

STATE OF RHODE ISLAND  
DEPARTMENT OF BUSINESS REGULATION  
PASTORE COMPLEX  
1511 PONTIAC AVENUE  
CRANSTON, RHODE ISLAND

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FabCity Cigar Lounge, Inc. d/b/a	:	
FabCity Cigar Lounge,	:	
Appellant,	:	
	:	DBR No. 22LQ005
v.	:	
	:	
Board of License Commissioners for the	:	
City of Pawtucket,	:	
Appellee.	:	

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**ORDER RE: MOTION TO MODIFY STAY ORDER  
AND MOTION TO RESTRAIN AND ENJOIN**

**I. INTRODUCTION**

This matter arose from a motion for stay and appeal filed on February 10, 2022 by FabCity Cigar Lounge, Inc. d/b/a FabCity Cigar Lounge (“Appellant”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding the February 9, 2022 decision by the City of Pawtucket, Board of License Commissioners (“Board”) to revoke the Appellant’s Class BV liquor license (“License”). A hearing on the motion for stay was heard on February 14, 2022 before the undersigned<sup>1</sup> with the parties represented by counsel. A conditional stay was issued on February 22, 2022. On March 2, 2022, the Appellant filed a motion to restrain and enjoin the Board. On March 15, 2022, the Appellant a motion to modify the conditional stay order. The Board filed objections to both motions. A hearing was held on both motions on March 18, 2022. The February 22, 2022 stay order is incorporated by reference to this order.

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<sup>1</sup> Pursuant to a delegation of authority by the director of the Department. Due to the Covid19 pandemic, the hearing was held remotely.

## **II. JURISDICTION**

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

## **III. MOTION TO RESTRAIN AND ENJOIN**

The parties agreed that the City of Pawtucket can ensure that its liquor licensees including the Appellant abide by liquor licensing rules as well as any conditions of licensing.<sup>2</sup>

However, the Appellant was concerned the Board has requested the Appellant's tobacco license which is issued by the Division of Taxation ("Division") be investigated by the Division. The Appellant sought to restrain the Board from taking action against its tobacco license. The Board argued that it requested the Division look into the tobacco licensing, but did not take any action against the tobacco license. The Board argued that the Department does not have jurisdiction over the Board. The Appellant argued that the city clerk inquired to the Division regarding the status of its tobacco permit and when told by the Division that information was non-disclosable, the Board requested an investigation. The Appellant represented that two (2) Division investigators checked on it after the Board's request. The Appellant argued that while Board took

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<sup>2</sup> At hearing, it was discussed how the Pawtucket police should be treating an earlier closing time. There was concern that the police were requiring patrons and staff to leave at closing time when the relevant regulation allows patrons to leave 20 minutes after closing and employees to leave 30 minutes after closing for a 1:00 a.m. closing. After the hearing, the undersigned listened to the Board's February 23, 2022 hearing. <https://clerkshq.com/Pawtucket-ri>. At the hearing, the Board did mention that it believed that the relevant liquor regulation should also apply to the earlier closing time to which the undersigned agrees. Section 1.4.18 of 230-RICR-30-10-1 *Liquor Control Administration* provides in part as follows:

### 1.4.18Hours of Business - Retail

A. All patrons shall leave the licensed premises not later than 1:20 a.m. where the licensee is permitted to remain open until 1:00 a.m. Last call shall be at 12:45 a.m. Where licensee is permitted by local ordinance or permit to remain open until 2:00 a.m. all patrons must leave the licensed establishment by 2:00 am. All employees shall leave the licensed premises within one-half hour after the required closing time; provided the owner or employees may enter or be in a licensed establishment at any time for a legitimate business purpose with approval from the local police department. This paragraph shall not apply to a Class B-C license.

no direct action against the liquor license, it took affirmative action against the tobacco license and those licenses are intertwined.

The Department has authority over liquor licensing. A liquor appeal to the Department pursuant to R.I. Gen. Laws § 3-7-21 is considered a *de novo* hearing. The Department's jurisdiction is *de novo* and the Department independently exercises the licensing function. *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964); and *Hallene v. Smith*, 201 A.2d 921 (R.I. 1964). Because the Department's has such broad and comprehensive control over traffic in intoxicating liquor, its power has been referred to as a "super-licensing board." *Baginski v. Alcoholic Beverage Comm.*, 4 A.2d 265, 267 (R.I. 1939). See *Board of Police Com'rs v. Reynolds*, 133 A.2d 737 (R.I. 1957). Therefore, the Department can overturn or modify or uphold a local licensing authority's decision on liquor licensing. The Department can also bring its own actions against those licensed for various liquor sales by local authorities.

R.I. Gen. Laws § 44-20-2 provides for the issuance of tobacco dealer's permits by the Division. The Appellant is a smoking bar as provided for in R.I. Gen. Laws § 23-20.10-2(20). As noted by the undersigned at hearing, there is no license issued for a smoking bar. Rather, the statute requires that smoking bars file yearly affidavits in relation to their sales with the Division and to have proper ventilation systems (delineated in Department of Health regulations). Obviously to be a smoking bar, an entity would need a liquor license and tobacco permit and indeed a license to prepare food. In a smoking bar, the serving of food and alcohol is to be incidental to the consumption of tobacco products. R.I. Gen. Laws § 23-20.10-2(20).

However, the Department has no oversight over tobacco sales' permits. The Department's oversight of any entity that represents itself as a smoking bar is limited to the liquor license. No action has been taken against the Appellant's liquor license by the Board.

#### IV. MOTION TO MODIFY STAY ORDER

The Appellant requested that the stay order be modified to allow it to open to midnight as initially recommended by the undersigned to the director in the first stay order. The Appellant represented it has opened for two (2) weekends with an 11:00 p.m. closing on Friday and Saturday nights but has lost money on both weekends. See Appellant's motion with attached spreadsheet. At the initial stay hearing, the Board indicated that if a stay was granted, it would request that the Appellant's closing be at midnight with police details on Fridays, Saturdays, and Sundays. At the March 18, 2022 hearing, the Board represented that it supported the current *status quo* but if closing time was set at midnight, it would request a police detail for Sunday night as well.

The Appellant argued that the idea of a stay is so that an entity can stay in business pending a full hearing, and it will not be able to do that if it is paying for a four (4) hour detail but only can open to 11:00 p.m. The Appellant argued that it is only a small venue with a 30 to 40 capacity which supports a midnight opening. It argued that it only makes money on Friday and Saturday nights, so it is not worth having a detail on Sunday night.

It is noted that Pawtucket police details are for a minimum of four (4) hours so that if they start at 9:00 p.m., the detail could be there to 1:00 a.m. The detail are also two (2) person details. Thus, the Appellant argued that it can close at midnight and have a police presence still to 1:00 a.m. The Appellant argued that this would be in line with *Vibe Lounge and Hookah Bar, Inc. v. City of Pawtucket, Board of Licenses* DBR No. 21LQ004 (5/19/21) (first stay order). In the first stay order, *Vibe* had reduced hours to midnight and a police detail ordered for any night it was open. The second stay order – issued after the viewing of the security video – allowed the club to open to 1:00 a.m. but still with a police detail every night. *Vibe*, (6/22/22) (second stay order). The Appellant also pointed to the stay order for *Fuego Lounge, LLC d/b/a Fuego Lounge v. City of*

*Providence, Board of Licenses*, DBR No. 21LQ005 (stay order 9/14/21) which did not provide for any reduced hours. In *Fuego*, the issue was not one of disorderly conduct but rather an appeal of a suspension of license regarding alleged security failures outside the licensee after closing.


The Appellant argued that a stay allows it to continue to stay in business pending the full hearing scheduled to begin next week. The Appellant represented that any safety concerns can be met by the police detail being on site past closing time.

**V. RECOMMENDATION**

Based on the foregoing, it is recommended that the motion to restrain and enjoin is denied.

Based on the foregoing, it is recommended that the stay order be modified to have it conditioned on a midnight closing every night but Sunday and a police detail (two-person) at night (approximately 9:00 p.m. to 1:00 a.m.) on Friday and Saturday nights and any night before a State holiday and on State holidays.<sup>3</sup> The Appellant shall close at 11:00 p.m. on Sunday nights.

Dated: March 22, 2022

  
Catherine R. Warren  
Hearing Officer

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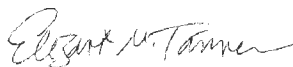
<sup>3</sup> The parties may agree to a modification of the stay if they choose. The parties could also enter into a settlement if they desire. Obviously if the Appellant does not open on a night the police detail is required, no police detail is required. The police detail should be on site to 1:00 a.m.

**INTERIM ORDER**

I have read the Hearing Officer's Recommended Order in this matter, and I hereby take the following action with regard to the Recommendation:

  X   ADOPT  
       REJECT  
       MODIFY

Dated: 03/24/2022

  
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Elizabeth M. Tanner, Esquire  
Director

**NOTICE OF APPELLATE RIGHTS**

**THIS ORDER CONSTITUTES AN INTERLOCUTORY ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-15. 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 24<sup>th</sup> day of March, 2022 that a copy of the within Order was sent by first class mail, postage prepaid and by electronic delivery to the following: Mark P. Welch, Esquire, 141 Power Road, Suite 106, Pawtucket, R.I. 02896, Christopher M. Mulhearn, Esquire, Law Offices of Christopher M. Mulhearn, 1300 Division Road, Suite 304, West Warwick, R.I. 02893 and Frank Milos, Esquire, City Solicitor, 137 Roosevelt Avenue, Pawtucket, R.I. 02860, and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

  
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