

At a Special meeting of the Town Council serving as the Gloucester Licensing Board holden in and for the Town of Gloucester on October 19, 2023

I. Call to Order

The meeting was Called to Order at 6:00 P.M. by Councilor W. Worthy , Town Council President.

II. Roll Call

Members present: Cheryl A. Greathouse; Jonathan E. Burlingame; Walter M. O. Steere, III; Stephen W. Arnold, Vice President; William A. Worthy, Jr., President

Also Present: David Igliazzi, Town Solicitor; Christine Mathieu, Deputy Town Clerk; Joseph Delprete, Police Chief ; Matthew Fague, Captain Gloucester Police; William Bernstein, Assistant City Solicitor

III. Pledge of Allegiance.

Councilor W. Worthy asked all to please rise to join us in the Pledge.

IV. Show Cause Hearing was Continued from August 3, 2023 to August 16, 2023 Rescheduled to September 6, 2023 and Rescheduled to October 19, 2023 (with re-advertisement) - Discussion , Vote or Other Action by Town Council acting as Licensing Board

A. **Licensee**

Hill's Tavern and Grill, LLC, Albert L. Hill, Jr., d/b/a Hill's Tavern and Grill.
Location of Business: 417 Putnam Pike, Chepachet, RI 02814

1. **License granted to Licensee for consideration:**

a. **BV Liquor License (RIGL 3-5-15; RIGL 3-7-7)** granted for the period 12/1/2022 to 11/30/2023.

Councilor W. Worthy stated that the Purpose of this hearing is to show cause why said license, #1(a) , should not be subject to revocation, suspension or a fine for violating conditions of license based upon the following grounds which he read as follows:

Violation 1: Liquor Liability Insurance (RIGL 3-7-29)

Failure to have proper liability insurance as required by licensing

Violation 2: Regulation of Sales/Minor Book (RIGL 3-8-6(c)(1))

Failure to have or keep a sign-in-as-minor book as required for regulation of sales

Violation 3: Renewal of Class B, C, D, J, N and Class P licenses (RIGL 3-7-6.1 (b) Sections 1—5)

Failure to have proper server training certificate(s) on premises or filed with licensing authority for on duty bartender on June 19, 2023

Councilor W. Worthy stated he would be recusing from this matter as he has worked with the vendor, Al Hill.

Councilor W. Worthy DECLARED the Hearing OPEN

Atty. Igliazzi, Town Solicitor, instructed Councilor S. Arnold, as Vice President, to respectfully take the gavel and oversee the hearing.

Atty. Igliazzi stated that the parties have agreed to stipulated facts and asked Assistant Town Solicitor, Attorney Bernstein, to review the charges.

Atty. Bernstein stated his role is to show the facts leading to the violation. The following are agreed to by the parties and asked to be entered as joint exhibits: Statement of facts as joint exhibit 1; Affidavit of the employee as joint exhibit # 2; and, the police report as joint exhibit # 3.

D. D'Agostino, attorney for Hill's Tavern and Grill, LLC had no objections.

Atty. Bernstein read into the record #1 Agreed Statement of Facts:

1. Hill's Tavern and Grill, LLC, d/b/a Hill's Tavern, is an establishment on Putnam Pike offering food and beverages.
2. Hill's Tavern is and was at all times relevant hereto the holder of a valid BV liquor license. It was most recently renewed on November 17, 2022.
3. State law requires all liquor license holders to have in force a valid liquor liability insurance policy when serving liquor.
4. On or about June 15 or 16, 2023, town officials were notified that the liquor liability insurance policy for Hill's Tavern had lapsed or been terminated.
5. On June 16, 2023, Sgt. Timothy Heston of the Gloucester Police Department went to Hill's Tavern and informed Albert Hill that because of the lapse in liquor liability insurance no liquor would be allowed to be served until the insurance was reinstated.
6. On June 19, 2023 at approximately 3:00pm, Captain Fague and Lt. Jenison conducted a check of Hill's Tavern to determine whether alcohol beverages were being sold on the premises after Hill's was informed not to do so.
7. The officers observed several patrons inside and outside drinking what appeared to be alcoholic beverages.
8. One red Solo cup being consumed by a patron was field tested for alcoholic content and it tested positive for alcohol.
9. The bartender stated she sold alcoholic beverages at that time to several patrons.
10. During this investigation, police discovered there was no book for suspected minors to sign, as required by state law.
11. On the date in question, there was no valid TIPS certification on record for the bartender on duty at the time.
12. Hill's Tavern liquor liability insurance certificate was issued on or about June 23, 2022.
13. Hill's Tavern has had no prior disciplinary action taken against its license to sell alcoholic beverages.

Assented to as to form and substance this *16th* day of October, 2023 by:

David D'Agostino, Esquire
Attorney for Hill's Tavern
(End of Exhibit)

William L. Bernstein, Esquire
Assistant Solicitor

Atty. Bernstein stated that these are stipulated facts and can not be refuted. Atty. Bernstein stated that the standard to consider is whether there is a preponderance of evidence to sustain a violation. Atty. Bernstein states that there is sufficient evidence to sustain a violation. Atty. Bernstein stated that the facts show beyond a reasonable doubt that Mr. Hill knew there was no liquor liability insurance in place on June 16 and was told not to serve alcohol and did so anyway as evidenced by the police report on June 19th. Atty. Bernstein stated that the facts show beyond a reasonable doubt that Mr. Hill knew there was no minor book and no certification of bartender on file.

Atty. Bernstein stated it was clear that the insurance policy lapsed in March by the text message shown as Exhibit C ; that there was a notice of intent to cancel (Exhibit E) and lastly, on May 4, 2023th there was a "you are canceled" notice in council's packet.

Atty. Bernstein stated that the Council is the fact finder as to when Mr. Hill knew the insurance was canceled. Atty. Bernstein stated that the affidavit and the police report establish beyond a reasonable doubt that Mr. Hill is in violation.

Atty. D'Agostino agreed with Atty. Bernstein and stated that there is very little disagreement as to the facts but there are a couple of things he feels Council should be aware of. Atty. D'Agostino referred to the letter dated Sept 5th, 2023, that was marked as Respondent's Exhibit A, which was his response to the three stated violations and the letter dated Oct. 16, 2023th, which was marked as Respondent's Exhibit B. Atty. D'Agostino stated he submitted copies of refund checks which reflect payments made by Mr. Hill.

Atty. D'Agostino stated Mr. Hill didn't understand the problem with payment and further, what they are challenging is that one day after finding out that his insurance was cancelled, Mr. Hill believed he secured insurance with a payment. Atty. D'Agostino stated that Mr. Hill believed as he had paid the premium on the 16th he had reinstated his insurance. Atty. D'Agostino stated it was not a case of disregarding notice. Atty. D'Agostino stated Mr. Hill was made aware of lack of insurance by the mortgage holder on June 15th and the next day Mr. Hill reinstated the policy with a payment. Atty. D'Agostino stated the General Liability insurance allowed Mr. Hill to continue to serve food but the Liquor Liability certificate was not issued until June 19th, 2023.

Atty. D'Agostino also stated that discipline is supposed to be progressive and if not it could be considered arbitrary and capricious. Atty. D'Agostino stated that Mr. Hill has no prior disciplinary action. Atty. D'Agostino acknowledges the violations but felt any sanctions imposed should be proportional to the violations.

Councilor C. Greathouse asked if she understood it correctly in that Mr. Hill felt that by paying for the insurance including the liquor liability that he had coverage. Attorney D'Agostino stated that

was correct. Councilor C. Greathouse asked if the payment that was made by Mr. Hill on June 16, 2023 was approved or if it had to go to underwriting. Atty. D'Agostino stated that Mr. Hill paid for the insurance on June 16, 2023 and just couldn't get the liquor liability certificate until June 22, 2023.

Atty. Bernstein stated that there are communications showing the policy was canceled in April (Exhibit D) and further that receiving a refund does not mean the policies were not canceled.

D. Igliazzi asked Atty. D'Agostino why the town as the licensee was not notified of the insurance cancellation as is required by state law. Atty. D'Agostino stated that he did not know. Atty. D'Agostino stated that the policy has been paid for the next year in full.

Councilor S. Arnold stated that there is a fair amount of gray in these three specific violations but that when Mr. Hill was told to not serve alcohol by the town and did so anyway is a real problem for him. Councilor S. Arnold stated that he felt that the potential for liability on the town as the licensee when the liquor liability insurance lapsed and alcohol was continued to be served was a great issue. Councilor S. Arnold stated that he wants all businesses to succeed but felt the behavior by Hill's Tavern was disrespectful.

Councilor W. Steere stated that he agreed with Councilor S. Arnold's statements. Councilor W. Steere asked why Mr. Hill was serving alcohol on June 19th when the insurance was in force on the next business day of June 20th. Councilor W. Steere stated that all want business to succeed but this activity could have put the town in jeopardy. Atty. D'Agostino stated that Mr. Hill believed that the insurance was in place once he made the payment.

Councilor S. Arnold stated his opinion that credibility fell short once he learned that alcohol was served in red solo cups on June 19th. Councilor C. Greathouse asked how alcohol is normally served. Atty. D'Agostino stated not in red solo cups. Councilor J. Burlingame asked why the decision was made to serve alcohol in red solo cups. Mr. Hill was sworn in upon D. Igliazzi's recommendation. Mr. Hill testified that his glass washer and his ice machine went down on the same day. Councilor C. Greathouse asked why Mr. Hill chose to serve alcohol. Mr. Hill stated he believed that once he paid by certified check for the insurance that he was covered and he was just waiting for the certificates.

Atty. Bernstein stated that the police report contains statements that Mr. Hill knew he was not to serve alcohol. Atty. Bernstein stated that Captain Fague is present to testify. Captain Fague was sworn in. Captain Fague stated that he told Mr. Hill that he could not serve alcohol and that the patrons at Hill's on the 19th had alcohol and ice in their solo cups. Captain Fague stated that the police have been called to Hill's in the past and solo cups are not usually seen.

Councilor W. Steere asked if the evidence was that there was one known day of violation for serving alcohol. Captain Fague stated that there was evidence of only one day, June 19th. Captain Fague stated that the officer who had gone to Hill's on June 15th told Mr. Hill that food could be served but not alcohol.

D. Iglizzo stated that the three possible penalties. D. Iglizzo stated that for a first offense, the maximum fine can be up to \$500. D. Iglizzo stated that a license can be revoked but that is not typical for first violations as it is a permanent penalty because it is taking away a license. D. Iglizzo stated that the third penalty is suspension.

Councilor J. Burlingame stated that these three violations are first violations. D. Iglizzo stated that he is not suggesting one penalty or another but that he does not feel the Council can revoke as that is used for extraordinary circumstances.

Councilor C. Greathouse stated that she would be in favor of imposing a \$500 fine for each offense as she believes this will not happen again. Councilor J. Burlingame stated he would also like to impose a \$500 fine for each offense. Councilor W. Steere stated that he would be in favor of imposing a one day suspension as to the first violation and then a \$100 to \$200 fine for each of the other two violations. Councilor S. Arnold stated that he would be in favor of a fine for violations 2 and 3 but that due to the seriousness of violation 1 that more than a fine would be appropriate. D. Iglizzo recommended that the Council vote on the date they believe Mr. Hill received notice because by state law Mr. Hill had 48 hours to get insurance after he was notified. D. Iglizzo stated that Council needs to determine the date of notice in relation to the date of violation.

Councilor C. Greathouse asked if a certified letter of notice had been sent. Atty. Bernstein stated that a final notice of cancellation had been sent and that notice is an exhibit. Atty. Bernstein stated he does not if the notice was sent by certified mail. Atty. Bernstein stated that the notice contains a statement that it was sent on May 4, 2023 and that the recipient should contact the agent immediately. Atty. D'Agostino stated that the notice contains a notice date of May 4, 2023 and that it was sent to Hill's Tavern at the residence address of Mr. Hill and not the business address. Atty D'Agostino offered this evidence for mitigating purposes if any. Atty. D'Agostino also stated that the notice says to contact your agent at the bottom did not list Mr. Hill's agent but rather a state agency.

Councilor J. Burlingame stated that he would be in favor of a \$500 fine for all three violations but if a suspension is being considered then he may be in favor of reducing the fine for the other violations. D. Iglizzo stated that Council should first determine when Mr. Hill had notice of cancellation.

MOTION was made by Councilor W. Steere that Mr. Hill had notice of cancellation of insurance on or before June 15, 2023; seconded by Councilor J. Burlingame

Councilor S. Arnold asked the Clerk to poll the Council:

Councilor C. Greathouse - Aye
Councilor W. Steere-Aye
Councilor J. Burlingame- Aye
Councilor S. Arnold- Aye

MOTION PASSED

MOTION was made by Councilor W. Steere as to violation # 1 for failure to have proper liability insurance as required by RIGL 3-7-29 for the penalty to be a one day suspension; seconded by Councilor S. Arnold

Discussion: Councilor J. Burlingame stated his concern for the employees if there was a suspension and that he would be in favor of a fine for all. Councilor C. Greathouse also stated her concern for employees being hurt by a suspension. Councilor W. Steere stated that if Mr. Hill had followed the advice to not serve alcohol then the employees would not have been working that day. Councilor W. Steere stated a decision was made to work that day and there are consequences.

Councilor C. Greathouse stated she would be in favor of a one day suspension on a day that is not busy and during the week. Councilor W. Steere suggested Thursday night as a possible night. Councilor S. Arnold stated he is in favor of a one day suspension for violation one. D. Igliazzi stated that Councilor C. Greathouse suggested a suspension of not a weekend and Councilor W. Steere suggested Thursday night. D. Igliazzi suggested a motion be made, seconded and voted.

Councilor W. Steere withdrew his motion . Councilor S. Arnold withdrew his second.

Councilor W. Steere suggested Thursday, October 26, 2023. Mr. Hill stated that he has a comedy show planned for that night which has been advertised and tickets already sold. Mr. Hill expressed how embarrassed he has been over his decision that resulted in this hearing and how he has embarrassed himself before his wife , children and apologized for being the cause for the hearing tonight. Mr. Hill asked the Council to reconsider the date as the show effects a lot of people. Councilor W. Steere suggested Thursday, November 2, 2023.

MOTION was made by Councilor W. Steere as to violation # 1 for failure to have proper liability insurance as required by RIGL 3-7-29 the following penalty would be imposed of a suspension of one day for Thursday November 2, 2023; seconded by Councilor S. Arnold

Councilor S. Arnold asked the Clerk to poll the Council:

Councilor C. Greathouse-Nay
Councilor W. Steere- Aye
Councilor J. Burlingame-Aye
Councilor S. Arnold- Aye

MOTION PASSED

MOTION was made by Councilor W. Steere as to Violation# 2 for failure to keep a sign in as minor book as required by RIGL 3-8-6(c)(1) for the penalty to be imposed of \$100 fine ; seconded by Councilor J.Burlingame

Discussion: None

Councilor S. Arnold asked the Clerk to poll the Council.

Councilor C. Greathouse- Aye
Councilor J. Burlingame- Aye
Councilor W. Steere- Aye
Councilor S. Arnold - Aye

MOTION PASSED

MOTION was made by Councilor C. Greathouse as to violation # 3 for failure to have the proper server training certificates on the premises or filed with the licensing authority for the on duty bartender on June 19, 2023 as required by RIGL 3-7-6.1 (b) Sections 1-5 the following penalty be \$500;

Discussion: Councilor J. Burlingame stated that a suspension was already imposed by the Council so he does not feel a \$500 fine is warranted. Councilor C. Greathouse stated her agreement to reduce the amount. Councilor S. Arnold asked if the motion needed to be withdrawn . D. Igliazzi stated that a second had not been made.

Councilor J. Burlingame recommends a fine of \$100. D. Igliazzi asked if Councilor J. Burlingame is making the motion. Councilor J. Burlingame stated he was.

MOTION was made by Councilor J. Burlingame as to violation # 3 for failure to have the proper server training certificates on the premises or filed with the licensing authority for the on duty bartender on June 19, 2023 as required by RIGL 3-7-6.1 (b) Sections 1-5 the following penalty be \$100; seconded by Councilor W. Steere

Discussion: None

Councilor S. Arnold asked the Clerk to poll the Council.

Councilor C. Greathouse- Aye
Councilor J. Burlingame- Aye
Councilor W. Steere- Aye
Councilor S. Arnold - Aye

MOTION PASSED

Councilor S. Arnold wished Mr. Hill the best of luck .

Councilor S. Arnold DECLARED the public hearing CLOSED.

D. Igliazzi stated his recommendation that the Council authorize Councilor S. Arnold as Vice President to sign the decision in order for it to be issued.

MOTION was made by Councilor W. Steere to authorize Councilor S. Arnold to sign the decision regarding this show cause hearing ; seconded by Councilor C. Greathouse

Councilor S. Arnold asked the Clerk to poll the Council.

Councilor C. Greathouse- Aye
Councilor J. Burlingame- Aye
Councilor W. Steere- Aye
Councilor S. Arnold - Aye

MOTION PASSED

V. Adjourn

MOTION was made by Councilor W. Steere to ADJOURN at 7:30 P.M.; seconded by Councilor S. Arnold

Councilor S. Arnold asked the Clerk to poll the Council.

Councilor C. Greathouse- Aye
Councilor J. Burlingame- Aye
Councilor W. Steere- Aye
Councilor S. Arnold - Aye

MOTION PASSED