

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RI 02920**

2012 Sports Bar, Inc.	:	
Appellant,	:	
	:	
v.	:	DBR No. 12LQ084; 13LQ060
	:	
The City of Cranston,	:	
Committee on Safety Services and Licenses,	:	
Appellee.	:	

SUPPLEMENTAL ORDER AMENDING DECISION

This Supplemental Order Amending Decision follows a written request by the City of Cranston, Committee on Safety Services and Licenses (“Committee”) asking that the Department of Business Regulation (“Department”) amend its Decision and Order in the above-captioned matter to afford the Committee additional time to complete the actions ordered therein.

Specifically at issue is the Hearing Officer’s recommendation, adopted as an order by the Director on July 22, 2013, imposing a thirty (30) day period by which “the City of Cranston shall formally adopt objective standards pre-approved by the Department to impose entertainment restrictions or prohibitions on a Class B license to be applied uniformly to all licensed facilities and applicants for licensure as required by § 3-7-7.3.” In its August 29, 2013 extension request, sent to the undersigned Hearing Officer by electronic mail, the Committee represented that the Committee and the City of Cranston have made efforts to comply with the July 22 Order with “all speed within the parameters of the open meetings rules and [its] Home Rule City Charter.” The extension request cites the fact that the Committee has sent the proposed ordinance to the Department for its approval and posits that “the same represents a thoughtful and meaningful

effort to implement standards.” The Committee further represents that its planned process for adopting said ordinance will involve notice to all liquor license holders in the City of Cranston, enabling their comment and feedback. The request lists the following steps involved in the ordinance adoption process:

1. We held a hearing to solicit comments on what the proposed regulations should be.
2. We drafted an ordinance.
3. The ordinance has been properly introduced and advertised for hearing.
4. The ordinance will be docketed on the safety service agenda.
5. After hearing the ordinance will be forwarded to the full council for passage.

Central Management Regulation 2 *Rules of Procedure for Administrative Hearings*, Sections 10 and 19 govern the disposition of requests for extensions of time. Section 10(B), entitled “Extensions of Time”, provides: “It shall be within the discretion of the Hearing Officer, for good cause shown, to extend any time limit.” The Committee has demonstrated “good cause” to extend the time limit set for the adoption of the subject ordinance by setting forth the steps that it has taken and how it intends to proceed. Specifically, the extension is warranted in light of the deliberation required by both the Committee and the full council of the City of Cranston and the intention to assure that all affected licensees are provided with an adequate opportunity to comment on the proposed ordinance. Section 10(B) further provides that “[a]ll requests for extensions of time shall be made by written motion filed with the Hearing Officer before the expiration of the applicable time period unless waived by the Hearing Officer.” In the instant case, the extension request was submitted six (6) business days after the expiration of the thirty day time period as calculated pursuant to Section 10(A); however, the delay is deemed waived in the discretion of the undersigned Hearing Officer, in light of the “good cause” shown.

Section 19 provides: “[a]t any time after the issuance of a final order of the Director, any Party may, for good cause shown, by motion petition the Director to reconsider the final order.”

This applies to requests petitioning the Director, through the duly appointed Hearing Officer, to “reconsider” a deadline for action imposed through issuance of a final order. Section 19 requires that “[t]he petitioner...set forth the grounds upon which he/she relies.” As summarized above, the extension request of the Committee did specifically set forth the grounds for extension. Section 19 further provides that the petitioner shall “file his/her motion within twenty (20) days of the issuance of the final order;” “the Department shall not entertain a motion for reconsideration filed more than twenty (20) days after entry of the final decision, unless the Hearing Officer finds good cause to entertain said motion.” In the instant case, the extension request was submitted thirteen (13) business days later than a twenty (20) period following the July 22 Order, as calculated pursuant to Section 10(A); however, the undersigned Hearing Officer finds “good cause” to reconsider based on the efforts and processes of the Committee and City of Cranston, as set forth in the extension request and summarized above.

Pursuant to Section 19, “[t]he Director may grant the motion for reconsideration within his/her discretion and shall order such relief as he/she deems appropriate under the circumstances.” This discretion to fashion a remedy upon request for reconsideration for extension of time is one aspect of the Department’s broad super-licensing authority.¹ In accordance with this broad discretion, and its finding that the Committee and the City of Cranston have made reasonable efforts to comply, the undersigned Hearing Officer recommends that the original thirty (30) day period expiring on August 21, 2013, be extended for an additional thirty (30) day period expiring September 20, 2013.

¹ See, e.g., *Messier v. Daneker*, 81 R.I. 243, 246 (R.I. 1954). The Department, in adjudicating an appeal of a decision of a local licensing body, has the power “to make *any* decision or order,” including issuing a Supplemental Order Amending Decision to afford a party an extension of time. R.I. Gen. Laws § 3-7-21 (*emphasis supplied*)

In so recommending, the undersigned Hearing Officer has received and reviewed the written objections of counsel for the 2012 Sports Bar, Inc. (“Appellant”).² The Appellant was copied as a recipient on the August 29 extension request and has responded via several messages to opposing counsel and the undersigned. Neither Section 10 nor Section 19 require a hearing to be held and none would be dispositive of the request given the consideration the undersigned has given to the written objections. The interests of the Appellant were adequately represented at the hearing on the merits held on the record prior to the issuance of the July 22 Order and changes to the remedy fashioned in the Department’s discretion do not necessitate further testimony.

Counsel for the Appellant further requests that the subject entertainment conditions discussed in the July 22 Order be lifted. The July 22 Order provides that “[f]ailure to comply with § 3-7-7.3 within the thirty (30) day period set forth herein *may* result in a subsequent order of the Department lifting the entertainment restrictions on the Appellant’s license.” *Id.* at 15 (*emphasis supplied*). Given the “good cause” shown for extending the deadline, lifting the conditions is not appropriate at this time. The entertainment restriction shall remain in effect through such time as a decision lifting said condition may be made by the Committee following adoption of the subject ordinance or refusal to do may be reversed by the Department on appeal.

RECOMMENDATION

It is hereby recommended as follows:

1. The July 22 Decision and Order shall be amended by changing pgs. 14-15, Paragraph 2 of Section VII “Recommendation” as follows:

~~Within thirty (30) days of this Order~~ By September 20, 2013, the City of Cranston shall formally adopt objective standards pre-approved by the Department to impose entertainment restrictions or prohibitions on a Class B license to be applied uniformly

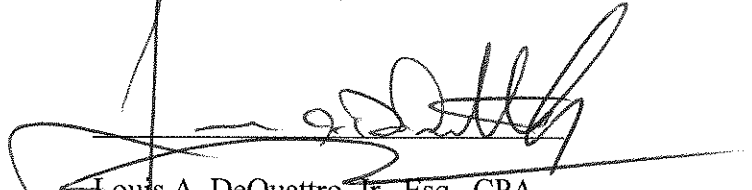
² Substantively, the Appellant cites general dissatisfaction of the pace of the ordinance adoption process that do not overcome the “good cause” shown by the Committee and Open Meetings Act violation issues that are outside of the Department’s jurisdiction.

to all licensed facilities and applicants for licensure as required by § 3-7-7.3. This order is not to be applied to separate entertainment licenses issued by the City. Failure to comply with § 3-7-7.3 within the thirty (30) day period set forth herein may result in a subsequent order of the Department lifting the entertainment restrictions on the Appellant's license.

2. The parties shall update the Hearing Officer by electronic mail of the status of the ordinance and liquor license no later than September 18, 2013.
3. The Hearing Officer shall be vested with the discretion to further extend the subject deadline for good cause, without further action or approval of the Director; provided, however, that the Appellant shall be given notice of any request for extension and an opportunity for written objection prior to granting said request.

Date: 9/3/2013

As recommended by:

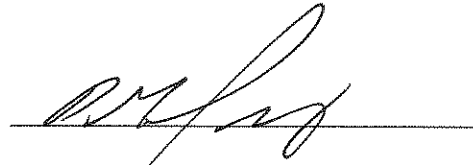

Louis A. DeQuattro, Jr., Esq., CPA
Hearing Officer
Deputy Director & Executive Counsel

I have read the Hearing Officer's recommendation and I hereby (check one)

- Adopt
- Reject
- Modify

the recommendation of the Hearing Officer in the above-entitled Decision and Order.

Date: 3 Sept 2013


Paul McGreevy
Director

Entered as an Administrative Order No.: - 13-042 this 3rd day of September, 2013.

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 3rd day of September, 2013 that a copy of the within Decision and Order and Notice of Appellate Rights was sent by e-mail and first class mail, postage prepaid to -

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and by email to Maria D'Alessandro, Deputy Director, Securities, Commercial Licensing and Racing & Athletics