

**STATE OF VERMONT  
BURLINGTON LOCAL CONTROL COMMISSION**

**In Re: Atwater Kent, Inc. dba Esox**

**HEARING PANEL APPROVAL & RECOMMENDATION**

By a unanimous, 2-0 decision, the Hearing Panel voted to approve the Stipulated Findings and Conclusions of Law executed by the City and Respondent on May 1, 2013 (attached), and recommend the approval and adoption of the Order set forth below by the full Local Control Commission at its next meeting.

Dated at Burlington, Vermont this 2nd day of May, 2013.

Local Control Hearing Panel

By:

  
Norm Blais, Chair

**ORDER**

Based upon the Hearing Panel's Approval and Recommendation above and the Stipulated Findings and Conclusions of Law executed by the City and Respondent on May 1, 2013 (attached thereto), the Local Control Commission orders that:

1. The First Class Cabaret License for the business of Atwater Kent, Inc. dba Esox, 194 Main St., Burlington, Vermont be suspended for 1 day beginning on Tuesday, May 21, 2013 from 8:00 a.m. to 2:00 a.m. on Wednesday, May 22, 2013 on the basis of the events of January 26, 2013. This suspension will apply to the entirety of its licenses, including its authority to sell malt and vinous beverages as well as spirituous liquors.

Dated at Burlington, Vermont this \_\_\_\_\_ day of May, 2013.

Burlington Local Control Commission

By:

\_\_\_\_\_  
Joan Shannon, Chair

**STATE OF VERMONT  
BURLINGTON LOCAL CONTROL COMMISSION**

**In Re:           Atwater Kent, Inc, Inc. dba Esox**

**STIPULATED FINDINGS & CONCLUSIONS OF LAW**

NOW COME the City of Burlington ("City") by and through Senior Assistant City Attorney Eugene M. Bergman, and Atwater Kent, Inc. dba Esox by and through its owner Bill Hunter and stipulate and agree to the following Findings of Fact and Conclusions of Law. The Parties also agree and stipulate to Respondent receiving a one day suspension on Tuesday, May 21, 2013 from 8:00 a.m. to 2:00 a.m. on Wednesday, May 22, 2013 on the basis of the events of January 26, 2013.

**FINDINGS OF FACT**

1.       The Hearing Panel of Burlington Local Control Commission ("Commission") met on May 1, 2013 to consider the information referred by the Burlington Police Department that the holders of a First Class Cabaret License for the business Atwater Kent, Inc. dba Esox, 194 Main St., Burlington, Vermont failed to comply with Vermont Liquor Control Board General Regulations 17 and 36 on January 26, 2013.
2.       This matter is before the Commission pursuant to its authority under 7 V.S.A. § 167 [Duties of Local Control Commissioners] and § 236 [Suspension or revocation of license or permit; administrative penalty] in order to review whether suspension is appropriate based on the events of January 26, 2013.
3.       The following is stipulated to be admitted into evidence and is attached hereto: (1) Burlington Local Control Commission Notice of Hearing dated April 12, 2013; (2) Burlington Police Report IN # 13-001984 (8 pages).

4. On January 26, 2013, Respondent held a first class and third class license cabaret license from the State of Vermont for a site at 194 Main St., Burlington, Vermont for the license year May 1, 2012 to April 30, 2013.
5. As a condition of the license, Respondent must abide by all State of Vermont Liquor Control Regulations adopted by the Vermont Liquor Control Board.
6. General Regulation 17 reads: No alcoholic beverages shall be sold or furnished to a person displaying signs of intoxication from alcoholic beverages or other drugs / substances. No alcoholic beverages may be consumed on the licensed premises by any person displaying such signs of intoxication. No person displaying such signs of intoxication shall be allowed to stay on the licensed premises, except under direct personal supervision by a licensee or his or her employees in a segregated nonpublic area when the patron's immediate departure could be expected to pose a risk of bodily injury to the patron or any other person.
7. General Regulation 36 reads: It shall be the duty of all licensees to control the conduct of their patrons at all times. No disturbances, brawls, fighting or illegal activity shall be permitted or suffered upon any licensed premises; nor shall such premises be conducted in such a manner as to render said premises or the streets, sidewalks, parking lots or highways adjacent thereto a public nuisance.
8. The Burlington City Clerk's Office sent Respondent a written Notice from the Commission dated April 12, 2013 by certified mail advising it of a hearing regarding the alleged violation of GR 17 and GR 36 and that the panel would consider whether to suspend the first and third class licenses granted to Respondent based on the January 26, 2013 events. Respondent received the notice.
9. The relevant events of January 26, 2013 were observed by Burlington Police Officer Kim Shelley while she was on downtown foot patrol.

10. At approximately 1:10 a.m., Respondent's patron, Stephanie Patsos ran out of Esox onto the Main St. sidewalk screaming wildly and laughing. Patsos stumbled and nearly fell twice. Patsos had been drinking alcohol at Esox and had had approximately four drinks there and was drinking just prior to this incident.

11. In addition to the stumbling, screaming and laughing, Patsos spoke with very slurred speech and had a sluggish facial appearance and watery eyes.

12. Prior to running out of the bar, Patsos was acting in a similar manner inside the bar, screaming and laughing and coming up from behind another patron and giving him a big hug just before running out of Esox.

#### CONCLUSIONS OF LAW

13. Patsos was furnished alcoholic beverages by Respondent and consumed them and was allowed to stay there despite her being clearly and highly intoxicated inside the establishment. She was not under Respondent's direct supervision. Her screaming and stumbling on the Main St. sidewalk was a disturbance and posed a risk of harm to others on the sidewalk that night.

14. Respondent consequently violated Vermont Liquor Control General Regulations No. 17 and 36

Dated at Burlington, Vermont this 1st day of May, 2013.

Stipulated to by City of Burlington  
By:

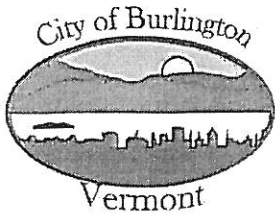


Eugene M. Bergman  
Sr. Assistant City Attorney

Stipulated to by Atwater Kent, Inc. dba Esox  
By:



Bill Hunter  
Owner



## OFFICE OF THE CLERK/TREASURER

City of Burlington

City Hall, Room 20, 149 Church Street, Burlington, VT 05401

Voice (802) 865-7000

Fax (802) 865-7014

TTY (802) 865-7142

### BURLINGTON LOCAL CONTROL COMMISSION

#### NOTICE OF HEARING

4/12/13 *ld*

*Call 7010 2780 0002 6745 8902*

RE: HEARING TO CONSIDER THE SUSPENSION OF THE FIRST CLASS CABARET LICENSE GRANTED TO **Atwater Kent, Inc., d/b/a Esox** SAID LICENSE BEING GRANTED TO SELL ALCOHOLIC LIQUOR FOR ON-PREMISE CONSUMPTION.

Please take notice that pursuant to the authority vested in the Burlington Local Control Commission by Title 7, Section 236, Vermont Statutes Annotated, a hearing will be held before a hearing panel (the Local Control Subcommittee) of the Burlington Local Control Commission at 8:15 a.m., in Conference Room 12, City Hall, 149 Church St., Burlington, Vermont on Wednesday, May 1, 2013.

The hearing will be held to consider the suspension of the first and third class licenses granted to **Atwater Kent, Inc., d/b/a Esox, 194 Main Street, Burlington, Vermont**, said licenses being granted to sell alcoholic liquor for on-premise consumption, for alleged violation of the following duly adopted regulations of the Vermont Liquor Control Board and the following duly set license conditions set by the Burlington Liquor Control Commission: General Regulation No. 17 and General Regulation No. 36.

General Regulation 17 reads: No alcoholic beverages shall be sold or furnished to a person displaying signs of intoxication from alcoholic beverages or other drugs / substances. No alcoholic beverages may be consumed on the licensed premises by any person displaying such signs of intoxication. No person displaying such signs of intoxication shall be allowed to stay on the licensed premises, except under direct personal supervision by a licensee or his or her employees in a segregated nonpublic area when the patron's immediate departure could be expected to pose a risk of bodily injury to the patron or any other person.

General Regulation 36 reads: It shall be the duty of all licensees to control the conduct of their patrons at all times. No disturbances, brawls, fighting or illegal activity shall be permitted or suffered upon any licensed premises; nor shall such premises be conducted in such a manner as to render said premises or the streets, sidewalks, parking lots or highways adjacent thereto a public nuisance.

The City of Burlington does not discriminate on the basis of political or religious affiliation, race, color, national origin, age, sex, sexual orientation, marital status, veteran status or disability. Persons with disabilities who require assistance or special arrangements to participate in programs and activities of the Clerk Treasurer's Office are encouraged to contact us at 865-7000 or 865-7142 (TTY) at least 72 hours in advance so that proper arrangements can be made.



*It is alleged that at approximately 1:10 a.m. on January 26, 2013, a patron was allowed to consume alcohol on the premises despite displaying signs of intoxication in violation of General Regulation 17 and then this same patron then exited the premises in a manner which caused a public nuisance on the adjacent sidewalk in violation of General Regulation 36, to wit: one Stephanie Patsos was allowed to consume alcohol on the premises despite displaying signs of intoxication and then exited the premises in a manner which render the adjacent sidewalk a public nuisance, as stated with more particularity below.*

*At approximately 1:10 a.m., Patsos was observed by Burlington Police Officer Kim Shelley through Esox's front window holding the glass filled with what she believed to be beer because it was amber colored with a white head and no fountain soda that she is aware of has the same physical characteristics. Officer Shelly was on a downtown foot patrol and her attention was drawn to Esox as she passed by when she heard a loud noise through Esox's door. With the noise drawing her attention, Officer Shelley observed Patsos through Esox's street-side window screaming and laughing. Officer Shelley saw Patsos place a half full clear glass with amber liquid on the window ledge. She then saw Patsos come up from behind another patron, give him a big hug and then run out of Esox's door onto the adjacent Main St. sidewalk. Patsos was screaming wildly and laughing as she ran out of Esox. Officer Shelley saw Patsos stumble and nearly fall twice. When Officer Shelley approached Patsos, Shelley observed that she had very slurred speech, a sluggish facial appearance, and watery red eyes, signs of intoxication. Officer Shelley spoke with Patsos and Patsos told her that she had been drinking only at Esox that night and had "maybe four" drinks there. Patsos told Officer Shelley that she was trying to go to Nectar's. The officer advised Nectar's not to permit Patsos's entrance given her condition. Officer Shelley gave Esox a public safety inspection checklist form noting this "overservice of alcohol" with the remark noting "female stumbling, disorderly."*

The Burlington Local Control Commission shall determine whether or not such alleged violations did occur as specified herein. You shall have an opportunity by yourself or through your attorney to appear at said hearing to present evidence and argument on all issues involved in this case and bring before the hearing panel all pertinent facts that the said licensee believes will have a bearing on the issues involved in this case. Notice may be taken of judicially cognizable facts, including the Respondent's prior liquor control record.

The investigative report(s) pertaining to these incidents are enclosed with this notice.

All correspondence and documents pertaining to this matter should be sent to the Burlington Local Control Commission, Local Control Subcommittee, c/o Clerk/Treasurer's Office, City Hall, 149 Church St., Burlington, Vermont, 05401.

Dated at Burlington, Vermont, this 12th day of April, 2013.

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Burlington Local Control Commission

By:

A handwritten signature in black ink, appearing to be 'Lori Olberg', written over the printed name.

Lori Olberg, Licensing, Voting and Records Coordinator  
Office of the Clerk/Treasurer

cc: Senior Assistant City Attorney Bergman

Assistant City Attorney Meyer

Officer Kim Shelley, BPD

Matt Gonyo and Jamie Chase, DLC Investigators

Local Control Sub-Committee Members: Norm Blais, Max Tracy and Tom Ayres

CITY ATTORNEY'S OFFICE

FEB 19 2013

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Incident / Misc. #

13-001984

**BURLINGTON PUBLIC SAFETY INSPECTION CHECKLIST**

ESTABLISHMENT

*Ed's*

ADDRESS

CONTACT

- ☐ OVERCROWDING
- ☐ EXIT / EMERGENCY LIGHTING
- ☐ GENERAL LIGHTING CONDITION
- ☐ OBSTRUCTION OF EGRESS (INTERIOR / EXTERIOR)
- ☐ OBSTRUCTION OF PUBLIC RIGHT OF WAY
- ☐ UNLAWFUL CONDUCT ON PREMISES
- ☐ ESTABLISHMENT DISTURBANCE (INTERIOR / EXTERIOR)
- ☒ OVERSERVICE OF ALCOHOL
- ☒ MINORS IN POSSESSION OF ALCOHOL
- ☐ EXCESSIVE NOISE
- ☐ ALCOHOL ON DANCE FLOOR
- ☐ FALSE IDENTIFICATION ON PATRON IN ESTABLISHMENT
- ☐ ENTERTAINMENT PERMIT VIOLATION
- ☐ OTHER

REMARKS

*Female stumbling disorder*

Officer #

*272*

Time

*01:00*

Date

*02/26/13*

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Initial Information - [Ordinance Violation - Other] 01/26/2013 01:10

Incident Number: 13BU001984

Call Time: Sat Jan 26 01:10:11 -0500 2013

Call Type: Ordinance Violation - Other

Primary Ofc.: 292: Shelley, Kim

Call Type: Ordinance Violation - Other  
Call Priority:   
Call Origin:   
Date & time of call: 01/26/2013 01:10 AM  
Location of Call: 188 Main St. Burlington, VT 05401

Area:   
Incident Number: 13BU001984  
Flag For Roll:   
Call:   
Cancelled By:   
Complainant:   
Owner: 1041

Mental related:   
Alcohol related:   
Drug related:   
DOMV:   
Cargo theft:   
Drug Types:

Witness List

Person Type:   
Person of Interest:   
Name:   
DOB: 09/11/1990  
Primary Phone: 860-919-0732  
Address: 218 North St #2, Burlington, VT 05401

Person Type:   
Suspect:   
Name:   
DOB:   
Primary Phone: 802-862-7314  
Address: 194 Main St, Burlington, VT 05401

Responding Officers

Officer name: 292: Shelley, Kim  
Primary:   
Dispatched: 01/26/13 01:16  
Enroute: 01/26/13 01:16  
OnScene: 01/26/13 01:16  
Cleared: 01/26/13 01:17

Secondary Location:

Dispatch Narratives

292: Shelley, Kim - 01/26/13 03:28  
Over service occurred at Esso, patron was attempting to enter NECTARS.  
1008: Simays, Pam - 01/26/13 01:16  
292 adv over service

MRI#:   
NCIC/NIC#:   
Narrative:   
Cancelled:

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People Detail - Patsos, Stephanie D (09/11/1990), Esos

Incident Number: 13BU001984

Call Time: Sat Jan 26 01:10:11 -0500-2013

Call Type: Ordinance Violation - Other

Primary Ofc: 292: Shelley, Kim

<b>Person Type</b>	<b>IBR Victim Type</b>	<input type="checkbox"/>	<b>Name</b>	<b>DOB</b>	<b>Age</b>	<input type="checkbox"/>	<b>Address</b>
Person of Interest	Individual - I	Bus.	Patsos, Stephanie	09/11/1990	22	Juvenile	218 North St #2, Burlington, VT, 05401
<b>Place of Birth</b>	<b>Sex</b>	<b>Race</b>	<b>Height</b>	<b>Weight</b>	<b>Build</b>	<b>Aliases</b>	
	Female - F	White - W			Slim		
<b>Hair</b>	<b>Eyes</b>	<b>Facial Hair</b>	<b>Hair Length</b>	<b>Scars/Tattoos</b>	<input type="checkbox"/> Deceased		
Brown / BRO			Shoulder				
<b>Primary Phone</b>	<b>Secondary Phone</b>	<b>Email</b>	<b>License</b>	<b>State</b>			
860-919-0732			218355150	VT			
<b>IBR Resident Type</b>	<b>IBR Gang Affil.</b>	<b>Ethnicity</b>	<b>Employer</b>	<b>Employer Address</b>			
Resident - R							
<b>Attachment</b>	<b>Description</b>						
<b>Clothing Description</b>	<b>Dept. of Corrections Status</b>	<b>Weapon</b>	<b>IBR Injury</b>	<b>Paperwork to be served</b>			
<b>Symt Type</b>	<b>Taken By</b>	<input type="checkbox"/> Using Alcohol	<b>BAC</b>	<input checked="" type="checkbox"/> Using Drugs	<b>Drug Type</b>	<input checked="" type="checkbox"/> Using Computer	

<b>Person Type</b>	<b>IBR Victim Type</b>	<input checked="" type="checkbox"/>	<b>Name</b>	<b>DOB</b>	<b>Age</b>	<input checked="" type="checkbox"/>	<b>Address</b>
Suspect	Business - B	Bus.	Esos			Juvenile	194 Main St, Burlington, VT, 05401
<b>Place of Birth</b>	<b>Sex</b>	<b>Race</b>	<b>Height</b>	<b>Weight</b>	<b>Build</b>	<b>Aliases</b>	
<b>Hair</b>	<b>Eyes</b>	<b>Facial Hair</b>	<b>Hair Length</b>	<b>Scars/Tattoos</b>	<input type="checkbox"/> Deceased		
<b>Primary Phone</b>	<b>Secondary Phone</b>	<b>Email</b>	<b>License</b>	<b>State</b>			
802-862-7314							
<b>IBR Resident Type</b>	<b>IBR Gang Affil.</b>	<b>Ethnicity</b>	<b>Employer</b>	<b>Employer Address</b>			
Non-Resident - N							
<b>Attachment</b>	<b>Description</b>						
<b>Clothing Description</b>	<b>Dept. of Corrections Status</b>	<b>Weapon</b>	<b>IBR Injury</b>	<b>Paperwork to be served</b>			
<b>Symt Type</b>	<b>Taken By</b>	<input type="checkbox"/> Using Alcohol	<b>BAC</b>	<input type="checkbox"/> Using Drugs	<b>Drug Type</b>	<input type="checkbox"/> Using Computer	

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Vehicles

Incident Number: 13BU001984

Call Time: Sat Jan 26 01:10:11 -0500 2013

Call Type: Ordinance Violation - Other

Primary Ofc: 292: Shelley, Kim

Role	Vehicle Make	Vehicle Model	Vehicle Year	Plate Number	State
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	VT
Color	VIN	Other Description		Reason seized	Value
	<input type="text"/>	<input type="text"/>		<input type="text"/>	<input type="text"/>
Towed By	Towed To	Owner	Operator		
	<input type="text"/>	<input type="text"/>	<input type="text"/>		

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Incident Detail - : 292: Shelley, Kim

Incident Number: 13BU001984  
 Call Time: Sat Jan 26 01:10:11 -0500 2013  
 Call Type: Ordinance Violation - Other  
 Primary Ofc.: 292: Shelley, Kim

Occurred from: 01/26/2013 01:10 AM  
 Occurred to: 01/26/2013 01:10 AM  
 Invest./Primary Officer: 292: Shelley, Kim

Attachment: [ ] Description: [ ]

☐ TRO/FRO Exists ☐ Alcohol Involved ☐ 911 Call Exists ☐ Medical Release ☐ Audio Recordings ☐ SIU Contacted ☐ DCF Notified ☐ Crisis Svc Involved ☐ Swabbings

☐ Video Recordings ☐ Photos Taken ☐ Prints Lifted ☐ Diagrams ☐ Clothing Evidence ☐ K9 ☐ Miranda Warning ☐ Other Evidence ☐ Crime Scene Processed ☐ Lpr Used

Search Conducted: Physical Evidence

Category	Sub category	Violation	Counts# Premises Entered
Comm/Att	IBR Scene/Loc Type	IBR Crim Act Type	IBR Gang Affil
Point Of Entry	Force/No Force	Point of Exit	Campus Code
		Justifiable Homicide	Significant Event

Narrative Type

Report: 292: Shelley, K: 01/26/13  
 03:29

Narrative

On date and time noted, i was on foot patrol in front of Nectar's. I observed a female run out of Esos screaming wildly and laughing. Patsos stumbled and nearly fell twice. When approached, she was clearly highly intoxicated. She spoke with very slurred speech, had a sluggish facial appearance, watery red eyes and stated that she had "maybe four" drinks. Nectar's was advised not to permit her entrance based on her condition.

292

Offense Suspect: V was LEO  
 Offense Victim: V was LEO Assignment  
 IBR Victim-Offender

Other ORI

Bias/Motivation (anti)  
 LEOEA Narrative

[ ]

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Arrest Information

Incident Number: 13BU001984  
Call Time: Sat Jan 26 01:10:11 -0500 2013  
Call Type: Ordinance Violation - Other  
Primary Ofc: 292: Shelley, Kim

Arrestee	Arresting Officer	Arrest date & time	IBR Mult Arrest Indicator
292: Shelley, Kim		01/26/2013 01:17 AM	
Arrest Location			
36 S Union St, Burlington, VT 05401			
Citation date & time	IBR Arrestee Weapon	IBR Arrest Type IBR Exceptional Clearance Code	
	Except. clearance date		
Juvenile Disposition			
<input type="checkbox"/> Has Child <input type="checkbox"/> Prints & Photos			
Under 18 Needed			
Charges			
Arrest Charge			
<input checked="" type="checkbox"/> Most serious charge			

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Property Information

IBR Role/Code	IBR Quantity	IBR Unit Measure	IBR Property Description	Make	Description
Tag #	Serial#	Owner	<input type="checkbox"/> Owner Notified	Value	IBR Suspected Drug Type Color
Location	Action	Date & Time Tagged	Tagged By	Temp Storage Location	
368 Union St	Do Not Release				
<input checked="" type="checkbox"/> NIBRS	<input type="checkbox"/> Disposed	<input type="checkbox"/> Item In Temp	Offenses		
Rel	Evidence				
Chain of Custody Entry	From	To	Location	Sub Location	
Lab Analysis Req.	Analysis Perf. By	Analysis Narrative			

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TREASURER'S OFFICE



Incident Review - Reviewed [Approved]: 02/02/2013

Incident Number: 13BU001984

Call Time: Sat Jan 26 01:10:11 -0500 2013

Call Type: Ordinance Violation - Other

Primary Ofc.: 292: Shelley, Kim

Invest./Primary Officer	Officer Incident Status	Status Date	Reviewing Supervisor	Review Date	Approval	Incident Disposition
292: Shelley, Kim	Ready for Approval	01/28/2013	159: Wright, Janine	02/02/2013	Approved	Inactive - No Arrest

Supervisor Comments

Was Esos issued a checklist?

No, completed but not issued a copy. 292

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TREASURER'S OFFICE