



TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 929-6611
Fax (978) 929-6350

Steven L. Ledoux
Town Manager

January 7, 2015

Please place this in the Legal Ad section of the Acton Beacon on Thursday, January 22, 2015:

Bill to: Not Your Average Joe's
2 Granite Street, Suite 300
Milton, MA
(774) 213-2800

Please confirm to ltomyl@acton-ma.gov

Regards,

Lisa Tomy
Executive Assistant

**LEGAL NOTICE
TOWN OF ACTON
NOTICE OF HEARING**

The Acton Board of Selectmen will hold a public hearing on February 9, 2015 at 7:10 PM in the Francis Faulkner Hearing Room in Town Hall, 472 Main Street, Acton to review the alcoholic beverages service policies with Not Your Average Joe's, Alan Kursch, Manager at 291 Main Street, Acton MA. .The documentation can be inspected at Town Hall during normal business hours.

Acton Board of Selectmen



TOWN OF ACTON
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Telephone (978) 929-6611
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Board of Selectmen

January 8, 2015

Alan Kusch, Manager
Not Your Average Joe's
291 Main Street
Acton, MA 01720

RE: Employee Operating Under the Influence

Mr. Kusch:

The Board of Selectmen has recently received notification and an Alcoholic Beverage Control Commission report from the Acton Police Chief regarding an incident that took place on May 3, 2014. This incident resulted in one of your employees being placed under arrest for operating under the influence. The Board of Selectmen takes these matters very seriously, especially since the violator had admitted to consuming alcoholic beverages after his work shift after hours.

The Board also acknowledges that at that time of the offense, you were not the Manager. Therefore, the Board respectfully requests your presence, and any additional parties that may have been involved at that time, at a public hearing on **February 9, 2015 at 7:10 PM** at Acton Town Hall, 472 Main Street, Francis Faulkner Hearing Room, Room 204.

To prepare for this hearing, the Board suggests that you bring or provide ahead of time your current alcoholic beverage service policy and any other material that may be relevant in reviewing your All Alcohol License..

Regards,

Lisa Tomyl
Executive Assistant
Office of the Town Manager

Cc: Police Chief
ABCC File

Lisa Tomyl

From: Frank Widmayer
Sent: Tuesday, January 06, 2015 3:56 PM
To: Steve Ledoux
Cc: Lisa Tomyl; Mark Hald
Subject: Not Your Average Joe's ABCC 24J Notification.pdf
Attachments: Not Your Average Joes ABCC 24J Notification.pdf

Steve,

1448CR000559	Not Your Average Joe's	291 Main Street	Acton, Ma. 01720		
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The above information was received from the Alcohol Beverage Control Commission and provides the location of the last drink that a person had who was then subsequently arrested for operating under the influence of alcohol. The date of offense was 5/3/2014 and the arrest was made by the Littleton Police Department. I have included a redacted copy of the report.

The offense date was a long time ago but we only get notified on the ABCC schedule that they provide from court records. The interesting aspect of this incident is that the suspect had his last drink at Not Your Average Joe's where he is an employee. Based on that aspect I recommend that the Board of Selectmen have the management of Not Your Average Joe's in for a hearing on the matter to discuss their policies.

Regards,
Frank

Frank J. Widmayer III
Chief of Police



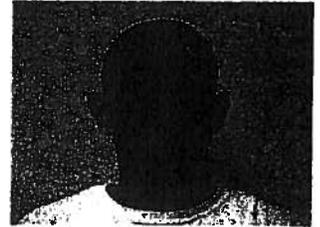
Littleton Police Department
Arrest Report

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12/12/2014

Arrest #: 14-123-AR
Call #: 14-5878

Date/Time Reported: 05/03/2014 @ 0038
Arrest Date/Time: 05/03/2014 @ 0038
Booking Date/Time: 05/03/2014 @ 0156

OBTN: TLIT201400123
Court: AYER DISTRICT COURT
Court Date: 05/05/2014 @ 0830
Reporting Officer: Patrol Brian Casey
Assisting Officer: Patrol Patrick O'Donoghue
Booking Officer: Patrol Brian Casey
Approving Officer: Sergeant Edmond Bussiere



Signature: _____

Bail For Court: AYER DISTRICT COURT Set: 05/03/2014 @ 0157
Personal Recognizance Set 40.00
Personal Recognizance Set
Bail Set By: BAIL COMM MATT DAY
Bail Unpaid:

Signature: _____

#	DEFENDANT (S)	SEX	RACE	AGE	SSN	PHONE
1	[REDACTED], ERIK E [REDACTED] RD AYER MA 01432	M	W	31	[REDACTED]	

Military Active Duty: N
HEIGHT: 509 WEIGHT: 125 HAIR: BLACK EYES: BROWN
BODY: SKINNY COMPLEXION: NOT AVAIL.
DOB: 08/16/1982 PLACE OF BIRTH: GUATAMALA
LICENSE NUMBER: MA S89971764 ETHNICITY: HISPANIC
PCF #: 0

[APPEARANCE]

GENERAL APPEARANCE: ORDERLY

GLASSES WORN: NO

MARKS: DISC R HND(BURN FROM COOKING)
TATTOOS: TAT RF ARM(ESTRADO)

[FAMILY/EMPLOYMENT INFORMATION]

MARITAL STATUS: SINGLE

FATHER'S NAME: [REDACTED], ROBERTO
MOTHER'S NAME: [REDACTED], BICENTA

EMPLOYER/SCHOOL: NOT YOUR AVERAGE JOES

OCCUPATION: COOK

Littleton Police Department
Arrest Report

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12/12/2014

Arrest #: 14-123-AR
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#	DEFENDANT(S)	SEX	RACE	AGE	SSN	PHONE
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[RIGHTS/BOOKING CHECKS]

RIGHTS ADVISED BY: Patrol Brian M Casey DATE/TIME: 05/03/2014 @ 0156
PHONE USED: Y PHONED DATE/TIME: 05/03/2014 @ 0156
ARRESTEE SECURED: N

FINGERPRINTED: N
PHOTOGRAPHED: N
SUICIDE CHECK: Performed
PERSONS: State
NCIC VEHICLE CHECK: Not Performed
INJURY OR ILLNESS: N

#	OFFENSE(S)	ATTEMPTED	TYPE
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LOCATION TYPE: Parking Lot/Garage Zone: WEST SECTOR GEO 04
CATALANO BROS., INC.
53 AYER RD
LITTLETON MA 01460

- | | | | |
|---|---|---|-------------|
| 1 | MARKED LANES VIOLATION
89/4A 89 4A
OCCURRED: 05/03/2014 0038
REFER TO CITATION#: R4781095 | N | Misdemeanor |
| 2 | OUI LIQUOR
90/24/J 90 24
OCCURRED: 05/03/2014 0038
REFER TO CITATION#: R4781095 | N | Misdemeanor |
| 3 | NAME/ADDRESS CHANGE, FL NOTIFY RMV OF
90/26A 90 26A
OCCURRED: 05/03/2014 0038
REFER TO CITATION#: R4781095 | N | Misdemeanor |

Littleton Police Department

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NARRATIVE FOR PATROL BRIAN M CASEY

Ref: 14-123-AR

Entered: 05/03/2014 @ 0226 Entry ID: 49BC
Modified: 05/04/2014 @ 2226 Modified ID: 49BC
Approved: 05/12/2014 @ 2303 Approval ID: 36EB

The following is a summary of the events that occurred on May 3, 2014...

On May 3, 2014, I, Officer Brian Casey was working a 2300-0700 shift (began on 5/2) for the Town of Littleton. I was working along with Officer Patrick O'Donoghue. Both Officers were assigned to uniform patrol in fully marked cruisers for the Town of Littleton. All roads listed in this report are accepted public ways within the Town of Littleton. The weather was clear and seasonal.

At approximately 0020 hrs I was traveling Westbound on Ayer Rd. My attention was drawn to the vehicle traveling in front of me (Westbound). My attention was drawn to this vehicle, a Red Pontiac Sedan (MA PC [REDACTED]) as I noted it cross over the double solid yellow line on two occasions in the area of the Littleton Operations Center. I noted that I was traveling at 50 MPH and the vehicle was pulling away from me indicating it was traveling faster than 50 MPH (Please note the posted limit is 45 MPH in this area) I conducted an inquiry of the vehicle and learned the registered owner's license was suspended.

I activated my emergency lights in the area of 53 Ayer Rd for all the above infractions and called the stop in to dispatch. I approached the drivers side of the vehicle where I was immediately struck with a strong odor of an alcoholic beverage coming from within the vehicle. I greeted the operator and asked him for his license and registration which he provided (female passenger provided him registration). I identified him as Erik [REDACTED] [REDACTED]. I asked him if he had consumed any alcohol this evening and he stated he had not however then later admitted to having one glass of wine.

While speaking to [REDACTED] the odor of an alcoholic beverage became stronger each time he spoke and appeared to emanate from his facial area. I noted his eyes were slightly bloodshot however extremely glassy. I asked him if he would submit to standardized field sobriety testing and he stated he would. I advised him to stay in his vehicle and I would be back shortly. I ran his information and requested Ofc O'Donoghue respond to my location. He arrived on scene and I briefed him and then returned to the drivers side of the vehicle and asked [REDACTED] to step out of the vehicle. As he stepped out he had to hold on to the door to keep his balance.

This section of roadway is busy even at night with trucks and is on a somewhat steep incline. For this, I escorted [REDACTED] back to New Estate Rd (holding onto his arm) as it is much more flat and less traffic. I kept my cruiser behind the vehicle and turned off the flashing emergency blue lights and left the yellow arrow directional on as it does not distract an individual the way the flashing blue lights do. Please note [REDACTED] was never looking towards the arrow directional itself also, always away from it.

Ofc O'Donoghue located a portion of New Estate Rd that was flat paved and clear of debris and safe to conduct standardized field sobriety tests. This road in some areas is in need of repair/repaving. We were sure to use an area that was flat, paved and did not have potholes. This area is lit by streetlights however with Ofc O'Donoghue's cruiser we used the head lights to illuminate the area for him. I asked [REDACTED] if he had any problems with his eyes and he stated he did not. I asked him if he had any physical problems and he stated he had broken his leg and did not have the muscle built back up yet. At this point he then stated "I dont know why you have to be like this, I had three glasses of wine after work, Im not drunk". This differed from his original statements stating he had nothing then one drink. I asked him what time he got out of work and he responded 11 PM.

The first test I conducted was horizontal gaze nystagmus. I advised him to follow the tip of my pen with his

Littleton Police Department

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NARRATIVE FOR PATROL BRIAN M CASEY

Ref: 14-123-AR

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eyes only keeping his head straight forward. He advised he understood and did not have any questions. I advised him to touch the tip of my pen with his right index finger. He attempted to do this but missed my pen. I began the test using my pen as a stimulus checking each eye individually. I began by checking for smooth pursuit and noted his eyes lacked the ability to smoothly pursue my pen without jerking. I then checked for the onset of nystagmus at the position of maximum deviation. I noted clearly distinct and sustained nystagmus at maximum deviation. I then checked for nystagmus at the onset prior position and again noted nystagmus clearly. For this test I noted all clues present.

Due to his leg injury the next test I conducted was counting backwards. I asked [REDACTED] if he had any troubles counting and he stated he did and did not speak English well. I asked what language he spoke and he stated Spanish. I asked him if he could count in Spanish and he stated he could. Please note this officer had taken a combined four years of schooling in Spanish and although can not speak fluently has no problems counting and can understand and speak most numbers in Spanish. I asked him to count backwards from 69 to 54 in Spanish. Please note that while speaking to [REDACTED] prior to this and after this he had no problems understanding my directions at all, admitted he understood them at all times and very rarely asked me to repeat myself. [REDACTED] advised me he has been in the United States since he was fourteen years old.

For this test I repeated the numbers to him numerous times in English and Spanish and he stated he understood. He began the test skipped the number 69, counted 68 to 62 where he counted 62 twice, counted to 59 where he counted 59 twice, counted to 57 where he counted 57 twice. After counting the second 57 he counted 58, 59, 58, 57 and stopped at 54. I wrote these mistakes on my hand as I was listening to him count.

The next test I conducted was the Rhomberg Stand test. I advised [REDACTED] to stand up straight with his feet together and lift his head back toward the sky and close his eyes. I advised him to count the passage of thirty seconds in his head and when he felt thirty seconds was complete to put his head down and say stop. [REDACTED] advised he understood and did not have any questions. He began the test when instructed and timing with my watch he stopped at 19 seconds. During this test he swayed violently from side to side.

At this point based upon my observations, I formed the opinion [REDACTED] was operating a motor vehicle under the influence of an intoxicating liquor and due to this his ability to operate safely was extremely diminished. I ordered him to place his hands behind his back and at first he resisted. I grabbed his hands and he attempted to pull away. He was ordered to not attempt to resist by Ofc O'Donoghue and I and was handcuffed (DL), Searched, and placed in the rear of my cruiser.

The owner of the vehicle/passenger Veronica [REDACTED] ([REDACTED]) was advised of the situation and that the vehicle was being towed. [REDACTED] was given several options and wanted to come to the station and await bail for [REDACTED]. She was transported by Ofc O'Donoghue right in front of me when I transported [REDACTED]. While transporting [REDACTED] there was a strong odor of an alcoholic beverage in my cruiser, an odor that was not there prior to [REDACTED] being placed into it and I was able to strongly smell it despite the divider so much so that I had to keep my window open.

CBK Towing was contacted and took custody of the vehicle after it was inventoried. Both [REDACTED] and [REDACTED] were transported to LPD. [REDACTED] awaited in the lobby and [REDACTED] was booked according to departmental protocol and procedure. He was read his statutory rights and consent form verbatim. I gave him a copy in both English and Spanish and he followed along with the English copy. I had him sign both the English and Spanish form after I read

Littleton Police Department

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NARRATIVE FOR PATROL BRIAN M CASEY

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it in English verbatim and he advised he understood. There was a discrepancy on the departmental arrest number on the forms that was fixed prior to him signing it. However his name, the date, time etc was all correct.

I began the fifteen minute observation period and explained it to him and sat and stared directly at him in front of the booking window. I had him open his mouth before we began to ensure nothing was in his mouth. During this time he continually stated he did not eat and had three glasses of wine after work. Ofc O'Donoghue entered the information on the breathalyzer and administered the test with the following results:

Test #1: 0.168% BAC Calibration: 0.080 Test #2: 0.160% BAC

██████████ was advised of this and given copies and explained his suspension. Bail Commissioner Matt Day agreed to release him under personal recognizance. During the booking process, ██████████ had severe mood swings at one time he would laugh and joke and at others he was attempting to stare me down during the fifteen minute observation period. I explained that I had to watch him numerous times and he advised he understood but then thought as though I was staring him down and stated he wasn't going to back down. He began at times making incoherent claims such as the only reason I stopped him was that he was a Yankees fan. He would be irate and angry and instantly switch to happy and laughing. He was later bailed into the custody of his girlfriend. Prior to being bailed I had him check all his property and sign a form indicating the property I had inventoried was in a bag I handed to him. Inside that bag was also the registration to his vehicle. He left out the side entrance then came storming in the front door a moment later with his girlfriend stating I took the registration to the vehicle that was right in the bag in front of him and even I could see within the clear bag.

Respectfully Submitted,

Ptl. Brian Casey #49