

**DECISION OF THE PORTLAND CITY COUNCIL DENYING
THE APPLICATION FOR A LIVE ENTERTAINMENT LICENSE**

IN THE MATTER OF BONFIRE, LLC

On April 5, 2017, the City of Portland City Council held a public hearing on the application of Bonfire, LLC for an entertainment with dance license pursuant to the City of Portland Code of Ordinances § 4-51. The following are the Council's findings and conclusions.

THE RECORD

The written record submitted in this matter is as follows:

1. Written cover letter from Tanner Herget on behalf of Bonfire Country Bar, requesting to move the entertainment license previously held by 51 Wharf Street and Ultra Lounge;
2. Application and associated materials submitted by Bonfire Country Bar;
3. Memorandum by Anne Torregrossa, Associate Corporation Counsel, addressing the differences between the corporate structure of 51 Wharf Street and Ultra Lounge and Bonfire LLC;
4. Memorandum from Ann Machado, Zoning Administrator, addressing the restrictions contained in City of Portland Code of Ordinances § 14-330.13; and
5. Memorandum from Jessica Hanscombe, Business License Specialist, addressing the restrictions contained in City of Portland Code of Ordinances § 4-57.5, with attachments.

At the hearing, the City Council also heard the following testimony:

6. Joseph Goodman, Esq., attorney for the applicant, addressed the Council and explained that his client obtained its entertainment license in August of 2006, as a result of the previous business at that location, Salsa, having an entertainment license. The applicant is seeking to move the license one door down.

Citing to the preamble of the relevant ordinance, Attorney Goodman testified that allowing the applicant to move the license would comply with the spirit of the ordinance because it would not be increasing density in that area. Attorney Goodman took the position that the applicant met the exception in § [14-]330.13.

Mr. Goodman pointed out that the definition of ownership under the ordinance is broad and includes ownership interests.

7. Tanner Herget, representative for the applicant, also addressed the Council with a diagram of the area. He explained that 51 Wharf had been a 300-person nightclub, and he is seeking to move the entertainment license from that location down the

road to the much smaller Bonfire. He is currently operating Bonfire Country Bar as a bar without entertainment.

Mr. Herget explained that he has been a conscientious bar owner in the City for a number of years, even serving on committees to improve the safety of the City's nightlife.

8. In a statement, and in response to Council questions, Ms. Hanscombe explained that Bonfire is located within the B-3 Zone, which has a dispersal requirement of 100' between businesses with an entertainment license. Bonfire is located 35' from Oasis, which has an entertainment license.

Ms. Hanscombe further explained that Mr. Herget has closed 51 Wharf Street, and is seeking to transfer the license to 37 Wharf Street, which staff does not believe is allowed.

In response to questions, Ms. Hanscombe explained that the location at 51 Wharf Street remains grandfathered and that a new business with entertainment could go in, so long as it was within one year of 51 Wharf abandoning its license.

9. Attorney Torregrossa, in response to questions by the Council, explained that a business other than 51 Wharf had held an entertainment license at 51 Wharf Street, prior to the deadline to be "grandfathered" under § 14-330.13. When that business closed and 51 Wharf opened in the same location, 51 Wharf was able to take advantage of that grandfathered entertainment license.

In response to questions, Attorney Torregrossa explained that staff's interpretation is that the location at 51 Wharf is grandfathered under the terms of the ordinance and there is no way for the Council to terminate that right without changing the ordinance. Staff considers that the location is grandfathered for a period of one year from the abandonment of the previous license.

She further explained the position in her memorandum that 51 Wharf Street and Ultra Lounge, Inc. and Bonfire LLC are separate corporate entities that cannot be disregarded and Maine law does not typically allow owners or others to disregard the corporate form.

10. Michael Sauschuck, Chief of Police, also spoke about the public safety concerns behind the dispersal requirement, particularly eliminating a single massive crowd being created at closing time with the bars in the Old Port. In Chief Sauschuck's experience, the issues they see at bar time increase when there are large masses.
11. No other members of the public spoke in favor of or against the application.

FINDINGS OF FACT

The City Council, therefore, finds as follows:

12. The applicant is Bonfire, LLC, which owns Bonfire Country Bar, located at 37 Wharf Street.

13. 37 Wharf Street is located within the Downtown Entertainment Overlay Zone.
14. It is also located within 100' of Oasis, which is another business that currently holds an entertainment license.
15. 51 Wharf Street and Ultra Lounge, Inc. previously operated a bar by that name at 51 Wharf Street.
16. 51 Wharf Street and Ultra Lounge, Inc. held an entertainment license at that location, which it obtained as a result of a prior business at that location being eligible for the exemption from the dispersal requirements in § 14-330.14.
17. 51 Wharf Street and Ultra Lounge, Inc. and Bonfire, LLC share a common owner, the Herget Group, LLC.
18. However, the entities are not the same; they are different corporate entities, and are even different types of corporate entities.

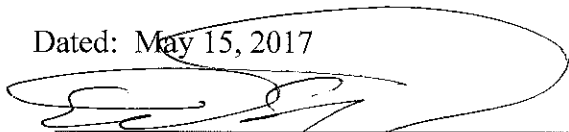
CONCLUSIONS OF LAW

19. The applicant is located within 100' of another business with an entertainment license and, therefore, does not meet the dispersal requirements of § 14.330-13.
20. The applicant does not meet the standards to be exempted from the dispersal requirements of § 14-330.14 because it is the location at 51 Wharf Street that is exempt, and not the business.
21. Even if it was the business that was exempt, Bonfire still does not qualify for the exemption because Bonfire, LLC and 51 Wharf Street and Ultra Lounge, Inc. are not the same corporate entity, and Maine law generally does not allow an owner to disregard the corporate structure when it is convenient.

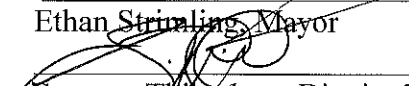
ORDER

Therefore, the City Council denies the application of Bonfire, LLC for an entertainment license at 37 Wharf Street.

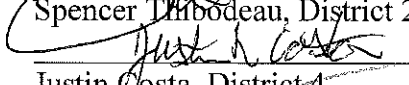
Dated: May 15, 2017



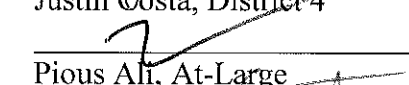
 Ethan Strimling, Mayor




 Spencer Thibodeau, District 2



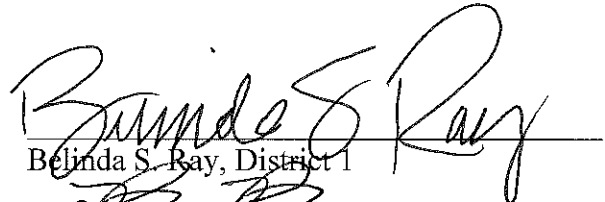
 Justin Costa, District 4



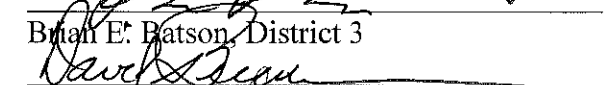
 Pious Ali, At-Large



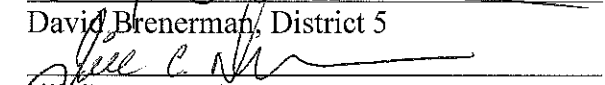
 Nicholas M. Mavodones, Jr., At-Large



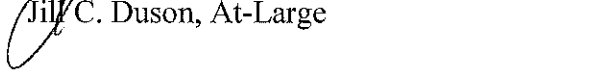
 Belinda S. Ray, District 1



 Brian E. Patson, District 3



 David Brenerman, District 5



 Jill C. Duson, At-Large