

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL LICENSE HEARING
TUESDAY, APRIL 22, 2009
TOWN HALL CHAMBERS**

A Town Council Hearing was held on Tuesday, April 22, 2009 to consider suspension or revocation of the business license of Paul McClellan, d/b/a/ Friendly's Market (31 Washington Avenue, Old Orchard Beach, Maine 04064 – Map, Block and Lot – 312-13-11. Chairman opened the meeting at 6:20 p.m.

The following were in attendance;

**Chairman James Long
Vice Chairman Shawn O'Neill
Councilor Sharri MacDonald
Councilor Roxanne Frenette
Councilor Robin Dayton
Town Manager Stephen Gunty
Assistant Town Manager V. Louise Reid
Licensing Inspector Gary Lamb
Police Chief Dana Kelley**

Members of the Administrative Board also present:

**Dan Blaney, Business Member
Tina Morrison, Citizen Member
Gary Curtis, Alternate Citizen Member**

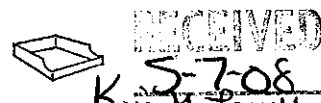
Absent from the Administrative Board:

Marc Bourassa, Alternate Business Member

The Chairman opened the meeting at 6:18 p.m. and gave a short introduction as to the purpose of the hearing.

Historical Information

On October 22 2007, Friendly's Market was summoned before the Administrative Review Board because the business had been caught by the OOB Police Department for the third time in 12 months selling alcohol to a minor. At that October 22, 2007 meeting, a motion was passed on a 4-2 vote stating, “that any infraction or breaking of the law in the coming year would be cause for his business and liquor license to go directly back to the Town Council with recommendation of it's denial.” At the April 8, 2008 Administrative Board Hearing, Mr. McClellan was before the Board again because his business was recently caught a 4th time selling alcohol to a minor. After considerable discussion with Mr. McClellan and his attorney Neal Weinstein, a motion was made to deny their business license for one year. This motion would have closed the business for a year. This motion died for lack of a second. Another motion was then made to recommend the Town Council suspend the business license for 30 days. This motion passed on a 4-2 vote. If endorsed by the Town Council, Friendly's Market will be closed for 30 days. Administrative Board members in attendance on April 8 2008 -



Town Manager Steve Gunty, Police Chief Dana Kelley, Fire Chief John Glass, citizen representative Tina Morrison, business representative Dan Blaney and License Administrator/Town planner Gary Lamb. Councilors have been reminded that the Board treats this as a very serious situation, especially since neither of Mr. McClellan's two employees have taken the alcohol server-seller training (something he knew should have been done by now.) The temporary closure of a business may seem too drastic for some but in this situation it is warranted.

On Tuesday, April 15, 2008 this recommendation of the Administrative Board went to the Town Council for their consideration. Discussion by Neal Weinstein, Esquire, that this was not an official hearing came with a recommendation by the Council that the Hearing be held on Tuesday, April 22, 2008. The following letter was sent to Mr. McClellan on April 16, 2008.

**TOWN OF OLD ORCHARD BEACH
Office of the Town Manager
1 Portland Avenue
Old Orchard Beach, Maine 04064-2245
207-934-5714**

April 16, 2008

**Paul McClellan
d/b/a Friendly Market, Inc.
31 Washington Avenue
Old Orchard Beach, Maine 04064**

Re: Notice of Hearing to Consider Suspension or Revocation of Business License

Dear Mr. McClellan:

Please be advised that the Old Orchard Beach Town Council will conduct a hearing on Tuesday, April 22, 2008 at 6:15 p.m. in the Council Chambers at the Old Orchard Beach Town Office. The purpose of the hearing will be to consider the suspension or revocation of your business license under Section 18-39(a) of the Old Orchard Beach Code.

The grounds for the possible suspension or revocation are as follows:

On at least four occasions (November 7, 2006, July 13, 2007, August 19, 2007 and March 21, 2008) your business has sold alcohol to minors. The sale of alcohol to minors is a Class E crime. Under Section 18-28(a) of the Old Orchard Beach Code, any licensee who commits a criminal violation in the course of conducting the licensed business commits a violation of the Town's License Ordinance. Under Section 18-28(a)(4), it is also a violation of the Town's License Ordinance when the licensee permits an activity to occur which is forbidden by the provisions of state law applicable to the business.

Under Section 18-39(a) of the Town Code, such violations may constitute "cause" for suspension or revocation of your business license. You are urged to attend the hearing and present any evidence which you wish the Town Council to consider.

Sincerely,

**cc: Neal L. Weinstein, Esquire
Gary Lamb, Town Planner**

**Stephen J. Gunty
Town Manager**

Attorney Neal Weinstein referenced the fact that at least one of the violations was before the last business license was issued and that in essence there were three violations, not four. He expressed his feeling that this was a violation of our Charter's business license process. He indicated that at the time of the issuance of the business license issues should have been addressed at that time not carried over to the present year. He indicated that his client was very distraught over what had happened and that he took responsibility for the failure of an employee to follow strictly to the law. Attorney Weinstein said that unfortunately for his client he is a kind and generous individual who hired an individual who had lost her husband recently, did not drive, and was not able to get to a place where the classes were being held. His client would not only have his business suffer but also the community would suffer because his market is the only business of that type to service an elderly group of citizens who would be greatly disadvantaged should they not be able to shop in this area. Attorney Weinstein acknowledged that there is an issue in the town with under-age drinking and that his client regretted this happening and took responsibility for it. It was pointed out how difficult it is to run a business and that AZ's had been closed which makes it even more difficult for the citizens in that part of the Campground to purchase food goods locally.

Councilor Frenette indicated that forgetting the 2006 infraction, there are still issues here to be considered and that accountability is the responsibility of the business owner.

Chairman Long indicated that the Administrative Board had over 44 hearings prior to this one coming forward to the Council and has saved the Town hours of administrative time. This Administrative Board has been vitally important in bringing the Town into adherence to our Ordinances and our Charter.

Attorney Weinstein also congratulated the Council and the Administrative Board but he reiterated again that this action of closing down a business for 30 days will definitely hinder not only the business owner but the Campground area.

Town Manager Steve Gunty explained the two agreements that were provided to the Council. There was a complaint that this second Order was received when they arrived at the Council meeting this evening. The Assistant Town Manager took responsibility for requesting the second Order to give another option of addressing considerations of the Council. It was reiterated by the Town Manager that the desire was to provide more options to the Council, attempting on behalf of the Council to be proactive.

Mr. Paul McClellan apologized to the Town Council, to the Administrative Board, to the citizens and to the residents in the community of his store for losing confidence in him and he committed to make sure the rules are followed and that he desired his business to be a hallmark for the community.

Councilor O'Neill indicated that he was grateful for the work of the Administrative Board and that he accepts the gracious apology of Mr. McClelland but the fact that this was a continuing issue it needed to be dealt with in a proactive way. He indicated that he did not think in all honesty that thirty days suspension of liquor license was enough and that he did not however want to shut down the store selling daily goods to the locals in that area but that he felt that denying Mr. McClellan the opportunity to sell liquor for a year would be in the best interest of the youth. He reminded everything that it is a privilege to do business in Old Orchard.

Councilor Frenette indicated that she did not believe the municipality could take away a liquor license since we do not issue them. She indicated she felt that the thirty day business license suspension taking into consideration he had already been closed for two days (Monday and Tuesday, April 21 and 22) would be the best way to address this issue. She acknowledged that this would be a hardship on the business owner and the community but it was necessary to make business owners aware of the seriousness of selling liquor to minors.

Attorney Weinstein reminded the Council that Potvins Market had three violations in a year and yet they were permitted to continue to operate. He said there needed to be some recognition of fairness in dealing with this issue and this business. He recognized that Mr. McClellan had agreed to certain stipulations at the October 2007 hearing. He indicated that he felt a thirty day suspension of the business license was excessive and that an Order to not sell alcohol would be substantive to his legally not being able to do that in his store even though the State issues the liquor license.

Councilor Dayton spoke of the seriousness of closing this business for thirty days and the impact it will have on the community. She indicated she had lived in this area and was aware that other businesses in that location have closed and it was a hardship then and will continue to be a hardship for the senior population who use this business to secure food goods and products. She indicated she fully understands the seriousness of selling liquor to underage young people and her statements of support to keep the business open do not undermine that sentiment but rather her concern for the locals in the area of the Market.

Chairman Long indicated that in reviewing the previous violations the business owner promised that he would obey the law and that any violation could mean the suspension of his license so he was aware of the seriousness of this situation.

Councilor MacDonald indicated she felt it was a serious hardship for the community not to have the services of that market at their disposal but that she also recognized the seriousness of selling liquor to minors.

MOTION: Councilor Frenette motioned and Councilor O'Neill seconded to suspend the business license of Paul McClellan d/b/a Friendly Market, Inc. for a period of 30 days, effective April 21, 2008 through May 20, 2008.

VOTE: Yea: Councilors Frenette, O'Neill and Chairman Long
 Nea: Councilors MacDonald and Dayton

**ORDER ON LICENSE SUSPENSION HEARING,
PAUL MCCLELLAN D/B/A FRIENDLY MARKET INC.**

On April 22, 2008, the Old Orchard Beach Town Council held a hearing to consider the revocation or suspension of the business license of Paul McClellan d/b/a Friendly Market, Inc. After hearing, the Council finds and concludes as follows:

FINDINGS

1. Based on the information provided by the Old Orchard Beach Police Department and also on the reports of the Administrative Board hearings of Monday,

October 22, 2007 and Tuesday, April 8, 2008, the Council finds that the licensed business has sold alcoholic beverages to minors on four documented occasions: November 7, 2006, July 13, 2007, August 19, 2007 and March 21, 2008.

CONCLUSIONS

1. The sale of alcohol to minors is a Class E crime under state statute.
2. Any licensee who commits a criminal violation in the course of conducting the licensed business commits a violation of Section 18-28(a) of the Old Orchard Beach Code.
3. Under Section 18-28(a)(4) of the Old Orchard Beach Code, it is a violation of the Town's License Ordinance for a licensee to permit an activity to occur which is forbidden by the provisions of state law applicable to the business.
4. Under Section 18-39(a) of the Old Orchard Beach Code, the above-referenced violations constitute cause for suspension of the business license.

NOW, THEREFORE, be it hereby ordered:

The business license of Paul McClellan d/b/a Friendly Market, Inc. is suspended for a period of 30 days from April 21, 2008 to May 20, 2008.

ADJOURNMENT

MOTION: Councilor Frenette motioned and Councilor O'Neill seconded to adjourn at 7:00 p.m.

VOTE: Unanimous.

Respectfully Submitted,



V. Louise Reid
Town Council Secretary

I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of five (5) pages is a true copy of the original Minutes of the Hearing of the Town Council on April 22, 2008.

V. Louise Reid