

CITY OF NEWTON

BOARD OF LICENSE COMMISSIONERS

Chair, Kathleen M. McCarthy, Dina Conlin & Gloria M. Gavis

Fax: (617) 552-7063 Email: Licensing@newtonma.gov

MINUTES

DATE: November 29, 2016

COMMISSIONERS PRESENT: Dina Conlin and Kathleen McCarthy

STAFF: Sgt. George McMains, Mary Jane Pendergast and Attorney Maura O'Keefe

Meeting called to order at 6:30PM

The October 7, 2016 special hearing minutes were approved 2-0.

The October 25, 2016 minutes were held over for approval next hearing.

The 2017 hearing schedule was held over waiting for Commissioner Gavis's review for next hearing.

Discussion on BYOB – Newton residents were asked to speak. A raise of hands showed 9 people to speak this evening.

Jill Kernerschon owner of Paint Bar is opposed to BYOB. She feels there is no control over how much the customers can drink. She feels it is the responsibility of the owners to monitor the amount people drink. This would be a negative choice for her.

William Stone, a Newton resident for twenty years is in favor of BYOB. He thinks it would be a great addition to the neighborhood and beer and wine would complement the restaurants.

Artur Andronic, owner of Moldova is in favor of BYOB. He feels it can be regulated. He gathered many signatures of a positive response on BYOB. There were 235 positive signatures and 0 negative signatures. 135 were Newton residents.

Rick Heller from Legal Sea Food, a 27 year resident, is opposed to BYOB. He felt Regulations with the licensing board and public safety were issues of concern. They train their managers to protect the restaurant and public due to excess alcohol. They are subject to discipline with the licensing board and the police. The rules of the ABCC are designed to protect the restaurant and the public. He feels restaurants invest a lot of money to do this.

David Marks, a Newton resident is in favor of BYOB. He feels it would help people who can't afford the cost of the liquor license. It should be limited to beer and wine. It would help to build up the village and should attract a range of restaurants. It would especially help a lot of small restaurants.

Seana Gaherin from Dunn-Gaherins Restaurant, 25 years in business with a liquor license is opposed to BYOB. She thinks everyone should follow the same protocol when applying for a liquor license. Economic hardship should not be considered to compete when starting out in a business. She feels like she pays taxes and the liquor license was her biggest investment. She feels the contents of the bottles are not being checked and it's a time where the opioid epidemic brings up concerns. She feels that this devalues everything they are trying to do in regards to their restaurants. Public safety issues and lack of control are a big concern. She brought a letter from the restaurant Fiorella's who were unable to attend which will be recorded in the record. She also made a comment on difficult economic times, and mentioned that liquor licenses are available and why should people get these on a lesser value.

Bill Honeycote from Brewers Coalition is opposed to BYOB. All the licenses are regulated already, beverage fees and meal taxes, staff training, storage and delivery, coolers and running them. More important the staff is trained on serving the alcohol. 4-12 percent alcohol content in the bottles, there would be no regulation. He has vested heavily in his business. His staff is dispensing the alcohol and is highly trained and feels that public safety is the main concern with BYOB. They should go through the same process that he did notifying abutters, etc.

Karl O'Hara from Paddy's Pub and O'Hara's Restaurant is opposed to BYOB. He feels all restaurants should apply for a liquor license.

Lumiere Restaurant is opposed to BYOB. As a new business owner he has an appreciation for the process with ABCC. He is concerned with public safety issues and wouldn't feel comfortable with it. His staff is highly trained and he is opposed to the whole BYOB process.

Councilman Brian Yates, Ward 5 is opposed to BYOB. He has been to Dunn-Gaherin's since it changed names within 5 years and has seen the neighborhood transform over the years. He mentioned crime in the neighborhood years ago and patrons that drank excess alcohol and how Seana Gaherin has changed the community and runs a great restaurant. The local community has been hit hard with local bridges being under construction. BYOB would be bad for business to all current business's owners. Dunn-Gaherin's and Echo Bridge Restaurant are in the area. He would like to maintain the quality of life and keep the level of service which is superb in the neighborhood.

Councilman Jay Harney, Ward Four is not in favor of BYOB. As a member of the public safety community, he asked about the police and how they weighed in on this. Sgt. McMains commented that they have spoken about it. He mentioned the Trubadour. He said Patty's Pub spent a lot of money to make both Paddy's Pub and O'Hara's what it is today. Brewers Coalition has also been made into a nice restaurant. It needs to be looked at very seriously. He would urge for BYOB to not happen. Pillars of the community are the older restaurants and success is at a cost.

Mike Emery from Bertucci's is opposed to the BYOB. Regulations, training and public safety are taken very serious.

Councilman Alison M. Leary, Ward 1 is in favor of BYOB. She feels it's not in competition with the regular restaurants. She mentioned the rules and regulations. She wanted to clarify if you have a liquor license no bottles could be brought into your establishment. She thinks that it is more consumer choice. Yelp is big on BYOB and draws a lot of people in. She doesn't think it undermines any other restaurants and would be in favor of it. She doesn't agree and thinks misinformation is given to people and they don't understand the rules. She feels it would help the Newton Corner and Nonantum areas. She pointed out she would not be in favor if it undermined public safety, if there was a question of over serving people, etc.

Councilman John Rice, Ward 5 is not in favor of BYOB. O'Haras and Dunn Gaherin's are in his ward. He mentioned the food trucks and thought of the negative impact. A lot of restaurants are being put in and it's making for a lot competition. He mentioned a lot of commercial growth. He feels they have made significant contributions and investment in their facilities. Public safety is also a big issue.

Anna Manturis from Tartufo Restaurant is not in favor of BYOB. She has been in business for 13 years in business, added value and equity for her. If she sells it's her income and her retirement, 30 percent are liquor sales. They attend Tips classes and are paying license fees. When will it stop! Will people be able to bring in their own baked goods, etc?

David Murphy is in favor of BYOB. He doesn't feel that it would impact restaurants. He doesn't see it impacting an existing restaurant. He is in favor of beer and wine.

Bill Doherty is not in favor of BYOB. Beer and wine stocking is an issue. It's a mixture of a lot of different things.

Chad Burns from Farmstead Table is not in favor BYOB. It is a competition and it will hurt the small restaurants.

Patrick O'Hara from Patty's Pub and O'Hara's Restaurant is opposed to BYOB. He has been in business for 30 years. All of his competition is here today. He wants to be in business another thirty years as well.

Anthony Vega from Bocca Bella Cafe and Bistro is not in favor of BYOB. Safety should be taken into consideration. He agreed with all the Newton residents' responses before him.

Additional emails from Newton residents will be scanned into the record and posted for people to review. They were also told to watch the on line postings for future BYOB meetings within a six month time frame.

Attorney Maura O'Keefe requesting a pre-meeting discussion with the commissioners on fee schedules.

1. Implementation of fees
2. Classes of Alcohol license with and without Common Victuallers

Attorney Maura O'Keefe wanted to address the informal ways Common Victualler license have been give out in the past. The differences between the licensing department and the food permits issued by the inspectors brought up some issues that need to be addressed, especially how the health inspectors are issuing them and how the seating is being handled, which became a big issue, she looked at unique instances liquor licenses with no CV's for instance worked, and clubs were also discussed. The Common Victualler rule was pointed out where the food is prepared on the property. Unique instances were looked at with and without common Victuallers. Retail package stores were discussed, Attorney O'Keefe pointed out retail package stores only have tastings under Section 12 premises, if you have a retail package store with Common Victualler no tasting can be done. You can't walk around with an open bottle. She wanted to make sure the Commissioners were aware of this rule.

The Commissioners requested a memorandum would be great to update people. Attorney O'Keefe thought that was great and stated when anomalies come up she could address them. It was discussed that a meeting would be best. She also commented about the new staff, they see things through fresh eyes and pick up on new things. The commissioners are requesting a meeting with the staff, the Law Department and Sgt. McMains. They would like to meet on a regular basis, have an open forum and it would be noticed as a public meeting.

Fees are consistent across the board but would like to have a group talk about this. Staff is on top of all the fees and license fees. Questions generated some new ideas. The fee schedule has no renewal fee as of now. She feels it's an oversight and would like to check with other towns. She asked if the administrative staff could gather information from other communities regarding their renewal fees. Attorney O'Keefe will put together a list and organize a meeting. Perhaps we could have the Commissioner of Parks and Recreation join us as The Cove have their own licenses, policies and procedures. She would like to know what is expected at The Cove. She is going to start to organize a memorandum and an agenda.

ONE DAY TEMPORARY WINE AND MALT LICENSE:

Application filed by Katherine Hopkins, 777 Dedham Street, Newton, MA 02459. **For a one day temporary wine and malt license for a holiday party on December 14, 2016 from 3:00 PM – 8:00 PM to be held at Mount Ida College, 777 Dedham Street, Newton, MA 02459.**

Estimated Attendance: 125-150, Ages: All

Approved 2-0

Application filed by Artur Andronic, 245 Main Street, Apartment 16, Watertown, MA 02472. **For six (6) one day temporary wine and malt license for wine tasting paired with Moldovan Food, to be held at Moldova Restaurant, 344 Watertown Street, Newton, MA 02458.**

**Wine tasting paired with Moldovan Food
Wednesday, November 30, 2016 from 2:00 PM – 9:00 PM
Estimated Attendance: 50, Ages: 21+
Approved 2-0, due to contingency with compliance**

Wine tasting paired with Moldovan Food
Saturday, December 3, 2016 from 2:00 PM – 9:00 PM
Estimated Attendance: 50, Ages: 21+
Approved 2-0, due to contingency with compliance

Wine tasting paired with Moldovan Food
Wednesday, December 7, 2016 from 2:00 PM – 9:00 PM
Estimated Attendance: 50, Ages: 21+
Approved 2-0, due to contingency with compliance

Wine tasting paired with Moldovan Food
Saturday, December 10, 2016 from 2:00 PM – 9:00 PM
Estimated Attendance: 50, Ages: 21+
Approved 2-0, Due to contingency with compliance

Wine tasting paired with Moldovan Food
Wednesday, December 14, 2016 from 2:00 PM – 9:00 PM
Estimated Attendance: 50, Ages: 21+
Approved 2-0, Due to contingency with compliance

Wine tasting paired with Moldovan Food
Saturday, December 17, 2016 from 2:00 PM – 9:00 PM
Estimated Attendance: 50, Ages: 21+
Approved 2-0, Due to contingency with compliance

Sargent McMains spoke with Mr. Artur Andronic regarding the ABCC regulations on storing alcohol and disposing of alcohol properly. He will make a visit to the restaurant to make sure everything is in compliance. The commissioners advised Mr. Andronic to read and comply with the ABCC regulations as soon as possible.

ONE DAY TEMPORARY WINE AND MALT LICENSE AND A ONE DAY ENTERTAINMENT LICENSE: (2)

Application filed by Suzanne Westcott, 21 Essex Road, Chestnut Hill, MA 02467. **For a one day wine and malt license and a one day entertainment permit. To be held at the Church of the Redeemer, 379 Hammond Street, Chestnut Hill, MA 02467**

Dinner and Cocktails for a one day temporary wine
Sunday, January 29, 2017 from 5:00 PM – 8:00 PM
Church of the Redeemer, 379 Hammond Street, Chestnut Hill, MA 02467
Estimated Attendance: 100, Ages: All
Approved 2-0

Reception/Concert for a one day temporary wine and malt and a one day temporary entertainment license
Friday, April 21, 2017 from 7:30 PM – 10:30 PM
Church of the Redeemer, 379 Hammond Street, Chestnut Hill, MA 02467

Estimated Attendance: 100, Ages: All
Entertainment consists of a Musical Concert
Approved 2-0, contingent upon updated insurance form

Application filed by Christina Khouri, 275 Grove Street, Suite 1-110, Newton MA 02466. **For a one day wine and malt license and a one day entertainment license.**

Company holiday party
Wednesday, December 14, 2016 from 2:00 PM – 7:00 PM
Windsor Club, 1601 Beacon Street, Waban, MA 02468
Estimated Attendance: 100: Ages: 21+
Entertainment consists of Live Music
Approved 2-0

Application filed by Janet Giroux, 66 Andreus Road, Marlborough, MA 01752. **For a one day wine and malt license and a one day entertainment license.**

Company Holiday Party
Tuesday, December 13, 2016 from 5:00 PM – 11:00 PM
Windsor Club, 1601 Beacon Street, Waban MA 02468
Estimated attendance: 60, Ages: All
***Entertainment consists of live music (3 piece Jazz trio) and Amplification system**
Approved 2-0

ANNUAL ENTERTAINMENT LICENSE WITH SUNDAY ENTERTAINMENT

Application filed by Jill Kerner Schon, 823 Washington Street, Newton MA. **For an annual entertainment license for the Paint Bar LLC, 823 Washington Street, Newton MA 02460.**

Entertainment consists of: Recorded Music

Approved 2-0

NEW COMMON VICTUALLER

Application filed by Attorney Robert L. Allen Jr, 300 Washington Street, 2nd Floor, Brookline, MA 02445 for d/b/a Finagle a Bagel, 77 Rowe Street, Newton, MA 02466. **For a new Common Victualler license. Seating is 40 interior and 9 (exterior) patio. Hours of operation are 6:00 AM – 7:00 PM seven days a week. Manager is Susan Gould. To be exercised at 77 Rowe Street, Newton, MA 02466.**

Approved 2-0. Commissioners requested to have a menu for the file.

CHANGE OF MANAGER

Application filed by Attorney Richard Heller, One Seafood Way, Boston MA 02210. **For a change of manager. Old manager is Mike Edwards new manager is Christianne Mary Chetkin, to be exercised at Legal Seafood, 43R Boylston Street, Newton MA 02167**

Approved 2-0

Meeting adjourned at 8:30 P.M.

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Addendum: BYOB Responses from Newton Residents

My husband and I support the BYOB option in Newton. This just seems to be the civilized thing to do, and would help smaller and struggling restaurants make it in this city.

Thank you,

Janet and Manny Paraschos

Please put me on the record opposing the thought of allowing B.Y.O.B. in Newton. Holders of liquor licenses in Newton are heavily regulated, on both a city and state level, when it comes to compliance, fees (including beverage and meals taxes collected on behalf of the City and the Commonwealth), staff training and liquor liability insurance. We have invested heavily in our business by building bars, storage and delivery areas for product, draft systems and coolers, along with power to run these coolers and operate machinery, which allows us to dispense product. Most importantly, we take great pride in serving our guests safely and being able to monitor how much someone consumes, because our trained staff members are dispensing the product. We take the appropriate action to prevent issues that compromise public safety when it comes to over consumption, because we are able to easily monitor how much is consumed by having a record/tab for our guests. In addition, we know the alcohol content (ABV) of all products we sell. People who are allowed to bring their own wine, beer or alcohol in to an establishment will bring in whatever product they desire. For example: The operators of businesses that allow B.Y.O.B. will have no way of knowing the ABV of a beer someone is drinking. There is a big difference between beers that have a 4% ABV and those that have a 12% ABV. A guest who consumes two 16 oz. beers with a 4% ABV may not be affected at all, while a guest who consumes two 16 oz. beers with a 12% ABV may be severely intoxicated. This issue especially highlights the dangers associated with B.Y.O.B.

Newton has a vibrant restaurant scene now. Our business owners are responsible operators and we give back as much as possible, to the cities that we operate in. The operators of these restaurants depend on the markup associated with "selling" alcoholic beverages, which allows us to hire and to pay our staff, bills, taxes, occupancy costs and hopefully be profitable.

Please consider how this potential legislation will impact those who have invested in Newton. We are constantly facing challenges that make it more difficult for us to remain in business. Please also consider how this potential legislation could compromise public safety.

Bill Honeycutt-

Proprietor- Brewer's Coalition

As the owner/manager of Deluxe Station Diner LLC I would ask you to VOTE NO on the idea of BYOB. for the following reasons,

- 1...I pay a fee to Newton of \$3800. to have the right to sell alcohol in my restaurant.
- 2...We pay for required Liquor Liability insurance.

- 3...Our managers and bar tenders and servers are trained on the rules of the ABCC and how to deal with patrons who are drinking too much.
 - 4...we have to police all customers to insure the legal age to drink and not intoxicated already.
 - 5...A substantial part of our gross sales and net profits are derived from the sale of alcohol. if BYOB is allowed why would customers buy our liquor, People can't bring their own food and expect us to cook it for them.
 - 6...This will hurt all restaurants and bars in Newton.
 - 7...The way I understood it was a way for small dry towns that have no license in town to attract people to local restaurants.
-

Hello--

I am attaching a letter that may be read at the hearing this evening re the BYOB revision proposal. I look forward to learning about this and would like to offer my assistance in developing the proposal.

Sincerely,

Mario Boccabella

bocca bella café & bistro
442 Lexington Street
Auburndale, MA 02466

November 29, 2016

RE: BYOB in city's restaurants

I received the notice regarding this evening's public meeting regarding the allowance of BYOB in city's restaurants. As I read the notice several times I could not determine the details of the proposal.

The notice states, "...to revise their (city's) regulations to permit the practice of what is commonly known as bring your own beverage, or BYOB, in the City's restaurants." I have several questions as to the proposal as written:

1. Is the proposal limited to existing restaurants that do not have alcoholic beverage licenses? If it is limited to restaurants without alcoholic beverage licenses and wish to have their customers bring same then I would be in agreement that they should. If the city only has a limited number of alcoholic beverage licenses to issue as prescribed by the state, then I believe it is fair and right for them to be given the permission to have their customers BYOB to the restaurant. I am sure that details need to be worked out re liability, insurance, etc.
2. Does the proposal include all restaurants with or without alcoholic beverage licenses? If it is also meant to include restaurants with liquor licenses, then I would have a number of questions and concerns regarding the proposal, namely:
 - a. Liability
 - b. Responsibility
 - c. Discerning who provided the liquor in case of some legal issue
 - d. Enforcement: is the restaurant operator responsible if the customer that BYOB becomes intoxicated or is on the verge of becoming intoxicated? How is the restaurant operator able to remove the bottle of liquor brought in by a customer from the table. And what about the open

bottle restriction whereby a customer cannot leave the premises with an open bottle, whether he brought it or not?

3. Since this is the beginning of a proposed revision, I believe that more study needs to be done to safeguard the intent of "giving all players in the food business" an equal and fair footing.

I look forward to hearing more of this and hope that the details can be worked out.

Sincerely,

Mario Boccabella

To all commissioners and those gathered to consider BYOB in the city of Newton, I am opposed to BYOB. Can I bring a Box O' Joe from Dunkin Donuts into the Capital Grille because that's granny's favorite coffee, hm? Doubt it.

You certainly can't bring snacks into the movie theatre, been there, done that .. blamed the kids.

What about engine oil and a filter to the Jiffy Lube or the BMW dealership? Yikes!

Restaurants go through a lot of trouble to pick out a thoughtful list that compliment's their menu. And provide a certain guarantee with regards to the wine you select from their list. You certainly can't send back a bottle you brought in yourself if it's corked.

If BYOB were to be approved, we would have to consider many other issues. Can a 'party' come in with multiple bottles? Can a server or bartender 'shut-off' a customer that is drinking their own alcohol. Is the restaurant liable for alcohol it didn't serve but was brought in? Will there be a limit to the number of BYOB licenses available?

Thank you for your thoughtful consideration of this topic. I look forward to hearing the outcome of your meetings.

Warmly,

Carol

To the Licensing Board

I am unable to attend tonight's meeting. But I am strongly in favor of allowing BYOB for wine and beer, most especially for smaller restaurants that find it difficult or cost prohibitive to obtain licensing. Many communities I have lived in allowed this. As a result, I feel like there were more small restaurants, usually owned by locals and supported by the neighbors who mostly walked there.

Alicia Bowman
19 Chestnut Terr
Newton Centre

Unfortunately, I am not able to be at the meeting the meeting tomorrow night. The responsibility of serving alcohol and the unintended consequences.

The proposal of BYOB should not be taken lightly. There is major responsibility with owning a liquor a license and serving alcohol to the public. As license holders we take that responsibility seriously and train our staff accordingly. We have the servers and bartenders get TIPS certified and train everyone about alcohol awareness, as well as carry liquor liability insurance. There is a public safety issue and an economic impact. We are in a very unstable economic environment and most of the restaurant are not packed every night with an overflow of people looking to be served. The industry is under a lot of pressure between unprecedented legislation effecting our margins and staffing shortages. This also devalues our liquor license we hold, which we paid for and took the proper steps to obtain. not to mention it does not add revenue for the owners or the city.

Here are a few questions and comments that I have.

- What type of punishment for violations – should city issue a byob permit, that can be revoked?
- Is the owner required to carry liquor liability insurance?
- Owner/server has no ability to track consumption levels
- BYOB adds nothing to the bottom line of a restaurant nor does it bring in any additional tax revenue to the city.
- Should be limited to beer and wine
- Do you actually have to order a meal?
- How much can be brought it to a restaurant at any given time
- will there be a limit on how long you can offer byob before having to purchase a beer and wine license?

Thanks,

Remon Karian

Owner & President

Fiorella's

187 North Street // Newtonville // MA 02460

Phone: 617.969.9990 // fiorellasnewton.com

To the Licensing Commissioners:

I am opposed to allowing BYOB at Newton restaurants. It seems in conflict with the idea of "family friendly" restaurants. If restaurants need to make more money, there are other ways to do that instead of increasing the consumption of liquor.

Very important, to me, is not allowing every restaurant in the city to do this! Unfortunately, cities and towns seem to get to the point where a liquor license, as a taxi medallion used to, is coveted by so many business people owning restaurants that it trumps (no pun intended) the need to serve good food.

We enjoy going to restaurants that do not serve liquor, like Cabot's in Newtonville. I would hope that we do not allow blanket granting of BYOB permits that will force restaurants like Cabot's to apply for BYOB and ruin the present friendly atmosphere there - very noisy because of the kids, but very enjoyable for families as well as older people like us!

Priscilla M. Leith, Auburndale

Nancy Schon

Think it's good thing for small restaurants.

I reside at 78A Jackson Street in Newton Centre and I believe that this proposal should be adopted.

Mark H. Misselbeck, C.P.A., M.S.T.
Katz, Nannis + Solomon, P.C.

I support a change in the Newton City law to allow restaurants to have BYOB liquor.

Thanks.

Ira Hart

8 Devon Road

Newton, MA

I think Newton should approve a BYOB policy for restaurants. For those of us who don't have money to eat out as much as we would like, it is a great option. We can go to more reasonably priced restaurants (like Mango Thai), get some reasonably priced food, and have some wine or beer that is much cheaper than if we went to a restaurant serving alcohol. I am sure there will be opposition from restaurant owners who serve alcohol. I would take comments from ordinary citizens and weigh those more.

Liz Carty

Stoneleigh Road, Newton MA

Dear Licensing Board, We are in favor of approval of regulations in Newton whereby BYOB would be allowed in restaurants. This is a plus for both consumers and restaurants just starting out. It will not significantly hurt established restaurants. We should do this to support restaurants as small businesses which provide employment.

Thank you,

Peter and Suzanne Kalil

62 Pine Ridge Rd

Waban, MA

Some smaller restaurants would be able to survive and thrive with BYOB. The larger chains with liquor licenses should Not be allowed to force out our local Ma and PA establishments, Vote for expanding and allowing

Alexandra Hans

51 Devon Road

Newton Centre

Dear Board of License Commissioners,

I support bringing BYOB to Newton Because I think it would benefit restaurants and therefore the city as well by bringing in more diners.

Thank you for your consideration.

Sincerely,

Jill