

LOCAL LIQUOR CONTROL COMMISSION REQUEST FOR ACTION

DATE: June 9, 2015

ITEM NO. 7- Review of Local Liquor Control Commission Case No. 2015-01, Curbside Corporation, d/b/a Curbside, 227 W. Main Street

Attached is the Report and Recommendation of the Hearing Officer in the matter of Curbside Corporation, d/b/a Curbside, 227 W. Main Street, Case No. 2015-01, regarding the fourteen violations listed in the attached Citation and Notice of Hearing document. Out of the fourteen violations, ten were met with the burden of proof.

Liquor Code Provision: The local liquor control commission shall consider the hearing officer's report and recommendation at a public meeting. The city and the licensee shall have the opportunity to present any evidence in aggravation or mitigation of the recommended penalty. However, no new or additional evidence regarding the charges shall be presented to the local liquor control commission. After reviewing the report and recommendation and any objections, the local liquor control commission may by majority vote impose a penalty against the licensee as provided in section [2-5-2](#) of this title.

Determination Criteria: In making the determination regarding the appropriate penalty, the hearing officer and local liquor control commission may consider the nature of the violation, past violations of the licensee, and the facts and circumstances surrounding the violation as presented at the evidentiary hearing.

2-5-2 A. Imposed By Local Liquor Control Commission: Any licensee violating any provision of this title or any applicable provision of this code or the state statute may be ordered to pay all costs of the city in holding the hearing and shall be subject to any or all of the following penalties by the local liquor control commission unless otherwise provided pursuant to the provisions of this title:

1. A letter of reprimand;
2. A fine of not more than one thousand dollars (\$1,000.00) for a first violation within a twelve (12) month period;
3. A fine of not more than one thousand five hundred dollars (\$1,500.00) for a second violation within a twelve (12) month period;
4. A fine of not more than two thousand five hundred dollars (\$2,500.00) for a third or subsequent violation within a twelve (12) month period; and/or
5. Suspension of license;
6. Revocation of license.

Recommended Actions: The Local Liquor Control Commission may:

Approve, Deny, or Modify the Report and Recommendation of the Hearing Officer in the matter of Curbside Corporation d/b/a Curbside, 227 W. Main Street, Case No. 2015-01.

**BEFORE THE
LOCAL LIQUOR CONTROL COMMISSION
CITY OF CARBONDALE, ILLINOIS**

IN THE MATTER OF:)	
Curbside Corporation)	NO. 2015-01
d/b/a Curbside)	License No. A2-1
227 W. Main St.)	
Carbondale, Illinois 62901)	

CITATION AND NOTICE OF HEARING

YOU ARE HEREBY CITED AND NOTIFIED, pursuant to Section 2-2-3 of the Carbondale Revised Code, to appear before the Chairman of the Carbondale Liquor Control Commission, for a hearing on **May 21, 2015 at 1:30 p.m. at the Carbondale City Hall 2nd floor, Mayor's Conference Room**; to show cause why your liquor license should not be reprimanded, fined, suspended, or revoked for violations of the Carbondale Liquor Code, in the following manner:

1. That on June 10, 2014 the Carbondale Liquor Control Commission issued to the above a class A2 liquor license, No. A2-1.
2. That on or about October 1, 2014 the State liquor license for the establishment expired without renewal.
3. That from November 1, 2014 through January 15, 2015 the business continued to operate with patrons consuming alcoholic beverages inside the establishment while the State license was expired.
4. That on or about January 27, 2015 through current the business has been operated with a manager who is not listed on the application and has not undergone the necessary background check in accordance with 2-4-3(D) of the Carbondale Revised Code .
5. That on or about January 27, 2015 through current the business has been operated by a manager who was convicted of conspiracy to distribute and posses with the intent to distribute cocaine and 100 kilograms or more of marijuana, in violation of 21 USC 846, and as such is ineligible to serve as a manager pursuant to 2-4-4(A) of the Carbondale Revised Code.
6. That on February 28, 2015 the licensee did permit alcohol to be served without the simultaneous sale of any item listed in the entree section of its menu, in violation of 2-4-9-A)(2)(f)(1) of the Carbondale Revised code.
7. That on March 1, 2015 the licensee did permit alcohol to be served without the simultaneous sale of any item listed in the entree section of its menu, in violation of 2-4-9-A)(2)(f)(1) of the Carbondale Revised code.

8. That on March 14, 2015 the licensee did permit or allow the establishment to exceed the posted occupancy of 144, in violation of the International Fire Code as adopted by the Carbondale Revised Code.

9. That on March 29, 2015 the licensee did permit or allow a person under the age of twenty one to possess and consume alcohol within the licensed premises, in violation of 2-5-10(A) of the Carbondale Revised Code.

10. That on March 29, 2015 the licensee did permit or allow the establishment to exceed the posted occupancy of 144, in violation of the International Fire Code as adopted by the Carbondale Revised Code.

11. That on April 4, 2015 the licensee did permit or allow the establishment to exceed the posted occupancy of 144, in violation of the International Fire Code as adopted by the Carbondale Revised Code.

12. That on April 4, 2015 the licensee did sell a 750 ml bottle of Ciroc Vodka to a single patron in violation of 2-5-13 (B)(1) of the Carbondale Revised Code.

13 That on April 5, 2015 the licensee failed to control the patron within the licensed premises and a physical altercation ensued, in violation of 2-5-3(D) of the Carbondale Revised Code.

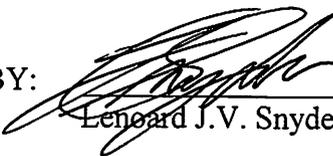
14. That on or about April 13, 2015 Agent Ruffino with the Illinois Liquor Control Commission did an inspection of the premises and found that the licensee did not have documentation of purchases of liquor/alcohol for Curbside from a licensed liquor distributor, in violation of the Illinois Liquor Code and Regulations.

You may, if you choose, be represented at your own expense by legal counsel at the evidentiary hearing. The hearing shall be informal and strict rules of evidence shall not apply. Upon the conclusion of the hearing the Chairman of the Carbondale Liquor Control Commission may accept the charges or dismiss the charges. If the charges are accepted and you are found to have committed the above violations the Chairman may issue a reprimand or levy a fine for the violation The Commissioner may recommend to the full Commission that your license be suspended or revoked.

You must appear at the hearing, your failure to appear will result in a judgment against your license and may result in revocation. All motions must be filed with the Chairman of the Local Liquor Control Commission at least three days prior to the hearing.

ENTERED on May 13, 2015.

BY:


Leonard J.V. Snyder, Assistant City Attorney

**BEFORE THE
LOCAL LIQUOR CONTROL COMMISSION
CITY OF CARBONDALE, ILLINOIS**

IN THE MATTER OF:
Curbside Corpoaration
d/b/a Curbside
227 W. Main St.
Carbondale, Illinois 62901

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NO. 2015-01
License No. A2-1

NOTICE OF HEARING

TO: Jamie Snyder, Assistant City Attorney
200 South Illinois Avenue
P. O. Box 2047
Carbondale, Illinois 62901

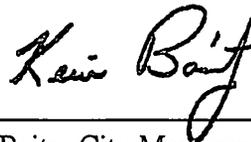
Curbside Corporation
d/b/a Curbside
227 W. Main St.
Carbondale, IL 62901

You are hereby notified, pursuant to Section 5/7-5 of the Illinois Liquor Control Act, Section 2-2-3 of the Carbondale City Code. As the holder of a liquor license of the City of Carbondale, Illinois, that the above-entitled cause of action has been set for SENTENCING HEARING, before the Carbondale Liquor Control Commission, on Tuesday June 9, 2015 at 7:00 p.m. in the City Council Room at the Carbondale Civic Center, 200 S. Illinois Avenue, Carbondale, Illinois.

At said Hearing, the Carbondale Liquor Control Commission shall determine whether to accept, reject or modify the Hearing Officer's Report and Recommendation. Please take notice that at said hearing, you may be represented by an attorney, however, no new evidence will be taken at this hearing.

Dated this the 2nd day of June, 2015.

BY: _____



Kevin Baity, City Manager
Carbondale Local Liquor Control Commission Hearing
Officer

**BEFORE THE
LOCAL LIQUOR CONTROL COMMISSION
CITY OF CARBONDALE, ILLINOIS**

IN THE MATTER OF:
Curbside Corporation
d/b/a Curbside
227 W. Main St.
Carbondale, Illinois 62901

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NO. 2015-01
License No. A2-1

**HEARING OFFICER'S
REPORT AND RECOMMENDATION**

RECITAL OF EVIDENTIARY HEARING: The hearing was called to order at 1:30 p.m. on May 21, 2015 in the City Manager's conference room. Those present were Hearing Officer Kevin Baity, Sgt. Jarin Dunigan, Sgt. Cory Kemp, Asst. City Attorney Jamie Snyder, Martha Ikner (Licensee) and Van Ikner.

The City presented evidence through Sgt Dunigan and Sgt. Kemp concerning the activities at the Curbside Corporation at 227 W. Main St., Carbondale, IL. The City alleged that the Licensee's State License was expired from October 1, 2014 through January 15, 2015 when it was renewed. The Licensee admitted this allegation. The City also alleged and the Licensee admitted that they sold alcohol during that time period.

The City presented evidence in the form of a certified conviction that Van Ikner had been convicted of conspiracy to distribute and posses with the intent to distribute cocaine and 100 kilograms or more of marijuana, in violation of 21 USC 846. The City also presented that Mr. Ikner has presented himself and the Licensee has presented him as the manager. Under 2-4-4(A), the manager must possess the same qualifications as the licensee. The licensee presented evidence that Mr. Ikner was the Kitchen manager and that he only acts as a loving husband to assist the police, as the other staff doesn't feel comfortable speaking with the police.

The City moved to dismiss paragraphs six and seven of the complaint and therefore there is no need to discuss the evidence as it relates to these matters.

The material facts that relates to paragraph's eight, nine, ten and eleven were presented through Sgt. Dunigan. The City alleged that the Licensee exceeded their fire capacity on March 14, 2015; March 29, 2015 and April 4, 2015. The Licensee admitted the violations from March 14 and April 4, 2015 as they had previously plead guilty to those offenses before Judge Grace in

Jackson County case numbers 15-OV-431 and 15-OV-470. Sgt. Dunigan was then questioned concerning the March 29, 2015 event. He testified that the Licensee's business appeared to be open after the required closing time, upon inspection patrons were still dancing and the lights were dimmed. Patrons were in possession of alcohol. Prior to entering the establishment Sgt. Dunigan positioned his in car camera at the rear entry door of the licensed establishment. Sgt. Dunigan made contact with staff that began to order people out of the establishment. Sgt. Dunigan positioned himself inside the establishment where he could observe the people exiting. While patrons exited he observed a Demarkus Jones, a person known to Sgt. Dunigan to be under the age of 21. Mr. Jones was in possession of an alcoholic beverage and was stopped outside by another officer. After the business was cleared Sgt. Dunigan reviewed his video and counted the individuals leaving the establishment. He counted approximately 170 people not including staff leave the establishment, the stated occupancy of the establishment is 144 persons. The Licensee presented testimony through statements that the stated occupancy is incorrect.

The City presented evidence in relation to paragraph twelve that patrons were being served full bottles of vodka, City code provides for the sale of alcohol by the glass only, except beer by the pitcher and wine by the bottle or carafe. The City presented a photo of a bottle of vodka which Sgt. Dunigan took from a patron. The Licensee presented testimonial evidence that the individual brought the bottles of vodka into the establishment. Officer Dunigan then remained at the licensed premises for the remainder of the evening. Officer Dunigan then reported observing people run from the establishment. He entered the location and saw several individuals engaged in a physical altercation. Other officers entered the location and attempted to disperse the combatants who were not listening to the Licensee's employees to disperse. One officer dispersed his OC spray and the combatants fled from the location. The Licensee presented evidence through Mr. Ikner that it was merely an argument and no physical altercation occurred and that it was the actions of the police officers that caused the situation to get out of hand.

As the evidence relates to the allegation of paragraph fourteen not having proper documentation showing the purchase of alcoholic beverages, in violation of Illinois Liquor Code Regulations. The Licensee admitted to these allegations.

FINDINGS: As it relates to Paragraphs two, three, eight, eleven and fourteen, I find there to be sufficient factual basis based upon the Licensee verbal admission and the presentation of a

factual basis that the Licensee did commit the violations in these paragraphs. As it relates to paragraph four and five, I find that Curbside Corporation knowingly allowed Mr. Van Ikner a convicted felon to be the manager of a liquor establishment based upon the Licensee's permitting Mr. Ikner to appear before the Liquor Commission on its behalf as the manager.

As it relates to paragraph nine and ten, I find that the City has met its burden that the Licensee permitted a person under 21 to obtain an alcoholic beverage and remain within the establishment with it. I also find that the Licensee exceeded its determined occupancy level of 140 persons on March 29, 2015.

As to paragraph twelve I find that the City failed to meet its burden beyond a preponderance of the evidence that the Licensee sold alcoholic liquor by the bottle.

As to paragraph thirteen I find that the licensee failed to control the licensed premises by allowing or permitting individuals to engage in a physical altercation within the licensed establishment.

RECOMMENDATION: Considering the record as it appears before this Hearing Officer, I find it both necessary and appropriate given the nature and severity of the offenses and the determination and finding of GUILT by the licensee in all allegations except those contained in paragraph twelve as contained in the Complaint. It is this Hearing Officer's determination that the appropriate level of penalty should be as follows:

Paragraph two and three – operating without a State liquor license, I recommend a fine of \$500.00 plus cost of proceedings.

Paragraph four and five – Permitting a convicted felon to manage and failure to properly designate a manager, I recommend a one week suspension of the liquor license on each count to run concurrent plus cost of proceedings.

Paragraphs eight, ten and eleven – Exceeding the operating occupancy of the licensed premises, I recommend a one week suspension the liquor license on each of these paragraphs to run concurrent, however it shall run consecutive with the suspension in Paragraphs four and five plus cost of proceedings.

Paragraph ten – Permitting or allowing a person under the age of 21 to possess or consume alcoholic beverage within the licensed establishment, I recommend that the Licensee have a letter of Reprimand placed upon their

record plus cost of proceedings.

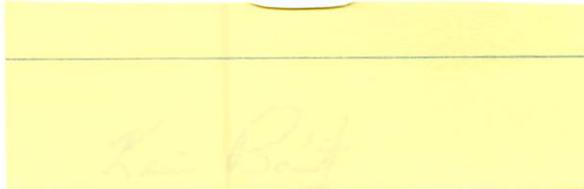
Paragraph thirteen – Failure to maintain control of the licensed premises, I recommend that the Licensee have a letter of Reprimand placed upon their record plus cost of proceedings.

Paragraph fourteen – Failure to maintain records as required by the Illinois Liquor Code regulations, I recommend a \$500.00 fine plus cost of proceedings plus cost of proceedings.

If the recommendation of suspension is accepted the Licensee may remain open as a restaurant, but shall not sell alcoholic beverages or allow patrons to possess or consume alcoholic beverages within the licensed establishment and may not have activities which would require the issuance of an Entertainment Club license. The cost of proceedings for this matter are \$1,054.20.

DATED this the 2nd day of June, 2015.

Respectfully Submitted,

A rectangular area of the document is redacted with a solid yellow color, obscuring the signature of the City Manager.

Kevin Baity, City Manager
Hearing Officer for the Carbondale Local Liquor
Control Commission