, may open their brick-and-mortar premises to workers, customers, and the public; and
- b. Restaurants may commence indoor table service.

“Close contact personal services” shall mean any personal service typically delivered through close physical contact with a client including, without limitation, nail care services, massage therapy, personal training services, and tattoo, piercing, and body art services. The Director of Labor Standards shall issue guidance to define such services more completely.

3. Sector-Specific Rules and Self-Certification

The Director of Labor Standards and the Commissioner of Public Health shall issue, subject to my approval, COVID-19 workplace safety rules for certain, specific Phase II enterprise sectors (“Sector-Specific Rules”) to address the particular circumstances and operational needs of those specific sectors.

The Secretary of the Executive Office of Energy and Environmental Affairs (“EEA”), subject to my approval, shall issue Sector-Specific Rules to implement COVID-19 safety measures for organized youth and adult amateur sports activities and shall continue to issue COVID-19 workplace safety standards for operators of and participants in outdoor recreational activities as provided for in COVID-19 Order No. 34. In issuing such standards, the Secretary may from time to time, following consultation with the Commissioner of the Department of Public Health, adjust the capacity restrictions in Section 3(c) of COVID-19 Order No. 35 and the capacity and other limitations applicable to the recreational activities and facilities specified in Attachment 1 to COVID-19 Order No. 33.

Phase II Sector-Specific Rules shall supplement the generally applicable COVID-19 safety rules applicable to all workplaces in the Commonwealth adopted in COVID-19 Order No. 33. Phase II enterprises shall adopt and comply with all Sector-Specific Rules applicable to their workplaces.

Newly Opened Premises: Phase II enterprises that are authorized under the terms of this Order to open their brick-and-mortar premises to workers, customers, and the public shall be required to self-certify that they are in compliance with all generally applicable COVID-19 workplace safety rules and any applicable Sector-Specific rules. Before opening a brick-and-mortar premises under the terms of this Order, a Phase II enterprise not previously authorized to operate as a COVID-19 Essential Service pursuant to COVID-19 Order No. 13 shall be required to implement the following measures:

- a. Bring the workplace into full compliance with all generally applicable COVID-19 workplace safety rules and all Sector-Specific Rules that are applicable to the individual workplace

- b. Complete the required self-certification to verify compliance with all general and any applicable Sector-Specific Rules and make the self-certification available for inspection upon a request by State or Local authorities
- c. Post on the premises all public notices and advisories that are required to be displayed under the terms of this Order

A Phase II enterprise that has prior to the issuance of this Order been authorized to remain open to workers, customers, and the public as a “COVID-19 Essential Service” shall have until June 15, 2020 to certify its compliance with any COVID-19 workplace safety rule issued pursuant to this Order and with the public notice provisions specified above.

All such businesses and other organizations shall, in any event, immediately undertake best efforts to comply with all generally applicable COVID-19 workplace safety rules applicable to all businesses and other organizations operating within the Commonwealth.

4. Enforcement and Authority

The Department of Labor Standards, in consultation with the Department of Public Health (“DPH”), shall have general authority to promulgate directives, regulations, and guidance to implement and enforce the COVID-19 workplace safety rules authorized under this Order.

DPH shall have specific authority to promulgate directives, regulations, and guidance to implement and enforce the terms of this Order as it applies to businesses, organizations, and workplaces subject to the sanitary code established pursuant to section 127A of chapter 111 of the General Laws and where DPH otherwise has existing regulatory authority.

A municipal board of health or authorized agent pursuant to G. L. c. 111, § 30 shall have concurrent authority with DLS and DPH to enforce the terms of this Order and any directives, regulations, or guidance issued by DLS, DPH, and EEA under the authority of this Order.

This Order is intended to establish a uniform set of COVID-19 workplace safety rules for all businesses and other organizations operating brick-and-mortar premises across the Commonwealth. No municipal or other local authority should adopt or enforce any workplace health or safety rule to address COVID-19 that is in addition to, stricter than, or otherwise in conflict with any COVID-19 workplace safety rule adopted in this Order or under the implementing directives, regulations, and guidance issued by DLS, DPH, or EEA under the authority granted by this Order. DLS, DPH, EEA, and each municipal or local authority shall uniformly apply any enforceable COVID-19 workplace safety rule.

Violation of the terms of this Order or any directives, regulations, or guidance issued pursuant to this Order may result in a civil fine of up to \$300 per violation, in the manner provided for in G. L. c. 277, § 70C. This Order may also be enforced by injunction. A motion for an injunction to enforce this Order or any directives, regulations, or guidance issued on its

authority may be filed in the district court or other any court of competent jurisdiction for the municipality in which the violation has been charged.

In issuing directives, regulations, or guidance under the terms of this Order, (a) the Director of Labor Standards shall act under the authority G. L. c. 149, §§ 6 & 6½; and (b) the Commissioner of Public Health shall act under the authority of G. L. c. 17, § 2A and G. L. c. 111, §§ 6 & 127A, insofar as those statutes are consistent with the provisions of this Order and authority is available thereunder. In addition, I hereby direct the Commissioner of Public Health to act under the authority of G. L. c. 17, § 2A and G. L. 111, § 6 or any other appropriate authority to supplement the terms of this Order in the event she determines that additional measures are required to ensure that the terms of this Order are observed. The Director of Labor Standards and the Commissioner of Public Health may issue regulations implementing the terms of this Order pursuant to the processes generally provided in G. L. c. 30A, §§ 2-6.

If any provision of this Order or the application thereof to any person or entity or circumstance is determined to be invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Order or its application to other persons, entities, and circumstances.

5. Exceptions

This Order shall have no application to any of the following businesses, organizations, workplaces, or facilities:

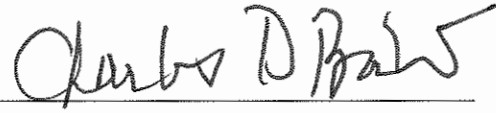
- a. Any municipal legislative body, the General Court, or the Judiciary
- b. Federal governmental entities
- c. Any health care facility or licensed health care provider
- d. Any of the following workplaces or facilities with specialized functions and populations, provided that DPH shall in each case consult with the responsible authority and provide COVID-19 health and safety guidance as needed:
 - Public and private elementary and secondary (K-12) schools
 - Residential and day schools for special needs students
 - Licensed, approved, or exempt child care programs and any emergency child care centers and emergency residential programs operating under emergency authorization
 - Facilities operated by the Department of Correction or any Sheriff
 - Facilities operated, contracted, or licensed by the Department of Youth Services, Department of Mental Health, Department of Public Health, or the Department of Developmental Services
 - Facilities that provide safe spaces for the unstably housed such as homeless and domestic violence shelters

- and any other facilities or workplaces that the Commissioner of Public Health may in writing exempt from the terms of this Order

COVID-19 Order No. 13 is rescinded effective at 12:01 am on June 8, 2020.

This Order is effective immediately and shall remain in effect until rescinded or until the state of emergency is ended, whichever occurs first.

Given in Boston at 12:45 PM this 6th day
of June, two thousand and twenty



CHARLES D. BAKER
GOVERNOR

Commonwealth of Massachusetts

Schedule A to COVID-19 Order No. 37

	<p>All Phase I, II, III, and IV enterprises are required to comply with general and, where applicable, sector-specific COVID-19 workplace safety rules administered by DPL, DPH, and local boards of health. Workplace safety rules include a variety of mandatory context-specific COVID-19 safety measures such as occupancy limitations, operational modifications, social distancing rules, and specialized cleaning requirements.</p>
Phase I	<p>As specified in COVID-19 Order No. 33:</p> <ul style="list-style-type: none"> • Businesses and other organizations providing products and services identified as “COVID-19 Essential Services” in COVID-19 Order No. 13 • Manufacturing • Construction • Places of Worship • Firearms retailers and shooting ranges • General Use Offices • Car Washes • Hair Salons and Barber Shops • Pet Groomers • Drive-In Movie Theaters • Laboratories • Certain Outdoor Recreational Facilities and Activities as specified in <u>Exhibit 1</u> to COVID-19 Order No. 33
Phase II	<ul style="list-style-type: none"> • Retail Stores including stores in enclosed shopping malls • Restaurants providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000, including beer gardens/wineries/distilleries meeting these criteria <ul style="list-style-type: none"> ○ Step 1: outdoor table service ○ Step 2: indoor table service • Hotels, motels, inns, and other short-term lodgings (no events, functions, or meetings) • Limited organized youth and adult amateur sports activities and programs—no contact and no games or scrimmages, and indoor facilities limited to youth programs • Professional sports practice and training programs--no inter-team games and no admission for the public • Personal Services provided at a fixed place of business or at a client location <ul style="list-style-type: none"> ○ Step 1: Services involving no close personal contact (photography, window washers, individual tutoring, home cleaning, etc.) ○ Step 2: Services involving close personal contact (massage, nail salons, personal training for individuals or no more than 2 persons from same household, etc.) • Non-athletic instructional classes in arts/education/life skills for youths under 18 years of age in groups of fewer than 10 • Driving schools and flight schools • Outdoor historical spaces—no functions or gatherings and no guided tours • Funeral homes—increased capacity to permit 40% occupancy for one service at a time within the facility • Warehouses and distribution centers • Golf facilities including outdoor driving ranges • Other outdoor recreational facilities <ul style="list-style-type: none"> ○ pools, playgrounds and spray decks ○ mini golf, go karts, batting cages, climbing walls, ropes courses • Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools

	<ul style="list-style-type: none"> ○ for the limited purposes of permitting students to complete a degree, program, or prerequisite for employment, or other similar requirement for completion, for summer youth programming including athletic facilities, and any necessary supporting services • Day Camps including sports and arts camps • Public libraries
Phase III	<ul style="list-style-type: none"> • Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools—general operations • Casino gaming floors • Horse racing tracks and simulcast facilities (no spectators) • Indoor recreational and athletic facilities for general use (not limited to youth programs) • Fitness centers and health clubs including <ul style="list-style-type: none"> ○ cardio/weight rooms/locker rooms/inside facilities ○ fitness studios (yoga, barre, cross-fit, spin classes, general fitness studios) ○ indoor common areas ○ indoor swimming pools ○ indoor racquet courts and gymnasiums ○ locker rooms/shower rooms ○ excluding saunas, hot-tubs, steam rooms • Museums • Indoor historic spaces/sites • Aquariums • Outdoor theatres and performance venues of moderate capacity • Indoor theatres, concert halls, and other performance venues of moderate capacity • Sightseeing and other organized tours (bus tours, duck tours, harbor cruises, whale watching) • Motion picture, television, and video streaming production, except for activities specifically permitted in Phases I and II • Fishing and hunting tournaments and other amateur or professional derbies • Weddings/events/gatherings in parks, reservations, and open spaces with allowance for moderate capacity • Overnight camps • Indoor non-athletic instructional classes in arts/education/life skills for persons 18 years or older • Indoor recreational businesses: batting cages, driving ranges, go karts, bowling alleys, arcades, laser tag, roller skating rinks, trampolines, rock-climbing <p>This listing is subject to amendment.</p>
Phase IV	<ul style="list-style-type: none"> • Amusement parks, theme parks, indoor or outdoor water parks • Saunas, hot-tubs, steam rooms at fitness centers, health clubs, and other facilities • Bars, dance clubs, and nightclubs—venues offering entertainment, beverages, or dancing and not providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000 • Beer gardens/breweries/wineries/distilleries not providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000 • Large capacity venues used for group or spectator sports, entertainment, business, and cultural events including <ul style="list-style-type: none"> ○ Theaters and concert halls ○ Ballrooms ○ Stadiums, arenas, and ballparks ○ Dance floors ○ Exhibition and convention halls

- | | |
|--|---|
| | <ul style="list-style-type: none">• Private party rooms• Street festivals and parades and agricultural festivals• Road races and other large, outdoor organized amateur or professional group athletic events |
|--|---|

This listing is subject to amendment.



OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

**ORDER FURTHER ADVANCING THE RE-OPENING
OF PHASE II ENTERPRISES**

COVID-19 Order No. 40

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”);

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, on March 23, 2020, in order to restrict all non-essential person-to-person contact and non-essential movement outside the home as a means of combatting the spread of COVID-19 within the Commonwealth, I issued COVID-19 Order No. 13, which designated certain COVID-19 Essential Services, as defined in the Order and temporarily closed the brick-and-mortar premises of businesses and organizations that do not provide COVID-19 Essential Services;

WHEREAS, on May 18, 2020 and June 6, 2020, I issued COVID-19 Order Nos. 33 and 37, which authorized the re-opening of certain brick-and-mortar premises designated as “Phase I” and “Phase II” enterprises, subject to the requirement that all such enterprises comply with workplace safety rules and standards designed to protect against the risk of the COVID-19 virus;

WHEREAS, COVID-19 Order No. 37 provided that certain Phase II enterprises were authorized to re-open at the commencement of Phase II (“Step 1”) and that certain other Phase II enterprises would be authorized to re-open only when permitted to do so by a subsequent Executive Order to be issued only on the basis of continued positive progression in the public health data (“Step 2”);

WHEREAS, the current, sustained trend of improvement in public health data permits a continuing, carefully phased relaxation of certain restrictions on businesses and other organizations, provided that any adjustment can only be maintained or expanded on the basis of continuing positive trends in the public health data; and

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to authority over assemblages in order to protect the health and safety of persons, transportation and travel by any means or mode, regulating the sale of articles of food and household articles, variance of the terms and conditions of licenses and permits issued by the Commonwealth or any of its agencies or political subdivisions, and policing, protection, and preservation of public and private property;

NOW, THEREFORE, I hereby order the following:

Step 2 of Phase II of the Commonwealth's Re-Opening Plan shall commence at 12:01 am on Monday, June 22, 2020.

Effective upon the commencement of Step 2

- a. close contact personal services, as defined in COVID-19 Order No. 37 and in any implementing rules or regulations, may open their brick-and-mortar premises to workers, customers, and the public; and
- b. restaurants, as defined in COVID-19 Order No. 37, may commence indoor table service.

Any Phase II enterprise that opens its brick-and-mortar premises to workers, customers, or the public on or after the commencement of Step 2 shall be subject to all rules, requirements, limitations, and provisions applicable to Phase II enterprises generally under the terms of COVID-19 Order No. 37 or under the terms of any prior or subsequent Order of continuing effect, including any Sector-Specific Rules applicable to those facilities.

Given in Boston at 11:55 AM this 19th day of June, two thousand and twenty



CHARLES D. BAKER
GOVERNOR

Commonwealth of Massachusetts



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150*

Jean M. Lorizio, Esq.
Chairman

**ALCOHOLIC BEVERAGES CONTROL COMMISSION ADVISORY REGARDING
INDOOR SERVICE AT ON-PREMISES CONSUMPTION LICENSEES**

On June 19, 2020, Governor Charlie Baker approved the reopening of all licensees for on-premises consumption of food and alcohol beginning Monday, June 22, 2020, as part of Phase II of the Governor's reopening of the Commonwealth.

On Monday, June 22, 2020, all licensees for on-premises consumption of alcohol may commence indoor table service so long as they comply with the Governor's Safety Standards and Checklist for Restaurants, which can be found [HERE](#).

As always, all licensees must ensure that they comply with the laws of the Commonwealth of Massachusetts, and that sales of alcoholic beverages take place only as authorized by federal, state, and local law. All questions should be directed to Executive Director Ralph Sacramone at (617) 727-3040 x 731.

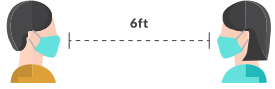
(Issued June 19, 2020)



“Restaurant” means an establishment that provides seated food service that is prepared on-site and under a retail food permit issued by a municipal authority pursuant to 105 CMR 590.000.

Restaurants may provide outdoor table service at the commencement of Phase 2 of the Commonwealth’s Reopening Plan. Restaurants will be authorized as part of Step 2 of Phase 2 of the Re-Opening Plan to commence indoor table service starting June 22, 2020.

MANDATORY SAFETY STANDARDS



SOCIAL DISTANCING

When indoor table service is permitted, restaurants are encouraged to structure operations to operate as much as possible through outdoor table service and to strictly limit indoor table service in order to assure effective compliance with social distancing requirements and to limit activities within confined spaces

Restaurants must comply with the following sector specific social distancing rules for providing dining services in all customer seating areas:

- Tables must be positioned so to maintain at least a 6 foot distance from all other tables and any high foot traffic areas (e.g., routes to bathrooms, entrances, exits); tables may be positioned closer if separated by protective / non-porous barriers (e.g., structural walls or plexi-glass dividers) not less than 6 feet high installed between tables and high foot traffic areas
- The size of a party seated at a table cannot exceed 6 people
- Restaurants may not seat any customers at the bar, but subject to any applicable building and fire code requirements, bar areas may be re-configured to accommodate table seating that complies with all spacing and other requirements in these COVID-19 safety standards
- All customers must be seated; eat-in service to standing customers (e.g., around bar areas) is prohibited
- Restaurants may provide carry-out or delivery service, but all safety standards for table separation, size of party, and hygiene must be maintained for any indoor or outdoor table seating that is available to carry-out patrons
- All other amenities and areas not employed for food and beverage service (e.g., dance floors, pool tables, playgrounds, etc.) must be closed or removed to prevent gathering of customers

Ensure separation of 6 feet or more between all individuals (workers, vendors, and customers) unless this creates a safety hazard due to the nature of the work or the configuration of the workspace:

- Close or reconfigure worker common spaces and high density areas where workers are likely to congregate (e.g., break rooms, eating areas) to allow 6 feet of physical distancing; redesign work stations to ensure physical distancing (e.g., separate tables, stagger workstations on either side of processing lines so workers are not face-to-face, use distance markers to assure spacing including in the kitchen area)
- Establish directional hallways and passageways for foot traffic if possible, to minimize contact (e.g., one-way entrance and exit to the restaurant). Post clearly visible signage regarding these policies
- Prohibit lingering in common areas (e.g., waiting areas, bathrooms) and ensure social distancing in common areas by marking 6 feet spacing with tape or paint on the floor and signage
- All customer-facing workers (e.g., servers, bus staff) must minimize time spent within 6 feet of customers

Designate assigned working areas to workers where possible to limit movement throughout the restaurant and limit contact between workers (e.g., assigning zones to servers)

Stagger work schedules and staff meal and break times, regulating maximum number of people in one place and ensuring at least 6 feet of physical distancing

Minimize the use of confined spaces (e.g., elevators, vehicles) by more than one individual at a time

Require face coverings for all customers and workers at all times, except where an individual is unable to wear a face covering due to medical condition or disability

Recommended best practices

Improve ventilation for enclosed spaces where possible (e.g., open doors and windows)

Customers may remove face coverings while seated at tables



HYGIENE PROTOCOLS

All workers must wash their hands frequently, and table servers must wash their hands or apply hand sanitizer between each table interaction

Ensure access to handwashing facilities on site, including soap and running water, and allow sufficient break time for workers to wash hands frequently; alcohol-based hand sanitizers with at least 60% alcohol may be used as an alternative

Alcohol-based hand sanitizers with at least 60% alcohol should be made available at entrances, exits, and in the dining area

Supply workers at workplace location with adequate cleaning products (e.g., sanitizer, disinfecting wipes)

Post visible signage throughout the site to remind workers and customers of hygiene and safety protocols

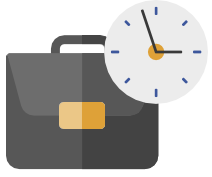
Self-serve, unattended buffets, topping bars, drink stations, and other communal serving areas must remain closed

Condiments and similar products (e.g., salt, pepper, and salad dressing) should not be pre-set on tables and should instead only be provided upon request either in single-serving portions (e.g., individual packages or cups) or in serving containers that are sanitized between each use

Menus must be one of the following: 1) paper, single-use menus disposed after each use, 2) displayed menu (e.g., digital, whiteboard, chalkboard), 3) electronic menus viewed on customers’ phones / mobile devices

Utensils and place settings must be either single-use or sanitized after each use; utensils should be rolled or packaged. Tables should not be pre-set to reduce opportunity for exposure

Tables and chairs must be cleaned and sanitized thoroughly between each seating



STAFFING & OPERATIONS

MANDATORY SAFETY STANDARDS

When possible, reservations or call ahead seating should be encouraged; managers must ensure that diners waiting for tables do not congregate in common areas or form lines

Restaurants may not provide customers with buzzers or other devices to provide alerts that seating is available or orders are ready; restaurants should instead use no-touch methods such as audio announcements, text messaging, and notices on fixed video screens or blackboards

Provide training to workers on up-to-date safety information and precautions including hygiene and other measures aimed at reducing disease transmission, including:

- Social distancing, hand-washing, and requirement and proper use of face coverings
- Modifying practices for serving in order to minimize time spent within 6 feet of customers
- Self-screening at home, including temperature or symptom checks
- Reinforcing that staff may not come to work if sick
- When to seek medical attention if symptoms become severe
- Which underlying health conditions may make individuals more susceptible to contracting and suffering from a severe case of the virus

Restaurant operators should establish adjusted workplace hours and shifts for workers to minimize contact across workers and reduce congestion at entry points

Limit visitors and vendors on site; shipping and deliveries should be completed in designated areas

Workers should not appear for work if feeling ill

Restaurants must screen workers at each shift by ensuring the following:

- Worker is not experiencing any symptoms such as fever (100.3 and above), cough, shortness of breath, or sore throat;
- Worker has not had 'close contact' with an individual diagnosed with COVID-19. "Close contact" means living in the same household as a person who has tested positive for COVID-19, caring for a person who has tested positive for COVID-19, being within 6 feet of a person who has tested positive for COVID-19 for 15 minutes or more, or coming in direct contact with secretions (e.g., sharing utensils, being coughed on) from a person who has tested positive for COVID-19, while that person was symptomatic
- Worker has not been asked to self-isolate or quarantine by their doctor or a local public health official
- Workers who are sick or feeling ill must be sent home.

Anyone showing signs of illness may be denied entry

If the employer is notified of a positive case at the workplace, the employer shall notify the local Board of Health (LBOH) in the city or town where the workplace is located and assist the LBOH as reasonably requested to advise likely contacts to isolate and self-quarantine. Testing of other workers may be recommended consistent with guidance and / or at the request of the LBOH

Notify workers that they may not work if they test positive for COVID-19 (they should be isolated at home) or are found to be a close contact of someone with COVID-19 (they should be quarantined at home)

Post notice to workers and customers of important health information and relevant safety measures as outlined in the Commonwealth's [Mandatory Safety Standards for Workplace](#)

Designate the Person in Charge (105 CMR 590) for each shift to oversee implementation of the guidelines in this document

Restaurants will be allowed to maximize outdoor dining space, including patios and parking lots where available, where municipal approval is obtained

Recommended best practices

When taking reservations and when seating walk-in customers, restaurants should retain a phone number of someone in the party for possible contact tracing

Encourage use of technological solutions where possible to reduce person-to-person interaction (e.g., contactless payment, mobile ordering, text on arrival for seating)

Workers who are particularly high risk to COVID-19 according to the Centers for Disease Control (e.g., due to age or underlying conditions) are encouraged to stay home or arrange an alternate work assignment

Workers are strongly encouraged to self-identify symptoms or any close contact to a known or suspected COVID-19 case to the employer

Encourage workers who test positive for COVID-19 to disclose to the employer for purposes of cleaning / disinfecting and contact tracing



CLEANING & DISINFECTING

Clean commonly touched surfaces in restrooms (e.g., toilet seats, doorknobs, stall handles, sinks, paper towel dispensers, soap dispensers) frequently and in accordance with CDC guidelines

Keep cleaning logs that include date, time, and scope of cleaning

Conduct frequent disinfecting of heavy transit areas and high-touch surfaces (e.g., doorknobs, elevator buttons, staircases)

Implement procedures to increase cleaning / disinfecting in the back-of-house. Avoid all food contact surfaces when using disinfectants. Food contact surfaces must be cleaned and sanitized before use with a sanitizer approved for food contact surfaces. Non-food contact surfaces must be frequently cleaned

In the event of a presumptive or actual positive COVID-19 case of a worker, patron, or vendor, the restaurant must be immediately shut down for 24 hours and then must be cleaned and disinfected in accordance with current CDC guidance before re-opening



**SECTOR SPECIFIC WORKPLACE SPECIFIC SAFETY STANDARDS
FOR RESTAURANTS TO ADDRESS COVID-19
Updated as of July 6, 2020**

Purpose

These sector specific COVID-19 workplace safety standards for Restaurants are issued to provide owners, operators, and workers of restaurants with instructions to help protect against the spread of COVID-19.

These standards are minimum requirements only and are not exclusive or exhaustive. The public health data for disease prevention that inform these guidelines can and does change frequently, and the operator of the restaurant is accountable for adhering to all local, state and federal requirements. The operator of the restaurant is also responsible for staying abreast of any updates to these requirements.

Standards for Responsible Restaurants in Massachusetts

“Restaurant” means an establishment that provides seated food service that is prepared on-site and under a retail food permit issued by a municipal authority pursuant to 105 CMR 590.000.

No activity in Restaurants can occur without meeting the following sector specific COVID-19 workplace safety standards for restaurants. These standards apply to all restaurants in operation until rescinded or amended by the State. The operator of each restaurant shall be responsible for meeting these standards.

The following workplace specific safety standards are organized around four distinct categories covering Social Distancing, Hygiene Protocols, Staffing and Operations, and Cleaning and Disinfecting.

I. Social Distancing

- While indoor table service is permitted, restaurants are encouraged to structure operations to operate as much as possible through outdoor table service and to strictly limit indoor table service in order to assure effective compliance with social distancing requirements and to limit activities within confined spaces
- Restaurants must comply with the following sector specific social distancing rules for providing dining services in all customer seating areas:
 - Tables must be positioned so to maintain at least a 6 foot distance from all other tables and any high foot traffic areas (e.g., routes to bathrooms, entrances, exits); tables may be positioned closer if separated by protective / non-porous barriers (e.g., structural walls or plexi-glass dividers) not less than 6 feet high installed between tables and high foot traffic areas
 - The size of a party seated at a table cannot exceed 6 people

- Restaurants may not seat any customers at the bar, but subject to any applicable building and fire code requirements, bar areas may be re-configured to accommodate table seating that complies with all spacing and other requirements in these COVID-19 safety standards
- All customers must be seated; eat-in service to standing customers (e.g., around bar areas) is prohibited
- Restaurants may provide carry-out or delivery service, but all safety standards for table separation, size of party, and hygiene must be maintained for any indoor or outdoor table seating that is available to carry-out patrons
- All other amenities and areas not employed for food and beverage service (e.g., dance floors, pool tables, playgrounds, etc.) must be closed or removed to prevent gathering of customers
- Ensure separation of 6 feet or more between all individuals (workers, vendors, and customers) unless this creates a safety hazard due to the nature of the work or the configuration of the workspace
 - Close or reconfigure worker common spaces and high density areas where workers are likely to congregate (e.g., break rooms, eating areas) to allow 6 feet of physical distancing; redesign work stations to ensure physical distancing (e.g., separate tables, stagger workstations on either side of processing lines so workers are not face-to-face, use distance markers to assure spacing including in the kitchen area)
 - Establish directional hallways and passageways for foot traffic if possible, to minimize contact (e.g., one-way entrance and exit to the restaurant). Post clearly visible signage regarding these policies
 - Prohibit lingering in common areas (e.g., waiting areas, bathrooms) and ensure social distancing in common areas by marking 6 feet spacing with tape or paint on the floor and signage
 - All customer-facing workers (e.g., servers, bus staff) must minimize time spent within 6 feet of customers
- Designate assigned working areas to workers where possible to limit movement throughout the restaurant and limit contact between workers (e.g., assigning zones to servers)
- Stagger work schedules and staff meal and break times, regulating maximum number of people in one place and ensuring at least 6 feet of physical distancing
- Minimize the use of confined spaces (e.g., elevators, vehicles) by more than one individual at a time
- Require face coverings for all customers and workers at all times, except where an individual is unable to wear a face covering due to medical condition or disability
- Customers may remove face coverings while seated at tables

II. Hygiene Protocols

- All workers must wash their hands frequently, and table servers must wash their hands or apply hand sanitizer between each table interaction
- Ensure access to handwashing facilities on site, including soap and running water, and allow sufficient break time for workers to wash hands frequently; alcohol-based hand sanitizers with at least 60% alcohol may be used as an alternative
- Alcohol-based hand sanitizers with at least 60% alcohol should be made available at entrances, exits, and in the dining area

- Supply workers at workplace location with adequate cleaning products (e.g., sanitizer, disinfecting wipes)
- Post visible signage throughout the site to remind workers and customers of hygiene and safety protocols
- Self-serve, unattended buffets, topping bars, drink stations, and other communal serving areas must remain closed
- Condiments and similar products (e.g., salt, pepper, and salad dressing) should not be pre-set on tables and should instead only be provided upon request either in single-serving portions (e.g., individual packages or cups) or in serving containers that are sanitized between each use
- Menus must be one of the following: 1) paper, single-use menus disposed after each use, 2) displayed menu (e.g., digital, whiteboard, chalkboard), 3) electronic menus viewed on customers' phones / mobile devices
- Utensils and place settings must be either single-use or sanitized after each use; utensils should be rolled or packaged. Tables should not be pre-set to reduce opportunity for exposure
- Tables and chairs must be cleaned and sanitized thoroughly between each seating

III. Staffing and Operations

- When possible, reservations or call ahead seating should be encouraged; managers must ensure that diners waiting for tables do not congregate in common areas or form lines
- When taking reservations and when seating walk-in customers, restaurants should retain a phone number of someone in the party for possible contact tracing
- Encourage use of technological solutions where possible to reduce person-to-person interaction (e.g., contactless payment, mobile ordering, text on arrival for seating)
- Restaurants may not provide customers with buzzers or other devices to provide alerts that seating is available or orders are ready; restaurants should instead use no-touch methods such as audio announcements, text messaging, and notices on fixed video screens or blackboards
- Provide training to workers on up-to-date safety information and precautions including hygiene and other measures aimed at reducing disease transmission, including:
 - Social distancing, hand-washing, and requirement and proper use of face coverings
 - Modifying practices for serving in order to minimize time spent within 6 feet of customers
 - Self-screening at home, including temperature or symptom checks
 - Reinforcing that staff may not come to work if sick
 - When to seek medical attention if symptoms become severe
 - Which underlying health conditions may make individuals more susceptible to contracting and suffering from a severe case of the virus
- Restaurant operators should establish adjusted workplace hours and shifts for workers to minimize contact across workers and reduce congestion at entry points
- Limit visitors and vendors on site; shipping and deliveries should be completed in designated areas
- Workers should not appear for work if feeling ill
- Workers who are particularly high risk to COVID-19 according to the Centers for Disease Control (e.g., due to age or underlying conditions) are encouraged to stay home or arrange an alternate work assignment
- Restaurants must screen workers at each shift by ensuring the following:

- Worker is not experiencing any symptoms such as fever (100.0 and above) or chills, cough, shortness of breath, sore throat, fatigue, headache, muscle/body aches, runny nose/congestion, new loss of taste or smell, or nausea, vomiting or diarrhea
- Worker has not had “close contact” with an individual diagnosed with COVID-19. “Close contact” means living in the same household as a person who has tested positive for COVID-19, caring for a person who has tested positive for COVID-19, being within 6 feet of a person who has tested positive for COVID-19 for 15 minutes or more, or coming in direct contact with secretions (e.g., sharing utensils, being coughed on) from a person who has tested positive for COVID-19, while that person was symptomatic
- Worker has not been asked to self-isolate or quarantine by their doctor or a local public health official
- Workers who fail to meet the above criteria must be sent home
- Anyone showing signs of illness may be denied entry
- Workers are strongly encouraged to self-identify symptoms or any close contact to a known or suspected COVID-19 case to the employer
- Workers must stay home if feeling ill
- Encourage workers who test positive for COVID-19 to disclose to the employer for purposes of cleaning / disinfecting and contact tracing. If the employer is notified of a positive case at the workplace, the employer shall notify the local Board of Health (LBOH) in the city or town where the workplace is located and assist the LBOH as reasonably requested to advise likely contacts to isolate and self-quarantine. Testing of other workers may be recommended consistent with guidance and / or at the request of the LBOH
- Notify workers that they may not work if they test positive for COVID-19 (they should be isolated at home) or are found to be a close contact of someone with COVID-19 (they should be quarantined at home)
- Post notice to workers and customers of important health information and relevant safety measures as outlined in the Commonwealth’s [Mandatory Safety Standards for Workplace](#)
- Designate the Person in Charge (105 CMR 590) for each shift to oversee implementation of the guidelines in this document
- Restaurants will be allowed to maximize outdoor dining space, including patios and parking lots where available, where municipal approval is obtained
- Additional on-site amenities and services may only open and operate when those amenities or services would otherwise be authorized to operate under the Commonwealth’s Phased Reopening Plan and then must adhere to all sector-specific safety protocols, available on the [Reopening Plan website](#), applicable to the amenity or service. Examples include:
 - Pool tables, darts, and other indoor games: Must remain closed
 - Musical and other performances: Must follow the latest Theater and Performance Venue guidance, including distance between performers and between performers and attendees. Performances at indoor venues may not include singing or the playing of wind or brass instruments
 - Dance floors: Must remain closed until Phase 4
 - Gift shops: Must follow the latest retail guidance

IV. Cleaning and Disinfecting

- Clean commonly touched surfaces in restrooms (e.g., toilet seats, doorknobs, stall handles, sinks, paper towel dispensers, soap dispensers) frequently and in accordance with CDC guidelines
- Keep cleaning logs that include date, time, and scope of cleaning
- Conduct frequent disinfecting of heavy transit areas and high-touch surfaces (e.g., doorknobs, elevator buttons, staircases)
- Implement procedures to increase cleaning / disinfecting in the back-of-house. Avoid all food contact surfaces when using disinfectants. Food contact surfaces must be cleaned and sanitized before use with a sanitizer approved for food contact surfaces. Non-food contact surfaces must be frequently cleaned
- In the event of a presumptive or actual positive COVID-19 case of a worker, patron, or vendor, the restaurant must be immediately shut down for 24 hours and then must be cleaned and disinfected in accordance with current CDC guidance before re-opening
- Open windows and doors to increase airflow where possible

Additional worker safety guidelines and resources (with hyperlinks to web pages) are available below:

U.S. Department of Labor, Occupational Safety and Health Administration (OSHA):

[OSHA – COVID-19 Webpage](#)

[OSHA – Enforcement Guidelines Webpage](#)

[OSHA Fact Sheet – Protecting Workers During a Pandemic](#)

U.S. Centers for Disease Control (CDC):

[CDC – Environmental Cleaning and Disinfection Recommendations](#)

[CDC – Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease \(Updated 3/21/20\)](#)

CDC – Decision Tool for Reopening Bars and Restaurants (5/15/20)

<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/restaurants-and-bars-decision-tool.html>

Additional Information:

Massachusetts State Coronavirus (COVID-19) Website
mass.gov/covid19

United States Centers for Disease Control and Prevention Coronavirus (COVID-19) Website
<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

SUMMARY OF
PAST
DISCIPLINARY
ACTIONS

Port Restaurant and Bar

Summary of past disciplinary actions

Board of Selectmen Meeting: February 8, 2021

Outcome: Board of Selectmen vote to hold public hearing to discuss disciplinary action from the January 12, 2021 disciplinary hearing for four (4) confirmed violations; May 22, 2020, May 24, 2020, July 16, 2020 and July 17, 2020

Board of Selectmen Meeting: November 6, 2017

Outcome: Board of Selectmen issued a notice of warning due to exceeding noise limitations on August 31, 2017, September 2, 2017 and September 3, 2017

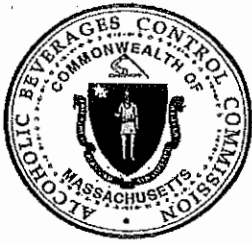
Board of Selectmen Meeting: September 26, 2005

Outcome: Board of Selectmen took no further action on the request to consider noise complaints. The determination was made at a Public Hearing on September 26, 2005.

Public Hearings: October 9, 2018 & November 6, 2018

Alcoholic Beverages Control Commission

Outcome: Licensee violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c 138, section 34C – Possession of an alcoholic beverage to a person under twenty-one years of age (3 counts). Therefore, the Commission suspends the license for a period of six (6) days which will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.



Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, Massachusetts 02114
Tel. (617) 727-3040
Fax: (617) 727-1510

Jean M. Lorizio, Esq.
Chairman



DECISION

PORT RESTAURANT & BAR INC.
541 ROUTE 28
HARWICH, MA 02646
LICENSE#: 0506-00074
VIOLATION DATE: 8/17/2018
HEARD: 12/4/2018

Port Restaurant & Bar Inc. (the "Licensee" or "Super Liquors") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission" or "ABCC") held a hearing on Tuesday, December 4, 2018, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C – Possession of an alcoholic beverage to a person under twenty-one years of age (3 counts). Prior to the commencement of the hearing, the Licensee stipulated to the facts alleged in Investigator Temple's Report.

The following documents are in evidence:

1. Investigator Temple's Investigative Report; and
2. Licensee Stipulation of Facts.

There is one (1) audio recording of this hearing.

The Commission took Administrative Notice of the Licensee's record.

FINDINGS OF FACT

1. On Friday, August 17, 2018, Investigators Binienda, Velez, and Temple ("Investigators") conducted an investigation of the business operation of Port Restaurant & Bar Inc. to determine the manner in which its business was being conducted.
2. At approximately 11:20 p.m., Investigators entered the licensed premises and observed four youthful appearing females, located in the back-patio area of the licensed premises, in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age.
3. Underage #1, actual date of birth 11/04/1997 (age 20), was in possession of a cranberry vodka. She presented to Investigators a fraudulent New York license although she stated that she was not asked for identification when she entered the premises.

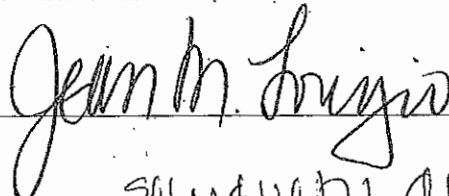
4. Underage #2, actual date of birth 8/26/1999 (age 18), was in possession of a Cape Cod beer. She presented to Investigators a fraudulent Rhode Island driver's license.
5. Underage #3, actual date of birth 9/27/1999 (age 18), was in possession of a cranberry vodka drink. She stated that she was not asked for identification when she entered the premises. She presented to Investigators a fraudulent identification.
6. Underage #4, actual date of birth 12/02/1998 (age 19), was in possession of a cranberry vodka drink. She presented to Investigators a fraudulent Massachusetts driver's license. Investigators determined that the Licensee reasonably relied on this identification; therefore, they did not charge the Licensee with committing a violation for this additional minor in possession of an alcoholic beverage.
7. Investigators spoke to the manager, Jake Domos, and identified the underage individuals to him.
8. Investigators informed Domos of the violations and that a report would be filed with the Chief Investigator for further action.
9. The Licensee has been in business for 14 years with no previous violation.

CONCLUSION

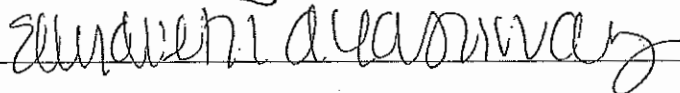
Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C – Possession of an alcoholic beverage to a person under twenty-one years of age (3 counts). Therefore, the Commission **suspends the license for a period of six (6) days which will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

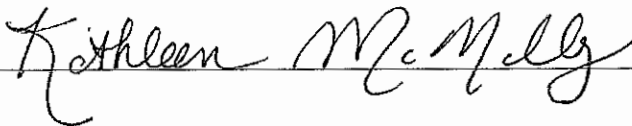
Jean M. Lorizio, Chairman



Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: December 6, 2018

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Christopher Temple, Investigator
Jamie Binienda, Investigator
Matthew P. Kelley, Esq. via facsimile 508-430-8662
Administration, File



September 27, 2005.


Mr. Justin Brackett, Manager
The Port Restaurant
541 Route 28
Harwich Port, MA 02646


Dear Mr. Brackett:

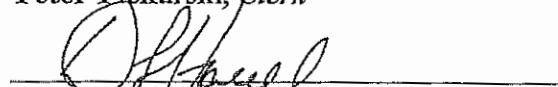
This letter is to confirm that the Board of Selectmen found no cause to take any further action on the request to consider noise complaints at The Port Restaurant. The determination was made at a Public Hearing held at a regular Board of Selectmen's meeting on September 26, 2005.

Sincerely,


Ed McManus, *Chairman*


Robin Wilkins, *Vice Chairman*


Peter Piekarski, *Clerk*


Donald F. Howell

Board of Selectmen
Town of Harwich, MA



November 7, 2017

Mr. Justin R. Brackett
Port Restaurant & Bar

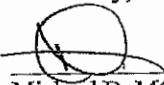
Dear Mr. Brackett:

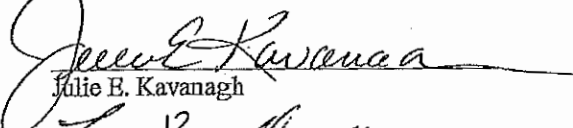
At a meeting of the Harwich Board of Selectmen held on Monday, November 6, 2017, the Board voted to issue you the following notice of warning regarding incidents at your establishment:

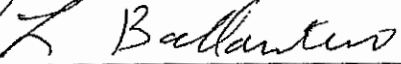
It is hereby stipulated that the Port Restaurant & Bar did violate the terms of its licenses by exceeding noise limitations on three occasions – August 31, 2017, September 2, 2017 and September 3, 2017. As a result of these violations, the Licensee is hereby issued a written warning that the Board will not permit such misconduct with respect to the management of the licensed premises. The Board expects that in the future you will exercise sufficiently close supervision so that you will comply with the terms of your licenses and the statutes, bylaws and regulations applicable to the licensed business. Please be advised that any further violations may result in penalties, up to and including revocation of your entertainment and/or alcoholic beverages license. Please be further advised that, while the Board supports the use of its progressive discipline guidelines as set forth in Section 1.17 of its Regulations, the Board reserves the right to use its discretion in determining whether the facts surrounding a violation warrant a penalty which is more lenient or severe than suggested by the guidelines.


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

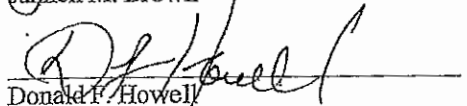
Sincerely,


Michael D. MacAskill, Chair


Julie E. Kavanagh


Larry G. Ballantine


Jarnell M. Brown


Donald F. Howell

cc: Chief D. Guillemette, Harwich Police Department
Mr. Gregg Corbo, K-PLaw
Mr. Raymond Tomlinson

POLICE DEPARTMENT
RECOMMENDATIONS



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: Joseph Powers
Town Administrator

Meggan Eldredge
Assistant Town Administrator

FROM: David J. Guillemette
Chief of Police 

DATE: February 25, 2021

SUBJECT: 2021 Seasonal Liquor License Renewals

In response to your memo dated February 23, 2021 regarding seasonal liquor license renewals, the Police Department has identified issues with the following establishments from the provided list.

Ember
500 route 28, Harwich Port

Perks
545 Route 28, Harwich Port

Port Restaurant and Bar
541 route 28, Harwich Port



HARWICHPolice

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

FROM: David J. Guillemette
Chief of Police

DATE: March 17, 2021

SUBJECT: Application for renewal of Entertainment Licenses for weekday and Sunday entertainment both inside and outside at The Port.

Mr. Chairman and members of the Board. I have major concerns about issuing the above requested entertainment licenses to The Port. During last spring and summer The Port was allowed to extend into their back parking area with a large tent. This resulted in increased complaints of noise from crowds inside the tent, increased traffic on Sea Street because of the limited parking, ongoing reports of COVID violations and reports of intoxicated individuals causing disturbances at closing time. People living in the area described it as a "night club atmosphere" that was extremely disturbing.

Through my correspondence with neighbors in the area and my review of calls for service from last season, it is readily apparent that steps need to be taken to reduce the impact of this establishment on the neighborhood.

I will make myself available for any questions regarding my concerns.

NOISE COMMITTEE
REPORT

Danielle Delaney

From: Bob Cohn <
Sent: Thursday, March 18, 2021 10:42 AM
To: Larry Ballantine; Michael D. MacAskill; Ed McManus; Don Howell; Stephen Ford
Cc: Joe Powers
Subject: Port and Ember Hearings
Attachments: Informal Harwich Port Noise Survey; Updated with August and September readings.doc; Nantucket Outdoor Entertainment Licenses 2018.doc

March 18, 2021

Larry Ballantine
Harwich Board of Selectmen
732 Main Street
Harwich, MA 02645

Dear Chairman Ballantine and Board Members,

I'm writing in regard to the upcoming hearings for Ember Pizza and Port Restaurant and Bar. Though I can't speak to after-hours disturbances and Covid-related violations, I can speak to entertainment noise issues.

In July 2019, I conducted the attached Informal Noise Survey, which I presented at the last Noise Containment Committee meeting prior to the pandemic. (I'm a Committee member, but this letter is mine alone.)

The map only depicts noise from Ember, mainly in July with a few days from May and June. As you'll see, entertainment noise from Ember was at times greatly excessive, and could be heard more than 1200 feet away, deep in the residential zone.

Noise readings from the Port are not shown on the map, but referring to the spreadsheet, you'll see that their noise levels were also greatly excessive.

Because the distance noise carries is also a measure of volume, noise at 750 feet is 5 times the volume and nuisance allowed under the Noise Bylaw, while noise heard at 1200 feet is 8 times the allowed limit. Yet noise from both venues reached these extremes.

The noise was often loud enough to disturb us on Pleasant St. and sometimes kept us from being able to sleep. Worse, though, was the effect on neighbors close to the venues, who had to endure incredible levels of noise on a regular basis.

I stopped doing surveys after July, but continued to note readings from my house. Based on this partial information, it seemed that noise levels from both venues began to improve toward the end of the 2019 season. Still, as the spreadsheet shows, things were far from quiet. Additionally there were significant relapses, including, I believe, a violation by Ember in September 2019. While for a week in July 2020 we regularly heard noise from the Port, 1000 feet away from their new performance area in their parking lot. Additionally there were all the crowd noise, after-hours, and covid-related issues during the 2020 season that others have reported.

It seems pretty clear that neither the Port nor Ember have made the same effort to be good neighbors as has Perks.

Still, I believe that this is as much a problem of our noise policy, which has unintentionally encouraged this sort of behavior. In fact, all the venues, including Perks and the Mad Minnow have been extremely

loud at times and made things difficult for their neighbors. The same is true for the West Harwich venues as well.

Because of this, and because of constantly changing venue management, I feel that to address *only* the current issues at the Port and Ember and fail to address the larger noise policy issues, is to treat the symptom rather than the disease.

As you're no doubt aware, there are a number of underlying problems with our outdoor entertainment policy:

- Amplified music can carry great distances outdoors;
- Live performances exacerbate this and are the main source of difficulties;
- The Town has granted a large number of outdoor entertainment licenses in close proximity to neighbors; but
- Failed to provide adequate noise management to protect neighbors from regular nuisance, specifically, proactive guidelines and restrictions, and a standardized, measurable noise threshold.

I hope we can take up these issues more fully at a following meeting, and in particular discuss the need for a Plainly Audible definition.

For now, though, if you do decide to grant outdoor entertainment licenses to the Port and Ember, I'd suggest some new license conditions be considered:

- 1) Speakers to be pointed away from neighbors at all times.
- 2) Live music restrictions:
 - a) Live music to be played only through house systems. I believe Perks has recently purchased a house system. Given the closeness of neighbors to all the venues, this may be an appropriate measure for live music throughout town.
 - b) Decibel monitors to be used by venues for self-regulation. This was suggested by Chief Guillemette a couple years ago.
 - c) Alternatively, security details, paid for by the venues, could perform the same function. This was suggested at a Noise Committee meeting.
 - d) Limit days and times for live music.
- 3) Use the bylaw's Plainly Audible definition to provide a standardized noise measure and reduce noise levels. An objectively measurable and consistent limit is key to all aspects of noise management, including the above house systems, decibel monitors, and security details.

I'm also attaching copies of Nantucket's outdoor entertainment licenses from 2018, which are individualized for each venue and may be instructive.

Thank you very much.

Respectfully,
Bob Cohn

INFORMAL HARWICH PORT NOISE SURVEY, 2019

— Bob Cohn

The Noise Survey was conducted in order to document and increase awareness of noise levels and issues in Harwich Port. While there was a significant drop-off in noise levels from the highs of 2018, it could still often be quite noisy in 2019. The survey is far from perfect, but hopefully can shine some light on the situation.

How the Survey Was Conducted

The survey was very informal. I didn't go out on a regular basis, but instead when I felt like it and/or when it was particularly noisy. By the beginning of August, I grew pretty tired of it, and did surveys less frequently.

I usually followed the same route, but not always:

- South from Pleasant St. through the Schoolhouse Rd. parking lot;
- to Perks and The Port to see which business was the source of any noise;
- South on Sea St. and then back up to Rt. 28;
- East along Rt. 28 to Freeman St./Snow Inn Rd.;
- North on Freeman to Pleasant;
- West on Pleasant and back to the start at Schoolhouse Rd.
- Except once or twice, I didn't go south of Rt. 28 on Bank or Bayview.

As I heard noise at various points along the way, I'd make a voice recording on my phone, which I'd later transcribe. I haven't yet finished transcribing the data.

I used the Noise Bylaw's plainly audible definition, but also noted relative loudness, songs, voices, crowd noise, and instruments.

Some things to keep in mind

The survey data is *very incomplete* and forms a partial picture only.

- I didn't do the survey every day, but only:
 - 3 days in May
 - 4 days in June
 - 15 days in July
- Survey was conducted fairly randomly—only on days I felt inclined.
- I didn't survey very much south of Rt. 28.
- Measurements were generally not taken inside 150-foot limit.
- Wednesday night music events aren't shown.
- The summer of 2019 was far quieter than 2018:
 - The Mad Minnow had no outdoor entertainment.
 - There appears to have been increased awareness of noise issues and some scaling back. This may have been due in part to the Noise Committee being announced.
- All measurements in the survey are approximate.

Notes about the Map

The map is intended to help visualize the survey data. Because it took a lot of time to put the map together, only the noise readings from Ember are so far shown. Thus, this is *an even more partial picture* than the survey spreadsheet itself.

A truer picture of the situation would:

- include readings from Perks and The Port, easily doubling the number of incidents;
- show readings all through the summer on a nightly basis, perhaps doubling again;
- include a fuller set of readings south of Rt. 28, adding still more; and
- include readings *inside* the blue and green circles.

Wednesday night music events might also be considered to gauge noise levels, adding another 15% on top of the above.

Further, had a 2018 version of the survey been done, it would have included readings from the Mad Minnow and a great deal more noise in general throughout the village, and would likely more than double again.

That is to say that at the peak noise levels of 2018, a map depicting an entire summer's survey might well show 8 or 10 times as many noise incidents. Perhaps more.

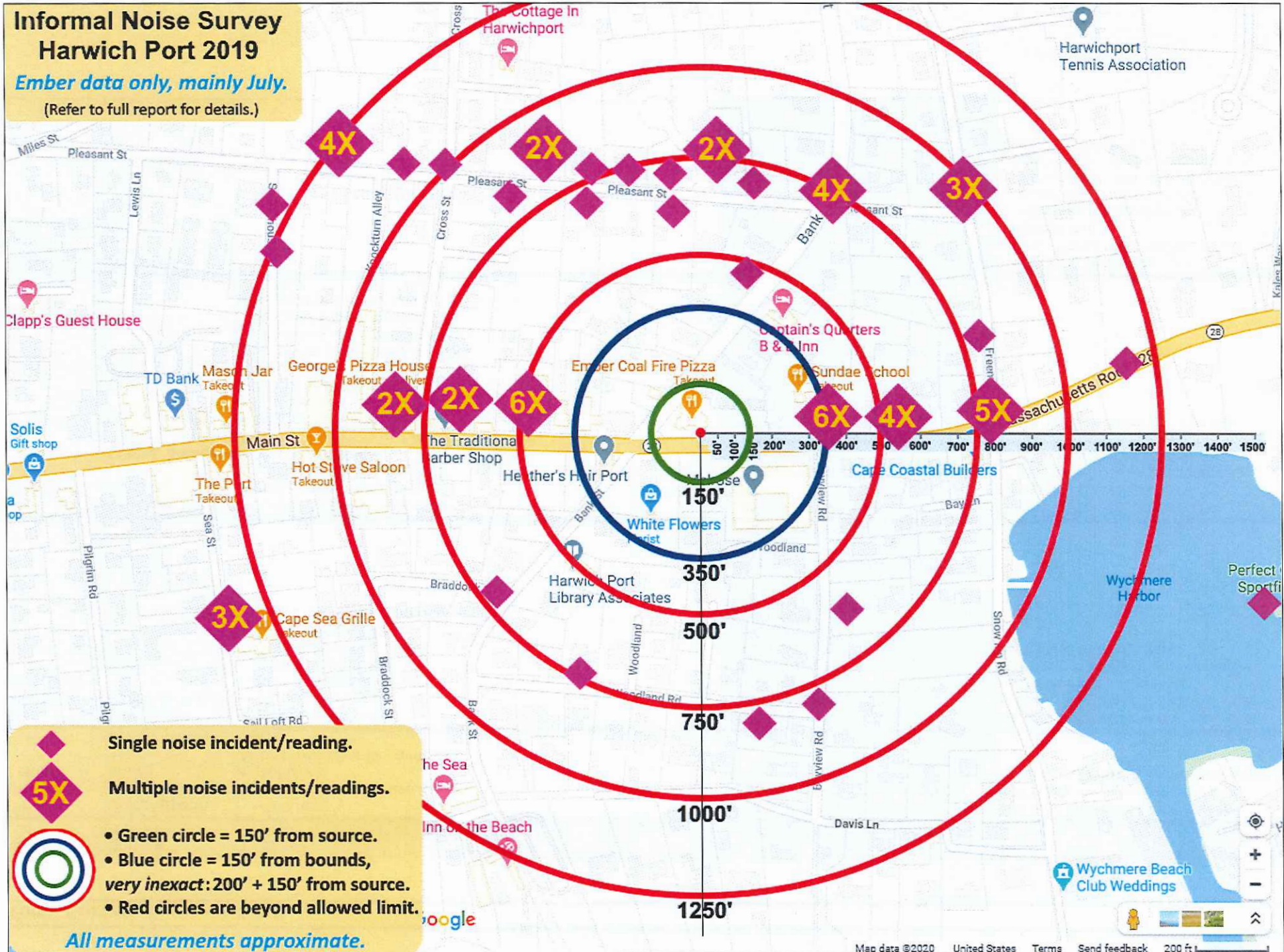
Some details:

- Circles are all centered at Ember's performance area,
 - The interior green circle has a radius of 150' from the performance area.
 - The blue circle *only very roughly* depicts the area 150' beyond Ember's boundaries. As the property line to the east is roughly 200' from the performance area, a circle of radius 350' is used (200'+ 150').
 - The red circles (500', 750', 1000', 1250') are all beyond permitted limits.
- Some addresses have been merged for easier depiction on map, e.g.:
 - George's Pizza // Cross & 28
 - 28 & Snow Inn // 28 & Freeman
 - United Gas // Cumberland Farm
- All numbers and measurements on the map are approximate.

Informal Noise Survey Harwich Port 2019

Ember data only, mainly July.

(Refer to full report for details.)



◆ Single noise incident/reading.

◆ 5X Multiple noise incidents/readings.

- Green circle = 150' from source.
- Blue circle = 150' from bounds, very *inexact*: 200' + 150' from source.
- Red circles are beyond allowed limit.

All measurements approximate.

Noise Survey, Summer 2019

Date & Time	Wind & Weather	The Port	Perks	Ember <i>Only Data Plotted on Map</i>	Notes
Fri. May 24 7:30p	Quite Strong Wind North to South Cool & windy	<ul style="list-style-type: none"> • ~400 feet/ Halfway up Schoolhouse Rd. lot • ~1000 feet At bottom of Sea St., almost to water 			Friday of Memorial Day weekend <ul style="list-style-type: none"> • Strong wind was pushing music away from Pleasant St., toward water
Sat. May 25 9:15-9:45	Light wind South to North Nice	<ul style="list-style-type: none"> • @29 Pleasant /~800' — Music & shouting • @Cross & Pleasant ~1000' (faint but PA) • @Cape Sea Grille /~400' • @27 Sea St./~500' — crowd shouting & carrying on 		Music PA <ul style="list-style-type: none"> • @57 Pleasant/~725' — (not faint) • @Bank & Pleasant ~700' (quite loud) • @Melrose /200+' (crowd noise PA) • @617 Rt 28/500' (fairly loud) • @Snow Inn & 28 /800' (& PA further east too) • @Cumby's /~450' 	Saturday of Memorial Day weekend <ul style="list-style-type: none"> • Music loud from The Port & Ember; — crowd noise was as well. • Performer at Perks not noticeable over noise from the Port.
Sun. May 26	South to North -Light Sunny, pleasant	<ul style="list-style-type: none"> • 4:45p: @29 Pleasant/~800' — male voice plainly audible • 6:00p: @Schoolhouse Rd & Anchorage driveway /~450' • @Cape Sea Grille /~400' • @27 Sea St./~500' • 7:30p: @29 Pleasant/~800' • 8:30: @29 Pleasant/~800' • Schoolhouse & Pleasant/~850' (faint but PA, "Brown-eyed Girl") • 36 Cross St. PA @9:45/1175' • Lewis Lane & Cape Cod 5 lot/~450' 		<ul style="list-style-type: none"> • Freeman & Pleasant /900' • Bank & Pleasant /700' • 28 & Bayview (female voice, slow music) /~325' • 28 & Snow Inn /~800' • 28 & Cross (female voice) / ~800' 	Sunday afternoon & evening of Memorial Day weekend <ul style="list-style-type: none"> — heard music from direction of Port/Perks while outside doing yardwork (male voice, was the same music style as heard an hour later from Port)
Wed. June 26 9:30-10pm	Little Wind Fair			<ul style="list-style-type: none"> • 29 Pleasant/~1200' — Music intermittently audible • Pleasant & Bank /~700' • 67 Pleasant/~650' • 35 Pleasant/~1150' • 28 & Bayview/~325' • 28 & Freeman/~800' • @Traditional Barber Shop/~800' • @Cape Sea Grille /~1500' 	Wednesday night late <ul style="list-style-type: none"> • Music from Ember audible all around neighborhood — venue lightly attended — single performer (I think) — singing fairly low, but amplified enough to be heard intermittently at significant distances

Date & Time	Wind & Weather	The Port	Perks	Ember Only Data Plotted on Map	Notes
Thu. June 27 8:15p-8:45p	No Wind Cool, Foggy		<ul style="list-style-type: none"> • @29 Pleasant/~800' — music light, but plainly audible • Schoolhouse lot & Anchorage drive /~400' • @Cape Sea Grille /~450' 	<ul style="list-style-type: none"> • @56 Pleasant/~750' • @74 Pleasant/~650' • Bank & Pleasant /~700' • Pleasant & Freeman /~900' (wailing guitar) • 28 & Freeman/~800' (announcement/talking on PA & music) • very plainly audible @617 Rt 28 /~500' • @Heather's Hair/~200' • @Cumby's /~475' 	<ul style="list-style-type: none"> • Just 1 performer at Ember, but he uses generated backup music • Could hear music from Perks at 29 Pleasant, from about 8:15/8:30 on — light, intermittent, but audible — became louder from 9:30 on
Fri. June 28 9:00 9:30 10:00p	No Wind Pleasant	<ul style="list-style-type: none"> • @29 Pleasant back yard/800' • Top of Schoolhouse lot (edge of woods)/~625' 	<ul style="list-style-type: none"> • 19 Schoolhouse Rd/550' (9:55 "Can't always get what you want.") 	<ul style="list-style-type: none"> • Corner Braddock & Bank/700' • 54 Pleasant/750' • 9:55p: Halfway up Schoolhouse Rd wooded lot/1300' • 6 Freeman St. 800' • 28 & Bayview/335' (heavy rhythm w/bongos) • @Heathers Rt 28/~300' (bongos) 	<ul style="list-style-type: none"> • Readings attributed to The Port may have been from Perks—walked the other direction, so not sure
Sun. June 30 8:00p	Strong Wind— Variable, but mainly North to South Nice night, but windy	<ul style="list-style-type: none"> • Chamber of Commerce/275' • Anchorage driveway/450' • 39 Sea St./275' • Cape Sea Grille/450' • Port Pines Rd & Sea St./850' • In back of Pilgrim Church, (30' away from Pilgrim Rd.) /375' 		<ul style="list-style-type: none"> • 92 Bank St./~450' ("Only the good die young") • @28 & Freeman/800' • @617 Rt 28 (heavy bass)/500' • @28 & Bayview (pretty loud: Monkees "I'm a Believer")/335' • Cumby's: "Johnny B. Goode"/475' • George's Pizza/800'— can clearly hear bass line • @Cape Sea Grille, Sea St./1400' 	<ul style="list-style-type: none"> • 4 piece band at Ember — but not that many customers—less than half full • Single male performer at Perks — <i>under umbrella</i> & not audible even in front of venue • Female performer at the Port, voice carried, highly amplified • Minnow: recorded music w/empty
Mon. July 1 7:30-10:00p	Fair amount of wind blowing South to North		<ul style="list-style-type: none"> • 8:00p @29 Pleasant back yard/800' • Schoolhouse Rd & Pleasant/800'—pretty loud • 9:15p: @19 Schoolhouse/600' — "Take a load off Fanny" etc. • Cape Sea Grille/450' — music is <i>intermittently</i> plainly audible 		<ul style="list-style-type: none"> • Single male performer at Perks — no umbrella/coverage — soulful, moaning male voice • Sent text to Sarah & Taylor Powell telling them that the music has been carrying up to Pleasant St. • Duet at Ember—pretty light, can't hear very far away
Thu. July 4 7:45p		<ul style="list-style-type: none"> • 7:45p @29 Pleasant/800' • 10:02p: @29 Pleasant /800' • Cape Sea Grille/400' — "Lord I was born a gambling man" 			<ul style="list-style-type: none"> • Spoke w/Sarah & Taylor Powell of Perks—music not very loud from Perks

Date & Time	Wind & Weather	The Port	Perks	Ember Only Data Plotted on Map	Notes
Fri. July 5 8:00p		<ul style="list-style-type: none"> • 8:00p @29 Pleasant/800': Music plainly audible inside our house • Schoolhouse Rd & Pleasant/800' • Cape Sea Grille/400' "Rolling on the river" • 27 Sea St./650': "I'm a joker, I'm a toker..." • Sail Loft Rd & Sea St./700' 		<ul style="list-style-type: none"> • Freeman & Pleasant/975' plainly audible (may have been from The Port) • @Heathers Rt 28/~200' 	<ul style="list-style-type: none"> • Ember performer: single guy w/music/rhythm generator
Sat. July 6 2:30				<ul style="list-style-type: none"> • 7:15p: Harbor Rd. wharf /~1800' • Wychmere Harbor overlook / ~1200' 	<ul style="list-style-type: none"> • Out driving around, could hear music from Ember all around Wychmere Harbor
Sun. July 7 7:45		<ul style="list-style-type: none"> • 8:00p @29 Pleasant /800' (plainly audible inside our house) 		<ul style="list-style-type: none"> • 72 Pleasant/650' • 62 Pleasant /675' • Cross & Pleasant/950' ("You're so vain you probably think this song is about you") • 8:30p 29 Pleasant /1200'(guy talking on PA) • 9:00p 29 Pleasant—music getting loud • 9:30p 29 Pleasant, still very loud • 9:45p called police again • 26 Bank St./~1100' • Bayview & Woodland/900' • 10 Woodland/775' • 29 Woodland/775' • 25 Bayview/600' • Bayview & Rt. 28/350':pretty loud • @Cape Sea Grille /~1500' 	<ul style="list-style-type: none"> • A couple people playing at Port • Ember very loud all over HP <ul style="list-style-type: none"> — called police @9:00pm — officer didn't come by house — no noticeable change in volume — got louder at @9:45p (trying to go to bed) — called police again and was told that the officer had asked them to turn it down — but if they music was turned down, it was only very briefly — and by 9:45p, it was still louder than before, and continued louder until 10pm • made recording of music 1200' away
Mon. July 8 9:20p			<ul style="list-style-type: none"> • 29 Pleasant /~800' —moany guy plainly audible 		<ul style="list-style-type: none"> • Monday night: moaning guy at Perks
Thu. July 11 from 7:30 on	A bit of wind blowing from the south	<ul style="list-style-type: none"> • 29 Pleasant/~800' —intermittently plainly audible • Schoolhouse Rd & Pleasant/800' —very clear: bass guitar riffs • 39 Sea St./275' —deeper male voice rhythmic/thumping component • 29 Pleasant 9:30p — music from The Port — intermittent guitar licks from Ember 		<ul style="list-style-type: none"> • @Traditional Barber Shop/~800' (electric guitar licks) • 29 Pleasant 9:30p — intermittent guitar licks 	<ul style="list-style-type: none"> • Port performer quite loud • Perks performer fairly quiet • Ember went on break as I went by
Sun. July 14				<ul style="list-style-type: none"> • 29 Pleasant St./1200' —music from Ember quite loud 	<ul style="list-style-type: none"> • Music fairly loud from Ember, but didn't do survey
Mon. July 15	No wind		<ul style="list-style-type: none"> • 7:15p 29 Pleasant /~800' —moaning guy plainly audible inside house • 9:00p: ditto 		<ul style="list-style-type: none"> • 3rd Monday in a row w/Perks' moaning guy: sounds low, but w/amplification, voice carries and is quite loud —good bit louder than previously —could be heard inside house

Date & Time	Wind & Weather	The Port	Perks	Ember Only Data Plotted on Map	Notes
Sat. July 20, 2019 7:30-on	Not much wind	<ul style="list-style-type: none"> • Music plainly audible from <i>either Perks or The Port</i> for a couple/few hours /800' <ul style="list-style-type: none"> — periodically howling • From 9:30 to closing, music was loud enough that it was echoing off houses to the north of us and still further away 			<ul style="list-style-type: none"> • Didn't do survey
Thu. July 25, 2019 8:45p		<ul style="list-style-type: none"> • 8:45p 29 Pleasant /~800' <ul style="list-style-type: none"> —electric guitar, wailing, almost steel guitar; intermittent, off & on — 9:00p singing "Blue Morning" — 9:20p: quite loud in house; wailing electric guitar, male singer • 9:20p; Schoolhouse Rd & Pleasant/800' <ul style="list-style-type: none"> —quite loud w/electric guitar licks • 9:50p 29 Pleasant/800' <ul style="list-style-type: none"> — getting louder as band goes into finale, heavy drums • 10:22p: music plainly audible • @Cape Sea Grille /~400' • Cape Sea Grille; • 39 Sea/275': quite/very loud 		<ul style="list-style-type: none"> • 28 & Bayview /~325' <ul style="list-style-type: none"> — plainly audible • @617 Rt 28/500' <ul style="list-style-type: none"> — guitar licks plainly audible • 49 Pleasant/850' <ul style="list-style-type: none"> (or might have been from the Port at 1050') • 19 Schoolhouse (in lot)/ ~1200: quite loud, people on PA system coming from Ember • @Cumby's /~450' <ul style="list-style-type: none"> — plainly audible 	
Fri. July 26, 2019 8:45p		<ul style="list-style-type: none"> • 39 Sea St./275' <ul style="list-style-type: none"> — loud; "Stuck in the Middle with You" • 9:00pm @29 Pleasant/~800' <ul style="list-style-type: none"> — music plainly audible • Anchorage parking lot • 9:45pm @29 Pleasant/~800' 		<ul style="list-style-type: none"> • 52-54 Pleasant/800' <ul style="list-style-type: none"> (or might have been from the Port at 1150') • @Cumby's /~450' <ul style="list-style-type: none"> — very plainly audible • 37 Bay View: ~350' <ul style="list-style-type: none"> — plainly audible 	
Sat. July 27 2019 6:15p		<p>(Port OR Perks—didn't do survey)</p> <ul style="list-style-type: none"> • 6:15pm @29 Pleasant/~800' <ul style="list-style-type: none"> — not loud, but plainly audible 		<ul style="list-style-type: none"> • 9:45pm @29 Pleasant/~1200' <ul style="list-style-type: none"> — plainly audible inside house—space age-y music; trying to go to bed 	
Sun. July 28 2019 8:30p	Wind coming from south	<p>(from Port OR Perks—couldn't be sure)</p> <ul style="list-style-type: none"> • @Cape Sea Grille /~450' — "Stand by Me" <ul style="list-style-type: none"> — pretty loud, though wind is coming from the south 		<ul style="list-style-type: none"> • Bank & Pleasant /700' <ul style="list-style-type: none"> — plainly audible • 72 Pleasant/650' <ul style="list-style-type: none"> — "Ain't No Sunshine When She's Gone" • 66 Pleasant /675' • @United Gas /~550' <ul style="list-style-type: none"> — very plainly audible 	
Mon. July 29 2019 8:15			<ul style="list-style-type: none"> • 8:15: @29 Pleasant/~800' <ul style="list-style-type: none"> — quite loud, male voice, moany • 9:00p: ditto • 9:30p: ditto 		

Data Below **NOT** Plotted on Map

Date & Time	Wind & Weather	The Port	Perks	Ember	Notes
Thu. Aug. 1		(Port OR Perks—didn't do survey)	<ul style="list-style-type: none"> from 7:30-9:30p: @29 Pleasant/~800' — hearing music inside our house from 9:15 on: heavy drums off & on 		<ul style="list-style-type: none"> Didn't go out on survey
Sat. Aug. 3		(Port OR Perks—didn't do survey)	<ul style="list-style-type: none"> 29 Pleasant 9:45p/~800' — music loud enough that it's echoing from across the street — could hear crowd woo-hoing, echoing from across the street 		<ul style="list-style-type: none"> Didn't go out on survey
Mon. Aug. 5				<ul style="list-style-type: none"> 29 Pleasant/~1200' 9pm - 10pm: music plainly audible inside house while trying to sleep 	<ul style="list-style-type: none"> Didn't go out on survey, quiet most of night;
Sat. Aug. 10		(Port OR Perks—didn't do survey)	<ul style="list-style-type: none"> 29 Pleasant/~800' 3:00p 		<ul style="list-style-type: none"> Didn't go out on survey
Mon. Aug. 12			<ul style="list-style-type: none"> 29 Pleasant /~800' —7:15: moany guy plainly audible <i>inside house</i> • 7:30: echoing from across street • 9:00: going to bed, can still hear inside house 		<ul style="list-style-type: none"> Didn't go out on survey
Thu. Aug. 15				<ul style="list-style-type: none"> 29 Pleasant /~1200' —6:45: electric guitar riffs —8:45: jazzy electric guitar still going • 8:45: Halfway down Schoolhouse Rd. wooded lot: guitar whining • United Gas: guitar can be heard between cars • Sundae School: very plainly audible • 28 & Bayview: very plainly audible 	
Sun. Aug. 18		(Port OR Perks—didn't do survey)	<ul style="list-style-type: none"> from 8:15 on: @29 Pleasant/~800' — got a little louder after 9 		<ul style="list-style-type: none"> Didn't go out on survey

Date & Time	Wind & Weather	The Port	Perks	Ember	Notes
Mon. Aug. 19			<ul style="list-style-type: none"> • 29 Pleasant /~800' —7:15: moany guy plainly audible — 8:00: getting louder, periodically echoing off house across street — 8:45: got quiet for 20 minutes while raining, now resumes — 9:15: raining out, but getting louder: "Whoa whoa, whoa whoa" — 9:25: getting worked up, cracky voice — 9:30: raining more, moany guy finally stops — 9:50: rain stops, moany guy starts back up 		<ul style="list-style-type: none"> • Didn't go out on survey
Tue Aug. 20		(Port OR Perks—didn't do survey)	<ul style="list-style-type: none"> • 9:00: @29 Pleasant/~800': plainly audible 		<ul style="list-style-type: none"> • Didn't go out on survey
Wed. Aug. 21		<ul style="list-style-type: none"> • Cape Sea Grille: 9:30 — music from both Perks & Port — guitar from Port 	<ul style="list-style-type: none"> • 29 Pleasant /~800' — 9:05 music quite loud *after* Wed. night music stroll • 9:30: Schoolhouse & Pleasant — Moany guy quite loud — shouting, hooting & hollering at bars, trumpet, getting louder • Cape Sea Grille: 9:30 — music from both Perks & Port — moany guy from Perks • 9:45: Pleasant & Cross: — moany guy plainly audible • 9:45: 36 Cross/~1100' — moany guy quite plainly audible • 9:45: 29 Pleasant — music echoing across street 		<ul style="list-style-type: none"> • Music quite loud *after* Wed. night stroll
Fri. Aug. 23		<ul style="list-style-type: none"> • 29 Pleasant /~800' —8:30: plainly audible —9:45: going to bed, can hear music inside house 			<ul style="list-style-type: none"> • Didn't go out on survey
Sat. Aug. 24				<ul style="list-style-type: none"> • 29 Pleasant /~1200' —8:30: plainly audible: guitar riffs, recognizable rhythms, etc. 	<ul style="list-style-type: none"> • Didn't go out on survey
Mon. Aug. 26			<ul style="list-style-type: none"> • 7:45: 29 Pleasant /~800' — moany guy: pretty faint, borderline plainly audible at 800'; most likely P.A. at 150' 	<ul style="list-style-type: none"> • 29 Pleasant /~1200' —7:45: Hooting and hollering from Ember 	<ul style="list-style-type: none"> • Didn't go out on survey

Date & Time	Wind & Weather	The Port	Perks	Ember	Notes
Thu. Aug. 29		<ul style="list-style-type: none"> • 29 Pleasant /~800' —8:20: absolutely plainly audible —9:15: plainly audible, pounding, thumping percussion • Pleasant & Schoolhouse —9:15: quite loud, heavy music • 9:20: Cape Sea Grille — Port P.A. system, plainly audible, including harmonica • 29 Pleasant /~800' —9:40: can hear music from The Port inside the house —9:45: went to Port, music was incredibly loud —9:55: music continues to be very loud inside house as we get in bed—even with windows mostly closed; loud for a couple hours, not singing loudly, just amped 		<ul style="list-style-type: none"> • 8:00pm: ~1400' /Bank St. beach, at edge of parking lot where sand begins 	
Fri. Aug. 30		<ul style="list-style-type: none"> • 29 Pleasant /~800' —8:45: hooting, hollering, a lot of screaming from one of the bars, out of control • Pleasant & Schoolhouse — 9:05: music plainly audible, crowd shouting • 9:05: Cape Sea Grille: — singer w/gruff, shouting voice, seems to encourage partygoers to join in 			<ul style="list-style-type: none"> • Didn't go out on survey
Sat. Aug. 31				<ul style="list-style-type: none"> • 29 Pleasant /~1200' —9:15: plainly audible. Starting to get louder. Performer on P.A. system going back and forth w/audience —9:15: rap music, kind of unpleasant, getting louder, definite violation — 9:20: loud drum thumping 	<ul style="list-style-type: none"> • Didn't go out on survey
Thu. Sep. 5		<ul style="list-style-type: none"> • 8:30: 50' into parking lot from Pleasant — drums, voices, plainly audible — can hear/feel drums inside house 		<ul style="list-style-type: none"> • 29 Pleasant /~1200' — 8:30 whiny electric guitar • Barbershop on 28: music from Ember plainly audible between cars • Bayview & 28: Electric guitar licks • 617 Rt. 28: plainly audible, but low 	

Date & Time	Wind & Weather	The Port	Perks	Ember	Notes
Sat. Sep. 7			<ul style="list-style-type: none"> • 29 Pleasant /~800' — 8:00: sounds like moany guy — 8:15: music plainly audible & crowd noise • 8:15: Schoolhouse Rd & Anchorage driveway, still plainly audible — same @Mason's Tree Service • 39 Sea St.: plainly audible • 43 Sea St.: plainly audible • 29 Pleasant /~800' — 9:00: plainly audible inside house w/windows closed — 9:30: still plainly audible w/windows closed, constant drumming 		
Sat. Sep. 14			<ul style="list-style-type: none"> • 8:30: @29 Pleasant /~800' — music plainly audible — @ Schoolhouse Rd & Pleasant: getting louder — 19 Schoolhouse/~600: quite loud, maybe moany guy — Cross and Pleasant/~1000 ft: plainly audible 	<ul style="list-style-type: none"> • 7:45: Lutz Gallery on 28 — music from Ember 	

Noise Committee

Presentation

Noise Issues in Harwich and the Need for a “Plainly Audible” Definition: Residents’ Perspective

Comments concern only Outdoor Entertainment noise from music;
crowd noise issues are beyond scope of presentation.

In Hindsight: Issues with 2016 Public Hearing

- Expansion of outdoor music area using Noise Bylaw's 150-foot Plainly Audible limit
 - But with little discussion of impact to or accommodation of residents inside or near area.
- Use of this standard is problematic.
 - As used in the Bylaw, it generally anticipates one-off, scattered, infrequent noise incidents.
 - Whereas in the Outdoor Entertainment License, it allows noise 7 days a week, 4 or more hours every night from 3 or 4 venues in ¼ mile stretch on Rt. 28.
 - The question remains whether it is a sufficient limit.

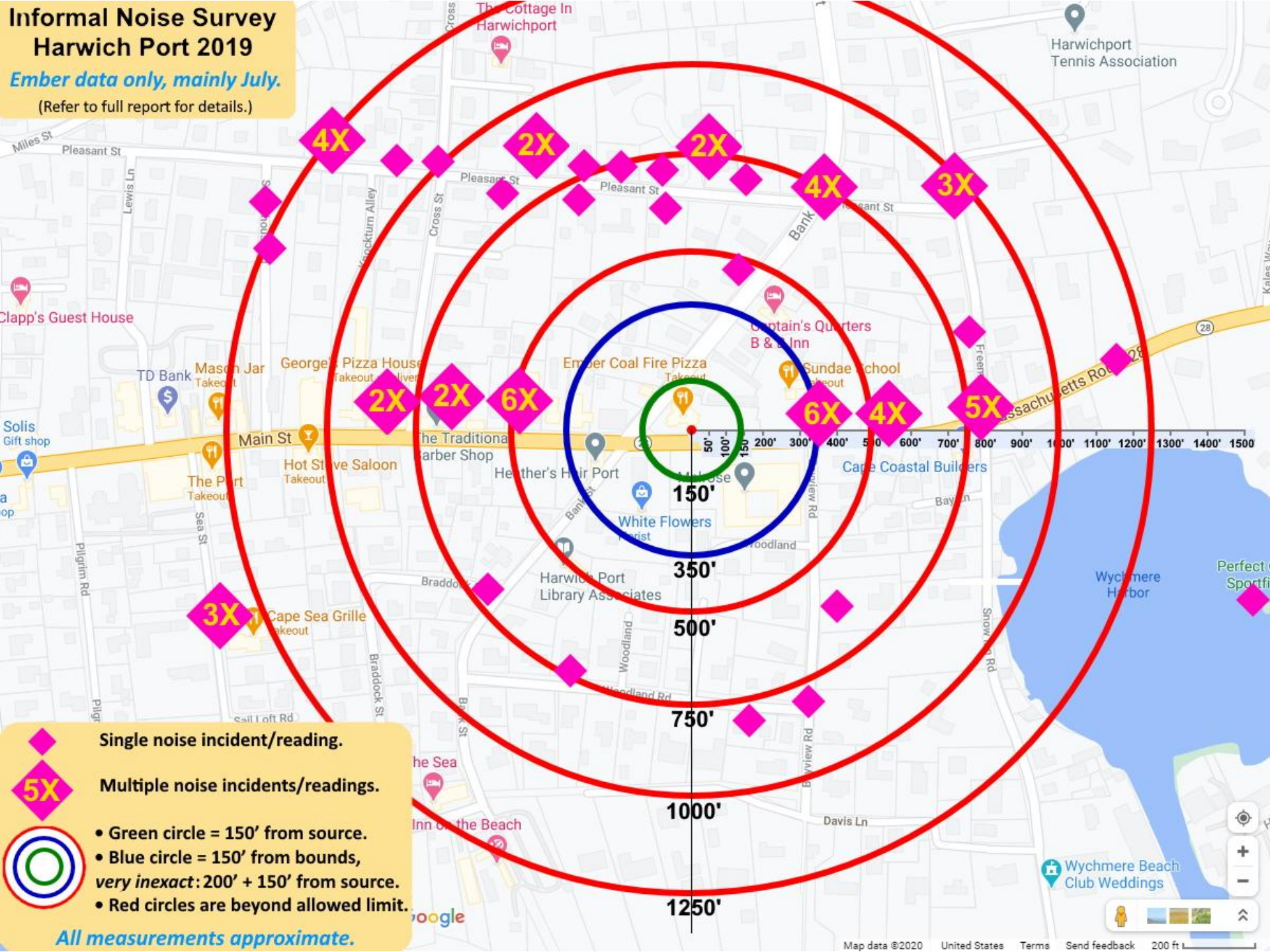
Omission of “Plainly Audible” definition

- “Plainly Audible” is a defined term in Noise Bylaw:
 - “Any sound from a source regulated by this bylaw that can be detected above routine or normal ambient background noise by unaided human hearing.”
 - This definition is consistent with definitions across the country.
- The definition wasn’t discussed at Public Hearing
 - But it was the measure of noise and nuisance under consideration throughout.
 - This definition was inadvertently omitted in the updated Entertainment License,
 - ultimately contributing to a broken noise policy.

Informal Noise Survey Harwich Port 2019

Ember data only, mainly July.

(Refer to full report for details.)

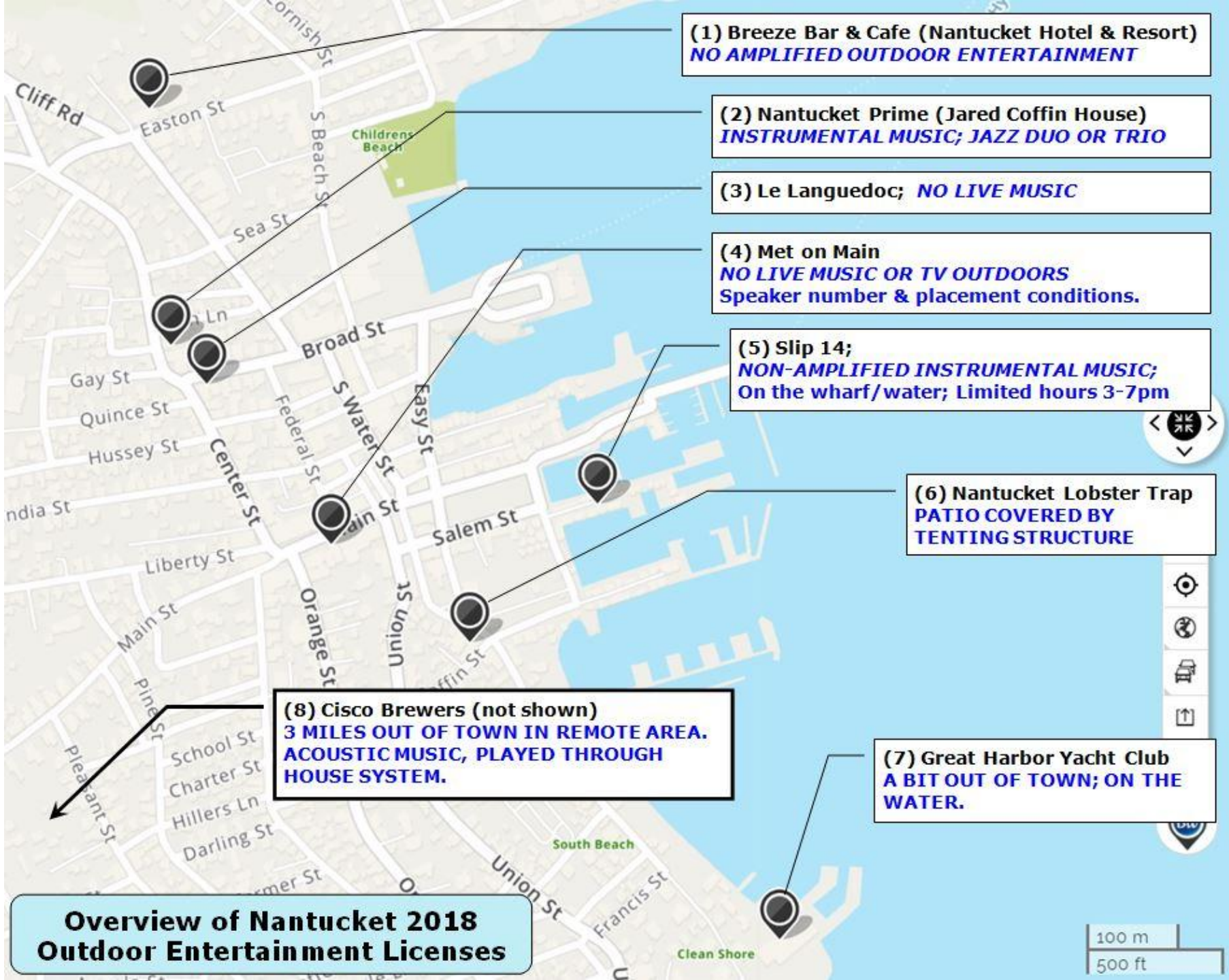


- Single noise incident/reading.
- Multiple noise incidents/readings.
- Green circle = 150' from source.
- Blue circle = 150' from bounds, very inexact: 200' + 150' from source.
- Red circles are beyond allowed limit.

All measurements approximate.

Lack of a Plainly Audible Definition in Practice

- Without a definition, interpretation became subjective, inconsistent, relaxed.
 - Police were put in a bind between competing interests and tried to keep the peace.
 - Noise thresholds rose—sometimes greatly.
 - Resulting in relatively few violations being issued.
- Noise levels considered nuisances under Bylaw are widely allowed under Entertainment License
 - even when 500, 700, and more feet away, in residential areas.
- This defies common sense and is flat-out wrong.
 - A nuisance in one case should be a nuisance in the other.
 - Still more so, given that these levels of nuisance last several hours, every night of the week.



(1) Breeze Bar & Cafe (Nantucket Hotel & Resort)
NO AMPLIFIED OUTDOOR ENTERTAINMENT

(2) Nantucket Prime (Jared Coffin House)
INSTRUMENTAL MUSIC; JAZZ DUO OR TRIO

(3) Le Languedoc; **NO LIVE MUSIC**

(4) Met on Main
NO LIVE MUSIC OR TV OUTDOORS
Speaker number & placement conditions.

(5) Slip 14;
NON-AMPLIFIED INSTRUMENTAL MUSIC;
On the wharf/water; Limited hours 3-7pm

(6) Nantucket Lobster Trap
PATIO COVERED BY TENCING STRUCTURE

(8) Cisco Brewers (not shown)
3 MILES OUT OF TOWN IN REMOTE AREA.
ACOUSTIC MUSIC, PLAYED THROUGH HOUSE SYSTEM.

(7) Great Harbor Yacht Club
A BIT OUT OF TOWN; ON THE WATER.

**Overview of Nantucket 2018
Outdoor Entertainment Licenses**

100 m
500 ft

Reasons for a Plainly Audible Definition (p. 1)

1) To properly assess noise levels.

- The plainly audible standard is well-established, well-regarded, and reasonable.
- A definition will help ensure the standard is applied correctly and consistently and help reduce noise levels.
- Without a well-defined noise limit and substantial license conditions, there are few effective controls.

2) To standardize a target noise threshold.

- For businesses to self-regulate, e.g., with decibel monitors.
- For residents to know when to call businesses and police.
- To provide police a clear enforcement standard.
- To assist Hearing Officers in their prosecutions.
- To improve communication and get everyone on the same page about permitted noise levels.

Reasons for a Plainly Audible Definition (p. 2)

3) To provide better information to the BOS.

- The current too-high noise threshold results in an artificially too-low number of violations.
- The BOS thus sees things through a flawed lens;
- in effect, looking through the wrong end of a telescope.

4) To restore balance:

- The original intent of the revised outdoor licenses was to address a problem where it was felt businesses were being set up to fail.
- In making this change, however, licenses were accidentally over-corrected when the Plainly Audible definition was dropped.
- In effect, this resulted in *residents being set up to fail*.

Reasons for a Plainly Audible Definition (p. 3)

- 5) To deliver on original understandings/promises:
 - The Bylaw’s measure of noise & nuisance was a critical agreed-on safeguard at the 2016 Public Hearing, but was never delivered.
 - After 4 years of sometimes extreme difficulties, residents deserve hard assurances.

- 6) To provide a basis for a “Uniform and consistent compromise noise policy”
 - as mentioned in NCC Charge.

- 7) To restore Harwich’s noise levels to those widely considered normal and reasonable everywhere else.

In Response to Objections

Yes, using the Bylaw's Plainly Audible definition may increase violations initially, but...

- ... violations have been artificially low to date.
- It seems manageable, however: there have all along been performances that would have been compliant, and quite frequently at the end of the 2019 season.
- I've had assurances from residents that they won't call unless noise is considerably beyond limits.
- A phase-in period with lighter penalties might help.

Yes, the venues have begun to move in the right direction, but...

- ... we've already seen that relapses can occur.
- And after 4 years of difficulties brought on in significant measure by poor policy, residents deserve real, substantive safeguards.

In Conclusion

(1/2)

Without a Plainly Audible definition, we effectively don't have a coherent, consistent noise policy,...

- ... but instead, wishful thinking and continued inadequate regard for residents' concerns;
— ongoing friction, reaction, and fighting fires.
- Affected residents uniformly believe that a Plainly Audible definition is necessary for any fair and workable compromise noise policy.
- Adding the definition is critical to addressing their needs and a *start* to resolving Harwich's noise problems.

The Plainly Audible definition, however, may not be enough.

- The 150-foot Plainly Audible standard serves only as a limit—a fallback position/a backstop.
- And we'd all prefer not to be constantly fighting about whether noise levels are at the limit or not.
- Additionally, built-in and/or restrictive conditions, perhaps like Nantucket's, may be helpful in developing appropriate, right-sized licenses in support of a robust noise policy.
- And a way for businesses and neighbors to work together toward a healthy, peaceful, and thriving community.

INFORMAL HARWICH PORT NOISE SURVEY, 2019

— Bob Cohn

The Noise Survey was conducted in order to document and increase awareness of noise levels and issues in Harwich Port. While there was a significant drop-off in noise levels from the highs of 2018, it could still often be quite noisy in 2019. The survey is far from perfect, but hopefully can shine some light on the situation.

How the Survey Was Conducted

The survey was very informal. I didn't go out on a regular basis, but instead when I felt like it and/or when it was particularly noisy. By the beginning of August, I grew pretty tired of it, and did surveys less frequently.

I usually followed the same route, but not always:

- South from Pleasant St. through the Schoolhouse Rd. parking lot;
- to Perks and The Port to see which business was the source of any noise;
- South on Sea St. and then back up to Rt. 28;
- East along Rt. 28 to Freeman St./Snow Inn Rd.;
- North on Freeman to Pleasant;
- West on Pleasant and back to the start at Schoolhouse Rd.
- Except once or twice, I didn't go south of Rt. 28 on Bank or Bayview.

As I heard noise at various points along the way, I'd make a voice recording on my phone, which I'd later transcribe. I haven't yet finished transcribing the data.

I used the Noise Bylaw's plainly audible definition, but also noted relative loudness, songs, voices, crowd noise, and instruments.

Some things to keep in mind

The survey data is *very incomplete* and forms a partial picture only.

- I didn't do the survey every day, but only:
 - 3 days in May
 - 4 days in June
 - 15 days in July
 - 1 day in August
 - (intermittent surveys thereafter, not yet transcribed)
- Survey was conducted fairly randomly—only on days I felt inclined.
- I didn't survey very much south of Rt. 28.
- Measurements were generally not taken inside 150-foot limit.
- Wednesday night music events aren't shown.
- The summer of 2019 was far quieter than 2018:
 - The Mad Minnow had no outdoor entertainment.
 - There appears to have been increased awareness of noise issues and some scaling back. This may have been due in part to the Noise Committee being announced.
- All measurements in the survey are approximate.

Notes about the Map

The map is intended to help visualize the survey data. Because it took a lot of time to put the map together, only the noise readings from Ember are so far shown. Thus, this is *an even more partial picture* than the survey spreadsheet itself.

A truer picture of the situation would:

- include readings from Perks and The Port, easily doubling the number of incidents;
- show readings all through the summer on a nightly basis, perhaps doubling again;
- include a fuller set of readings south of Rt. 28, adding still more; and
- include readings *inside* the blue and green circles.

Wednesday night music events might also be considered to gauge noise levels, adding another 15% on top of the above.

Further, had a 2018 version of the survey been done, it would have included readings from the Mad Minnow and a great deal more noise in general throughout the village, and would likely more than double again.

That is to say that at the peak noise levels of 2018, a map depicting an entire summer's survey might well show 8 or 10 times as many noise incidents. Perhaps more.

Some details:

- Circles are all centered at Ember's performance area,
 - The interior green circle has a radius of 150' from the performance area.
 - The blue circle *only very roughly* depicts the area 150' beyond Ember's boundaries. As the property line to the east is roughly 200' from the performance area, a circle of radius 350' is used (200'+ 150').
 - The red circles (500', 750', 1000', 1250') are all beyond permitted limits.
- Some addresses have been merged for easier depiction on map, e.g.:
 - George's Pizza // Cross & 28
 - 28 & Snow Inn // 28 & Freeman
 - United Gas // Cumberland Farm
- All numbers and measurements on the map are approximate.

Informal Noise Survey: Harwich Port, 2019

Date & Time	Wind & Weather	The Port	Perks	Ember	Notes
Fri. May 24 7:30p	Quite Strong Wind North to South Cool & windy	<ul style="list-style-type: none"> • ~400 feet/ Halfway up Schoolhouse Rd. lot • ~1000 feet At bottom of Sea St., almost to water 			Friday of Memorial Day weekend <ul style="list-style-type: none"> • Strong wind was pushing music away from Pleasant St., toward water
Sat. May 25 9:15-9:45	Light wind South to North Nice	<ul style="list-style-type: none"> • @29 Pleasant /~800' — Music & shouting • @Cross & Pleasant ~1000' (faint but PA) • @Cape Sea Grille /~400' • @27 Sea St./~500' — crowd shouting & carrying on 		Music PA <ul style="list-style-type: none"> • @57 Pleasant/~725' — (not faint) • @Bank & Pleasant ~700' (quite loud) • @Melrose /200+' (crowd noise PA) • @617 Rt 28/500' (fairly loud) • @Snow Inn & 28 /800' (& PA further east too) • @Cumby's /~450' 	Saturday of Memorial Day weekend <ul style="list-style-type: none"> • Music loud from The Port & Ember; — crowd noise was as well. • Performer at Perks not noticeable over noise from the Port.
Sun. May 26	South to North -Light Sunny, pleasant	<ul style="list-style-type: none"> • 4:45p: @29 Pleasant/~800' — male voice plainly audible • 6:00p: @Schoolhouse Rd & Anchorage driveway /~450' • @Cape Sea Grille /~400' • @27 Sea St./~500' • 7:30p: @29 Pleasant/~800' • 8:30: @29 Pleasant/~800' Schoolhouse & Pleasant/~850' (faint but PA, "Brown-eyed Girl") • 36 Cross St. PA @9:45/1175' • Lewis Lane & Cape Cod 5 lot/~450' 		<ul style="list-style-type: none"> • Freeman & Pleasant /900' • Bank & Pleasant /700' • 28 & Bayview (female voice, slow music) /~325' • 28 & Snow Inn /~800' • 28 & Cross (female voice) / ~800' 	Sunday afternoon & evening of Memorial Day weekend — heard music from direction of Port/Perks while outside doing yardwork (male voice, was the same music style as heard an hour later from Port)
Wed. June 26 9:30-10pm	Little Wind Fair			<ul style="list-style-type: none"> • 29 Pleasant/~1200' — Music intermittently audible • Pleasant & Bank /~700' • 67 Pleasant/~650' • 35 Pleasant/~1150' • 28 & Bayview/~325' • 28 & Freeman/~800' • @Traditional Barber Shop/~800' • @Cape Sea Grille /~1500' 	Wednesday night late <ul style="list-style-type: none"> • Music from Ember audible all around neighborhood — venue lightly attended — single performer (I think) — singing fairly low, but amplified enough to be heard intermittently at significant distances

Date & Time	Wind & Weather	The Port	Perks	Ember	Notes
Thu. June 27 8:15p-8:45p	No Wind Cool, Foggy		<ul style="list-style-type: none"> @29 Pleasant/~800' — music light, but plainly audible Schoolhouse lot & Anchorage drive /~400' @Cape Sea Grille /~450' 	<ul style="list-style-type: none"> @56 Pleasant/~750' @74 Pleasant/~650' Bank & Pleasant /~700' Pleasant & Freeman /~900' (wailing guitar) 28 & Freeman/~800' (announcement/talking on PA & music) very plainly audible @617 Rt 28 /~500' @Heather's Hair/~200' @Cumby's /~475' 	<ul style="list-style-type: none"> Just 1 performer at Ember, but he uses generated backup music Could hear music from Perks at 29 Pleasant, from about 8:15/8:30 on — light, intermittent, but audible — became louder from 9:30 on
Fri. June 28 9:00 9:30 10:00p	No Wind Pleasant	<ul style="list-style-type: none"> @29 Pleasant back yard/800' Top of Schoolhouse lot (edge of woods)/~625' 	<ul style="list-style-type: none"> 19 Schoolhouse Rd/550' (9:55 "Can't always get what you want.") 	<ul style="list-style-type: none"> Corner Braddock & Bank/700' 54 Pleasant/750' 9:55p: Halfway up Schoolhouse Rd wooded lot/1300' 6 Freeman St. 800' 28 & Bayview/335' (heavy rhythm w/bongos) @Heathers Rt 28/~300' (bongos) 	<ul style="list-style-type: none"> Readings attributed to The Port may have been from Perks—walked the other direction, so not sure
Sun. June 30 8:00p	Strong Wind— Variable, but mainly North to South Nice night, but windy	<ul style="list-style-type: none"> Chamber of Commerce/275' Anchorage driveway/450' 39 Sea St./275' Cape Sea Grille/450' Port Pines Rd & Sea St./850' In back of Pilgrim Church, (30' away from Pilgrim Rd.) /375' 		<ul style="list-style-type: none"> 92 Bank St./~450' ("Only the good die young") @28 & Freeman/800' @617 Rt 28 (heavy bass)/500' @28 & Bayview (pretty loud: Monkees "I'm a Believer")/335' Cumby's: "Johnny B. Goode"/475' George's Pizza/800'— can clearly hear bass line @Cape Sea Grille, Sea St./1400' 	<ul style="list-style-type: none"> 4 piece band at Ember — but not that many customers—less than half full Single male performer at Perks — <i>under umbrella</i> & not audible even in front of venue Female performer at the Port, voice carried, highly amplified Minnow: recorded music w/empty
Mon. July 1 7:30-10:00p	Fair amount of wind blowing South to North		<ul style="list-style-type: none"> 8:00p @29 Pleasant back yard/800' Schoolhouse Rd & Pleasant/800'—pretty loud 9:15p: @19 Schoolhouse/600' — "Take a load off Fanny" etc. Cape Sea Grille/450' — music is <i>intermittently</i> plainly audible 		<ul style="list-style-type: none"> Single male performer at Perks — no umbrella/coverage — soulful, moaning male voice Sent text to Sarah & Taylor Powell telling them that the music has been carrying up to Pleasant St. Duet at Ember—pretty light, can't hear very far away
Thu. July 4 7:45p		<ul style="list-style-type: none"> 7:45p @29 Pleasant/800' 10:02p: @29 Pleasant /800' Cape Sea Grille/400' — "Lord I was born a gambling man" 			<ul style="list-style-type: none"> Spoke w/Sarah & Taylor Powell of Perks—music not very loud from Perks

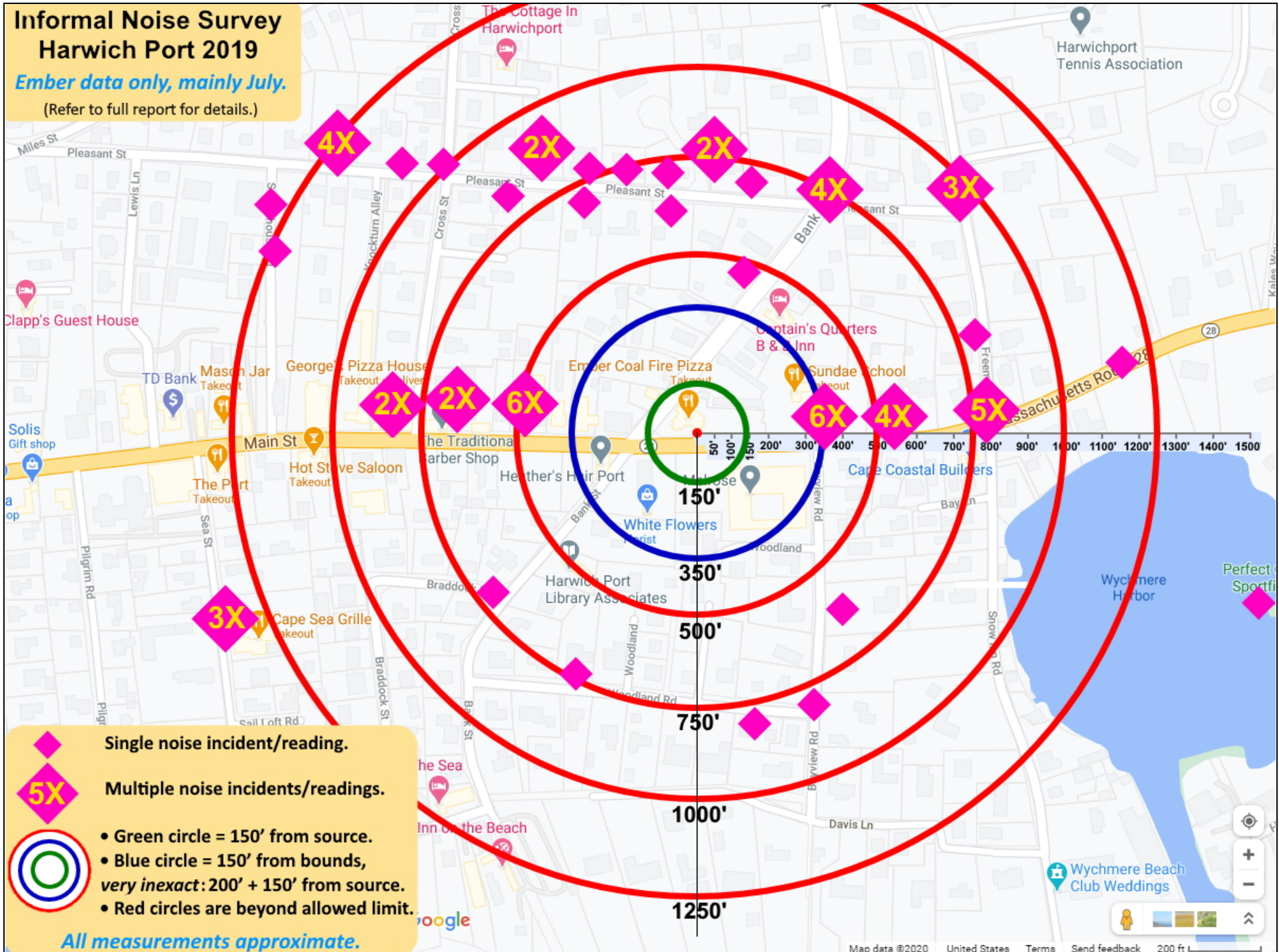
Date & Time	Wind & Weather	The Port	Perks	Ember	Notes
Fri. July 5 8:00p		<ul style="list-style-type: none"> • 8:00p @29 Pleasant/800': Music plainly audible inside our house • Schoolhouse Rd & Pleasant/800' • Cape Sea Grille/400' • "Rolling on the river" • 27 Sea St./650': "I'm a joker, I'm a toker..." • Sail Loft Rd & Sea St./700' 		<ul style="list-style-type: none"> • Freeman & Pleasant/975' plainly audible (may have been from The Port) • @Heathers Rt 28/~200' 	<ul style="list-style-type: none"> • Ember performer: single guy w/music/rhythm generator
Sat. July 6 2:30				<ul style="list-style-type: none"> • 7:15p: Harbor Rd. wharf /~1800' • Wychmere Harbor overlook / ~1200' 	<ul style="list-style-type: none"> • Out driving around, could hear music from Ember all around Wychmere Harbor
Sun. July 7 7:45		<ul style="list-style-type: none"> • 8:00p @29 Pleasant /800' (plainly audible inside our house) 		<ul style="list-style-type: none"> • 72 Pleasant/650' • 62 Pleasant /675 • Cross & Pleasant/950' ("You're so vain you probably think this song is about you") • 8:30p 29 Pleasant /1200'(guy talking on PA) • 9:00p 29 Pleasant—music getting loud • 9:30p 29 Pleasant, still very loud • 9:45p called police again • 26 Bank St./~1100' • Bayview & Woodland/900' • 10 Woodland/775' • 29 Woodland/775' • 25 Bayview/600' • Bayview & Rt. 28/350':pretty loud • @Cape Sea Grille /~1500' 	<ul style="list-style-type: none"> • A couple people playing at Port • Ember very loud all over HP <ul style="list-style-type: none"> — called police @9:00pm — officer didn't come by house — no noticeable change in volume — got louder at @9:45p (trying to go to bed) — called police again and was told that the officer had asked them to turn it down — but if they music was turned down, it was only very briefly — and by 9:45p, it was still louder than before, and continued louder until 10pm • made recording of music 1200' away
Mon. July 8 9:20p			<ul style="list-style-type: none"> • 29 Pleasant /~800' —moany guy plainly audible 		<ul style="list-style-type: none"> • Monday night: moaning guy at Perks
Thu. July 11 from 7:30 on	A bit of wind blowing from the south	<ul style="list-style-type: none"> • 29 Pleasant/~800' —intermittently plainly audible • Schoolhouse Rd & Pleasant/800' —very clear: bass guitar riffs • 39 Sea St./275' —deeper male voice rhythmic/thumping component • 29 Pleasant 9:30p — music from The Port — intermittent guitar licks from Ember 		<ul style="list-style-type: none"> from Ember • @Traditional Barber Shop/~800' (electric guitar licks) • 29 Pleasant 9:30p — intermittent guitar licks 	<ul style="list-style-type: none"> • Port performer quite loud • Perks performer fairly quiet • Ember went on break as I went by
Sun. July 14				<ul style="list-style-type: none"> • 29 Pleasant St./1200' —music from Ember quite loud 	<ul style="list-style-type: none"> • Music fairly loud from Ember, but didn't do survey
Mon. July 15	No wind		<ul style="list-style-type: none"> • 7:15p 29 Pleasant /~800' —moaning guy plainly audible inside house • 9:00p: ditto 		<ul style="list-style-type: none"> • 3rd Monday in a row w/Perks' moaning guy: sounds low, but w/amplification, voice carries and is quite loud —good bit louder than previously —could be heard inside house

Date & Time	Wind & Weather	The Port	Perks	Ember	Notes
Sat. July 20, 2019 7:30-on	Not much wind	<ul style="list-style-type: none"> • Music plainly audible from <i>either Perks or The Port</i> for a couple/few hours /800' — periodically howling • From 9:30 to closing, music was loud enough that it was echoing off houses to the north of us and still further away 			<ul style="list-style-type: none"> • Didn't do survey
Thu. July 25, 2019 8:45p		<ul style="list-style-type: none"> • 8:45p 29 Pleasant /~800' —electric guitar, wailing, almost steel guitar; intermittent, off & on — 9:00p singing "Blue Morning" — 9:20p: quite loud in house; wailing electric guitar, male singer • 9:20p; Schoolhouse Rd & Pleasant/800' —quite loud w/electric guitar licks • 9:50p 29 Pleasant/800' — getting louder as band goes into finale, heavy drums • 10:22p: music plainly audible • @Cape Sea Grille /~400' • Cape Sea Grille; • 39 Sea/275': quite/very loud 		<ul style="list-style-type: none"> • 28 & Bayview /~325' — plainly audible • @617 Rt 28/500' — guitar licks plainly audible • 49 Pleasant/850' (or might have been from the Port at 1050') • 19 Schoolhouse (in lot)/ ~1200: quite loud, people on PA system coming from Ember • @Cumby's /~450' — plainly audible 	
Fri. July 26, 2019 8:45p		<ul style="list-style-type: none"> • 39 Sea St./275' — loud; "Stuck in the Middle with You" • 9:00pm @29 Pleasant/~800' — music plainly audible • Anchorage parking lot • 9:45pm @29 Pleasant/~800' 		<ul style="list-style-type: none"> • 52-54 Pleasant/800' (or might have been from the Port at 1150') • @Cumby's /~450' — very plainly audible • 37 Bay View: ~350' — plainly audible 	
Sat. July 27 2019 6:15p		<p>(Port OR Perks—didn't do survey)</p> <ul style="list-style-type: none"> • 6:15pm @29 Pleasant/~800' — not loud, but plainly audible 		<ul style="list-style-type: none"> • 9:45pm @29 Pleasant/~1200' — plainly audible inside house—space age-y music; trying to go to bed 	
Sun. July 28 2019 8:30p	Wind coming from south	<p>(from Port OR Perks—couldn't be sure)</p> <ul style="list-style-type: none"> • @Cape Sea Grille /~450' — "Stand by Me" — pretty loud, though wind is coming from the south 		<ul style="list-style-type: none"> • Bank & Pleasant /700' — plainly audible • 72 Pleasant/650' — "Ain't No Sunshine When She's Gone" • 66 Pleasant /675' • @United Gas /~550' — very plainly audible 	
Mon. July 29 2019 8:15			<ul style="list-style-type: none"> • 8:15: @29 Pleasant/~800' — quite loud, male voice, moany • 9:00p: ditto • 9:30p: ditto 		
Thu. Aug. 1		<p>(Port OR Perks—didn't do survey)</p> <ul style="list-style-type: none"> • from 7:30-9:30p: @29 Pleasant/~800' — hearing music inside our house • from 9:15 on: heavy drums off & on 			

Informal Noise Survey Harwich Port 2019

Ember data only, mainly July.

(Refer to full report for details.)



◆ Single noise incident/reading.

◆ 5X Multiple noise incidents/readings.

- Green circle = 150' from source.
- Blue circle = 150' from bounds, very *inexact*: 200' + 150' from source.
- Red circles are beyond allowed limit.

All measurements approximate.

From William Vranos

October 3, 2019

To the noise committee:

I will be unable to attend the next meeting so I hope that this letter can be entered into the record.

I live at 43 Sea Street and am a direct abutter to The Port and Perks. I have many thoughts about the noise problems in the neighborhood but I think initially, in this letter, I would like to express to the committee the problems created for myself and my family due to excess noise from these establishments.

To keep this in context, I believe the committee should understand that when I purchased my home the Port was a four star restaurant with only side walk seating and Perks did not exist in his current form. It is upsetting to hear people suggest that I should have to tolerate excess noise because of the location of my house.

Also I believe the community should understand that I am not anti music or anti business. I am anti excessive noise.

Since these establishments have been allowed to employ outside entertainment, the lives of me and my family has changed dramatically. We have been forced to put window unit air conditioners and fans in all the rooms so that "white noise " can drown out the noise from these businesses. I did not buy a 2nd home near the ocean with the expectation that I would not be able to open the windows in the summer.

Many evenings, we have been forced indoors from cook outs and other social activities because of the noise. When we have guests with small children who go to bed early or on evenings when I will commute from work from this house and need to go to bed before 10 o'clock, sleep is disrupted. Due to this, we have spent less time at our home the past couple of summers. Sometimes it is just not relaxing to be there. Think about that. We feel forced from our own home.

I have, quite frankly, given up on calling the police. The officers are either so confused about the ordinance or show up when things have quieted down, that the call is ineffective. It is a tremendously frustrating situation for me and I believe for the officers.

There are evenings, when the entertainer is high quality and the noise level is low, that it can be pleasant have music played next door. Other evenings, it seems poor quality entertainers make up for their lack of talent by being loud and exhorting the crowd to make noise as well. One even handed out cowbells. As a starting point, I think we can all agree that this type of entertainment is not suitable for a mixed commercial/residential area.

I think a large part of the problem is the current wording of the noise ordinance. I do believe that the businesses have capitalized on the confusion. "Plainly audible" at 150 feet is confusing at times (although not so confusing that it should not be enforced when there is clear violation). For instance how does a cowbell get factored in and what good is it if the officer shows up once the cowbells are done being played? Also, I once asked an officer where he thought 150 feet was and he walked me down the road to a spot that was almost 150 yards away. Furthermore, where someone lives distance wise, should not affect the officer's response. If it is too loud for a reasonable person to be able to enjoy his own property, the noise ordinance should protect that person. Laws and ordinances are designed to protect individuals' privacy and safety. Because patrons like loud noise and the town likes tax collection, does not mean that the rights of individuals can be abused.

It seems to me, that with properly written, easily understood, and thus enforceable ordinance, which sets a reasonable noise level, everyone can be happy. I understand that I may have to put up with some background noise but the establishment should understand that the entertainers they hire and crowds need to stay within certain boundaries as well. These are not large venues; it seems solvable.

Sincerely,

William Vranos

from Gary and Lisa Sawin

As much as we would love to be there on Tuesday at 5PM the day/time is problematic for us due to work commitments, but nonetheless we would love to share our experience living next door to a strictly outside venue.

First and foremost we purchased our guest house in 1982 living next door to a Leather Shop and private residence where Perks is now located. Since Perks started serving alcohol and having live entertainment in their driveway we have been unable to rent rooms- because let's face it you rent a room to sleep!

We are unable to remove our storm windows on that side of the house due to the music/noise, our porch on that side which has become unusable.

We have been threatened by patrons for using a weed whacker at 6PM while music was playing. The owner has also threatened us for calling the police.

Every night we shut all of our windows and doors and hunker down in the middle of our house where the music/noise is somewhat muffled but still audible. The music is so loud that the patrons talk over it. Our animals are also frightened by the loud sounds.

After 10PM when the music stops there is still no reprieve from it all- Perks becomes a frat party/gong show audition till 1AM. That's when corn hole and Large Jenga games start, loud singing from patrons, people cheering each other on while game playing, cow bells are ringing, yelling up the driveway to people passing by etc. At 1AM people start yelling on their way out of the driveway and this continues down the street.

Family members have changed bedrooms to be on other sides of the house but it can still be heard even on the other side. There's no going to bed early in our house down there!

We actually have 2 buildings on our property- our back building has become totally unusable due to the music/noise from Perks. You can actually hear every conversation that takes place at the bar from many of the rooms.

Every time we come down we are so excited to open our windows and enjoy the peace and quiet while inhaling the sea air- the only time we were able to enjoy that this year was Easter and one day in August when it rained in the evening.

Visiting for a week is one thing but 7 nights a week during the summer is absurd to those who live around it.

There has never been any attempt by the owner of Perks to keep the music/noise at a reasonable level that would be considerate to his neighbors. We believe that the first permit given out years ago stated "Acoustic Music" what has changed?

Lisa and Gary Sawin

NANTUCKET OUTDOOR ENTERTAINMENT LICENSES FOR 2018

(may not be complete)

(1) Breeze Bar & Cafe

LICENSE FEE: \$100.00

THE LICENSING BOARD for the
TOWN OF NANTUCKET, MASSACHUSETTS
HEREBY GRANTS AN
ENTERTAINMENT LICENSE

▶ **SEVEN DAYS** ◀

BUSINESS: The Restaurant at Easton Street, LLC
DBA: Breeze Bar & Cafe
PREMISES: 77 Easton Street
Nantucket, MA 02554
MANAGER: James H. Holmes

LICENSED PREMISES DESCRIBED AS:
Hotel consisting of ground level space and 4 stories. 1st floor including lobby/cafe/lounge/bar, pool area and pool deck; and covered. Main entrance on Easton Street. Multiple egresses.
SEATING CAPACITY:
ALL DECKS COMBINED: 234
1st FLOOR BALLROOM: 300
4th FLOOR BAR & DECK: 50

Approved Entertainment:

- INSTRUMENTAL/VOCAL MUSIC
- DISC JOCKEY/KARAOKE
- DANCING (Ballroom)
- RADIO/CD PLAYER
- TELEVISION/WIDESCREEN
- MOVIE THEATRE (1) SCREEN
- EXHIBITIONS/TRADE SHOWS
- STAGE PLAYS (1) STAGE
- FLOOR SHOWS
- ATHLETIC EVENTS
- AMPLIFIERS (INDOORS ONLY)

INDOORS: Conditions of License:

- **HOURS: 6:00 am to 1:00 am;** 7 Days
- All Indoor Entertainment must end by 1:00 am.
- Amplified Entertainment Permitted

OUTDOORS: Conditions of License:

- **HOURS: 9:00 am to 8:00 pm;** 7 Days
- All Outdoor Entertainment must end by 8:00 pm.
- Non-Amplified Live Music Permitted
- **NO AMPLIFIED OUTDOOR ENTERTAINMENT**
- Conditions: According to the restrictions in Special Permit #12-05 and Modification #4 to same.

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of Section 183A, Chapter 140 of the Massachusetts General Laws, and any rules or regulations made thereunder by the licensing authorities.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed his official signature on this 20th day of December 2017.

Dawn Hill Holdgate
Chairman, Board of Selectmen

THIS LICENSE WILL EXPIRE DECEMBER 31, 2018

**Unless earlier suspended, cancelled, or revoked*

This License Shall Be Displayed On the Premises in a Conspicuous Place Where it May Be Easily Seen.

(2) Nantucket Prime

LICENSE FEE: \$100.00

THE LICENSING BOARD for the
TOWN OF NANTUCKET, MASSACHUSETTS
HEREBY GRANTS AN
ENTERTAINMENT LICENSE

▶ **SEVEN DAYS** ◀

BUSINESS: Nantucket Prime, LLC
DBA: NANTUCKET PRIME
PREMISES: 29 Broad Street
Nantucket, MA 02554
MANAGER: Matthew Sullivan

LICENSED PREMISES DESCRIBED AS:
Dining Room, Bar Area and Outdoor Patios, including Outdoor Bar.
Maximum Occupancy: 112

Approved Entertainment:

- INSTRUMENTAL MUSIC
Jazz Duo or Trio, Piano, Acoustic Guitar,
Wind, Sax
- VOCAL MUSIC (1 Vocalist)
- DANCING (10' x 10' Dance Floor)
- RADIO; CD PLAYER; IPOD
- TV (4) WIDESCREENS (27"+)
- AMPLIFIED MUSIC THROUGH SPEAKERS

Conditions of License:

- **HOURS (INDOORS): 11:00 am-1:00 am;** 7 Days
- **HOURS (PATIO): 11:00 am-10:00 pm;** 7 Days
- All Indoor Entertainment must end by 1:00 am.
- All Patio Entertainment must end by 10:00 pm.

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of Section 183A, Chapter 140 of the Massachusetts General Laws, and any rules or regulations made thereunder by the licensing authorities.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed his official signature on this 20th day of December 2017.

Dawn Hill Holdgate
Chair, Select Board

THIS LICENSE EXPIRES DECEMBER 31, 2018

**Unless earlier suspended, cancelled, or revoked*

This License Shall Be Displayed On the Premises in a Conspicuous Place Where it May Be Easily Seen.

(3) Le Languedoc

LICENSE FEE: \$100.00

THE LICENSING BOARD for the
TOWN OF NANTUCKET, MASSACHUSETTS
HEREBY GRANTS AN
ENTERTAINMENT LICENSE

▶ **SEVEN DAYS** ◀

BUSINESS: Twenty Four Broad Street Inc.
DBA: LE LANGUEDOC
PREMISES: 24 Broad Street
Nantucket, MA 02554
MANAGER: Neil Grennan

LICENSED PREMISES DESCRIBED AS:
First Floor Living Room, Library, Lobby Areas,
Lounge.

OCCUPANCY:
FIRST FLOOR: 78
PATIO: 40
BASEMENT: 20

Approved Entertainment:

- RADIO; PANDORA SYSTEM, CD PLAYER; IPOD FOR BACKGROUND MUSIC INDOORS AND OUTDOORS
- 27" FLATSCREEN TV BEHIND BAR IN LOWER DINING ROOM
- 27" TV FOR EACH GUEST ROOM (4)

Conditions of License:

- **HOURS: 10:00 am to 10:00 pm; 7 Days**
- All Entertainment must end by 10:00 pm.
- **LOCATION:** Interior of the building AND outdoor patio.

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of Section 183A, Chapter 140 of the Massachusetts General Laws, and any rules or regulations made thereunder by the licensing authorities.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed his official signature on this 20th day of December 2017.

Dawn Hill Holdgate
Chair, Select Board

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(4) Met on Main

LICENSE FEE: \$100.00

THE LICENSING BOARD for the
TOWN OF NANTUCKET, MASSACHUSETTS
HEREBY GRANTS AN
ENTERTAINMENT LICENSE

▶ **SEVEN DAYS** ◀

BUSINESS: The Metropolitan Club, Inc.
DBA: MET ON MAIN
PREMISES: 38 Main Street
Nantucket, MA 02554
MANAGER: Carl Goldberg

LICENSED PREMISES DESCRIBED AS:
Restaurant with table and bar seating, outdoor patio and to-go food. Entrance/exit on Main Street. Two exits in back, one to alley; one to patio. Patio has one exit to alley.

Interior Restaurant Occupancy: 49
Patio Occupancy: 41
Employees: 10

Approved Entertainment INDOORS:

- **INSTRUMENTAL MUSIC**
3-5 Instruments to include: Keyboard, Saxophone, String Instruments
- RADIO; IPOD; CD
- TELEVISION

Conditions of License INDOORS:

- **HOURS: 8:00 am to 12:00 am** (Pre-Recorded Music)
- **HOURS 8:00 am to 10:00 pm** (Live Music)
- **NO AMPLIFICATION**
- Windows/Doors to patio must be kept closed after 9:30 pm.

Approved Entertainment OUTDOORS:

- RADIO; IPOD; CD
- **NO LIVE MUSIC OR TV MONITORS**

Conditions of License OUTDOORS:

- **HOURS: 9:00 am to 9:30 pm**
- **AMPLIFICATION:** Maximum Two (2) Speakers
- Speakers to be pointed toward restaurant at all times and away from neighboring properties.
- Speakers to be on Automatic Timers for shut down at 9:30 pm.

SELECT BOARD REVIEW:

- The Select Board will review the above in the event any verified noise complaints are received and/or violations to license conditions are reported by the Business License Inspector (per BOS 3/16/16)

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of Section 183A, Chapter 140 of the Massachusetts General Laws, and any rules or regulations made thereunder by the licensing authorities.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed his official signature on this 20th day of December 2017.

Dawn Hill Holdgate
Chair, Select Board

THIS LICENSE WILL EXPIRE DECEMBER 31, 2018

**Unless earlier suspended, cancelled, or revoked*

This License Shall Be Displayed On the Premises in a Conspicuous Place Where it May Be Easily Seen.

(5) Slip 14

LICENSE FEE: \$100.00

THE LICENSING BOARD for the
TOWN OF NANTUCKET, MASSACHUSETTS
HEREBY GRANTS AN
ENTERTAINMENT LICENSE

▶ **SEVEN DAYS** ◀

BUSINESS: Fish In The Spread, LLC
DBA: SLIP 14
PREMISES: 14 Old South Wharf
Nantucket, MA 02554
MANAGER: Jonas M. Baker

LICENSED PREMISES DESCRIBED AS:
Bistro Style Restaurant with indoor seating and patio seating under an awning. There are 3 entrances also acting as exits on the first floor. Second floor storage as well as prep kitchen, three restrooms.

Maximum Occupancy: 135

Approved Entertainment:

- RADIO; CD; IPOD
- TELEVISION
- NON-AMPLIFIED INSTRUMENTAL MUSIC

Conditions of License:

- HOURS/LIVE MUSIC: 3:00 pm-7:00 pm;
7 Days
- All Live Entertainment must end by 7:00 pm.
- LOCATION: Live Entertainment on East Corner of Outdoor Patio.

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of Section 183A, Chapter 140 of the Massachusetts General Laws, and any rules or regulations made thereunder by the licensing authorities.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed his official signature on this 20th day of December 2017.

Dawn Hill Holdgate
Chair, Select Board

THIS LICENSE EXPIRES DECEMBER 31, 2018

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This License Shall Be Displayed On the Premises in a Conspicuous Place Where it May Be Easily Seen.

(6) Nantucket Lobster Trap

LICENSE FEE: \$100.00

THE LICENSING BOARD for the
TOWN OF NANTUCKET, MASSACHUSETTS
HEREBY GRANTS AN
ENTERTAINMENT LICENSE

▶ **SEVEN DAYS** ◀

BUSINESS: Larry B. Whelden
DBA: NANTUCKET LOBSTER
TRAP
PREMISES: 23 Washington Street
Nantucket, MA 02554
MANAGER: Larry B Whelden

LICENSED PREMISES DESCRIBED AS:
One Room Inside, Patio Outside.

Maximum Occupancy: 91

Approved Entertainment INDOORS:

- LIVE VOCAL MUSIC
- LIVE INSTRUMENTAL MUSIC
1-5 Acoustic String Instruments
- RADIO; IPOD; CD
- TELEVISION

Conditions of License INDOORS:

- LIVE MUSIC HOURS: 4:00 pm to 10:00 pm
- Recorded Background Music Only allowed until Closing at 1:00 am.
- Acoustic Music may be plugged into small amplifiers and stereo speakers on a limited basis. (BOS 9-10-14)

Approved Entertainment OUTDOORS:

- LIVE INSTRUMENTAL MUSIC
1-5 Acoustic String Instruments
- RADIO; IPOD; CD (Recorded Music)

Conditions of License OUTDOORS:

- HOURS: 4:00 pm to 10:00 pm
- ALL MUSIC; ENTERTAINMENT ON PATIO
MUST END AT 10:00 PM

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of Section 183A, Chapter 140 of the Massachusetts General Laws, and any rules or regulations made thereunder by the licensing authorities.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed his official signature on this 20th day of December 2017.

Dawn Hill Holdgate
Chair, Select Board

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(7) Great Harbor Yacht Club

LICENSE FEE: \$100.00

THE LICENSING BOARD for the
TOWN OF NANTUCKET, MASSACHUSETTS
HEREBY GRANTS AN
ENTERTAINMENT LICENSE

▶ **SEVEN DAYS** ◀

BUSINESS: Great Harbor Yacht Club, Inc.
DBA: Great Harbor Yacht Club
PREMISES: 96 Washington Street
Nantucket, MA 02554
MANAGER: Stephen Creese

LICENSED PREMISES DESCRIBED AS:
Great Harbor Yacht Club's Sailing Center which includes Snack Bar, Meeting Room, Lawn Area in Front of Sailing Center and Clubhouse including 2 Restaurants, Ball Room, First and Second Floor Decks, 2 Lounges and Lawn Area in Front of Clubhouse.

Conditions of License INDOORS:

- **HOURS (Mon. – Sat.): 11:00 am to 12:00 am**
- **HOURS (Sunday): 9:00 am to 12:00 am**
- Inside Clubhouse and Sailing Center

Conditions of License OUTDOORS:

- **HOURS (Sun. – Thurs.): 11:00 am to 9:00 pm**
- **HOURS (Fri. – Sat.): 11:00 am to 10:00 pm**
- Outdoor Area to include Lawn Area for Clubhouse and Sailing Center

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed his official signature on this 20th day of December 2017.

Dawn Hill Holdgate
Chairman, Board of Selectmen

THIS LICENSE WILL EXPIRE DECEMBER 31, 2018

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(8) Cisco Brewers

LICENSE FEE: \$100.00

THE LICENSING BOARD for the
TOWN OF NANTUCKET, MASSACHUSETTS
HEREBY GRANTS AN
ENTERTAINMENT LICENSE

▶ **SEVEN DAYS** ◀

BUSINESS: Cisco Brewers, Inc.
DBA: Cisco Brewers
PREMISES: 5 Bartlett Farm Road
Nantucket, MA 02554
MANAGER: Randolph Hudson

LICENSED PREMISES DESCRIBED AS:
Garden Area starting at Northeast corner of Brewery Retail, heading North for 5 feet and turning West along Garden for 60 feet, turning South for 100 feet to edge of Patio, turning East to Southwest corner of Brewery wall, turning North along Brewery wall to beginning at Northeast corner of Retail.

Approved Entertainment:

- **INSTRUMENTAL MUSIC**
(4-7 Instruments)
Guitar; Drums; Bass; Mandolin;
Violin; Brass
- **VOCALISTS (1-3)**
- **DISC JOCKEY**

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of Section 183A, Chapter 140 of the Massachusetts General Laws, and any rules or regulations made thereunder by the licensing authorities.

Conditions of License:

- **HOURS: 2:00 pm to 7:00 pm; 7 Days**
- All Entertainment must end by 7:00 pm.
- **ACOUSTIC MUSIC ONLY** to be played through house system.
- Entertainment only within designated perimeters of Courtyard.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed his official signature on this 20th day of December 2017.

Dawn Hill Holdgate
Chairman, Board of Selectmen

THIS LICENSE WILL EXPIRE DECEMBER 31, 2018

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