



# CAMBRIDGE LICENSE COMMISSION

831 Massachusetts Avenue, First Floor, Cambridge, Massachusetts 02139

## MEETING MINUTES

**Monday, June 19, 2017, 9:00 a.m.**  
**831 Massachusetts Avenue**  
**Carmelia M. Vicente Conference Room**  
**Cambridge, Massachusetts 02139**

Commission Members present at the meeting: Chair Nicole Murati Ferrer, Police Commissioner, Brent Larrabee, and Fire Chief, Gerard Mahoney.

- 1) Chazumba, LLC d/b/a Felipe's Taqueria, holder of an All Alcoholic Beverages License at 21 Brattle Street: (Recording begins: 00:00)**
  - a. Continuation of disciplinary hearing of June 7, 2017 regarding the allegations of:**
    - i. overcrowding on May 19, 2017; and**
    - ii. Overcrowding, no crowd manager documentation, blocked exits and other violations of the fire code on May 20, 2017.**

Kevin Crane the Attorney and Tom Brush owner of Felipe's Taqueria are present.

Chair, Nicole Murati Ferrer requested closing statements or additional questions from Attorney Crane. Attorney Crane requested to ask additional questions of his client.

Attorney Crane asked Mr. Brush: Since May 19<sup>th</sup> how has your restaurant operated?

Mr. Brush: Operated on a about a 40% reduced capacity from the 20<sup>th</sup> on. They removed tables and chairs from the front of the restaurant to ensure they would not go over capacity at 62 or below. Mr. Brush stated is greatly impacted his business, in terms of sales in the last month.

Attorney Crane asked since May 19<sup>th</sup> what changes have you made as far as counting?

Mr. Brush responded that they have added security with counters at the front door and up on the mezzanine to control traffic to the roof top. Security will manage traffic between each floor since there is listed capacity by floor. Mr. Brush emphasized how difficult this task is and how it is an added labor in order to comply with the law and reduced capacity.

Attorney Crane asked focusing on May 20<sup>th</sup>, there was some testimony by Captain Arsenault and his report he stated there were 75 seating, has there ever been more than the 62 seats on the First Floor?

Mr. Brush: No

Attorney Crane: How long have you been in operation at this location:

Mr. Brush: 2.5 years

Have you ever had any violations?

Mr. Brush: No I have not.

Attorney Crane closing: May 19<sup>th</sup> violation there is no dispute that there was an overcrowding violation issue. On May 20<sup>th</sup>, he disputes that there is substantial evidence to support the overcrowding. Captain

Arsenault testimony was that there were 75 seats but he did say that he estimated up and down 10 seats. If we take his report of 75 seating and 65 standing, and take the figures Mr. Brush thought was his capacity of 65 seating and 60 standing, and Mr. Brush's testimony that there was never more the 62 to seats on the premise, the overcapacity allegations on the first floor is slim. No question that there was not an over capacity issue on the second floor as the capacity is 48 and the count was 41. On the third-floor Captain Arsenault count was 55 seating and 34 standing for a total of 89. If was take what Mr. Brush thought was his legally recognizable capacity on the roof at that time, 60seating and 38 standing, he would have been in compliance. Attorney Crane believes there is enough of a grey area where a finding of violation would not be supported with substantial evidence. Attorney Crane also noted his client has complied with all other violations that were alleged with the fire department as quickly as possible, fully cooperated with the investigators on both evenings and has had no previous violations at this location. In addition, he has endured a substantial hardship over the last month, revenue is way down and it has caused havoc with the staff, including laying offs and revamp of operations.

Chair, Nicole Murati Ferrer asked Mr. Brush for the count on May 20<sup>th</sup>.

Mr. Brush did not have a count, he stated security was taking count. He restated he thought he had a higher capacity,

Chair, Nicole Murati Ferrer stated that counsel is arguing that Felipe's Taqueria was not over capacity on May 20<sup>th</sup> and requested evidence supporting this argument.

Mr. Brush stated his count would have been with the two security guards, one in the front and one on the mezzanine keeping it below the 98 on the roof and 122 on the first floor. He also emphasized the count is ever changing, so it is impossible to know the count at all time.

Chair, Nicole Murati Ferrer: When your Counsel asked what you have changed since the 19<sup>th</sup> you stated you had security with counters, were there security with counters on the 20<sup>th</sup>?

Mr. Brush: Yes

Chair, Nicole Murati Ferrer: Do you know what those counters said?

Mr. Brush: I do not know what the counters said at that particular time, but I do know we were under our understood capacity.

Fire Chief, Gerard Mahoney: What does the license issued by the City state?

Mr. Brush: The license issued from the city states 170 seats, it does not address the standing or assembly.

Fire Chief, Gerard Mahoney: Does it address by floor?

Mr. Brush: I believe it does.

Fire Chief, Gerard Mahoney: So, 170? The word seat is not listed. Do you serve on the outdoor patio?

Mr. Brush: Yes.

Fire Chief, Gerard Mahoney: My main concern is the means of egress. You do acknowledge that your place was overcrowded on the 19<sup>th</sup>.

Mr. Brush: Yes

Fire Chief, Gerard Mahoney: You do acknowledge that there were substantial issues with the ancillary system, portable extinguishers, and no crowd manager paperwork on the 19<sup>th</sup>.

Mr. Brush: Yes.

Chair, Nicole Murati Ferrer: With regard to May 19<sup>th</sup> I find a violation. First floor capacity is 62 they had 72, therefore over by 10, second floor there were 89, with a capacity of 48, overcrowded by 41 and the roof they had 171 with a capacity of 60, so there is an overcrowding by 116 which is significant. Vote of violation and suspension.

Considering the next day there is the same situation and even taking into consideration the testimony of only 62 seats there were still 65 people standing, on the second floor there was no overcapacity issue

and on the roof there were 89 persons with a capacity of 60. There were issues with blocking the egresses on the second day together with everything else. Vote for violation on second day and recommend suspension as well. Request suspension of three days on the 19<sup>th</sup> violations and suspension of three days on the 20<sup>th</sup> violations for a total of a six-day suspension.

Fire Chief, Gerard Mahoney: Amend recommendation to four-day suspension be served and two held in abeyance.

Police Commissioner, Brent Larrabee: Agrees with Fire Chief and requests that the days be served on days with the least economic impact and work with the Licensee to select the days.

Fire Chief, Gerard Mahoney: Agrees with Police Chief.

Chair, Nicole Murati Ferrer: Does not recommend, as that is not the standard with other licensees.

Police Commissioner, Brent Larrabee: Stated if that is the board's normal practice to have four consecutive days he will defer to the board. He wanted clarification to how long the 2 days would be held in abeyance.

All Board members agreed one year.

Mr. Brush was offered, to serve two days per violation with one day suspended or serve all four days consecutively. Mr. Brush choose to serve all four days consecutively.

Chair, Nicole Murati Ferrer: Recommended a Tuesday through Friday be served.

Attorney Crane requested a Monday through Thursday.

The Board stated the suspension dates served would be three weeks out so the licensee had time to prepare. The Board selected dates served to be Tuesday, July 11<sup>th</sup> – Friday, July 14<sup>th</sup>.

**b. Licensee's request to have the capacity on its license be changed to reflect the standing room occupancy in its floor plan. Specifically, a standing room occupancy of 60 on the first floor, and of 38 on the roof deck.**

Granted 3-0 standing room occupancy of 60 on the first floor.

Granted 2-1 standing room occupancy of 38 on the roof deck (dissent Chair, Nicole Murati Ferrer).

David Byrnes, Senior Building Inspector from Inspectional Services reviewed construction/architectural documents of Felipe's Taqueria and the capacity listed on the documents.

David talked about how square footage is determined, and agreed the numbers represented on this plan. The plan allowed for occupancy of 122 on ground floor with 62 seat as seating, mezzanine has 48 seats/no standing and seasonal roof-deck has a total capacity of 98, 60 of it seats and 38 for standing. This plan was accepted by the Inspectional Services Department.

Fire Chief, Gerard Mahoney recommended that the capacity on the license be changed to reflect the architectural drawing submitted to the city.

Chair, Nicole Murati Ferrer raised concerns about previous hearing where concerns were raised about capacity on the roof deck. Part of the issue how many at any time would be on the deck and owner and counsel agreed 60 at that time. It appeared there were concerns with the neighbors, can you shed some light on this.

Attorney Crane talked about concerns from the neighbors, specifically Mr. DeGiovani, and though he was not in support at the time, there have been no further complaints in the 2.5 years it has been open.

He also stated that he should have submitted the plans with the total occupancy with the initial application.

Chair, Nicole Murati Ferrer raised additional concerns about the roof-deck becoming a bar or “watering hole” not a primarily a food service establishment. Why do you need all the additional standing room, if the primary purpose is to eat?

Mr. Bush stated 75% of business is food and alcohol sales are mostly in the evening not the day time. He also stated they serve food until 2:00am, a whole hour after they stop serving alcohol.

Fire Chief, Gerard Mahoney questioned whether all the food was served on the ground floor and whether the roof has traditional wait staff.

Mr. Brush confirmed that all food is served on the first floor.

Chair, Nicole Murati Ferrer stated she is in favor for the occupancy on the first floor, but has concerns about the controlling occupancy on the roof deck with the ebb and flow of traffic.

Mr. Brush stated they are no longer have people queuing on the second floor. They are working with a app vendor so patrons can be notified when space is available on the roof deck.

Police Chief, Brent Larrabee commented that the occupancy will include employees. Mr. Brush Confirmed.

Police Chief, Brent Larrabee stated he voted to agree with the architectural plans.

Phil Cunningham, a representative of 50 Church Street, an abutter of Felipe’s Taqueria, asked to speak to the board. 50 Church Street does not recommend the additional capacity for the roof deck as it will be disruptive to the neighbors with excessive crowd noise. He stated that the establishment is not primary food establishment as they are requesting additional standing room to drink not eat. He submitted a letter reflecting this.

Attorney Crane responded that that these issues have already been raised, and there have been only minor issues that have been resolved since then. Future tenants have the same opportunity to resolve issues should they arise or file a complaint. Furthermore, he stated that this letter is unfair as he is taking advantage of the fact that they are in for a hearing to express prior concerns when there have not been any changes. He also expressed that both Mr. DiGiovani and Mr. Brush have litigious history at Mr. Brush’s Mt. Auburn location. The plans were approved by the city when the property was built, although not approved by the license commission.

Chair, Nicole Murati Ferrer raised additional concerns not about 50 Church street, but concern of controlling occupancy on the roof deck. She stated she will go on record approving the first floor but will not go on record approving the additional occupancy on the roof deck.

Fire Chief, Gerard Mahoney wanted to take it under advisement after Mr. DiGiovani’s concerns.

Chair, Nicole Murati Ferrer stated that there have been no serious concerns reported to the License Commission, just a couple on noise complaints report by police, which were resolved at the moment. There is no disciplinary issue with regard to noise.

Attorney Crane stated the first serious complaint of noise they would have to appear before the board.

Chair, Nicole Murati Ferrer stated that even if the roof is taken under advisement, she believes the first floor should be approved today.

Fire Chief, Gerard Mahoney confirmed the deck was seasonal. He wants to approve the increased deck capacity with the condition that if there is a complaint about the deck it will come back before the board.

Police Chief, Brent Larrabee agrees.

Granted 3-0 standing room occupancy of 60 on the first floor. Granted 2-1 standing room occupancy of 38 on the roof deck (dissent Chair, Nicole Murati Ferrer).

## 2) Hackney Related Matters: (Recording begins: 42:55)

### a. The process for unused medallions.

After having public hearing and listening to testimony, the Board decides 3-0 not to create or adopt any policy. The Board further decides to eliminate the lapse rule.

### b. Proposed Amendments to the Hackney Rules and Regulations.

3-0 Removed unused medallion rule on page 6. Page 8, article 7 rule 3c – Change the driving record going back 7 years to going back 4 years. Rules adopted 3- in its entirety with amendments made on the record.

Board discussed a rule about not renewing drivers who do not pay the tolls. Chair, Nicole Murati-Ferrer stated she contacted Boston, as suggested by an owner who stated they currently have this rule. The contact in Boston stated they did not adopt this rule. It is an owner/driver operational issue. No rule adopted with regard to collection of tolls (3-0).

### c. Flat Rates and current meter rates.

Board vote no change 3-0. There were people who both supported and did not support having the flat rate book. The Board voted to leave the flat rate book as is and not amend.

### d. Consideration of Renewal Applications.

- i. Jean Pointjour, #HAD28517 – Approved 3-0
- ii. Rodney Charles Pompilus, #HAD29989 – Approved 3-0

## 3) Fee Changes to Annual Entertainment Licenses, Common Victualler Licenses, Patio(s). (Recording Begins: 53:25)

First Raised on March 22<sup>nd</sup>, it was vetted by the City Solicitor on March 25<sup>th</sup>, the recommendations are as follows:

- a. Common Victualler License fee: \$100 annual license fee + \$1 per person (using the total indoor occupancy #). All common victualler licenses will include the licensing of background music as entertainment.
- b. Patio fee for licenses that hold a liquor license pursuant to G. L. c. 138, § 12: on public property - \$750 (as is); on private property \$250 (new); if patio on public and private property \$1000.
- c. Redefine Recorded Music Played Below Conversation Level (Background Music) to *Recorded Music Played at or Below Conversation Level*. There is no fee for this entertainment if the business holds a common victualler license. If the business does not have a common victualler license, the annual fee is \$110.
- d. Redefine Recorded Music Played At or Above Conversation Level to *Recorded Music Played Above Conversation Level*, fee is \$500.

- e. Disk Jockey fee \$500.
- f. Karaoke fee \$500.
- g. Readings of poetry and other works \$135.
- h. Magic shows \$135.
- i. Remove as categories of entertainment radio & phonograph; no fees.
- j. Added Lottery Screen to exceptions to Video Screen or Film Projector Screen (except the first screen on a video juke box and cinema screen). Changed the fee from \$0 per screen to \$0 for first three (3), \$50/TV thereafter.
- k. Reduced the fee of Video Game, Pinball Machine, or other to \$100 per machine.
- l. Removed the inclusion of the common victualler fee from the entertainment fee of Theatrical Stage or Cinema Screen. If the licensee requires a common victualler license, it would have to be licensed as such and the fee for the common victualler is \$100 flat fee (no \$1 per person fee occupancy fee since the common victualler is ancillary to the entertainment). Theatrical Stage fee remains \$750 per stage and cinema screen fee is \$500 per screen.
- m. The Board did not adopt a modified schedule for non-profits.

The fees would be effective January 1, 2018/2018 renewals. Approved as stated above adopted 3-0.

- 4) Kimberley Courtney, on behalf of CoffeeShop, LLC d/b/a UpperWest, has applied for one day licenses to be exercised in the private parking lot adjacent to 1 Cedar Street, B, Cambridge on June 25 & 30, July 1, 7-9, 14-16, 21-23, 28-30, and August 4-6, 2017, between the hours of 10:00 a.m. – 10:00 p.m. with 35 people expected. The application also requests to extend the food service of Common Victualler License # VIC10320 to the same area with the same days, hours and number of expected attendants. (Recording Begins: 57:33)**

Granted as a one day license with Malt and Wine only per ABCC rule 3-0. No fee for current licensee.

- 5) Charlie Moore, on behalf of Turner Construction, has applied for a Special Noise Variance at 145 Broadway to excavate and place slurry wall panels for foundation from June 20, 2017 through December 20, 2017 during the hours of 7 a.m. – 10 p.m. on weekdays (variance being 6:01 p.m. – 10 p.m.), and 7 a.m. – 3:00 p.m. on weekends (variance being 7 a.m. – 8:59 a.m.). (Recording Begins: 59:10)**

Granted 3-0.

- 6) Paul Vozzella, on behalf of Callahan Construction Mgrs., has applied for a Special Noise Variance at 2 Leighton Street to pour concrete from June 19 through December 20, 2017 (weekdays only) during the hours of 7 a.m. – 8 p.m. (variance being 6:01 p.m. – 8:00 p.m.). (Recording Begins: 1:00:01)**

Granted 3-0.

- 7) John Loftus, has applied for a one day malt and wine license for an art show to be exercised at Workbar, 45 Prospect Street, on 6/28/17 from 5:30 p.m. – 9:00 p.m. Expected attendance - 99 people. (Recording Begins: 1:00:30)**

Granted 3-0.

**8) Requests for One Day Entertainment Licenses: (Recording Begins: 1:01:07)**

**a. Rachel Roccoberton on behalf of the Dance Complex and in partnership with the Cambridge Arts Council, has applied for dancing, recorded/live music, amplification system, light show, and dynamic show for an outdoor street festival in Central Square (Massachusetts Avenue, between Pearl and Brookline Streets), on 6/23/17 from 5 p.m. – 10 p.m. Expected attendance – 1000 people. [Approved by Special Events Committee]**

Granted 3-0. Police Detail Required.

**b. Julie Barry, on behalf of the Cambridge Arts Council, for the summer in the city multicultural performances/movie night events with performers/entertainers dancing, recorded/live music, amplification system and theatrical exhibition/play/moving picture show. Expected attendance – 250 people. [Approved by Special Events Committee]**

**i. Daytime Events – 9 a.m. – 11 a.m.:**

- 7/6: Red Yarn at Magazine Beach**
- 7/11: All Around this World at Bergin Park**
- 7/13: Marvelous Marvin at Rose Heritage Park**
- 7/17: Liars & Believers at Tobin Field**
- 7/19: Piti Theater Company at Glacken Field**
- 7/25: Triveni School of Dance at Sennott Park**
- 7/27: Sol y Canto at Dana Park**
- 7/31: South Coast Historical at Raymond Park**
- 8/2: Passion for Birds at Hurley Park**

Granted 3-0. Fee waived.

**ii. Movie Night Events, 6 p.m. – 10 p.m.:**

- 8/8 at Rose Heritage Park**
- 8/10 at East Cambridge Saving Bank Lot**
- 8/15 at Volpe National Transportation Systems Center Lawn**
- 8/17 at Lechmere Canal Park**
- 8/22 at University Park**
- 8/24 at ECB-Inman Branch Lot**
- 8/29 at Palmer Street**
- 8/31 at North Point Common**

Granted 3-0. Fee Waived.

**c. David Fischer, on behalf of the Brazilian Cultural Center of New England, has applied for performers/entertainers dancing and recorded/live music for a cultural demonstration at Lafayette Square, on 7/8/17 from 6 p.m. - 9 p.m., and 7/9/17 from 5 p.m. - 7 p.m. Expected attendance – 30 people. [Approved by Special Events Committee]**

Granted 3-0.

**d. Alexandra Zubowski, on behalf of Commonwealth Cambridge, has applied for patrons dancing, recorded/live music, and amplification system for a wedding and reception at**

**Commonwealth Cambridge, 11 Broad Canal Way, on 6/25/17 from 4:15 p.m. – 10:00 p.m.  
Expected attendance – 100 people.**

Granted 3-0.

**e. Genevieve Holmes, on behalf of Make Music Boston, a program of Kadence Arts, has applied for recorded/live music for music festivals with an expected attendance of 300 on:**

**6/21/17 from 10 a.m. – 9 p.m. at 1 Porter Square  
6/21/17 from 11 a.m. – 4 p.m. at Kendall Plaza (315 Main Street)  
6/21/17 from 10 a.m. – 9 p.m. at Green Rose Heritage Park  
6/21/17 from 10 a.m. – 9 p.m. at Joan Lorentz Park**

Granted 3-0.

**9) Michael Monestime, on behalf of CSBA d/b/a Central Square Business Association has applied for a one day hawker/peddler license for various vendors (see application) to sell food, arts & crafts, jewelry, clothing and other miscellaneous items at the parking lot of 95 Prospect Street on 6/25/17 from 11 a.m. – 5 p.m.**

Granted 3-0.

**Approved: 06/08/17**

**Posted: 06/29/17**