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Lowell City Hall  
375 Merrimack Street  
Lowell, MA 01852

Manager Bernie Lynch  
Lowell City Hall  
375 Merrimack Street  
Lowell, MA 01852

**RE: Downtown Safety Issues**

Dear Mayor Murphy and Manager Lynch:

I am writing in anticipation of the City's upcoming meeting to discuss solutions to the recent spate of apparently alcohol-fueled, late-night violence in the downtown area. I do so for both personal and professional reasons. From a personal perspective, last year we bought and renovated a building in the downtown, and in November we moved our law offices there. While we are excited about being located in an historic and architecturally beautiful neighborhood, we have ourselves sustained some late-night damage. Our copper downspout was stolen, trash has been dumped in our garden, my car was keyed, we have picked up our share of broken beer bottles, etc.

Professionally, we have practiced in the "liquor liability" area for many years, representing bars and restaurants throughout the Commonwealth. As part of that practice, we have, among other things, helped to draft responsible alcohol service and training policies and counseled numerous such businesses with respect to the responsible service of alcohol.

We share the concerns expressed by George Duncan and Jim Cook in the newspaper recently and agree with the sentiments expressed in the recent *Sun* editorial and in the local blogs but, given our personal stake in how this issue is addressed, we wanted to offer some respectful additional suggestions for next steps.

At the outset, it should be noted that this is not a problem for which our downtown *restaurants* should in any way be disadvantaged. Downtown Lowell has *and needs* a good number of first-rate restaurants in which, ancillary to the

service of food, alcohol is offered. It would be a major mistake for us if they were to be perceived as part of this problem, and somehow penalized as a result. In this economy, it is hard enough for restaurants to turn a profit without having to respond to supplemental requirements.

It should also be noted preliminarily that primary responsibility rests with the alcohol *consumer*. It goes without saying that alcoholic beverages can be consumed and enjoyed without that consumption leading to vandalism and violence. Anyone involved in the criminal justice system knows, though, that the consumption of alcohol often fuels criminal activity, especially for young people, and especially when the crimes – assaults, vandalism, DWI's, etc. – are committed in the early morning hours.

However, the problem of excessive alcohol consumption and its connection to criminal activity, especially among the young, is too complex to be meaningfully addressed in the short term. Responsible alcohol *service* can be, though. **It is the responsible service of alcohol, and the measures taken to ensure that this is done, which are at the heart of this issue.**

Rolling back Lowell's 2 a.m. closing hour – at least for those downtown bars where repeated incidents have occurred – would be a reasonable start. It would appear, from the news reports, that many of those involved in the recent late-night violence, are from communities outside of Lowell whose bars close earlier. However, an earlier closing time would be just a start. As a community, we need to make sure that alcohol is being served in downtown bars in a responsible and professional way. The service of alcohol is subject to licensure and as such, reasonable requirements can be imposed on licensees by the governing authority, here the Lowell License Commission ("LLC") (if the LLC wishes to adopt requirements additional to its existing Rules and Regulations, it can do so as long as they are consistent with Massachusetts law and the Lowell Code of Ordinances). The following are some specific suggestions for how that can be accomplished.

1. The LLC could insist upon downtown bars (i.e., those establishments

whose principal business is selling alcohol) having in place a *written* set of responsible alcohol service policies. These would address the subjects of service to underaged and intoxicated patrons, and prohibit certain improper practices (e.g., delivering more than two drinks at a time to a single patron, offering free drinks, alcohol consumption by on duty servers, etc.). Bar owners would be required to provide a copy of their policies to each alcohol server who would sign them, acknowledging that they had read and would follow them, and those policies would be kept on file (at the bar and with the LLC).

2. The LLC could insist upon downtown bars having in place responsible alcohol service *training* practices. These would apply to all involved in the service of alcohol: bartenders, managers, and wait staff. All such employees should be required to successfully complete one of the readily-accessible (and affordable) alcohol service training and certification programs (e.g., TIPS, Bar Code, etc.), and their certificates should be current and on file. Those programs provide salient information about how alcohol is metabolized, the signs of intoxication, and the serious consequences of over-service.
3. Arguably, the key alcohol service employee is the bar's Manager. By law, licensees *must* retain a person responsible for day-to-day management of the licensed premises. The Manager should be charged with ensuring that all staff are following the bar's responsible alcohol service policies. **Importantly, by its own Rules and Regulations, the LLC must "approve" each bar's Manager.**
4. Each downtown bar should have a person at the door responsible for checking ID's and determining whether someone seeking admission is intoxicated. The door person should also be certified and trained in identifying fake ID's.
5. Each downtown bar should be encouraged to install one or more surveillance cameras (we once represented a bar which had installed 27

such cameras). The presence of a surveillance camera would serve to deter irresponsible service but could also capture employee theft and provide evidence for law enforcement in the event of a disturbance within the bar.

6. Each downtown bar should be required by the LLC to keep a record of any disturbances within the bar. According to LLC Rules and Regulations, it is a violation of a bar's license to allow any disorder, disturbance, or illegality of any kind in or on the licensed premises. **Notably, licensees are required to notify the Lowell Police when a violation of law, disorder, or disturbance is taking place or is about to take place at the premises.**
7. Each downtown bar should be encouraged to hire a detail police officer at least during busy hours. Many bars do so as a cost of doing business. In truth, the costs of not having appropriate preventive measures in place (e.g., license suspensions or revocations, criminal penalties, civil lawsuits, increased insurance premiums, etc.) will considerably outweigh the expense of a detail officer.
8. Each downtown bar should have adequate liability insurance, and evidence of that insurance should be on file with the LLC. Not uncommonly, liability carriers' Loss Control personnel will conduct periodic inspections of their bar insureds to ensure that their policies and practices are reasonable (and, if they aren't, the insurer can decide not to renew coverage). It should be noted that implementing the measures listed above could reduce a licensee's insurance premiums.

Obviously, enhanced monitoring, enforcement, and reporting by law enforcement are also critical. Continued periodic "stings" by local police, state police, and/or the Alcohol Beverage Control Commission ("ABCC") should promote more responsible behavior. By LLC regulation, the Lowell Police and State Police officers assigned to Lowell are agents of the LLC with authority to

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enter the premises of any licensee at any time to ascertain the manner in which the licensed business is conducted.

Further, under Massachusetts General Laws, C. 90, § 24J, in any case where there is a conviction or plea of guilty to a driving under the influence offense, the court must inquire of the defendant whether he was served at a licensed establishment prior to his offense and the name and location of the establishment. This information must be communicated to the ABCC and the local District Attorney. Pursuant to LLC regulations, an investigation should be instituted by the Lowell Police following three § 24J notices to one establishment in an 18-month period. The finding of a violation should result in not less than a three-day suspension.

A downtown bar owner is obviously entitled to build a business and make a profit, and the LLC should not be insensitive to the legitimate interests of downtown bar owners. However, the welfare and safety of the general public should be the LLC's chief concern. Ultimately, it is incumbent on the LLC to take appropriate steps to ensure that its requirements are being followed and to take decisive action when its requirements are being violated. The failure to do so can have tragic consequences. If irresponsible service is not identified and corrected and an over-served patron picks up a bat or gets behind the wheel of a car, he or she can cause extensive property damage or, more significantly, serious personal injury and death.

The failure to act can also be insidious. News reports detailing downtown violence can undermine all the good work that the City and its downtown businesses and residents have done to make historic downtown Lowell an attractive place to open a business, work, live, dine, enjoy some music or theater, and, yes, have a drink.

As those involved well know, this is a time for more than talk. It is a time for all those empowered to effect positive change – the LLC, city officials, the City Council, downtown bar owners, and the law enforcement community – to *immediately* take fair and reasonable steps to stop irresponsible service and

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ensure that it not continue, and to send the message to potential downtown bar patrons that punishment for criminal behavior will be swift and severe.

As we renovated the Gaslight Building on Shattuck Street, which was built in 1859, we came to understand its remarkable history, and numerous prints depicting that history now hang from its walls. We have also begun to appreciate the fact that so many of our downtown buildings, with their impressive 19<sup>th</sup> century facades and architectural features, have equally interesting stories. Few cities in the Commonwealth have the "rose red" downtown assets that Lowell has, not to mention the cobblestoned streets, flowering gardens, multiple arts venues, great restaurants with café seating, etc. We are sincerely energized about being in downtown Lowell, but all will be for naught if on weekend mornings we're cleaning up after the previous night's shenanigans and sidestepping T.V. station trucks reporting unflattering news.

Let's correct this problem, together, and get back to work.

Sincerely yours,

GALLAGHER & CAVANAUGH



Michael W. Gallagher