

RECEIVED
FEB 10 2021

CITY COUNCIL OFFICE

[illegible]

Permit No.: P062414009

)
)
)
)
)

)

This cause came on to be heard before the undersigned Hearing Officer on February 9, 2021 based on the Non-Compliance Complaint, as amended, and the Answer to the amended Non-Compliance Complaint filed on behalf of the Permittee, Billiards & Brews, LLC (hereinafter “Permittee” or “Billiards & Brews”) . The City of Knoxville was represented by attorney Allison Dyer; the Permittee was represented by attorney Rick Owens.

1.

Page 1 of 10

which, *inter alia*, limited the on-premises consumption of food and drink in “any restaurant, club, or any other business of any kind” past 11:00 p.m.; and Board of Health Regulation 2020-7 (“COVID-19 Restaurant Occupancy Limitation and Early Closure Regulation”) (Exhibit B4), which ordered, *inter alia*, that “[a]ll restaurants, bars, and similar food or drink establishments, including nightclubs, shall close for on-premises consumption and activities at 10:00 p.m. EST” except for “drive through, pickup, carry-out, or delivery service for food or drink” Based on these Board of Health Regulations, an 11:00 p.m. curfew for the on-premises consumption of food and drink in “any restaurant, club, or any other business of any kind” was set at 11:00 p.m., beginning September 17, 2020 through November 25, 2020; from November 25, 2020 through all remaining times relevant hereto there was a 10:00 p.m. curfew for on-premises consumption and activities.

On November 17, 2020, the Knoxville City Council adopted emergency Ordinance O-168-2020 (Exhibit C), which amended City Code Section 4-73(c) to specify that Executive Orders of the governor and the mayor of Knoxville, Knox County Board of Health Regulations, and Orders of the Knox County Health Director are laws that must be complied with by beer permittees. On November 17, 2020, the Knoxville City Council also adopted emergency Ordinance O-169-2020 (Exhibit D), which amended City Code Section 4-32(b) to further limit time constraints for the on-premises sale/consumption of beer.

2.

Knoxville Police Sergeant John Coward testified that he personally delivered notice to the Permittee on November 18, 2020 of the enactment of the emergency Ordinances by Knoxville City Council, and the imposition of an 11:00 p.m. curfew and other requirements. (Exhibit F). Sergeant Coward also testified that notice of the imposition of a 10:00 p.m. curfew was made by hand delivery

of informational flyers to certain businesses, including the Permittee. (Exhibits H1-H2). Sergeant Coward further testified that he visited the Permittee's establishment on Unicorn Drive on multiple occasions – November 20, 2020; December 4, 2020; December 5, 2020; December 11, 2020; December 17, 2020; December 18, 2020; December 19, 2020 – after curfew on those dates, where he observed numerous customers on each occasion drinking bottles and pitchers of beer, and playing billiards and darts; on these occasions he issued municipal ordinance citations to the Permittee for violation of Section 4-32(b) of the City Code. (Exhibits G, I, J, M, Q, R, S). Sergeant Coward also issued eight additional municipal ordinance citations to the Permittee during December 31, 2020 - January 28, 2021 after curfew hours on those dates. (Exhibits X1-X8).

Knoxville Police Officer Hayden Cochran testified that on December 13, 2020 at approximately 12:55 a.m. he was dispatched to the Permittee's establishment on Unicorn Drive, where he observed a parking lot full of automobiles as well as patrons inside the establishment who were drinking beer from bottles. Officer Cochran issued a municipal ordinance citation to the Permittee for violation of Section 4-32(b) of the City Code. (Exhibit O).

Knoxville Police Sergeant Matthew Gentry testified that on December 24, 2020 he went to the Permittee's establishment on Unicorn Drive after Cody Goins, the night manager at the Permittee's establishment, called him to be there. When he arrived at the establishment at 1:12 a.m., Sergeant Gentry observed a parking lot full of automobiles; he walked into the establishment, which was crowded and loud, and saw open beer containers with people at tables in the establishment. Sergeant Gentry also stated that the night manager, Cody Goins, requested that a citation be issued; additionally, the said night manager told Sergeant Gentry that the owner of the Permittee was "forcing him" to work after curfew hours. Sergeant Gentry complied with the Cody Goins's request,

and issued a municipal ordinance citation to the Permittee for violation of Section 4-32(b) of the City Code. (Exhibit T). A video from Sergeant Gentry's police cruiser revealed many people leaving the establishment, and a deafening noise could be heard emanating from the establishment. (Exhibit AA-1).

Knoxville Police Officer Amy Jinks and Knoxville Police Lieutenant Darrell Griffin testified that they were dispatched to the Permittee's establishment on Unicorn Drive in the early morning hours of December 27, 2020 in regards to a shooting victim in a parking lot near the Permittee's establishment. (Exhibits AA4, EE). Officer Jinks related that when she arrived, the Permittee's establishment was open but that no other business in adjacent strip mall was open; she added that there were many cars in the parking lot, and that the "last call" for ordering alcoholic beverages had just been given in the establishment. Officer Jinks issued a municipal ordinance citation to the Permittee for violation of Section 4-32(b) of the City Code; the night manager, Cody Goins, told Officer Jinks that he would rather have been home with his family, but that the owner made him stay open. Lieutenant Griffin testified that when he arrived at the establishment he observed numerous people leaving who were "obviously very intoxicated." He added that the night manager, Cody Goins, told him that "because of the shutdown, everybody's coming there at about 10:30 after all the other places shut down." The night manager also stated that some people had been ejected earlier from the establishment right at "last call."

3.

Richard Lawhorn, the owner of Permittee (Exhibits E1-E2), testified that he is the owner of Billiards & Brews, LLC. Mr. Lawhorn also identified those persons listed on the “time records” (Exhibit DD) submitted for the relevant time period, and explained their respective job responsibilities; many of those persons whom Mr. Lawhorn identified as “bartenders” worked on multiple occasions during the relevant days in question until 4:00 a.m., well beyond the established curfews. Additionally, Mr. Lawhorn stated that he often had persons in Billiards & Brews for billiards tournaments; and that 50% or more of his revenues in the past year came from billiards fees and sale of food, with the sale of beer and other alcoholic beverages comprising the balance of his revenues. With these few exceptions, however, Mr. Lawhorn responded to questions about the activities of the nights in question by invoking – upon the advice of counsel – his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution and Article I, Section 9 of the Tennessee Constitution.

Kendall Cody Goins, who is the son of Richard Lawhorn and was the night manager at Billiards & Brews during the relevant time period, was identified as a witness by the City of Knoxville on its witness list for the hearing; and counsel for the City of Knoxville represented at the hearing that Mr. Goins had been served with a subpoena to appear at the hearing. Notwithstanding, Mr. Goins did not appear at the hearing to testify; he gave no notice that he would not appear; he did not seek quashal of the subpoena, based on the documents in the file; and his father, Richard Lawhorn, stated that he had no knowledge as to why Mr. Goins failed to appear to testify at the hearing.

Discussion

1.

Your Hearing Officer concludes that the preponderance of the evidence establishes that the Permittee is guilty of all non-compliance offenses charged in the Non-Compliance Complaint as amended, with the exception of an allegation of disorderly conduct relating to the shooting of a person on the premises of the Permittee. Your Hearing Officer accredits, and finds credible, the testimony of Knoxville Police Sergeant John Coward regarding the operation of Billiards & Brews beyond the hours of legal curfew on November 20, 2020; December 4, 2020; December 5, 2020; December 11, 2020; December 17, 2020; December 18, 2020; and December 19, 2020. Your Hearing Officer also accredits, and finds credible, the testimony of Sergeant Coward regarding the sale and consumption of beer at the premises of Billiards & Brews beyond the hours of legal curfew on those same dates. Your Hearing Officer accredits, and finds credible, the testimony of Knoxville Police Officer Hayden Cochran regarding the operation of Billiards & Brews beyond the hours of legal curfew on the night of December 12-13, 2020, as well as his testimony regarding the sale and consumption at the premises of Billiards & Brews beyond the hours of legal curfew on that same date. Your Hearing Officer accredits, and finds credible, the testimony of Knoxville Police Sergeant Matthew Gentry regarding the operation of Billiards & Brews beyond the hours of legal curfew on the night of December 23-24, 2020, as well as his testimony regarding the sale and consumption at the premises of Billiards & Brews beyond the hours of legal curfew on that same date. Your Hearing Officer accredits, and finds credible, the testimony of Knoxville Police Officer Amy Jinks and Knoxville Police Lieutenant Darrell Griffin regarding the operation of Billiards & Brews beyond the hours of legal curfew on the night of December 26-27, 2020, as well as their testimony regarding the

sale and consumption at the premises of Billiards & Brews beyond the hours of legal curfew on that same date. Consequently, your Hearing Officer determines by a preponderance of the evidence that the Permittee is guilty of violating Section 4-32(b) and Section 4-73(c) of the City Code on the dates mentioned above.

As for the allegation of evidence of disorderly conduct occurring on the premises of the Permittee's business on the morning of December 27, 2020 that relates to the shooting of a person who was discovered in a parking lot near the Permittee's premises (Second Amended Non-Compliance Complaint, at "Count XI", ¶¶ 75-77; Exhibit AA4), your Hearing Officer determines that there was insufficient proof to show that it was more likely than not that the shooting was directly related to the operation of the Permittee's business or that the incident occurred on the actual premises of the Permittee's business.

With regard to the invocation by Richard Lawhorn of his privilege against self-incrimination pursuant to the Fifth Amendment of the United States Constitution and Article I, Section 9 of the Tennessee Constitution, your Hearing Officer believes that it is appropriate to draw a negative inference from his invocation of his privilege against self-incrimination, inasmuch as there was independent evidence – from the testimony of the Knoxville Police Department officers referenced above – of the facts that Mr. Lawhorn refused to answer by invoking his privilege against self-incrimination. *Sikora ex rel. Mook v. Mook*, 397 S.W.3d 137, 146-47 (Tenn. Ct. App. 2012) (citing *Akers v. Prime Succession of Tenn., Inc.*, 387 S.W.3d 495, 506 (Tenn. 2012)), *perm. app. denied* (Tenn. 2013). Notwithstanding the application of these negative inferences, however, there was more than sufficient proof from the Knoxville Police Department witnesses to establish, by a preponderance of the evidence, the Permittee's violations as set forth above, even without consideration of the negative inferences from Mr. Lawhorn's testimony.

2.

Regarding the appropriate penalty for the multiple incidents of non-compliance that have been proved by a preponderance of the evidence, your Hearing Officer notes that the City of Knoxville “requests that the Permittee’s beer permit be suspended for at least seventy-five (75) days, and that this suspension continue thereafter until such time as the Permittee agrees to comply with the requirements set forth in the Knox County Board of Health Regulations.” The City of Knoxville further requests that the Permittee be ordered to pay a fine per violation as well as costs for this hearing, along with “any additional sanctions as appropriate in accordance with Section 4-89 of the City Code.” (Second Amended Non-Compliance Complaint, at ¶ 78).

Your Hearing Officer notes that the Permittee has committed multiple violations of both Section 4-32(b) and Section 4-73(c) of the City Code, even after the Permittee was timely given notice of the promulgation of Board of Health Regulations 2020-5 and 2020-7, along with Knoxville City Council emergency ordinances O-168-2020 (amending City Code Section 4-73(c) to specify that Executive Orders of the governor and the mayor of Knoxville, Knox County Board of Health Regulations, and Orders of the Knox County Health Director are laws that must be complied with by beer permittees) and O-169-2020 (amending City Code Section 4-32(b) to further limit time constraints for the on-premises sale/consumption of beer). This, along with additional citations of the Permittee for violations of Section 4-32(b) of the City Code that took place after the conduct alleged in the Second Amended Non-Compliance Complaint (Exhibits X1-X8) – and even after the filing of the Amended Non-Compliance Complaint – indicates to your Hearing Officer that the Permittee’s actions were willful, flagrant, and unrepentant; and do not suggest that the Permittee or its owner would be amenable to education and compliance with requirements of the Knox County

Board of Health Regulations or other applicable laws that regulate the sale or consumption of beer at his establishment. This makes the City of Knoxville's suggested penalty of permit suspension plus prospective compliance with applicable laws a likely exercise in futility.

Further, your Hearing Officer notes that Section 4-73(c) of the City Code provides in pertinent part that "[t]he board **shall revoke** the permit of any permittee who operates or allows his establishment to be operated in a disorderly manner." (emphasis added). This ordinance appears to be mandatory in its application of revocation as a penalty for operation of a permittee's establishment in a disorderly manner. Additionally, considering the numerous occasions of curfew violations by the Permittee on November 20, 2020; December 4, 2020; December 5, 2020; December 10, 2020; December 12-13, 2020; December 17, 2020; December 18, 2020; December 19, 2020; December 23, 2020; and December 26-27, 2020; your Hearing Officer believes that these multiple instances of deliberate and willful disorderly conduct – along with the violations of Section 4-32(b) on November 20, 2020; December 4, 2020; December 5, 2020; December 10, 2020; December 13, 2020; December 17, 2020; December 18, 2020; December 19, 2020; December 23, 2020; and December 27, 2020; all of which have been shown by a preponderance of the evidence – justify revocation of the Permittee's beer permit.

Given the severity of the sanction of revocation of the Permittee's beer permit, your Hearing Officer declines to assess fines for any instances of violation by the Permittee. Pursuant to Section 4-89 of the City Code, your Hearing Officer taxes the costs of this matter to and against the Permittee, including reimbursement to the City of Knoxville for fees paid to the court reporter and the hearing officer.

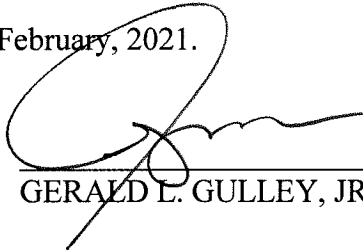
Conclusion

Based on the findings of fact and conclusions of law set forth hereinabove, it is therefore

ORDERED, ADJUDGED, AND DECREED that the Permit No. P062414009 issued to Permittee Billiards & Brews, LLC, be and hereby is REVOKED, effective immediately. It is further

ORDERED, ADJUDGED, AND DECREED that the Permittee, Billiards & Brews, LLC, be and hereby is directed to pay the costs incurred in this matter, including reimbursement to the City of Knoxville for fees paid to the court reporter and the hearing officer.

ENTERED this the 10th day of February, 2021.

A handwritten signature in black ink, appearing to read 'Gerald L. Gulley, Jr.', is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long, wavy tail.

GERALD L. GULLEY, JR., Esq., Hearing Officer