

Order 218-13/14

Passage: 9-0 on 5/5/2014

MICHAEL F. BRENNAN, (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Effective 5/15/2014

JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE RECORD AND WRITTEN DECISION
RE: SANGILLO'S TAVERN, LLC RENEWAL APPLICATION FOR A CLASS A
LOUNGE FOOD SERVICE ESTABLISHMENT LICENSE**

ORDERED, that the record compiled by Corporation Counsel of the March 17, 2014 hearing on the application by Sangillo's Tavern, LLC at 18 Hampshire Street for renewal of its Class A Lounge Food Service Establishment License, with a final City Council decision on April 7, 2014, is hereby approved as the official record; and

BE IT FURTHER ORDERED, that the written decision attached hereto as Attachment A is approved as the final written decision of the City Council regarding the application by Sangillo's Tavern at 18 Hampshire Street for renewal of its Class A Lounge Food Service Establishment License.

**DECISION OF THE PORTLAND CITY COUNCIL
DENYING THE RENEWAL OF A LIQUOR LICENSE FOR A
CLASS A LOUNGE FSE**

**IN RE: SANGILLO’S TAVERN, LLC D/B/A SANGILLO’S TAVERN AT 18
HAMPSHIRE STREET**

I. Procedural History

Date of Application for Renewal:	February 19, 2014
License Period:	February 26, 2013 – February 26, 2014
City Council Consideration:	March 17, 2014 (Postponed by the City Council to April 7, 2014)
	April 7, 2014: Public Hearing & Final Council Action: Application for renewal denied by a vote of 5-4 (Coyne, Duson, Leeman and Mavodones Opposed)

II. Procedural Background and Factual Findings

This matter came before the City Council for renewal pursuant to 28-A M.R.S. §653(1). A public hearing was held by the City Council on March 17, 2014, at the conclusion of which the City Council voted eight (8) to zero (0) (Coyne absent) on a motion to postpone final City Council action on the renewal of the license until April 7, 2014. On April 7, after deliberation on the matter, the City Council ultimately voted 5 to 4 (Coyne, Duson, Leeman and Mavodones) to deny the applicant’s application for renewal of their Class A lounge FSE license. Councilor Coyne participated in this hearing and the final Council action after reviewing the recorded portion of the March 17, 2014 meeting and all of the documents included in the record.¹

Kathleen T. Sangillo is the manager and Dana Sangillo is the owner of the applicant Sangillo’s LLC, which does business as the Sangillo’s Tavern located at 18 Hampshire Street in

¹ Councilor Coyne orally indicated this fact on the record on April 7th, and signed an affidavit (that was included in the City Council record) verifying that information.

Portland. (R. 1, 8-9). Ms. and Mr. Sangillo sought the renewal of the Tavern's license to serve food, malt, spirituous and vinous alcohol on a full time basis as a Class A lounge FSE. (R. 8-9).

Sangillo's Tavern is a Class A lounge located in Portland's India Street neighborhood. (R. 8-9). For point of reference, the Old Port, a small geographical area consisting of about five small city blocks, is located across Franklin Street and several large city blocks away from this neighborhood and the Tavern. In fact, there is no other bar that directly abuts the Tavern, and it is instead located in a primarily residential neighborhood.

Sangillo's Tavern's current liquor license was due to expire on February 26, 2014. (R. 8-9). Ms. Sangillo, the bar manager since 2009, filed an application for license renewal with the City Clerk's office on February 19, 2014. (R. 8-9).

The Portland City Council has nine elected members. This matter appeared for the first time on the Council Agenda on March 17, 2014. At that time, the Council had before it the official application for renewal (R. 8-9), and a number of other documents, the most important of which was a Liquor License Review Report prepared by Lt. Gary Hutcheson of the Portland Police Department ("PPD") and dated February 20, 2014 for the review period dated February 26, 2013 to January 30, 2014 (R. 20-24).

Other key documents submitted into the record before the City Council's decision on April 7, 2014 include a PPD Crime Analysis of Calls for Service for Sangillo's Tavern (R. 172), a PPD Crime Analysis for Similarly Sized Bars (R. 173), a legal memorandum (with attachments) prepared by Corporation Counsel's Office (R. 151-157), and an additional memorandum from the PPD, dated March 25, 2014 (R. 170-171), which specifically responded to Council questions posed on March 17, 2014.

The record also included the PPD CAD reports and the Incident Reports that were used by Lt. Hutcheson to create the Liquor License Review, and two (2) packets of materials submitted by the applicant and its attorney. (R. 25-150, 174-202).

It is the longstanding practice of the City to refer both new and renewal liquor license applications to the PPD in order that the Department may present the City Clerk's office, and the City Council (in the case of a recommended denial), with a report describing what, if any, incidents have occurred in or around the applicant's establishment during the preceding license year, the efforts made by PPD to resolve any problems, and the response of the owners or management to those efforts. As the Police Chief testified, the PPD rarely recommends denial. In fact in the past five years, on information and belief, out of the over 200 license applications they reviewed annually, the PPD has only recommended denial on 4 occasions, including this one.

III. March 17, 2014 Hearing

On March 17, 2014, the City Council held a public hearing on this application. (R. 4-5, 7). The applicant was present with its attorney, Mr. Harry Center. Prior to the hearing the applicant submitted a packet of documents all of which were considered by the Council and included in the record (R. 174-189). Mr. Center and his client presented information regarding Sangillo's history and Maine law, and specifically challenged the PPD's practice of attributing calls for service in the immediate vicinity of Sangillo's Tavern to the bar and its patrons.

Police Chief Michael Sauschuck and Assistant Chief Vernon Malloch presented the PPD's report and the case for the Department's recommendation for denial. The report, among other things, indicates that the PPD responded to many calls for service related to the operation of the premises including calls for "one assault, three persons refusing to leave, one theft, a

suspected OUI, one drug sale investigation and an elevated aggravated assault of a person by means of gunshot.” (R. 21-24).

The report also lists “Liquor Law Violations and Administrative Premises Violations” and identifies two administrative summonses: one for sale of liquor to a minor, and one for allowing a minor to remain on the premises. (R. 21-24). Both of those violations occurred inside the establishment. The applicant’s attorney indicated on the record that both summonses were being contested, and that the State Liquor Commission had not yet ruled on whether or not violations had actually occurred.

Under the category of “Incidents of Breach of the Peace in the Immediate Vicinity” the PPD report lists the following incidents to which the Department responded: “two general disturbances as a result of subjects yelling or otherwise being loud in the area, one subject refusing to leave the area, eight incidents involving persons fighting, one person bothering, a person drinking in public and a call to collect hypodermic needles left in the area.” (R. 21-24).

The report also indicates that the PPD “identified 23 calls for service to the premises or the immediate area connected to the operation of Sangillo’s. Seven of the calls resulted in police reports being generated, some of which are still under investigation.” (R. 21-24).

Finally, Lt. Hutcheson’s report contains three pages of details on the incidents related to the operation of Sangillo’s Tavern taken from the PPD CAD reports and incident reports that are also included in the record. (R. 21-24).

It should be noted that both Chief Sauschuck and Assistant Chief Malloch testified and their report indicates that in the PPD’s opinion “in the immediate vicinity” was a short distance in either direction from the bar and included a nearby parking lot. (R. 21-24). They both further stated that the PPD’s policy is to list the calls for service or incidents in that area that fall within

the state law applicable to liquor licenses to the bar nearest to the location of the incident that led to the call for service or the report. Finally, Assistant Chief Malloch also stated that since Sangillo's Tavern is physically separated from other bars in the City of Portland, the calls and incidents in the vicinity (that were identified in the PPD report) were clearly connected to this bar.

In his testimony, Assistant Chief Malloch also identified the effort made by the PPD to meet with the bar manager to discuss these incidents and the recommendations made by the PPD to improve the record/situation at Sangillo's Tavern (R. 17-19, 21-24). The PPD report indicates that "[w]e have been proactive in our efforts to improve safety and restore peace to the neighborhood, meeting with the bar and making suggestions on [which] they can improve. These suggestions have included adding staff to monitor patrons and better control of access to the bar. We have also devoted significant officer resources to providing special attention in the neighborhood and in responding to calls for police service. Unfortunately our efforts have been unsuccessful." (R. 21-24).²

Assistant Chief Malloch specifically noted in his testimony that the willingness of the applicant to follow through with most of the Department's recommendations that were made during the early summer of 2013 including, but not limited to, installation of cameras and a door person, but the PPD did not see an improvement in the calls for service/incidents in the immediate vicinity of Sangillo's Tavern. Recently, the PPD also met with the applicant again and recommended additional recommendations, most of which the applicant seemed receptive to with the exception of the PPD's recent recommendation that the bar close at 10pm. (R. 17-19).

² It should be noted that "[o]fficers were positioned outside the bar at closing time on at least 27 occasions. This level of police presence to prevent breaches of the peace and reduce violent crime is unsustainable." (R.).

This recommendation was made because the violations outlined in the PPD's reports primarily occurred between the hours of around 11:00pm until 1:00am.

The public hearing portion of the March 17, 2014 meeting concluded at around 12:00a.m. after which the Council decided (8 to 0, Coyne absent) to postpone its deliberations on the application to April 7, 2014. The Council also specifically requested additional written information from the applicant, city staff and the applicant/its attorney, and it received that information prior to the April 7, 2014 meeting. (R. 151-157, 170-173, 190-202).

IV. April 7, 2014 Final Council Action

The second portion of the City Council's review of this renewal application was conducted on April 7, 2014, with all nine (9) Councilors present. The applicant's attorney and the PPD were both given an opportunity to respond to and discuss the Council requested additional materials submitted for the record by both the PPD, city staff and the applicant. Following the close of these presentations, the City Council deliberated on the matter and voted 5 to 4 (Coyne, Duson, Leeman and Mavodones opposed) to deny the renewal of the applicant's liquor license.

V. Decision

This application for renewal of a Class A Lounge FSE liquor license for Sangillo's Tavern, LLC d/b/a Sangillo's Tavern at 18 Hampshire Street is denied for the following reasons:

A. *This Applicant violated 28-A M.R.S.A. § 653(2)(D)*

Title 28-A M.R.S.A. § 653 (2)(D) provides that one of the grounds for non-renewal of a liquor license includes, but is not limited to,:

Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premise and caused by persons patronizing or employed by the licensed premises.

We find that based on the facts above, the materials contained in the record and the testimony provided at the March 17, 2014 hearing, the incidents and calls for service described in Lt. Hutcheson's license review report dated February 20, 2014, and the PPD additional memorandum dated March 25, 2014, were caused by patrons of Sangillo's Tavern and constitute breaches of the peace, disorderly conduct, and other violations of the law in the vicinity of the licensed premises.

More specifically, the breaches of the peace, disorderly conduct or violations of law that occurred in the immediate vicinity by patrons of Sangillo's Tavern that are of most concern are as follows:

February 20, 2014 PPD Report

1	Assault
3	Persons Refusing to Leave
1	Theft
1	Suspected OUI
1	Drug Sale Investigation
1	Elevated Aggravated Assault with a Gun

In relation to one of the fights described in the February 20, 2014 report, that report states:

May 18, 2013 at approximately 0100 a female reported being assaulted by an unknown male while leaving the bar. She reports being grabbed by the hair and pulled to the ground. She had her hair ripped out and struck her knee. Other patrons of the bar came to her aid.

(R.22). The PPD incident report for this assault further specifies that the victim of the assault "was at the bar with a friend, when her friend got into an argument with an unknown male. She said she and her friend decided to leave, but returned later to pick up another friend . . . when she pulled into the parking lot, she said the male her friend argued with . . . [who] was with a second

male . . . [who] came up to her as she got out of her car and put his hand up to stop her from talking. She said she asked . . . what the problem was and he tried to strike her, but she ducked out of the way . . . [She said] he then grabbed her hair . . . and she fell to the ground, hitting her knee, while . . . [he] dragged her.” (R. 22).

The report also identifies an assault/fight that occurred on June 30, 2013. (R.23). This event involved a victim who works as a bartender at Sangillo’s Tavern. (R. 146). “On 6-30-13, at approximately 0045 hours, . . .[victim] stated that she returned to Sangillos to pick up her vehicle. [She] . . . was not working at that time . . . [and] spotted a black male . . . walking outside with his shot glass of Hennessey, a liquor . . . [She] told . . . [him] that he was not allowed to take his drink outside . . . [He] responded saying no . . . [and] [she] told [him] he would need to bring the drink back inside the bar or have someone else bring it inside for him. . . [he] . . . responded saying “fuck you bitch, I’m going to punch you in the face” . . . [and] . . . punched her on the left side of her jaw using his right fist. . .[she] was knocked unconscious and fell down to the sidewalk. . . she was unconscious for approximately 1 minute . . . [and] her mouth was bleeding and hurt.” (R. 146).

Finally, the report also states that on “January 28, 2014 at approximately 0121 officers responded to a shooting outside Sangillo’s. Multiple gunshots were fired in the residential neighborhood. One bullet struck and seriously injured a patron. The victim is expected to survive but is now paralyzed.” (R. 22).

Despite the claims by the applicant and its attorney that these incidents are not related to patrons of Sangillo’s Tavern (and instead related to people walking home from the Old Port), the record evidence clearly establishes that these incidents of breach of the peace were in the immediate vicinity of Sangillo’s Tavern, and directly involved patrons and/or employees of the

Tavern. In finding the causal connection between these breaches of the peace and the patrons of the Tavern, the City Council relies on the facts outlined in the PPD reports and incident reports, the Assistant Police Chief and Police Chief's testimony presented to the Council, as well as the knowledge of Chief Sauschuck, Assistant Chief Malloch and the PPD officers who regularly patrol this area.

In addition, the spike in incidents in the vicinity of Sangillo's Tavern identified by Lt. Hutcheson in his February 20, 2014 report is clearly documented. The record contains a PPD crime analysis that shows that the Tavern only had 12 incidents/calls for service in 2011-2012; 15 incidents/calls for service in 2012-2013; and 41 incidents/calls for service in 2013-2014. (R. 172).

Overall, we determine that given the numerous incidents (and spike in incidents) identified, and the relative geographic isolation of Sangillo's Tavern from other bars in the City, it is correct to attribute the calls for service/incidents to patrons of the bar, and the owner and manager's failure and that of their employees to control the misbehavior of the bar's patrons.

B. *This Applicant Violated 28-A M.R.S.A. § 653(2)(G)*

Equally sufficient and independent grounds for denying this license is the fact that two of the bar tenders/servers employed by Sangillo's Tavern, and who are serving alcohol to patrons, have not been trained as required by 28-A M.R.S.A. § 653(2)(G).³ The applicant admitted this violation on the record at the March 17, 2014 hearing, and it is further noted in the applicant's attorney's letter to Assistant Chief Malloch dated March 6, 2014. (R. 19).

³ "A license may be denied on one or more of the following grounds . . . [a]fter September 1, 2010, server training, in a program certified by the bureau and required by local ordinance, has not been completed by individuals who serve alcoholic beverages." 28-A M.R.S.A. § 653(2)(G).

C. This Applicant Violated 28-A M.R.S.A. § 654

Finally, this application is also denied based upon the legal considerations outlined in 28-A

M.R.S.A. § 654. That section states as follows:

In issuing or renewing licenses, the bureau, the municipal officers or the county commissioners, as the case may be, shall give consideration to:

- A. The character of any applicant;
- B. The location of the place of business;
- C. The manner in which the business has been operated; and
- D. Whether the operation has endangered the safety of persons in or on areas surrounding the place of business.

In this case the applicant's owner is Dana Sangillo. He testified, and the record indicates, that he has owned the bar for almost five (5) years, and that his aunt, Kathleen Sangillo, has operated/managed the bar for that same period of time. Mr. Sangillo also testified that he has some recent experience operating bars and that his aunt has office management experience.⁴ Given this experience, Mr. and Ms. Sangillo should have known of the problems that existed and done a much better job of managing Sangillo's Tavern and its patrons.

The location of this particular bar is physically removed from many of the other City and Old Port bars, but given its location in the residential India Street neighborhood it is vital that whoever is responsible for owning and managing an alcohol serving business does so in a manner that maximizes the safety of not only their employees and patrons but of others who live and frequent the neighborhood.

Instead, the record clearly establishes that the manner in which Sangillo's Tavern has been operated/managed has endangered the safety of persons residing in the areas surrounding

⁴ When questioned by Councilor Suslovic on March 17, 2014, Ms. Sangillo further testified that she did not think that it was illegal under Maine law for an underage person (in the case in question, a 19 year-old) to be allowed inside the bar whether or not he or she was drinking alcohol.

this place of business. That conclusion rests on the same analysis previously set forth, regarding the public safety violations/incidents/breaches of the peace that have occurred in the vicinity of this bar. The conclusion also rests on Assistant Chief Malloch's testimony indicating that the applicant tried to address the repeated incidents by no longer selling two types of liquor that the so-called alleged "trouble-makers" had been drinking, and on Ms. Sangillo's own testimony that she is the on-site manager of the establishment, but that she consistently goes home and is not present (nor is anyone else) to manage the bar after 5:00 p.m.⁵ The only people working in the bar after 5:00p.m. is a bar tender and occasionally a door person (who is primarily in the door area/outside) on any given evening. This is simply insufficient management, particularly given the spike in incidents that have been identified by the PPD during the renewal period.

The applicant's claim that they are being singled out for unfair treatment because there are other establishments in Portland with more violations is without merit. Each license that comes before the PPD and the Council is considered on its own merits, not in relation to the performance of other facilities. It is no defense when a bar such as this one has violated state law to claim that other bars may have worse violations.

This Council has confidence that the PPD, based on its extensive experience and local knowledge, has a good sense of those facilities that are effectively managing their employees and patrons and reducing public safety problems and risks and those that are not meeting those expectations. Sangillo's Tavern clearly falls into the second category and for that reason, as well as those set forth above, this application is denied.

⁵ Instead, on March 17, 2014, Ms. Sangillo testified that at night she merely manages the bar by reviewing the security cameras from home and/or the videos of the night before, the next day.

Date of Decision on the Record: April 7, 2014

Date of Written Decision Signed: May 12, 2014

**Date Decision mailed to Bureau of
Alcoholic Beverages and the Applicant:** May 13, 2014

Mayor Michael F. Brennan

Councilor Kevin J. Donoghue

Councilor Jon Hinek

Councilor David A. Marshall

Councilor Edward J. Suslovic