

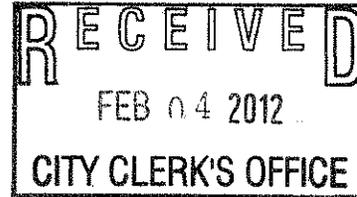


Cronin
Bisson &
Zalinsky P.C.
Attorneys at Law

722 Chestnut Street | Manchester, NH 03104
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www.cbzlaw.com

John G. Cronin
Admitted in NH and MA

January 31, 2013



Matthew Normand, City Clerk
City of Manchester
One City Hall Plaza
Manchester, New Hampshire 03101

Re: Franklin Street West Back

Dear Clerk Normand:

I am following up on your letter of December 6, 2012 regarding the closure of "Franklin Street West Back".

Your letter responded to our inquiry about the licensing of a private business, Strange Brew Tavern, to obstruct a public street. I understand the Committee on Public Safety, Health and Traffic reviewed the request and supported the request to close the street. The Board of Mayor and Aldermen approved the recommendation of the Committee pursuant to its statel authority. *See*, NH RSA 41:11 and 47:17.

Our client, 70 Market Street, LLC, the owner of property abutting the area used for tavern operations, objects to the ongoing use of the public way for restaurant operations. We note, the New Hampshire Supreme Court has ruled that the statutory authority does not allow the public or abutters to obstruct a public way. The Manchester Ordinance also provides that the BMA may grant a license to occupy a portion of a public street for street fairs or other community events. *See*, Order 797.34. The grant of power does not allow street closure to private restaurant operations.

Please advise when we can be placed on the agenda of the Committee to discuss our client's concerns.

Thank you.

Sincerely yours,
CRONIN BISSON & ZALINSKY P.C.

By:

John G. Cronin

JGC:tlm

cc: Derek Massey
Michael Massey

*Matthew Normand
City Clerk*



*Heather Freeman
Assistant City Clerk*

*JoAnn Ferruolo
Assistant City Clerk*

CITY OF MANCHESTER
Office of the City Clerk

December 6, 2012

John G. Cronin
Cronin & Bisson, P.C.
722 Chestnut Street
Manchester, New Hampshire 03104

Re: Franklin Street West Back

Dear Attorney Cronin,

This letter is in response to your communication dated November 19, 2012 regarding "Outside Restaurant Seating – Franklin Street West Back". The temporary closure of Franklin Street West Back was initiated by written request of Mr. Mitch Sawaya, owner of Strange Brew Tavern, located at 88 Market Street, dated January 22, 2008. The communication first appeared on the agenda of the Committee on Public Safety, Health, and Traffic on February 19, 2008, a meeting agenda which was posted publicly on or about February 15, 2008. The request was tabled at the meeting to allow further discussion between Mr. Sawaya and at least one abutter, Mr. Cliff Ross. The request remained tabled and appeared on all publicly posted committee agendas through September 15, 2008.

The request, appearing on the September 15, 2008 agenda, was removed from the table and unanimously approved by all members of the committee to allow a pilot program to close the alley adjacent to Strange Brew from 5:00 p.m. - 10:00 p.m. on Friday, Saturday and Sunday after further discussion on the matter. Mr. Sawaya and Mr. Ross were both in attendance and participated in the meeting.

The Board of Mayor and Aldermen unanimously voted to accept the committee recommendation at the meeting held on September 16, 2008. No license or permit was required to be issued to reflect the action of the Board of Mayor and Aldermen.

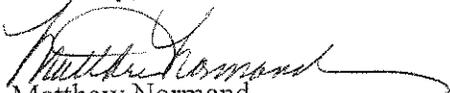
On July 28, 2010, my office received a subsequent written request from Mr. Sawaya dated June 25, 2010, seeking permission to extend the street closure to additional days of the week and one additional hour, nightly. The communication appeared on the agenda of the Committee on Public Safety, Health, and Traffic on September 8, 2010, a meeting agenda which was posted publicly on or about September 3, 2010. The request was unanimously approved by all members of the committee.

The Board of Mayor and Aldermen unanimously voted to accept the committee recommendation on September 21, 2010. Copies of written communications and minutes of all board/committee meetings are available at www.manchesternh.gov.

The authority to regulate the use of all public ways in the city of Manchester is vested in the Board of Mayor and Aldermen under the provisions of RSA 41:11 and 47:17.

Please feel free to contact me if I can be of further assistance.

Sincerely,


Matthew Normand
City Clerk

pc Thomas Clark, City Solicitor

John G. Cronin
Admitted in NH and MA

November 19, 2012

Matthew Normand, City Clerk
City of Manchester
One City Hall Plaza
Manchester, New Hampshire 03101

Re: Outside Restaurant Seating - Franklin Street West Back

Dear Matt:

Our office represents 70 Market Street, LLC, the owner of real property known and described as the land and buildings at 70 Market Street, Manchester, New Hampshire. The property is referred to by the City of Manchester at Tax Map 155-22.

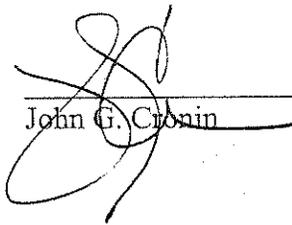
We understand a license or permit was issued to allow the Strange Brew Tavern to situate tables and chairs in the public way known and referred to as Franklin Street West Back. As you may know, the operation of the restaurant business in the public way has created friction between abutting property owners. The restaurant operations essentially closed the right of way during business hours and limited access for employees, customers and vendors. The restaurant operations abutting business premises created an intolerable distraction. The restaurant operations conducted in the public way resulted in an intolerable distraction to our client's business operations.

It is our understanding the such permits or licenses are generally granted to occupy sidewalks when suitable access is maintained for pedestrians. We are interested to know what considerations are given to rights of abutting property owners when permits or licenses are granted to obstruct a public way. Kindly advise of the authority on which the permit was granted. Based on the ongoing disruption and difficulties caused by the restaurant, we object to continuation or issuance of any permits or licences allowing restaurant operations within the limits of the public street known as Franklin Street West Back.

Thank you for you consideration.

Sincerely yours,
CRONIN & BISSON, P.C.

By:

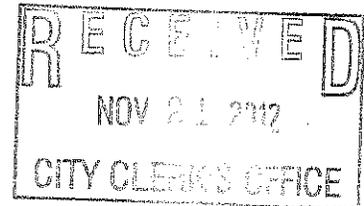

John G. Cronin

JGC/bms

cc: Michael Massey
Derek Massey



722 Chestnut Street, Manchester, NH 03104
Phone: (603) 624-4333 Fax: (603) 623-5626
www.croninbisson.com



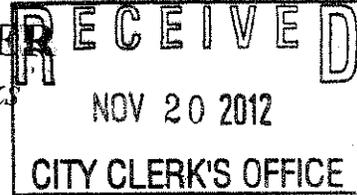
Kevin A. Sheppard, P.E.
Public Works Director

Timothy J. Lougherty
Deputy Public Works Director



Commission
Raymond Hebert
Hal Sullivan
Bill Skouteris
Rick Rothwell
Philip Hebert

CITY OF MANCHESTER
Department of Public Works



November 20, 2012

Community Improvement Committee of the Board of Mayor and Aldermen
City Hall
c/o Matthew Normand, City Clerk
One City Hall Plaza
Manchester, New Hampshire 03101

RE: PETITION DISCONTINUANCE OF A PORTION OF FRANKLIN WEST BACK STREET

Dear Committee Members,

The Department of Public Works has reviewed the referenced petition and have found the following:

- The dedication of the street was made by the Amoskeag Manufacturing Company.
- The street was laid out by the Board of Mayor and Aldermen on July 7, 1949 and the action recorded in Highways, Streets and Bridges book 11 page 446 by the City Clerk.
- There is a City sewer line located in this section of the street. The Department of Public Works requests withholding a utility easement over the street if this petition is granted.
- Granting of this petition will not hinder our operations.

Sincerely,

Kevin Sheppard, P.E.,
Public Works Director

MJM
cc: File

Matthew Normand
City Clerk



Heather Freeman
Assistant City Clerk

JoAnn Ferruolo
Assistant City Clerk

CITY OF MANCHESTER
Office of the City Clerk

MEMORANDUM

To: Kevin Sheppard
Public Works Director

From: Heather Freeman 
Assistant City Clerk

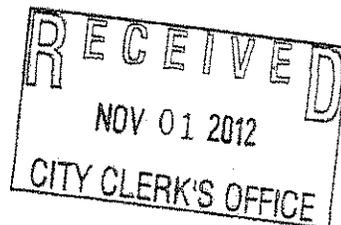
Date: November 2, 2012

Re: Petition for Discontinuance – Franklin Street West Back

In accordance with Rule 19 of the board, please find attached a petition for discontinuance of a portion of Franklin Street West Back. Please note this petition will be submitted to the Committee on Community Improvement.

Enclosure

pc: Leon LaFreniere, Director of Planning and Community Development



November 1, 2012

City Clerk's Office
c/o City of Manchester
One City Hall Plaza
Manchester, NH 03101

Attn: Board of Mayor and Aldermen

Re: Franklin Street West Back Discontinuance
CLD Reference No. 12-0319

Dear Board of Mayor and Aldermen:

Enclosed please find a proposed discontinuance of a portion of Franklin Street West Back in Manchester, which we are filing on behalf of our client, Mitchell J. Sawaya Revocable Trust. Also enclosed is a description of the street to be discontinued, a City GIS (for aerial view), and Section Map N from the City of Manchester Highway Department for the discontinuance. Please use this package to enter this request into the formal Street Discontinuance process as soon as practicable.

If you have any questions or concerns, please do not hesitate to contact us at 668-8223.

Very truly yours,

A. Cory DuBois, P.E.

ACD:jt

Enclosures

cc w/enclosures: Mitch Sawaya



Franklin Street West Back
CLD Reference No. 12-0319
November 1, 2012
Page - 2

*To the Honorable Board of Mayor and Aldermen
Of the City of Manchester:*

We respectfully request release and discharge of a certain dedicated way in the City of Manchester, County of Hillsborough, State of New Hampshire, from all public servitude except in connection with any existing utilities within the right-of-way, if any, because this way is not needed for the accommodation of public travel. Said way is a portion of Franklin Street West Back (as shown solely on Tax Map 152), beginning at Market Street and ending at Market Street South Back and lies within and is abutted by:

- Mitchell J. Sawaya Revocable Trust
At 88 Market Street
Tax Map 152-21
Book 8257, Page 2469
- 70 Market Street LLC
At 70 Market Street
Tax Map 155-22
Book 5952, Page 1244

The proposed discontinuance will permit the abutters to utilize the portions of this currently dedicated but unaccommodating to public travel way that abut their respective properties. There will be no inconvenience caused to the public as a result of this discontinuance.



Franklin Street West Back
CLD Reference No. 12-0319
November 1, 2012
Page - 3

DESCRIPTION
FRANKLIN STREET WEST BACK BETWEEN
MARKET STREET AND MARKET STREET SOUTH BACK

All that piece or parcel of Franklin Street West Back situated in the City of Manchester, County of Hillsborough, State of New Hampshire, located between Market Street and Market Street South Back; bounded and described as follows:

Beginning at a point on the southerly sideline of Market Street, at the easterly sideline of Franklin Street West Back; said point being a distance of 212.34 feet, more or less, westerly from the westerly sideline of Franklin Street at its intersection with the southerly sideline of Market Street.

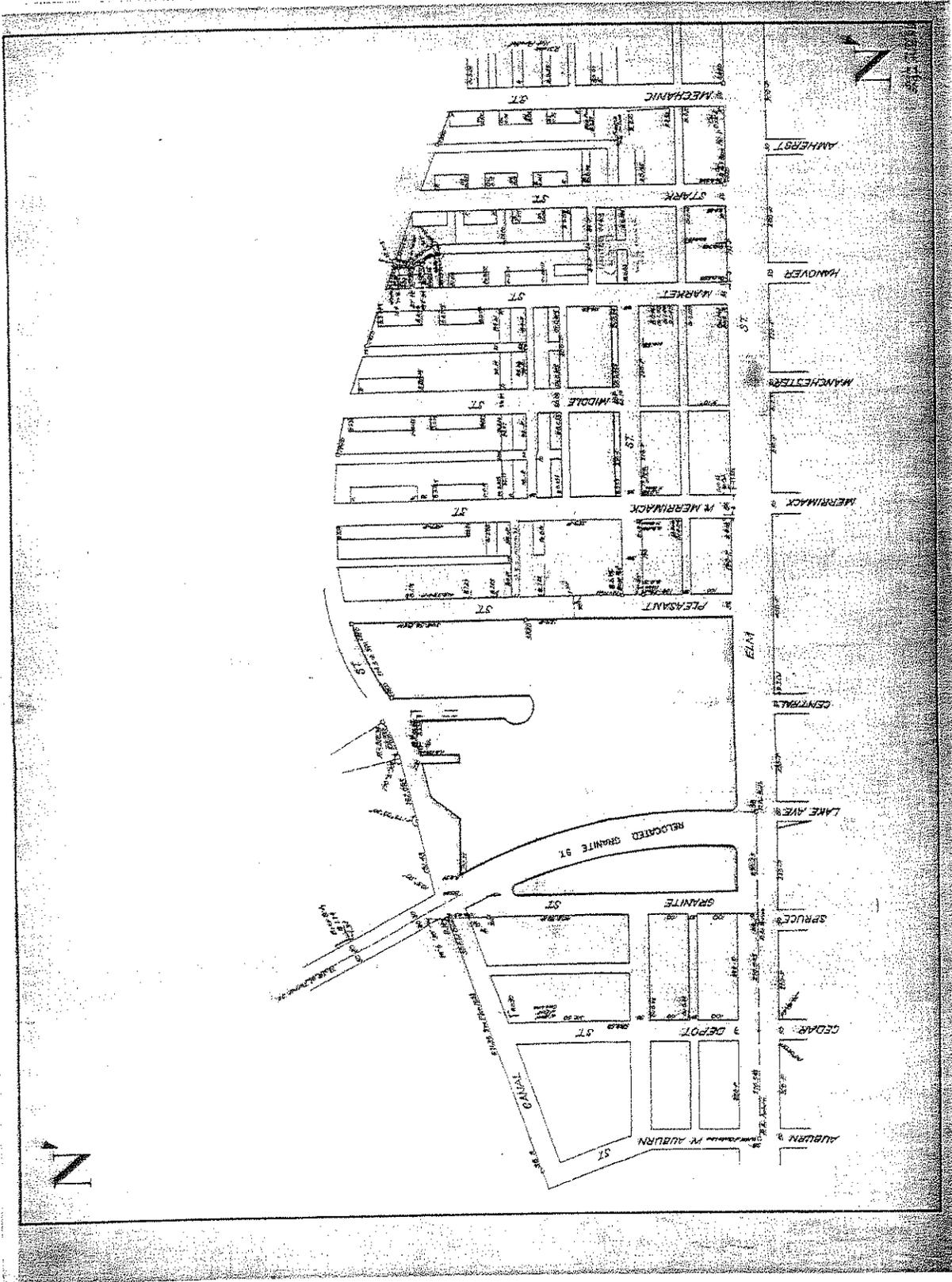
Thence, southerly along said easterly sideline of Franklin Street West Back, a distance of 85.00 feet to a point on said easterly sideline of Franklin Street West Back at its intersection with the extension of the northerly sideline of Market Street South Back;

Thence, westerly along said extension of the northerly sideline of Market Street South Back, a distance of 16.5 feet to a point on the westerly sideline of Franklin Street West Back at its intersection with the northerly sideline of said Market Street South Back; said point also being the southeasterly corner of Tax Map 152 Lot 21;

Thence, northerly along said westerly sideline of Franklin Street West Back, a distance of 85.00 feet to the southerly sideline of Market Street;

Thence, easterly along said southerly sideline of Market Street, a distance of 16.5 feet to the point of beginning.

The area of the above-described section of Franklin Street West Back is 1,402.5 square feet.



12' WIDE EASEMENT
TO BENEFIT 152-21
AS RECORDED IN 2350-615
(NOT INCLUDED IN DEED
FOR 152-21)

GRANITE CURB
MARKET STREET

LIMIT OF PARKING AREA
UTILIZED BY 152-22

GRANITE CURB
130.16'
152-20
MILL YARD FAMILIES
LIMITED PARTNERSHIP

152-21
MITCHELL SAWAYA
REV. TRUST

152-22
70 MARKET
STREET LLC

MARKET STREET SOUTH BACK (22' WIDE)

FRANKLIN STREET WEST BACK (16.5' WIDE)

PAVED PARKING AREA
CONCRETE PARKING AREA

152-15
MK&S
HOLDINGS II LLC

152-14
CLIFFORD ROSS

145.81'

145.81'

149.73'

130.16'

87.39'

87.23'

85.00'

85.00'

93.00'

93.00'

100.00'

100.00'

(16.5' WIDE)

100.84'

95.98'

100.69'

95.97'

104.03'

104.03'

100.53'

111.50'

111.50'

200.00'

*Strange Brew Handout
Comm. to Public Safety, Traffic & Health
February 19, 2008*

*tabled 2-19-08
3-18-08 REMAINED TABLED*

STRANGE BREW TAVERN
88 Market Street
Manchester, NH 03101

January 22, 2008

City of Manchester, NH
Office of the City Clerk
Attn: Matthew Normand
Deputy Clerk

Re: Encumbrance Permit

Dear Sir:

As per our October discussion, I am requesting permission to close the alley adjacent to Strange Brew known as Franklin West Back Street.

The area in question is 84'3" long (from one end of the building to the other) by 23'6" wide on the Market Street side.

The initial proposed closure times would be Thursday through Saturday from approximately 5pm until a last call for drinks at 10pm. All service would be discontinued in the alley by 11pm. We are picking these times for the initial test of this proposal because we always hire a detail Thursday, Friday, and Saturday. If this works out, I will ask that we reevaluate and close the alley for additional days (in particular, all day Sunday and Saturday).

The Heritage Commission has given conceptual approval for an awning 35 feet in length with an overhang of 10 feet 6 inches. This is a retractable awning which would only be open during hours of operation. During whatever review we have of the alley closure, I suggest we discuss "air rights" for the awning. Once air rights are approved, the building department will issue a permit.

As we discussed, we will not close the alley during snow emergencies.

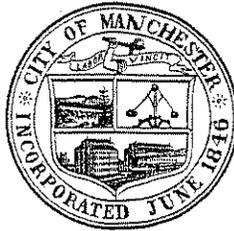
For the short term, I intend to purchase nylon rope barriers which we will wrap in white lights. If the program works out with no issues, I will look to put in a more permanent barrier, such as a wrought iron divider that swings out from the wall.

Please let me know if you have any further questions regarding this request. I can be reached in my office most days at (603)666-0293, or on my cell at (603) 670-3236.
Thank you in advance for your assistance in this matter.

Sincerely,

Mitch Sawaya
President
Strange Brew Tavern

Carol A. Johnson
City Clerk



Matthew Normand
Deputy City Clerk

CITY OF MANCHESTER
Office of the City Clerk

September 29, 2008

Mr. Mitch Sawaya
Strange Brew Tavern
88 Market Street
Manchester, NH 03101

Re: Street Closure Request

Dear Mr. Sawaya:

I am pleased to notify you of the conditional approval of the pilot program to close the alley adjacent to Strange Brew know as Franklin West Back Street. Enclosed for your records is a copy of your communication, as well as the action taken by the Board of Mayor and Aldermen at a meeting held on September 16, 2008, accepting a report of the Committee on Public Safety, Health and Traffic.

Should you have any questions relating to this matter, please do not hesitate to contact me directly.

Sincerely,



Matthew Normand
Deputy City Clerk

Enclosure

cc: Kevin Sheppard, Public Works Director
Kevin Kincaid, Licensing

TABLED ITEM

12. Communication from Mitch Sawaya, owner of the Strange Brew Tavern at 88 Market Street, requesting that he be allowed to temporarily close a portion of Franklin West Back Street each week from Thursday through Saturday between the hours of 5:00 p.m. and 11:00 p.m.

Note: Mr. Sawaya to meet with abutters in order to work out an agreement relative to his request and report back to the Committee.

(Tabled 2/19/08)

On motion of Alderman J. Roy, duly seconded by Alderman O'Neil, it was voted to remove Item 12 from the table.

Alderman J. Roy stated I see that the people involved in this are here. This is something that we looked at quite awhile ago and seeing that it is going to be a pilot program I think Mitch has shown that he works very well with the neighbors down there and if there are any concerns he addresses them rather quickly. I believe that Alderman O'Neil has some information about coverage by the Police Department in that area as well.

Chairman Shea stated there is a neighbor in the audience, Mr. Ross.

Alderman J. Roy stated both of them are here. Mitch and Mr. Ross are here.

Chairman Shea stated I am not sure what you want to do. Do you want both people to come up?

Alderman J. Roy responded absolutely.

Chairman Shea stated why don't we hear from Mitch first and then Mr. Ross.

Mr. Mitch Sawaya stated I think the way we left it before was someone, I think Alderman O'Neil, was going to have further discussion with Mr. Ross and you were going to check with the police and see what the track record was and see how we were handling our issues. I have only heard bits and pieces of how that all came out but what we had talked about was making this a pilot program where we did something on Saturdays and Sundays.

Chairman Shea asked was there a recent meeting? I am not aware of that.

Mr. Sawaya answered I believe the only meetings that have happened have been between some of the Aldermen and the police. We have already met with the Highway Department and the other departments that were involved.

have people out there monitoring the level of noise. There would be no music or anything like that out there but I think if I understand it right Mr. Ross's biggest concern is from about 11 PM until whatever time people are finally gone. That is what is waking him up at night if I understood it correctly.

Chairman Shea asked Mr. Ross, would you care to comment?

Mr. Cliff Ross stated I just want to point out that our complaints aren't necessarily old business. Within the last three months a tenant of ours and my daughter-in-law witnessed two savage fistfights outside of Strange Brew, outside the front door and then down near our property with all kinds of cheering going on. On another occasion not far removed in time, there was somebody that was apparently a police officer or something to do with corrections who had a car parked directly in front of our front door and people looked into the car and saw what apparently was identification that it was owned by a corrections officer so they came up on my front lawn and took a tremendous granite stone from our rock garden and smashed the car to pieces. That was reported to the police. The police came and according to my tenant the policeman said that this neighborhood has gone crazy. In another instance, we came out the front door of our place at 79 Middle Street and there was a pool of blood in the parking lot. Somebody had been plugged by a baseball bat and we have no information that the assailant came from Strange Brew but there was a big crowd that gathered on my front lawn and my son made the mistake of asking them to get off the front lawn in a respectful manner and they quickly identified two motor vehicles in the parking lot as belong to us. They kicked in my fender and tried to break off the window and they ripped the antenna off of our car in such a way that it dented the roof. My neighbors, the settlement company next door, put up a flagpole in the alleyway area and it was smashed to pieces immediately. I have no complaint with the people using that space up until 10 PM as Mitch asks but I am concerned about the entire situation. I had occasion to go into Strange Brew in the last three weeks to complain about something and I encountered one of the most polite and cooperative bartenders I ever met. I spoke about the situation to him and he said that it is hard for them to have a policeman go outside to supervise what is going on outside because of the possibility of fights in the bar. I think there is an obligation to attend to both areas and that neighborhood was never like that before. I like Mitch. He runs a very good place. He provides a lot of happiness to a lot of people but it is a dangerous situation down there. Now truthfully it has gotten better and I think it might be as a consequence of the Chief of Police putting more people out there and patrolling a little better. We hope it will continue and we simply ask that you do whatever you can to help the situation from becoming a tragic situation, and good luck to Mitch and his business.

Chairman Shea asked Mitch is it possible for you to hire a second policeman to supervise the people?

we were able to get that done. Prior to that, it was pretty much once they were done in my building they would get in their cars and drive off. That is definitely a factor.

Alderman Ouellette asked Mitch, do you also employ bouncers as well?

Mr. Sawaya answered I do. On a Friday or Saturday night there are five bouncers spread throughout the building

Alderman Ouellette stated getting to Chairman Shea's point, instead of considering hiring a second officer obviously you can just send one of the bouncers around to make sure everything is okay.

Mr. Sawaya responded it actually carries more credibility having the officer go around so that is what we typically try to do. My guys have authority within the building but once you are outside that building, they have no legal authority at all. It becomes very difficult for them to get involved in anything. So that officer, we will absolutely use him to go around.

Alderman Ouellette responded as long as somebody does it because I think that would clear up any issues during that time. I agree with Alderman O'Neil that it is a separate issue and a police issue in terms of the parking lot and Atty. Ross's issues, which aren't any fun I am sure. I am sure that the Chief will address that.

Mr. Ross stated we have lived there for some 35 years and during Mitch's tenure we have watched the people come and go. They go in as regular ordinary good kids but they don't necessarily leave that way. They are pretty wild. I appreciate the improvements and I am grateful to all of you.

Alderman J. Roy stated I have one more question for Mitch. While you have this area in the alleyway being occupied by some of your patrons, are you going to have a bouncer out there?

Mr. Sawaya responded absolutely.

Alderman J. Roy stated so he can go inside and get the police officer quick enough. I think what I was hearing, and Mr. Ross correct me if I am wrong, but you don't have any objections to him having this pilot program until 10 PM. You have an objection about what is happening later on that we have to address with the police.

Mr. Ross responded correct.

Alderman O'Neil stated I have a question for Mitch. I know this is late in the fall but if the Board approved it would you take a shot at it this fall at all?

Deputy City Clerk Normand stated just so we are clear, this would be reflected on his business license so what I have gathered so far from the conversation is that this would be proceeding from noon until 10 PM, that there will be no music outside, that the alley will be opened up after 10 PM, that there will be a bouncer outside and that this will last for only one season as a pilot program beginning in April or May of 2009 through October.

Chairman Shea asked how many days a week would this be?

Mr. Sawaya answered I just want to start it on Saturdays and Sundays.

Alderman Sullivan asked you don't want Fridays covered by this?

Mr. Sawaya answered the only problem with Fridays is we have to wait until the cars from next door leave anyway. I would love to do it on Fridays if that works. It probably should reflect Friday, Saturday and Sunday. I would just have to figure out what time we would start it on Friday. I need to see what is going to happen. The cars next door might not move out until 7 PM on a Friday.

Alderman Sullivan moved the motion as outlined by Deputy City Clerk Normand.

Deputy City Clerk Normand asked do you want me to read it again?

Alderman Sullivan answered yes.

Deputy City Clerk Normand stated this would be for a pilot program to begin sometime in April or May of 2009. It would be for seating only outside the alley abutting the Strange Brew from noon until 10 PM. There would be no music. The alley would be opened up after 10 PM. There would be a bouncer outside during the operation. I am not clear if it is Friday, Saturday and Sunday or just Saturday and Sunday.

Mr. Sawaya answered you probably want to put it down as Friday, Saturday and Sunday and then we don't have to come back here again.

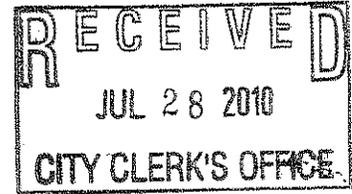
Alderman Sullivan stated yes let's put Friday, Saturday and Sunday.

Alderman J. Roy duly seconded the motion.

Alderman O'Neil stated I am committed to Atty. Ross regarding that parking lot that we are going to clean up the behavior there. I am committed to you on that.

Chairman Shea called for a vote. There being none opposed, the motion carried.

STRANGE BREW TAVERN
88 Market Street
Manchester, NH 03101



June 25, 2010

City of Manchester, NH
Office of the City Clerk
Attn: Matthew Normand
City Clerk

Re: Pilot Program

Dear Sir:

As you are aware, over the last two years Strange Brew Tavern has been part of a pilot program consisting of closing the alley known as Franklin West Back Street Friday, Saturday, and Sunday until 10pm.

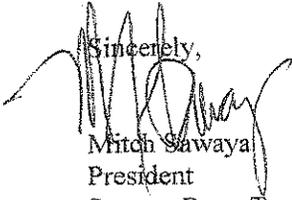
To the best of my knowledge this program has been quite successful. I am unaware of any neighborhood complaints. In fact, many of the people in the nearby neighborhoods have been taking advantage of the outdoor seating.

Due to the success of the program, I am asking that your office consider allowing us to keep the alley closed until 11pm. This would be a one hour extension from the currently approved closure time of 10pm.

In addition, I would like to extend the program to include the other nights of the week.

Please let me know if you have any further questions regarding this request. I can be reached in my office most days at (603)666-0293, or on my cell at (603) 670-3236.
Thank you in advance for your assistance in this matter.

Sincerely,



Mitch Sawaya
President
Strange Brew Tavern

Matthew Normand
City Clerk



Kathleen Gardner
Deputy City Clerk

CITY OF MANCHESTER
Office of the City Clerk

September 24, 2010

Mitch Sawaya
88 Market Street
Manchester, NH 03101

Re: Street Closure Pilot Program

Dear Mr. Sawaya,

Please be advised that at a meeting of the Board of Mayor and Aldermen held on September 21, 2010 it was voted to accept the report of the Committee on Public Safety, Health and Traffic recommending that the pilot program for closure of West Franklin Back Street be extended to 11:00 p.m. and include Monday through Thursday nights.

Sincerely,

Matthew Normand
City Clerk

Enclosure

Cc: David Mara, Chief of Police
Kevin Kincaid Licensing Compliance Coordinator

- T. Recommending that the following regulations governing standing, stopping, parking and operation of vehicles, be adopted pursuant to Chapter 70 of the Code of Ordinances of the City of Manchester and put into effect when duly advertised and the districts affected thereby duly posted as required by the provisions of that Chapter and Chapter 335 of the Sessions Laws of 1951.

Section 70.36 Stopping, Standing, or Parking Prohibited

STOP SIGNS – 4 WAY:

On North Adams Street at Appleton Street – SEC, NWC

***Review attached

Alderman Craig

(Unanimous vote with the exception of Aldermen Roy who voted in opposition)

- U. Recommending that the request from the Strange Brew Tavern to extend the hours of the currently approved street closure of West Franklin Back Street to 11:00 p.m. be approved and further that the program be extended to include Monday through Thursday nights.

(Unanimous vote)

9/21/10

Consent
Agenda

Approved by
Bma

Comm on Public Safety & Health
9/8/2010