

Performance Audit Report

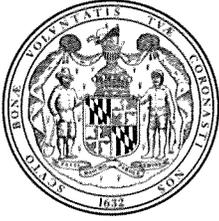
Board of Liquor License Commissioners
for Baltimore City

March 2013



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

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March 28, 2013

Thomas J. Barnickel III, CPA
Legislative Auditor

Senator James C. Rosapepe, Co-Chair, Joint Audit Committee
Delegate Guy J. Guzzone, Co-Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

We conducted a performance audit to evaluate the effectiveness and efficiency of the management practices of the Board of Liquor License Commissioners for Baltimore City (BLLC) as required by Chapter 263 of the Laws of Maryland, 2011. The law requires that the audit focus on BLLC operations relating to licensing, inspections, disciplinary procedures, and management oversight. BLLC had issued 1,360 alcoholic beverage and adult entertainment licenses as of December 1, 2011 and its fiscal year 2012 revenues totaled \$2.2 million, which were primarily derived from license fees.

The audit disclosed that, in each area of BLLC's operations we reviewed, comprehensive written policies and procedures were lacking. As a result, staff were provided with minimal formal guidance for processing licenses, conducting inspections of licensed facilities, and handling disciplinary actions for instances of noncompliance with requirements. BLLC also lacked processes for management to effectively oversee and determine the efficiency and effectiveness of its operations. When automated systems existed, management did not generate reports that could be used to monitor performance and, for certain critical operations (such as inspections), no automated system existed and no manual processes had been developed for management reporting.

Although State law and BLLC practices require the agency to obtain certain documents from applicants to substantiate that licensing requirements have been met, BLLC routinely issued licenses without obtaining these documents. For example, our review of BLLC's automated licensing system and related licensee files disclosed that there was no evidence that BLLC verified that 358 licensees (for the 2011 - 2012 license year) had a valid trader's license as required by law. We also found instances where BLLC issued licenses without evidence the related fees were paid and, in other cases, either did not assess an allowable late application renewal fee or under-assessed such fees.

Neither the Board nor BLLC had established any requirement as to the number and frequency of inspections. Our review of all inspections completed for the year ending August 31, 2011 found that the number varied significantly among the licensees. For example, 96 licensees were inspected eight or more times whereas 202 licensees received no inspections during this year. BLLC had not evaluated its staffing size or workloads to determine the appropriate number of staff needed to accomplish its mission. Although BLLC internal documents required inspectors to complete four routine inspections per day, the inspection records showed that no full-time inspector regularly met this requirement. There was also a lack of evidence that supervisors regularly monitored the inspectors' activities and reviewed inspection reports. We estimate that BLLC could meet its budgeted goal of completing 4,900 routine inspections for fiscal year 2011 using as few as six full-time inspectors. At the time of our audit, BLLC employed 14 full-time and 5 part-time inspectors. Finally, we found that BLLC routinely either did not follow up timely on public complaints, as reported through Baltimore City's 311 complaint system, or failed to document the resulting investigations and resolutions.

Our review of BLLC's disciplinary practices determined that the Board assessed fines in a consistent manner when the hearing process found that licensees violated State law or Board rules and regulations. However, many violations were never forwarded to the Board for a public hearing since BLLC staff decided which violations were submitted to the Board and BLLC had no formal guidance for making this determination. In addition, BLLC staff used a number of processes other than public hearings to confer with licensees who had violations and infractions and it is unclear if these processes are authorized under State law.

We also found that BLLC management did not routinely formally evaluate staff performance, and employees generally did not complete required financial disclosure and conflict of interest statements.

An executive summary of our findings can be found on page 7, and our audit scope, objectives, and methodology are explained on page 11. The response to this audit is included as an Appendix to this report. We wish to acknowledge the cooperation extended to us by BLLC during our audit.

Respectfully submitted,



Thomas J. Barnickel III, CPA
Legislative Auditor

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Executive Summary

Legislative Audit Report on the Board of Liquor License Commissioners for Baltimore City March 2013

We conducted a performance audit to evaluate the effectiveness and efficiency of the management practices of the Board of Liquor License Commissioners for Baltimore City (BLLC) as required by Chapter 263 of the Laws of Maryland, 2011. The law required that the audit focus on BLLC operations relating to licensing, inspections, disciplinary procedures, and management oversight.¹

BLLC is responsible for processing applications and issuing licenses to sell beer, wine, and liquor; conducting periodic inspections of businesses licensed to sell alcoholic beverages; collecting all license fees and fines; fining, suspending, or revoking the licenses of violators of alcoholic beverage laws; and licensing and regulating adult entertainment businesses in Baltimore City. There were approximately 1,360 alcoholic beverage and adult entertainment licenses as of December 1, 2011 and annual fees for these licenses ranged from \$82.50 to \$12,000 depending on the type of license. According to City records, fiscal year 2012 revenues and expenditures totaled \$2.2 million and \$2.0 million, respectively.

Objective 1 – Licensing

BLLC lacked formal policies to provide structure to the licensing process. Also, the informal practices adopted by BLLC when processing license applications and issuing the related licenses were not always followed. State law and internal guidance require applicants to submit certain documentation prior to receiving a license. However, BLLC frequently issued licenses without first obtaining the required documentation or otherwise ensuring that the licensees had met the related requirements. For example, our review of BLLC's automated licensing system disclosed that there was no evidence that BLLC verified that 358 of 1,360 licensees (for the 2011 - 2012 license year) had a valid trader's license as required by law. BLLC also often failed to document in the related licensee files that it performed various required practices such as ensuring that new licenses were not within a stated distance of schools or churches and that applicants obtained a criminal background check.

¹ For purposes of this report, "BLLC" refers to the agency, including all staff, while the term "Board" refers to the three-member Board of Commissioners.

Furthermore, we found a number of instances where BLLC issued licenses without evidence the related fees were paid or incorrectly assessed applicable fees. For example, although State law allows BLLC to assess late fees of \$50 per day when an applicant for a license renewal submits the application after the March 31 deadline, we found that BLLC routinely did not assess this fee. For the 2011 - 2012 license year, we found 141 instances where BLLC could have assessed a late fee; however, BLLC only assessed the fee in 67 instances and, in 46 of these, it under-assessed the late fee. For these 141 renewals, BLLC could have assessed late fees totaling \$86,300; however, it assessed and collected \$23,550. Finally, we found that internal controls over processing cash receipts related to the licensing process were not adequate, including inappropriate access to the automated licensing and cash receipts systems, the failure to adequately safeguard checks, and the failure to properly reconcile cash receipts to the City's accounting records.

Objective 2 – Inspections

BLLC lacked written policies and procedures to administer the inspection process, including investigating and resolving public complaints. While certain guidance existed, these documents generally covered the administrative aspects of inspections and did not provide guidance as to the number or frequency of inspections, inspection requirements, and identifying violations. For example, our review of licensee files and inspection documents for a 12-month period ending August 31, 2011 disclosed that the number of inspections conducted of each licensee varied significantly. For example, 96 licensees were inspected eight or more times whereas 202 licensees received no inspections during this year. Further, BLLC had no automated system to track inspections performed, outcomes of those inspections, and any related disciplinary actions taken. As a result, it was difficult for BLLC management to oversee operations to ensure that licensees were appropriately inspected, infractions and violations were addressed, staff properly performed required job duties, and to determine if current staffing was adequate.

The results of this lack of oversight were evident in our evaluation of BLLC staffing size and inspection work performed. While BLLC required each inspector to complete four routine inspections daily, we found that none of the full-time inspectors met this daily requirement for the entire 12-month period we evaluated. In addition, BLLC employed part-time inspectors who were fully paid even though they did not complete the required number of inspections as stated in their employment contracts. BLLC also did not assess its inspector workload requirements and staffing needs. Given BLLC's requirement that each inspector complete four inspections per day

and BLLC's estimate (in the City's budget book) to complete 4,900 routine inspections for fiscal year 2011, we determined that BLLC could accomplish this number of inspections using as few as six full-time inspectors. At the time of our audit, BLLC employed 14 full-time and 5 part-time inspectors.

We also found that inspection supervisors did not document performance of any supervisory activities. Supervisors did not account for inspections performed, review Inspector's Reports, nor ensure that Inspector's Reports were filed in licensee files. More than three months after we started compiling license and inspection data for the year ending August 31, 2011, we were advised by several inspectors that they had unfiled Inspector's Reports in their possession. These inspectors provided us with an additional 449 Inspector's Reports, dating back to November 2007, that had never been filed.

Finally, the audit disclosed that BLLC did not properly document the investigation and resolution of inspections performed as a result of complaints registered through the City's 311 Customer Service Request System. Our test of complaint investigations found that BLLC often did not document the investigation results and the disposition or resolution of the complaints. For example, of 118 complaints tested from the months of May 2011 and February 2012, 59 complaints had no documentation of any investigative efforts undertaken as of May 2012.

Objective 3 – Disciplinary Procedures

The Board appeared to assess fines to licensees in a consistent manner based on the violation types. However, we found that it had not developed any formal guidance over the disciplinary process. As a result, the Board and BLLC had implemented a number of disciplinary processes that may not be proper based on the Board's statutory authority. For example, BLLC staff conducted compliance conferences with licensees who committed minor infractions; licensees were assessed a conference fee and the Board was not advised of these meetings. Furthermore, BLLC staff assessed fines for violations under certain circumstances (such as a first-time offense for sales to minors) without advising or involving the Board.

In addition, the audit found that the Board did not comply with State law related to inactive licenses and allowed certain current licensees to retain licenses when the businesses were not operational for periods exceeding 180 days, which is generally the legal time limit for a closed business. Our test of 10 of these licenses in June 2012 disclosed that 9 licenses should have

expired between November 2007 and May 2012. Five of these licenses should have expired before the 2011-2012 renewal period; however, BLLC allowed these licensees to renew their licenses. We also found that the Board granted extensions past the one 180-day extension provided for by law.

Objective 4 – Management Oversight

BLLC had not implemented management practices to oversee its operations and to help ensure efficient and effective operations. The automated licensing and cash receipts systems and the 311 Complaint processes were not used to generate available reports that would allow management to review operations. In other critical areas (such as routine inspections and disciplinary actions), BLLC had not established any process to facilitate its oversight. We also found that BLLC did not formally evaluate employee performance nor obtain required employee financial disclosure statements. Finally, we reviewed BLLC's payroll practices and found that internal controls were inadequate and that BLLC made a number of errors in recording and reporting time worked.

Audit Scope, Objectives, and Methodology

Audit Scope

Chapter 263 of the Laws of Maryland, 2011, effective October 1, 2011, requires the Office of Legislative Audits, at least once every three years, to conduct a performance audit of the Board of Liquor License Commissioners for Baltimore City (BLLC) to evaluate the effectiveness and efficiency of the management practices of BLLC and the economy with which BLLC uses resources. The law also states that the audit shall focus on operations relating to licensing, inspections, disciplinary procedures, and management oversight.

Our audit was performed in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Objectives and Methodology

Our audit included the following objectives:

1. Evaluate procedures over alcoholic beverage licensing and determine if the BLLC licensing process complied with State law and Board requirements.
2. Evaluate the BLLC procedures for performing inspections of alcoholic beverage licensees and determine whether inspections were performed in accordance with these procedures and any other requirements.
3. Evaluate the disciplinary process and determine whether BLLC complied with applicable State law, as well as Board rules and regulations.
4. Evaluate management processes to determine whether proper oversight exists over BLLC operations.

To accomplish our objectives, we interviewed Board commissioners, BLLC employees, and other City and State employees as necessary. In addition, we reviewed hard copy records (such as licensee files) and information from automated licensing, cash receipts, and payroll systems. Using BLLC's paper licensee files, we compiled a database of all BLLC activity related to licensees for the period from September 1, 2010 to August 31, 2011, which included licensees with 2011-2012 licenses (referred to as the "compiled database" in this report). This compiled database included licensee information, inspection

activity, and disciplinary actions for all 1,360 alcoholic beverage and adult entertainment licensees. Finally, we performed a number of tests using this database, licensee files, and automated systems to determine if BLLC was complying with laws, rules, and regulations.

To determine the existence of any best practices and to obtain an understanding of liquor board operations, we interviewed liquor board personnel from other Maryland jurisdictions and reviewed the websites of various national organizations and other states. We also interviewed employees of these organizations to obtain additional documentation on liquor board operations and best practices. Our reviews and interviews did not disclose any consistent best practices or model guidelines for operations of a liquor board.

Fieldwork and Agency Response

We conducted our fieldwork from October 2011 to July 2012. BLLC's response to our findings and recommendations is included as an appendix to this audit report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise BLLC regarding the results of our review of its response.

Background Information

Agency Responsibilities

The Board of Liquor License Commissioners for Baltimore City (BLLC)² is an agency of the State of Maryland and, therefore, is not subject to the direct supervision of the Mayor and the Baltimore City Council. BLLC operations are governed by Article 2B of the Annotated Code of Maryland for alcoholic beverage licensing and by Subtitle 1 of Article 15 of the Baltimore City Code for the licensing and regulation of adult entertainment businesses. BLLC is responsible for processing applications for and renewals of licenses to sell beer, wine, and liquor; conducting periodic inspections of businesses licensed to sell alcoholic beverages; collecting all license fees and fines; fining, suspending, or revoking the licenses of violators of alcoholic beverage laws; and licensing and regulating adult entertainment businesses in Baltimore City. BLLC also issues licenses for special events (such as one-day licenses for beer and wine festivals). According to City records, which we verified, there were 1,360 alcoholic beverage and adult entertainment licenses (not including special event licenses) as of December 1, 2011 (for the 2011-2012 license year). Annual fees for alcoholic beverage licenses range from \$82.50 to \$12,000, depending on the type of license, and the annual fee for an adult entertainment business license is \$1,000.

Although BLLC is a State agency, all revenues from licenses issued, fines, and late fees are paid to Baltimore City's Director of Finance, and all BLLC expenditures are paid by the City. Furthermore, BLLC is included in the City's annual budget and its financial activity is included in the City's Comprehensive Annual Financial Report. According to City records, BLLC's fiscal year 2012 revenues and expenditures totaled \$2.2 million and \$2.0 million, respectively. According to State law, BLLC is governed by a three-person board that is appointed by the Governor with the advice and consent of the Senate. At the time of our audit, BLLC had 25 full-time staff, which included 3 executive staff, 3 supervising inspectors, 14 full-time inspectors (including 2 who perform investigations), and 5 support staff; BLLC also had 5 part-time inspectors.

² For purposes of this report, "BLLC" refers to the agency, including all staff, while the term "Board" refers to the three-member Board of Commissioners.

Other Audits

In February 2007, the Baltimore City Department of Audits issued a performance audit report on BLLC. The purpose of the audit was to determine whether internal controls and the related policies and procedures for selected areas were effectively designed and placed into operation, including controls for monitoring compliance with applicable laws and regulations, and for monitoring the efficiency and effectiveness of selected operations. The report included nine findings and related recommendations to improve the effectiveness of control procedures. We included the report's findings and a synopsis of BLLC's response as Exhibit 1 in this report and found that many of the conditions noted in the City's audit report continued to exist.

Findings and Recommendations

Objective 1 - Licensing

Objective and Methodology

Our objective for BLLC licensing was to evaluate BLLC's procedures over alcoholic beverage licensing and to determine if the licensing process complied with State law and Board requirements. To accomplish this objective we interviewed Board and BLLC employees. We obtained a data file of all BLLC licensees as of December 1, 2011 from the BLLC automated licensing system, maintained by the Baltimore City Mayor's Office of Information Technology (MOIT). We used the MOIT licensee data file, our compiled database of all BLLC activity related to licensees for the period from September 1, 2010 to August 31, 2011, and a review (which we performed from December 1, 2011 to February 21, 2012) of the actual hard copy licensee files to perform various tests of the licensing process including issuance of new licenses, license renewals, license transfers, and collection of related cash receipts.

Conclusion

BLLC lacked comprehensive policies and procedures to provide structure to the licensing process and to promote consistency and efficiency. Although BLLC had certain established practices for processing applications and issuing the related licenses, it often did not follow these practices. State law and internal guidance required applicants to submit certain documentation prior to receiving a license. However, BLLC frequently issued licenses without first obtaining the required licensing documents or otherwise ensuring that the licensees had met the related requirements. For example, our review of the BLLC automated licensing system disclosed that there was no evidence that BLLC verified that 358 of 1,360 licensees (for the 2011 - 2012 license year) had a valid trader's license as required by law. BLLC also often failed to document that it followed certain required practices such as ensuring that new and transferred licenses were not within a stated distance of schools or churches and that applicants obtained a criminal background check. Furthermore, in a number of instances BLLC records indicated that BLLC did not assess or collect the appropriate fees. Finally, we found that the cash receipts procedures did not provide assurance that all fees were collected and that collections received were properly accounted for and deposited.

Background

BLLC processes applications for new licenses, license renewals, and transfers of existing licenses to sell beer, wine, and liquor in Baltimore City and licenses adult entertainment businesses in the City. BLLC also issues licenses for alcoholic beverage sales during special events (such as beer and wine festivals). The licensing process is governed by Article 2B of the Annotated Code of Maryland for alcoholic beverages and by Subtitle 1 of Article 15 of the Baltimore City Code for adult entertainment business licenses. According to City records as of December 1, 2011, there were 1,360 annual alcoholic beverage and adult entertainment licenses, not including special event licenses. Annual fees for alcoholic beverage licenses, as stated in Article 2B of the Annotated Code of Maryland, range from \$82.50 (for a Class C beer and wine license) to \$12,000 (for an arena license) and vary depending on the type of establishment and what is sold. The annual fee for an adult entertainment business license, according to the Baltimore City Code, is \$1,000, in addition to any alcoholic beverage license fee, if applicable. Licenses are valid for one year; alcoholic beverage licenses expire on April 30 and adult entertainment licenses expire on June 30.

New Licenses

Applicants for new licenses complete an application form and submit an application fee of \$500 to BLLC. Applications are processed by BLLC support personnel who are to ensure applicants include all required information. Applicants who submit incomplete applications need to revise the application before it will be considered by the Board. The Board schedules public hearings to review the applications and to vote on approval of the licenses. If approved, applicants must submit various documents to BLLC (such as a valid trader's license and proof of personal property tax payment). Once all documentation is submitted, each licensee must pay the applicable license fee and BLLC management will issue the license. The three-part license is distributed as follows: one to the licensee, one for the BLLC licensee file, and one to support the processing of the license fee. According to the Board, there has been a moratorium on the issuance of new licenses since 1968, except for restaurant, arena, and hotel licenses, or as authorized by law.

License Renewals

BLLC mails all current licensees a renewal application prior to March 1 of each year. By law, licensees must file a renewal application between March 1 and March 31. Renewal applications with the renewal processing fee (\$50) are submitted to BLLC, either by mail or in person. BLLC staff will review each application and require the licensee to provide any missing information. State law for renewal applications requires the licensee to indicate that the facts in

the original application remain unchanged. BLLC staff is required to verify that the licensee is in good standing with the State Department of Assessments and Taxation (SDAT), indicating that the business has filed all required documents and fees with SDAT and that SDAT is not aware of the business being delinquent with any other State government agency. Licensees must provide certain other documents, including a copy of a valid trader's license and proof of payment of personal property taxes. BLLC staff will notify the applicant when the license is ready for pick up and the applicant will pay the appropriate license fee. BLLC may assess a late fee of \$50 per day, up to a maximum of \$1,500, for renewal applications submitted after March 31 of each year or may reject the renewal application for cause, such as failure to provide required information. BLLC generates a three-part license and distributes it in the same manner as noted previously for new licenses.

License Transfers

License transfers occur when there is a change in ownership or location, or when a licensee wants to provide additional services (such as live entertainment) not covered by the existing license. Transfer applications are generally processed in the same manner as applications for new licenses. Transfer applicants submit an application and a \$500 application fee. Transfers of ownership are approved and processed by BLLC staff, based on the Board's delegation of this responsibility, in cases where the community does not contest the transfer. All other transfers are presented to the Board in public hearings. If approved, applicants have 180 days to submit all required documentation to BLLC. Once the applicant submits the required documents and pays a \$200 license transfer fee, BLLC management will print the three-part license, which is distributed in the same manner as noted previously for new licenses. According to our compiled data file of all BLLC licensee activity, BLLC approved approximately 60 license transfers for the 2011- 2012 license year.

Licensing Information System

BLLC uses its automated licensing system to process and record alcoholic beverage and adult entertainment license information. BLLC uses the system to track each licensee status (such as the submission of required documentation) and to record any comments or historical information about the licensee. In addition, the automated licensing system information is available to the public through Baltimore City's Data Catalog, known as OpenBaltimore. OpenBaltimore allows the public to view license information and generate information using various search criteria such as license class, licensee name or address, and trade or corporation name. This information can be exported to the user's computer.

Findings

Finding 1

BLLC lacked formal written policies to guide the licensing process.

Analysis

BLLC lacked formal written policies to direct staff in processing alcoholic beverage license applications, renewals, and transfers. Although State law outlines certain specific license requirements and BLLC has adopted a number of other requirements, management has not provided licensing staff with sufficient uniform guidance on how to consistently enforce existing documentation requirements. Furthermore, controls were not in place, including a documented supervisory review process, to ensure licensees provided appropriate documentation and paid appropriate fees. Specifically, adequate guidance did not exist to address the following areas:

- employee duties and the specific steps to be followed when processing and issuing the applications and licenses, including information that should be recorded in the licensing system
- circumstances under which a license may be issued without all documentation having been received, and the designation of approval authority for such issuances
- requirements for supervisory review and release of licenses including ensuring the proper fees have been paid
- actions to be taken when licensees do not meet requirements (such as suspending an active license when the licensee does not provide proof of personal property tax payments, as required)
- the method for determining the amount of and for assessing late fees for renewal applications filed after the March 31 deadline as permitted in State law
- specific documentation that should be retained in the licensee files

Recommendation 1

We recommend that BLLC

- a. **develop and implement formal written policies to ensure that the licensing process is carried out consistently in accordance with State law and BLLC requirements; and**
- b. **establish effective controls, including a documented supervisory review process, to help ensure that licensees file all required documentation and pay all related fees.**

Finding 2

BLLC frequently issued licenses without receiving all required documentation from licensees or applicants.

Analysis

BLLC often issued licenses before receiving all required documentation. Based on our compiled database of BLLC activity related to licensees for the period from September 1, 2010 through August 31, 2011, our review of the licensee files, and our review of the BLLC licensing system, we noted several broad concerns over the lack of required documentation being provided by the licensees or applicants. The conditions noted generally related to the 2011 - 2012 alcoholic beverage license.

Personal Property Taxes

Current licensees often did not provide documentation to support payment of personal property taxes as required by Article 2B Section 10-301(j) of the Annotated Code of Maryland. BLLC's automated licensing system indicated that BLLC did not record the receipt of this documentation for 207 of the 1,360 licenses issued for the 2011 - 2012 year. However, our review of manual licensee files disclosed a lack of documentation for 534 of 1,360 licenses. Thus, the automated system did not agree with the related files. This could mean that documentation of personal property tax payments was not provided to staff or was not retained in the files.

Furthermore, we reviewed the licensee files for 13 establishments that attended Board hearings between September 2011 and November 2011 for failing to provide proof of personal property tax payments during the 2011 - 2012 license renewal period (March 2011). Our review disclosed that 5 of these establishments had not furnished the required documentation as of May 16, 2012 and the Board had not taken subsequent action, such as to suspend the licenses.

Trader's Licenses

BLLC's licensing system showed that BLLC did not record the existence of a valid trader's license for 358 of the 1,360 licenses as required by BLLC procedures. On March 2, 2012, BLLC sent a letter to 132 establishments stating that a copy of the 2011 trader's license was not on file with BLLC and that failure to submit this license information would result in a hold of their 2012 - 2013 alcoholic beverage license renewals. Therefore, at a minimum, BLLC knowingly issued a 2011 - 2012 alcoholic beverage license to 132 establishments without obtaining evidence of a current trader's license and the files did not include the required documents almost one year later. We did not determine if BLLC subsequently received appropriate documentation for any of the 358 licenses we identified.

Sales and Use Tax Licenses

BLLC's license files often did not include documentation of the existence of a sales and use tax license issued by the State Comptroller's Office, as required by BLLC procedures. Our review disclosed that 248 of 1,360 license files did not include a copy of the sales and use tax license nor was the sales tax number written on the application in these cases.

Comptroller and SDAT Payments

Our review disclosed that 148 of the 1,360 license files included a hold letter from BLLC for the license issuance, based on information from the Comptroller or SDAT, but did not include the related release letter. The State Comptroller's Office notifies BLLC when a licensee has not paid all taxes due and SDAT notifies BLLC when a licensee is not in good standing with SDAT (such as, because the licensee has not filed all required paperwork and paid applicable fees). BLLC should hold the license issuance until it obtains a release from the Comptroller and/or SDAT. BLLC management informed us, however, that BLLC does not always retain the documentation releasing the hold. We judgmentally selected 20 of these 148 licensees that were held pending payment of taxes and contacted the Comptroller's Office who advised us that a release letter had been issued for 19 of these licensees; the remaining license should not have been issued.

Recommendation 2

We recommend that BLLC obtain all required documentation from an applicant prior to issuing alcoholic beverage licenses. Specifically, we recommend that BLLC obtain documentation of

- a. payment of personal property taxes;**
- b. a current trader's license;**
- c. a sales and use tax license; and**
- d. license hold release letters, if applicable, from the Office of the Comptroller and/or SDAT.**

Finding 3

Our detailed testing of the licensing process disclosed that BLLC lacked documentation that certain State law and BLLC licensing requirements were met.

Analysis

Our testing of the BLLC licensing process disclosed that BLLC often did not comply with State law and its own procedures. We tested 30 judgmentally selected licensee files from our compiled database: 10 new licenses issued after May 1, 2011, 10 license transfers that occurred after May 1, 2011, and 10 license renewals processed for the 2011 - 2012 license year. We found

that only 2 of the 30 test items met all of the requirements for which we tested. Furthermore, our testing disclosed several significant documentation problems.³

Proximity to Schools, Churches, and Other Licensees

Current BLLC practices require its inspectors to complete a report for each new and transfer application that details the establishment's proximity to other licensed establishments and to schools and churches. While inspectors appropriately documented this information for the 10 transfer licenses tested, our test of 10 new licenses disclosed that inspectors did not document their verification of the establishments' locations for 6 new licenses. According to State law, no new license shall be granted in any building within 300 feet of a church or school.

Zoning Requirements

BLLC staff is to complete a location questionnaire to document that new licenses and transfers comply with State law regarding zoning and business location. Current practice requires that this questionnaire be reviewed and verified by another BLLC employee. However, staff did not always complete or review this document. Our test of 20 new licenses and license transfers disclosed that the location questionnaire was not in the files for 4 new licenses and for 1 license transfer. In addition, we determined that the questionnaire was not independently reviewed and verified for two other new licenses.

Criminal History

BLLC policy for documenting the review of criminal records requires staff to document the review of such records on the licensee hard copy file and then to shred the original documents that were reviewed. Our testing of new licenses and license transfers disclosed that, for 8 of 18 test items, BLLC staff did not document that the review of the criminal history information had been completed. This policy did not apply to the other 2 transfer applications included in our test as these were transfers of location and not changes in ownership. State law requires BLLC to obtain criminal records of applicants from the Department of Public Safety and Correctional Services.

Seating Capacity

Our testing disclosed that 15 out of 26 applications that should have included seating capacity information did not include the required documentation (such as the seating capacity rating from the Baltimore City Fire Department).

³ Refer to Exhibit 3 on page 66 to see the attributes we tested and the number of tests items that did not comply with each attribute.

In fact, although renewal applications requested licensees to include this information on the applications, the application forms for new licenses and transfers did not.

Certificate of Good Standing

We conducted a separate test of 30 judgmentally selected licenses.⁴ Our test disclosed that, according to SDAT, 9 licensees were not in good standing as of April 30, 2011 and these licensees still did not have a Certificate of Good Standing from SDAT in their license files as of April 2, 2012. These licensees should not have been issued 2011- 2012 licenses. A Certificate of Good Standing indicates that the business has filed all required documents and fees with SDAT and that SDAT is not aware of the business being delinquent with any other State government agency.

Recommendation 3

We recommend that BLLC comply with State law and its own procedures when processing applications for new licenses, license transfers, and license renewals, as applicable. Specifically, we recommend that BLLC ensure that

- a. inspectors document and place in the licensee file information related to an applicant's proximity to other licensees, schools, and churches;**
- b. all licensee files include documentation of compliance with zoning laws that has been reviewed and verified by BLLC personnel;**
- c. the review of criminal history records for all applicants is properly documented;**
- d. applications include seating capacity if necessary for the type of license; and**
- e. staff verifies that applicants are in good standing with SDAT and include relevant documentation in the licensee files.**

Finding 4

BLLC could not account for all fees for licenses issued and did not always assess late fees.

Analysis

BLLC could not account for all fees for licenses issued and did not always assess late fees. Specifically, our review of all 1,360 licenses issued for the 2011 - 2012 license year (starting May 1, 2011) disclosed the following conditions:

⁴ These 30 test items were based on a comparison we performed of a data file from SDAT of all corporate entities with an inactive status as of April 30, 2011 to BLLC's licensing system and certain judgmentally selected items from our compiled database. These are not the same 30 test items referred to previously in this Finding and are not included in Exhibit 3.

- Payments for 19 licenses, with license fees totaling \$20,153, were not recorded in BLLC's cash receipt system. Thus, it appears that BLLC issued the licenses without collecting or recording the related fees. For 25 other licenses, BLLC did not collect and record the license fees totaling \$29,413 until the 2012 renewal period (March/April 2012), almost one year after the beginning of the license term. Furthermore, the licensee files contained no documentation that BLLC took enforcement action (for example, to suspend the licenses) due to non-payment of license fees.
- BLLC generally did not assess and collect the appropriate late fees. State law allows BLLC to charge applicants a late fee of \$50 for each day the renewal application is filed after March 31, up to a maximum of \$1,500. We found 141 instances where BLLC could have assessed and received late fees based on the dates the renewal fees were paid as recorded in the cash receipts system. According to the information in the files, these 141 renewal applications were submitted from 3 to 165 days after the required March 31, 2011 renewal date. However, for 74 of these renewals, BLLC did not assess any late fee and, for 46 others, BLLC under-assessed the related late fees. We calculated that, for these 141 applications, BLLC could have assessed late fees totaling \$86,300. According to the licensee files and cash receipts system, BLLC assessed and collected late fees totaling \$23,550 related to all 2011 license renewals.
- Seating capacity information was not always written on the renewal license applications for Class B (restaurant) beer, wine, and liquor licenses. BLLC uses seating capacity to determine the proper license fee in accordance with State law. Our review of all 292 class B licenses in the compiled database as of December 1, 2011 disclosed that there was no record of seating capacity for 20 licenses. Our test of these 20 license files disclosed that 11 licenses did not record seating capacity on the applications. As a result, we could not determine if the license fees collected for these 11 licenses were proper. Although the seating capacity had been written on the remaining 9 applications by the licensees, the license fees collected for 3 licenses was incorrect, resulting in underpayments totaling \$1,035 for the 2011 license year which, in one case, included the failure to assess the proper fee for live entertainment.

Recommendation 4

We recommend that BLLC properly account for, assess, and record all fees. Specifically, we recommend that BLLC

- a. print and issue the licenses only after payment and recordation of the appropriate license fees;**

- b. assess late fees for applications submitted after March 31 of each year, as allowed by State law;
- c. ensure that applicants record the seating capacity on the renewal license applications, as applicable; and
- d. investigate the aforementioned instances of incorrect fees and non-payment of fees and take appropriate corrective action.

Finding 5

BLLC did not ensure that applications notarized at its office were proper.

Analysis

BLLC did not ensure that licensee signatures on renewal license applications processed at its office were properly notarized, as required. As a service to applicants, BLLC used an independent notary, who sat in the BLLC conference room, to notarize licensee signatures on renewal applications that were not notarized prior to being submitted to BLLC. However, the notary did not always verify the identity of licensees prior to notarizing their signatures on renewal applications. We were present for BLLC's 2012-2013 license renewal period, which occurred in March and April of 2012, and saw, on numerous occasions, that renewal applications without notarized signatures were accepted by BLLC. At the time the applications were accepted, the notary was not present at the BLLC office. BLLC staff required the applicants to pay a \$2 per signature fee that was forwarded to the notary, along with the applications, to be notarized by the independent notary at a later time.

State regulations require notaries to obtain satisfactory proof of identify of the individual signing the document, observe the signing of the document, and take the spoken statement of the individual signing the document that its contents are true. Based on our observations, this notary was not complying with these regulations and BLLC was facilitating this noncompliance. We referred this matter to the Secretary of State, which is the State agency responsible for commissioning and overseeing notaries.

Recommendation 5

We recommend that BLLC only accept applications that have been notarized.

Finding 6

BLLC did not always ensure that license transfers were completed within 180 days of receiving Board approval.

Analysis

BLLC did not always ensure that license transfers were completed within 180 days of receiving Board approval as required by State law. Our test of 10 license transfers that occurred during the 2011–2012 license year disclosed that 4 of these license transfers had not been completed within 180 days of receiving Board approval. These four license transfers were completed between 246 and 706 calendar days after the Board approved the transfers.

After Board approval, new applicants must provide BLLC with all required documentation to complete the transfer (such as, inspection approvals from other agencies and a sales tax license). State law specifies that a transfer of any license shall be completed not more than 180 days after the Board approves the transfer. BLLC staff informed us that, if the transfer has not been completed 180 days after receiving Board approval, the applicant may be given up to an additional 360 days to complete the transfer, after which the license would become inactive. However, this policy was not formalized and our test of license transfers disclosed that this informal policy was not always followed.

BLLC received advice from its counsel that this law was directory and not mandatory. Informal advice we obtained from counsel to the General Assembly confirmed that a formal advice should be obtained to clarify this matter.

Recommendation 6

We recommend that BLLC

- a. obtain an Opinion from the Attorney General regarding the interpretation of the law governing completion of license transfers within 180 days and abide by that Opinion, and
- b. develop formal policies and procedures over the processing of license transfers consistent with the legal Opinion.

Finding 7**Internal controls over cash receipts were not adequate.****Analysis**

Controls over cash receipts were not adequate. According to City records, BLLC's fiscal year 2012 revenues totaled \$2.2 million. Specifically, we noted the following conditions:

Processing of Collections

BLLC did not restrictively endorse checks. Instead, checks were processed and forwarded to the Baltimore City Collections Department (located in a separate building) for deposit without being restrictively endorsed. In addition, BLLC did not properly secure checks. Specifically, checks either were left on the desk of office staff during the day or were placed in an unlocked box near the front desk area, and checks were not placed in a safe or locked cabinet overnight. Further, BLLC did not obtain a receipt from the City Collections Department documenting the transfer of funds for deposit. Finally, the monthly reconciliation to verify cash receipts from initial recordation to subsequent deposit, as documented on the City's accounting records, was not performed by an employee independent of the cash receipts function.

User System Access

BLLC did not periodically generate and review reports of users' access and capabilities on its licensing and cash receipts systems to ensure that employees' capabilities to perform critical functions were properly restricted to employees needing those capabilities. Our review of employee access to these systems (based on security reports obtained from the Mayor's Office of Information Technology) disclosed that three BLLC employees had unnecessary administrator access to both systems, which gave them the ability to process and print licenses and record payments in the cash receipts system. Two other BLLC employees had modification access to the cash receipts and/or licensing systems and did not need this access to perform their job duties. Finally, four City Comptroller employees had access capabilities to the cash receipts system although these employees had no responsibilities for BLLC cash receipts. BLLC management was unaware of the system access for these two BLLC and four City employees.

Reconciliation Process

As previously mentioned, BLLC prepared monthly reconciliations of BLLC receipts to the applicable amounts recorded in the City's accounting records. However, BLLC did not resolve errors found during the reconciliation process and correct them in the City's accounting records. For example, in October 2011, the reconciliation showed that the City incorrectly recorded a cash

receipt transaction three times resulting in an overstatement of revenue of \$10,740. Although the error was correctly identified, action was not taken to correct the City's records. Also, the reconciliations, which were not performed by an employee independent of the cash receipts function, were not reviewed and approved by supervisory personnel and prepared timely. As of June 11, 2012, the most recently completed reconciliation was for March 2012 and that reconciliation included unresolved reconciling items.

Recommendation 7

We recommend that BLLC

- a. institute proper internal controls over cash receipts, including restrictively endorsing all checks immediately upon receipt, properly securing checks, documenting the transfer of receipts to the City, and ensuring that an employee independent of the cash receipts function verifies that all amounts received are subsequently deposited;**
- b. assign specific user access capabilities only to those employees who require such capabilities to perform their job duties, and periodically generate computer system security reports and review the reports to evaluate assigned user access capabilities; and**
- c. ensure the timely preparation of reconciliations of receipts to the City's accounting records and the timely correction of any errors found, and include an independent supervisory review and approval of the reconciliations.**

Objective 2 - Inspections

Objective and Methodology

Our objective for the inspection process was to evaluate the BLLC procedures for performing inspections of alcoholic beverage licensees and determine whether inspections were performed in accordance with these procedures and any other written requirements. To accomplish our objective, we interviewed the Board and BLLC staff and observed the inspection process by accompanying an inspector for one day. We also obtained and reviewed BLLC's *Inspection Division Protocol*, *Inspection Division Guidelines*, and *Rules and Regulations for the Board of Liquor License Commissioners for Baltimore City* that contained various requirements for the inspection process. Using our compiled database, which included all Inspector's Reports for the period from September 1, 2010 through August 31, 2011, we performed certain tests of the Reports. We also tested inspections related to complaints registered through Baltimore City's 311 Customer Service Request System (311 System) to evaluate whether BLLC properly handled complaint-initiated inspections.

Conclusion

BLLC lacked comprehensive written policies and procedures for the inspection process. While certain procedures were documented, these procedures generally covered the administrative aspects of inspections and did not include guidance for determining the frequency of inspections, inspection requirements, and what specifically constituted violations. Further, BLLC had no automated system to track inspections performed, outcomes of those inspections, and any related disciplinary actions taken. As a result, it was difficult for BLLC management to oversee inspection operations, including staff inspection efforts. For example, our review of licensee files and inspection documents for a 12-month period ending August 31, 2011 disclosed that the number of inspections conducted of each licensee varied significantly. For example, 96 licensees were inspected eight or more times whereas 202 licensees received no inspections during this period. While BLLC required each full-time inspector to complete four routine inspections daily, we found that none of the full-time inspectors met this requirement for the entire period we reviewed. In addition, BLLC employed part-time inspectors who were fully paid even though they did not complete the required number of inspections as stated in their employment contracts. BLLC also did not assess its inspector workload requirements and staffing needs. BLLC's *Inspection Division Guidelines* stated that each inspector should complete four inspections per day and BLLC estimated in the City's budget book that it

would complete 4,900 routine inspections for fiscal year 2011; accordingly, BLLC could accomplish this number of inspections using as few as six full-time inspectors.

We also found that inspection supervisors did not document the performance of any supervisory-related activities, including the review of Inspector's Reports, and that the licensee files did not include all completed inspection documents. Finally, the audit disclosed that BLLC did not properly document the investigation and resolution of inspections performed as a result of complaints registered through the City's 311 Customer Service Request System.

Background

BLLC conducts periodic, routine inspections of businesses licensed to sell alcoholic beverages in Baltimore City. In addition to routine inspections, BLLC responds to complaints about licensees, including those received through the City's 311 complaint system (referred to as complaint inspections). BLLC inspectors are assigned to one of seven districts within the City based on set geographical boundaries. At the time of our audit, BLLC employed 3 supervising inspectors, 14 full-time inspectors (12 for routine inspections and 2 for investigations), and 5 part-time inspectors.

For each routine inspection, BLLC inspectors prepare an Inspector's Report to document the areas reviewed (such as valid and current licenses and bathroom operation and cleanliness) as well as any infractions, violations, and corrective actions needed. Infractions generally represent minor noncompliance with laws or rules (such as improper signage) while violations represent significant noncompliance (such as selling alcohol to persons under age 21) as determined by the inspector or BLLC management. Finally, BLLC conducts investigations of licensees when prompted by complaints or tips received from the public or concerns noted by inspectors during the routine inspection process (such as allegations of underaged drinking or illegal gambling). These investigations may be conducted with other government agencies, such as the Baltimore City Police Department. Violations by licensees could result in a hearing before the Board.

Since BLLC does not have an automated system to track inspections, we manually reviewed all licensee files to determine the number of inspections performed based on completed Inspector's Reports for the period from September 1, 2010 through August 31, 2011. According to our compiled database, the inspectors conducted 4,169 routine inspections and 115 complaint inspections.

BLLC has certain written guidance over the Inspection Division operations. Specifically, the Board has developed *Rules and Regulations for the Board of Liquor License Commissioners for Baltimore City* (hereinafter referred to as the *Rules and Regulations*) that provide guidance to licensees and state basic requirements that licensees must meet to avoid violations. Further, BLLC management drafted the *BLLC Inspection Division Protocol* and the *BLLC Inspection Division Guidelines*. These two documents include certain administrative requirements for inspectors (such as sign-in and sign-out requirements) along with certain operational guidance (such as the number of routine inspections to be completed each day). New inspectors were provided with on-the-job training by working directly with an experienced inspector for several weeks or sharing a district with an experienced inspector for up to two years.

Inspection Results

BLLC provides each licensee with a copy of the results for its routine and complaint inspections. The inspector and licensee or the licensee's representative sign the Inspector's Report acknowledging that the inspection results were discussed. We confirmed these practices when we observed the inspections performed as part of our ride-along with an inspector.

Findings

Finding 8

BLLC lacked comprehensive written policies and procedures over the inspection process.

Analysis

BLLC lacked comprehensive written policies and procedures to govern the inspection process. Comprehensive policies and procedures should guide all inspectors on how to conduct routine inspections, specify minimum inspection requirements, provide guidance for identifying infractions and violations (generally based on the seriousness of the non-compliance), and guide inspectors in conducting follow-up to ensure violations are corrected. Existing guidelines (that is, the *Inspection Division Protocol* and *Inspection Division Guidelines*) provide inspectors with minimal guidance on how to enforce requirements contained in State law and in the Board's *Rules and Regulations* for licensees. For example, we noted the following processes in which guidance was lacking:

- Existing procedures did not detail the process to be used to conduct inspections and the specific criteria for evaluating each broad area covered during an inspection. For example, while the inspector is to inspect the kitchen, including the storage of food, trash containers, and its general condition, a satisfactory level of compliance was not defined for each area. BLLC staff advised us that they apply common sense and their own criteria to complete the areas listed on the Inspector's Report.
- Licensee infractions and violations were not defined. We were advised that infractions generally represent minor noncompliance with laws or rules (such as improper signage) while violations represent significant noncompliance, such as selling alcohol to persons under the age of 21; however, inspectors were left to apply their own criteria in evaluating noncompliance.
- Current BLLC written procedures did not specify a timeline for any follow-up action for violations and infractions, with the exception of the lack of a trader's license.
- Procedures did not require the periodic rotation of inspectors among districts within the City. Our interview of six inspectors disclosed that these inspectors had been assigned to their current districts for periods ranging from one to six years.
- Inspectors were not required to record the time the inspections were performed on the Inspector's Reports. While inspectors recorded the dates of the inspections, our review of 4,284 Inspector's Reports (4,169 routine inspections and 115 complaint inspections) included in our compiled database disclosed that 2,906 reports did not include the time of the inspection. Recording the time of an inspection may be critical as the Inspector's Report is a legal document and could be used in Court proceedings.
- The frequency of conducting routine inspections for each licensee was not specified by Board policy (or by State law). Using our compiled database, we found that the number of routine inspections (that is, excluding complaint inspections) conducted of each licensee varied significantly as detailed in Table 1. We were unable to ascertain from the BLLC records whether certain licensees were inspected more frequently due to the frequency or severity of violations. However, we did note for the 15 most frequently inspected establishments, for which there were a total of 175 inspections, no violations, and only 12 infractions were cited in these inspections.

| Table 1 Number of Routine Inspections Performed by BLLC for All Licensees September 1, 2010 to August 31, 2011 | | | | |
|--|---------------------|--|-----------------------|---------------------|
| Number of Inspections | Number of Licensees | | Number of Inspections | Number of Licensees |
| None | 202 | | Six | 85 |
| One | 201 | | Seven | 60 |
| Two | 208 | | Eight | 49 |
| Three | 217 | | Nine | 32 |
| Four | 152 | | Ten | 5 |
| Five | 103 | | More Than 10 | 10 |

Source: OLA compiled database

Note: Licensees that have both an alcoholic beverage and adult entertainment license are included only once in this table.

Recommendation 8

We recommend that BLLC develop and implement comprehensive written procedures over the inspection process that at least address the aforementioned bulleted areas.

Finding 9

BLLC lacked an automated method to monitor inspections performed, inspection outcomes, and related enforcement and disciplinary actions taken.

Analysis

BLLC lacked a method (such as an automated database) to track and summarize inspections performed, inspection outcomes, and related enforcement and disciplinary actions. The Inspector's Reports used to document inspections of licensees are manually completed and are not recorded or compiled into a database or spreadsheet. Rather, the Reports are filed by the inspectors in the respective licensee file folders maintained at the BLLC office. Accordingly, we reviewed each licensee file manually to develop a data file of inspections completed during the period from September 1, 2010 through August 31, 2011 (by both licensee and inspector) and any enforcement actions taken and penalties or fines assessed.

In addition to monitoring licensee inspection activity, an automated database could be used to monitor the performance of the BLLC inspectors. For example, BLLC management lacked an adequate method to monitor inspectors to ensure that each inspector completed the mandatory number of inspections. BLLC's *Inspection Division Guidelines*, issued on May 19, 2010 and reissued on April 3, 2012, require each full-time inspector to complete four routine inspections per workday, irrespective of other duties performed (such as posting notice signs and issuing summonses for disciplinary hearings).

Using our compiled database, we found that none of the 12 full-time inspectors met the four routine inspections per workday requirement during the entire period. Details regarding inspections performed by each inspector are shown in Table 2.

| Table 2 Number of Inspections Performed Compared With Number Required (By Inspector) September 1, 2010 to August 31, 2011 | | | | | |
|--|--|--|------------------------------------|---|---|
| Inspector | Number of Days with Four or More Inspections | Number of Days With One to Three Inspections | Number of Days with No Inspections | Number of Days Where Minimum Required Inspections Not Met | Percentage of Days Inspection Requirement Not Met |
| Inspector 1 | 0 | 31 | 187 | 218 | 100% |
| Inspector 2 | 2 | 20 | 196 | 216 | 99% |
| Inspector 3 | 17 | 19 | 182 | 201 | 92% |
| Inspector 4 | 28 | 42 | 148 | 190 | 87% |
| Inspector 5 | 28 | 151 | 39 | 190 | 87% |
| Inspector 6 | 28 | 151 | 39 | 190 | 87% |
| Inspector 7 | 39 | 59 | 120 | 179 | 82% |
| Inspector 8 | 51 | 48 | 119 | 167 | 77% |
| Inspector 9 | 52 | 62 | 104 | 166 | 76% |
| Inspector 10 | 61 | 93 | 64 | 157 | 72% |
| Inspector 11 | 66 | 60 | 92 | 152 | 70% |
| Inspector 12 | 86 | 65 | 67 | 132 | 61% |
| Averages | 38 | 67 | 113 | 180 | 83% |

Source: OLA compiled database

Note: We did not determine the actual number of workdays for each inspector. Rather, we estimated that each inspector worked 218 days as follows: 365 calendar days adjusted for 105 weekend days, 15 vacation days (an average based on inspector's length of service), 12 sick days, 12 holidays, and 3 personal days. Any variation in actual workdays and our estimated workdays would affect the number of days with no inspections.

Recommendation 9

We recommend that BLLC

- a. establish an automated system for tracking inspections performed, inspection outcomes, and any related enforcement actions taken;
- b. ensure this automated system includes all relevant information, such as the date and time of the inspection, the name of the inspector who performed the inspection, and violations noted on the Inspector's Report; and
- c. develop reports using the system to allow BLLC management to monitor inspector performance and workloads.

Finding 10

BLLC did not assess its workload requirements and related staffing needs.

Analysis

BLLC did not assess its workload requirements and related staffing needs. As a result, the number of full-time inspectors appeared excessive based on BLLC's workload. Using our compiled database, we determined that BLLC inspectors conducted 4,169 routine inspections for the year ending August 2011. However, we estimated that, given current staffing and inspection requirements, full-time inspectors should complete more than 10,400 inspections annually.⁵ If applied uniformly, this would result in each licensed entity receiving 7 inspections during the year and each inspector performing 872 routine inspections. However, our review disclosed that no inspector achieved this number of inspections as shown in Table 3.

⁵ This calculation was based on the current 12 full-time staff working 218 days in a calendar year (365 days adjusted for weekends and various leave use and holidays) and performing four inspections per day as required by BLLC's *Guidelines*.

**Table 3
Number of Inspections Completed By Inspector
September 1, 2010 to August 31, 2011**

| Inspector (Note) | Number of Inspections Completed | Difference From OLA Estimated Workload (872 per Year) | Percentage of Estimated Workload Not Completed |
|---------------------|---------------------------------------|--|---|
| Inspector 1 | 41 | 831 | 95% |
| Inspector 2 | 41 | 831 | 95% |
| Inspector 3 | 116 | 756 | 87% |
| Inspector 4 | 197 | 675 | 77% |
| Inspector 7 | 296 | 576 | 66% |
| Inspector 9 | 387 | 485 | 56% |
| Inspector 11 | 419 | 453 | 52% |
| Inspector 5 | 428 | 444 | 51% |
| Inspector 6 | 430 | 442 | 51% |
| Inspector 8 | 436 | 436 | 50% |
| Inspector 10 | 474 | 398 | 46% |
| Inspector 12 | 512 | 360 | 41% |
| Totals | 3,777 | 6,687 | 64% |

Source: OLA compiled database

Note: Inspections completed do not include inspections performed by part-time inspectors, investigators, and a former inspector. As a result, the total inspections in Table 3 (3,777) is less than the 4,169 total routine inspections completed, according to our compiled database.

While our workload calculation is an estimate and other factors may impact the number of routine inspections that could be performed by an inspector (such as actual leave taken), the current number of full-time inspectors substantially exceeds the number required to meet the anticipated workload of the agency as reflected in the Baltimore City 2012 Board of Estimates Agency Detail (that is, the City budget book). In the Agency Detail, BLLC estimated that it would complete 4,900 and 4,700 routine inspections for fiscal years 2011 and 2012, respectively. Based on BLLC's *Inspection Division Guidelines* that each inspector complete four inspections per day, BLLC could accomplish this number of inspections using as few as six full-time inspectors.

Recommendation 10

We recommend that BLLC develop workload requirements to carry out its regulatory responsibilities and meet its performance goals, and resize its inspection staff to efficiently meet those requirements.

Finding 11

BLLC did not properly monitor part-time inspectors and these inspectors did not perform all required inspections, although they were paid for them.

BLLC did not properly monitor its part-time inspectors. Contracts for part-time inspectors required the inspectors to complete 20 inspections each month (240 inspections per year). Our review of Part-Time Inspector's Reports per our compiled database disclosed that the two part-time inspectors who worked this entire year rarely completed 20 inspections per month. Specifically, one inspector performed 20 inspections for only one month during this period while the other inspector performed 20 inspections for two months. The number of monthly inspections performed for the 12-month period reviewed ranged from 1 to 20 (totaling 193 for the year) for one inspector and 0 to 35 (totaling 77 for the year) for the other. Together, these two part-time inspectors completed only 56 percent of the 480 inspections required for this period.

Our review also disclosed that these part-time inspectors were paid the full contracted amount even though they did not perform the required number of inspections. Specifically, the annual contract amount of \$3,600 was paid in equal amounts over 26 bi-weekly pay periods. In addition, one of these part-time inspectors prepared 24 Reports for 15 establishments that appear to have been closed on the dates of the inspections based on information provided by the establishments in the licensee files or Inspector's Reports for these licensees performed by full-time inspectors. In all 24 instances, this inspector completed the Part-Time Inspector's Reports indicating the licensees met the required inspection attributes and did not note that the establishments were closed. We also determined that this inspector performed 7 inspections of 6 additional licensees that did not have a valid alcoholic beverage license at the time of the inspection and, therefore, should not have been inspected.

BLLC routinely employs part-time inspectors to perform routine inspections. However, given that the number of full-time inspectors appears excessive, as commented upon in Finding 10, we question the need for a part-time inspection staff. State law does not specify the number of full-time inspectors to be employed by BLLC; however, it does state that BLLC shall employ 12 part-time inspectors.

Recommendation 11

We recommend that BLLC

- a. implement a process to review all Part-Time Inspector's Reports and to ensure that part-time inspectors comply with contract requirements regarding the number of inspections to be conducted;**
- b. review previously completed Part-Time Inspector's Reports to determine if the inspectors conducted valid inspections, and if inspections are determined to be invalid, in consultation with legal counsel, take appropriate action; and**
- c. if its workload evaluation shows that 12 part-time inspectors are not needed, request that legislation be submitted to amend State law regarding the employment of part-time inspectors.**

Finding 12

Inspection Division supervisors did not document duties performed and did not account for completed Inspector's Reports.

Analysis

The work performed by the two Inspection Division supervisors who handled routine and complaint inspections was not documented. Job requirements for inspection supervisors, based on the Baltimore City job descriptions, included training, supervising, and evaluating subordinate inspection staff; reviewing and approving all investigation reports; and reviewing, monitoring, and ensuring timely investigation and processing of violation cases. These employees advised us that they accompany inspectors during inspections, visit licensed establishments to discuss complaints received (not considered inspections), and participate in community meetings when requested by community groups. However, supervisors prepared nothing to document the performance of these duties. In fact, supervisory personnel did not review the Inspector's Reports or the Daily Summary Reports, which reflected the inspectors' daily activities. In addition, as commented elsewhere in this report (Finding 23), supervisors failed to provide formal, written evaluations of the inspectors' job performances.

Supervisors also did not account for the completed Inspector's Reports. We were informed in April 2012 by several inspectors that they had Inspector's Reports in their possession that had never been filed in the applicable licensee folders. Inspectors provided us with a total of 449 Inspector's Reports (365 routine and 84 complaint inspections) that were not filed as of April 20, 2012. Inspection dates on these Reports ranged from November 30,

2007 to April 11, 2012 and included 111 inspections that applied to our review period of September 1, 2010 through August 31, 2011.⁶ Table 4 below shows the range of inspection dates for the unfiled Inspector's Reports.

| Table 4 Inspector's Reports Unfiled as of April 20, 2012 by Calendar Year | | | | | | | | |
|--|------|------|------|------|------|------|-------------------|-------|
| Calendar Year | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | No Year on Report | Total |
| Number of Unfiled Inspector's Reports | 3 | 4 | 5 | 92 | 233 | 100 | 12 | 449 |

Source: BLLC Inspector's Reports

Our review of 321 of these Reports performed outside of our review period identified 68 violations documented on the Reports. Violations included the lack of a current trader's license, providing live entertainment and/or outdoor table service without a permit, serving alcohol to underage patrons, and inappropriate contact between an adult entertainment dancer and a patron. As these violations were outside of our review period, we did not review the status of any related enforcement actions taken by BLLC.

BLLC's *Inspection Division Guidelines*, issued on May 19, 2010 and reissued on April 3, 2012, require inspectors to return to the office to turn in their work product for that day, including completed Inspector's Reports, and to file inspections in the appropriate licensee folders.

Recommendation 12

We recommend that BLLC ensure that Inspection Division supervisors

- a. document the performance of their job duties, including the review and approval of Inspector's Reports; and
- b. account for all completed Inspector's Reports and ensure that these Reports are filed in the applicable licensee files, in a timely manner, as required by BLLC's *Inspection Division Guidelines*.

⁶ We included these 111 unfiled Inspector's Reports in our compiled database.

Finding 13

BLLC often did not perform timely inspections to follow up on licensees without valid trader's licenses.

Analysis

Inspectors often did not comply with BLLC policy when a licensee could not produce a valid trader's license (issued by the Clerk of the Circuit Court) during an inspection. BLLC's *Inspection Division Protocol* states that the licensee has up to 10 days to obtain a current trader's license and that the inspector shall visit the licensed location at the end of the 10-day period to determine compliance. Failure to comply could result in a hearing for a violation. The lack of a valid trader's license is the only requirement in which BLLC policy mandates a specific follow-up and the related period.

Our compiled database disclosed that 250 Inspector's Reports contained infraction comments (minor instances of noncompliance) stating the licensees did not have a current trader's license. Our test of 30 of these licensees disclosed that 11 did not have a follow-up inspection within 10 days, as required, to determine if the licensees had obtained a trader's license. Follow-up inspections for 5 of these 11 licensees occurred from 13 to 111 days after the initial infractions were found. For the remaining 6, as of May 22, 2012, BLLC had not conducted an inspection to follow up on the infractions that occurred 195 to 578 days previously.

Recommendation 13

We recommend that BLLC comply with existing policy and conduct timely follow-up on all inspections where the lack of a valid trader's license was cited as an infraction.

311 Customer Service Request System**Background**

BLLC participates in the City's 311 Customer Service Request System. This System, operated by the Mayor's Office of Information Technology (MOIT), allows City residents to file complaints by telephone or online and refers each complaint to the appropriate agency for follow-up. The System reflects data specific to the complaint, including location, time, date, and details. It also allows the agency receiving the referral to update the System with the status and the ultimate complaint resolution. This information is available to the public via the 311 System website.

According to BLLC personnel, complaints received during the hours between 9:00 p.m. and 2:15 a.m. are to be investigated within two hours of the complaint by inspectors specifically assigned to night duty. All other complaints are to be investigated the same or following day (within 48 hours) by the inspector(s) assigned to the applicable district.

Based on information received from MOIT, the 311 System referred 818 complaints to BLLC during the period from September 1, 2010 to August 31, 2011.

Finding 14

BLLC did not have written procedures regarding the 311 complaint investigations and resolution process, and BLLC often closed complaints in the 311 System prior to performing an investigation.

Analysis

BLLC lacked written policies for processing and documenting investigations and resolutions of complaints received from the 311 System. The two inspectors who generally performed 311 complaint investigations were not required to submit supporting documentation of investigations performed to their supervisors. Although we occasionally found investigation documentation in the licensee files, these inspectors informed us that they did not always document the results of their investigations. Without some documentation of the investigations, supervisors cannot review the work of the inspectors and ensure that appropriate action was taken.

Our review also disclosed that BLLC often closed cases in the 311 System prior to performing an investigation of the complaints. Specifically, BLLC staff advised us that the status of a 311 complaint would be updated to “closed” and “referred to the Inspection Division” in the 311 System when an inspector had not yet investigated the complaint. BLLC advised us that it implemented this practice because inspectors were not investigating complaints timely and it did not want this to reflect poorly on BLLC in the City’s 311 statistics.

On December 9, 2011, the City’s 311 Customer Service Division notified BLLC that a complaint should not be closed until the investigation has been completed and the results noted in the System. While we found that the number of cases closed in the System in this manner appeared to decrease after the City’s notification, complaints continued to be closed in the System without evidence that an investigation had been completed. Specifically, our testing of complaints received during February 2012 showed that 7 complaints (out of 64 total complaints) were closed prior to receiving a

response from the inspector; however, this is an improvement from the 31 complaints received during May 2011 (out of 54 total complaints) that were closed without any evidence of an investigation.

Recommendation 14

We recommend that BLLC

- a. develop and implement written procedures over the complaint investigation process, including the method for documenting these investigations; and**
- b. comply with the City's directive by not closing cases in the 311 System until the complaints are investigated and resolved.**

Finding 15

BLLC often did not resolve complaints properly and document that complaints were properly addressed.

Analysis

Our testing of 311 System complaints disclosed that BLLC often did not resolve complaints properly and investigations were not always documented. Our test of 118 complaints received in the months of May 2011 and February 2012 disclosed the following conditions:

- There was no evidence that BLLC had investigated 59 complaints as of May 4, 2012 (the date of our test). Delays ranged from 49 to 265 working days after the dates of the related complaints. In each case, we reviewed the related licensee file and there was no documentation of any investigative effort (Inspector's Report or email with investigation results). In 47 instances, the complaints were recorded as closed even though there was no evidence of any investigation.
- The resolution recorded for 7 complaints did not agree to the related investigation documentation. For example, the documentation for one complaint stated that it was unsubstantiated, but the System indicated that the complaint was waiting for an inspection reply.
- When investigations were conducted and documented, the related results were often not entered timely into the 311 System. Our test of 23 documented investigations disclosed 4 instances where the related resolutions were not recorded into the System for periods ranging from 6 to 17 days after the investigations were completed. In 4 other cases, the complaints were still open in the System as of May 4, 2012 even though documentation of the investigation was completed in February 2012.

- Fourteen complaints related to establishments not licensed by BLLC (such as a grocery store) and, therefore, should have been forwarded to other responsible agencies (such as the State Comptroller's Office); however, there was no documentation that BLLC forwarded 8 of these complaints to other agencies.
- For 21 licensee complaints that were recorded in the System as being referred to another agency (such as the Baltimore City Police Department), BLLC had no documentation showing that the complaints had been referred. These 21 complaints were all recorded as closed in the System.

Some of the above conditions may have resulted from the failure to generate and use available 311 System reports. The System has the capability to produce a number of standard statistical and administrative reports, as well as custom reports, that BLLC could use to track inspector performance as well as histories of complaints.

Recommendation 15

- We recommend that BLLC investigate complaints timely and document the results,**
- accurately record the investigation results in the System in a timely manner and retain the supporting documentation,**
- use the 311 System's report capabilities to monitor complaint investigations and resolutions, and**
- ensure complaints for non-licensed establishments are referred to other agencies for investigation and maintain the related referral documentation.**

Finding 16

BLLC did not use available technology to investigate and resolve noise-related complaints.

Analysis

BLLC did not use available scientific equipment (for example, a sound meter) to investigate loud noise complaints. Although we were advised that BLLC owns a sound meter, BLLC inspectors used what they described as a reasonable noise standard (by ear) to determine the validity of loud noise complaints. State regulations and the Health Code of Baltimore City specify the maximum permissible sound levels for a variety of circumstances (such as 55 decibels for residential areas as measured from the property border). Complaints related to loud music and noise represent a significant portion of 311 System complaints. For example, 39 complaints of the 118 total complaints referred to BLLC in May 2011 and February 2012 cited loud music

or noise as a primary concern. Accordingly, it would appear appropriate for BLLC to use objective, scientific equipment to determine the validity of noise complaints, as well as to document its findings for potential Board hearings.

Recommendation 16

We recommend that BLLC use available technology to investigate complaints related to loud noise and document the related findings.

Objective 3 – Disciplinary Procedures

Objective and Methodology

Our objective for BLLC's disciplinary procedures was to evaluate the disciplinary process and determine whether BLLC complied with applicable State law, as well as Board rules and regulations. To accomplish this objective, we interviewed the Board and BLLC employees to determine the types of disciplinary proceedings available and the process for each. We also observed several Board hearings. Using our compiled database (of BLLC licensee activity for the period from September 1, 2010 through August 31, 2011), we scheduled all violations where the Board conducted a hearing and determined the consistency of fines and penalties assessed by the Board when a licensee was found guilty of violating State law or Board rules and regulations. We also evaluated whether the disciplinary process was properly documented and documentation was retained in the licensee files. We reviewed BLLC files for licenses that were inactive for more than 180 days and would expire, by law, to determine if the Board and BLLC took appropriate action.

Conclusion

While the Board appeared to assess fines to licensees in a consistent manner, we found that it had not developed any formal guidance over the disciplinary process. As a result, the Board and BLLC had implemented a number of disciplinary processes that may not be proper based on the statutes governing the Board. For example, BLLC staff conducted compliance meetings with licensees who committed infractions, which generally represent minor noncompliance issues; licensees were assessed a compliance meeting fee and the Board was not advised of these meetings. In addition, the audit found that the Board did not comply with State law related to inactive licenses and allowed certain current licensees to retain licenses when their businesses were not operational for periods exceeding 180 days (the general legal limit for a closed licensee before the license should expire).

Background

Most disciplinary proceedings against licensees are the result of violations noted during the inspection process. Both routine and 311 complaint inspections can identify infractions and violations of State law as well as the *BLLC Rules and Regulations*. Infractions generally represent minor noncompliance with laws or rules (such as improper signage) while violations represent significant noncompliance (such as selling alcohol to persons under age 21), as determined by inspectors or BLLC management. Both infractions and violations are noted on the Inspector's Report. Violations may also be

identified as a result of referrals from third parties who also interact with licensees (such as the Baltimore City Police Department and the State Comptroller's Office).

Although inspectors evaluate and note instances of licensee noncompliance with laws, Board rules, and regulations, the Board Commissioners are responsible for adjudicating cases to determine if violations have actually occurred and for setting the related penalties. State law provides that the Board is charged with the duty of enforcing the provisions of the Alcoholic Beverages Article (Article 2B) of the Annotated Code of Maryland. The Board meets weekly in public sessions to adjudicate cases resulting from violations, as well as to grant new licenses and license transfers. The hearings are considered quasi-judicial and include testimony from inspectors, police, and licensee representatives, and are documented via transcripts. The decision portion of the transcripts is included in the licensee files to document the Board's actions. Licensees may appeal the decisions of the Board to the Circuit Court.

State law includes penalty provisions for licensees found guilty of violating State law or Board rules and regulations. Section 16-507 of Article 2B of the Annotated Code of Maryland states that, for any violation that is cause for suspension under the alcoholic beverage laws affecting Baltimore City, BLLC may, for a first offense, impose a fine of not more than \$500 or suspend the license or both; for any subsequent offense, the Board may impose a fine of not more than \$3,000 or suspend the license or both. State law further provides that the Board may revoke or suspend any license for any cause which, in its judgment, is necessary to promote the peace or safety of the community in which the place of business is situated. This law also provides that the license must be revoked or suspended under certain specific circumstances, such as when the licensee makes any material false statement in any application for a license or permit.

Using our compiled database, we determined that inspectors documented 408 violations on Inspector's Reports during the year. For 259 of these violations, the Board conducted a formal hearing, and for 149 violations, the violations were not referred to the Board for disciplinary proceedings against the licensees. In addition, our compiled database disclosed 287 infractions not considered by BLLC inspectors and supervisors to be significant enough to warrant violations.

The Hearing Process

As previously indicated, formal disciplinary hearings are quasi-judicial proceedings where the Board Commissioners determine the guilt or innocence of the licensees based upon the evidence presented. According to

the Board, these determinations are made using “a preponderance of the evidence” standard and not a “beyond a reasonable doubt” standard. Licensees may be represented by counsel, and the Board will hear testimony and obtain other information (such as the prior violations of a licensee over the preceding three years) prior to making a decision and determining whether a penalty is appropriate. Licensees are provided the Board’s rulings verbally at the hearing and in writing, via a Penalty Assessment Notice, if the ruling results in a penalty (fine, suspension, or revocation). The Notice includes the penalty, and the amount of time the licensee has to pay any imposed fine. A copy of the Notice is filed in the licensee’s file.

Findings

Board Fines Were Assessed in a Consistent Manner

Fines assessed by the Board appeared to be reasonably consistent within violation types for the period we examined. Specifically, we reviewed licensee files for violations occurring during the period from September 1, 2010 to August 31, 2011 and reviewed the related hearing documentation to determine the amount of the fine and the supporting rationale. That review disclosed that fines were consistent with those allowed by law and variations appeared reasonable, including the Board’s waiver of assessed fines (usually related to first offenses). For example, our review of fines assessed for 28 violations of Board Rule 4.01(a) for underage drinking (the most common type of violation we examined) found that, in 22 cases, the Board assessed a fine of \$500 as allowed by law for first-time offenses. Documentation in the files supported that the licensees had not had a similar violation within the preceding three years. In the remaining 6 cases, the Board assessed fines that ranged between \$1,750 and \$3,000 for second offenses as permitted by law. Table 5 summarizes fines assessed by the Board for the 126 violations reviewed for which guilty verdicts were rendered or no contest pleas were entered.

**Table 5
Board Fines Assessed by Violation Type
Based on Inspections Conducted
From September 1, 2010 to August 31, 2011**

| Violation Type | Description of Violation | Number of Violations With Guilty/No Contest Pleas | Low Fine Amount | High Fine Amount |
|---------------------------------|---|---|-----------------|------------------|
| Article 2B Section 1-201(a)(2) | Possession or sale of alcoholic beverages not provided for in Article 2B or the Tax-General Article | 6 | \$100 | \$500 |
| Article 2B Section 10-301(j)(1) | Proof of personal property tax payment not provided | 10 | \$100 | \$350 |
| Board Rule 3.02 | Uncooperative with Board, Police, Health Department, etc. | 9 | \$100 | \$500 |
| Board Rule 3.03(c) | Records of employees not available for inspection | 6 | \$0 | \$500 |
| Board Rule 3.06 | Not in compliance with requirements of Health Department, Building Code, or Fire Department. | 5 | \$100 | \$500 |
| Board Rule 3.12 | Disturbing the peace, safety, health, quiet, and general welfare of the community | 11 | \$100 | \$3,000 |
| Board Rule 4.01(a) | Underage drinking | 28 | \$500 | \$3,000 |
| Board Rule 4.10(a) | Licensee purchased alcohol from unlicensed manufacturer or wholesaler | 7 | \$0 | \$500 |
| Board Rule 4.15 | Gambling | 14 | \$350 | \$500 |
| All other violation types | Alcoholic beverage license not properly displayed, operating beyond licensed hours, use of establishment for the possession, transfer, or use of narcotic drugs, etc. | 30 | \$0 | \$1,000 |

Source: Board Hearing Transcripts Contained in Licensee Files

Finding 17**BLLC used alternatives to the Board hearing process to address violations and infractions and the Board had not formally approved these alternatives.**

BLLC had adopted alternatives to the Board hearing process to address licensee violations and infractions. These alternatives were essentially carrying out functions of the Board but were not officially approved by the Board. Furthermore, unlike Board hearings, these alternative processes were not open to the public. The legality of their use is questionable since they were not addressed in State law pertaining to BLLC.

- BLLC allowed licensees to pay a fine in lieu of a Board hearing for certain violations that were a first offense, and these disciplinary actions were communicated to the licensees via a letter from BLLC management. For example, licensees cited for a first offense for sales to minors were allowed to avoid a hearing before the Board by acknowledging that they committed the violation (essentially pleading “no contest”) and paying a \$500 fine (the statutory maximum penalty for a first time offense). BLLC management did not consult with the Board regarding these violations and did not advise the Board of these fines. The Board would only become aware of these fines if a licensee committed additional violations, which would then be taken before the Board.
- BLLC management advised us that licensees who violated administrative requirements (such as to obtain a trader’s license) may be allowed to pay an administrative fee of \$125 without having a Board hearing. This fee, which BLLC may assess regardless of the frequency of these violations, equals the administrative fee the Board assesses for licensees brought in for hearings. According to BLLC management, it adopted this practice since the Board generally did not assess a fine for administrative violations. Similar to fines in lieu of a hearing, documentation of these administrative actions were not provided to the Board.
- We were informed that, with the exception of violations for disturbing the peace, licensees who desired to avoid having their names appear in the public hearing docket (published on BLLC’s website) were permitted to plead “no contest” to the violations. In these cases, the requests were forwarded to the Board for a determination of a fine, without a hearing, and without the decision being documented in a transcript.
- BLLC used a process, known as an in-house or compliance conference, to discuss certain infractions with licensees. Conferences were used to discuss certain minor licensee infractions (such as a locked back door at

the establishment) that could lead to violations in the future or when BLLC received a number of community complaints about an establishment. BLLC generally charged the licensee a \$100 conference fee but did not assess any additional penalty or fine.

The Board also effectively delegated to BLLC the approval of license transfers that were limited to a change in ownership if the community was not contesting the transfer. BLLC met with the licensees in an in-house conference and was to document the meeting for the licensee file.

Our review of the cash receipt system disclosed that BLLC collected compliance conference fees for 28 conferences held with licensees during the period between October 1, 2011 and January 31, 2012. Based on our review, documentation of the conferences was not included in the files for 18 of these licensees.

We could not readily determine the frequency of these alternative practices. State law is unclear as to whether BLLC management may use these practices. Informal advice we obtained from counsel to the General Assembly confirmed that formal advice should be obtained to clarify this matter.

Recommendation 17

We recommend that BLLC

- a. obtain a formal Opinion from the Attorney General to determine if BLLC management has the legal authority to use alternative processes to address licensee violations and infractions;**
- b. formalize policies and procedures to comply with the legal Opinion and have them approved by the Board;**
- c. provide periodic reports of fines and fees assessed to licensees to the Board for informational purposes, if BLLC is determined to have this authority; and**
- d. document all decisions reached, including fines and fees assessed, and retain this documentation in the respective licensee files.**

Finding 18

BLLC lacked written policies and procedures for the disciplinary process.

Analysis

BLLC lacked written policies and procedures for the disciplinary process. Specifically, we found the following conditions:

- As previously mentioned in Finding 8, Inspectors were not provided with formal guidance as to which instances of noncompliance constitute a

violation and which constitute an infraction. Inspectors essentially made their own determinations whether to document an issue on the Inspector's Report as a violation or infraction. We were advised that inspectors may seek assistance from supervisory staff in these decisions. As noted previously, supervisors do not review Inspector's Reports to help ensure consistency in the treatment of violations and infractions. In addition, we found certain instances where the documented infraction appeared similar to a violation (such as the lack of a valid trader's license). As commented previously, our review found that the Inspector's Reports contained 287 infractions over a year period that were not considered significant enough to warrant being classified as a violation.

- Written guidance for deciding which violations should be adjudicated by the Board was not established. As noted in the Background, our review of Inspector's Reports disclosed 149 violations for which BLLC did not initiate disciplinary actions and, therefore, were not referred to the Board. These violations often cited the same issues as the violations that did result in a hearing. Some of the violations noted included selling loose beers, having an expired alcoholic beverage license, not having a current trader's license, making renovations to the establishment without Board approval, and operating after licensed hours. We were advised that decisions to submit a violation for a Board hearing were generally made by one BLLC supervisory employee. Furthermore, the license files did not contain any documentation to support this employee's decisions. This supervisory employee informed us that violations were not submitted to the Board if the matter could be addressed without a Board hearing (see Finding 17).
- The Board had no formal process for notifying interested parties (such as community organizations) of any post-hearing actions, such as modifications of fines and licensee appeals. Due to a lack of documentation, we could not readily determine the number of post-hearing modifications made by the Board or the number of appeals of Board decisions to the Circuit Court; however, our review of case files found evidence that this does occur. Specifically, in one case we reviewed, the licensee filed a Motion to Reconsider the hearing decision and offered to make a payment of \$2,000 in lieu of having its license suspended for two days as specified in the original decision. BLLC staff advised us that it does not notify any parties when the Board receives such motions. In addition, the Board's action on this Motion—to grant the additional fine in lieu of suspension—was not documented; the only documentation in the file was a letter from the licensee's attorney that appeared to indicate that the Board granted the Motion. Our review

disclosed that BLLC does advise interested parties under other circumstances, such as for reconsiderations related to transfers of licenses.

- Although the Board advised us that it used an informal standard of holding hearings on violations within 180 days of the violation, this requirement was not documented in Board policy, rules, or regulations. Furthermore, our review of the 139 cases involving 259 violations where the Board conducted hearings found that 11 hearings were not conducted within this informal 180-day requirement, as shown in Table 6. Hearings for these 11 cases ranged from 183 to 318 days after the dates of the related violations. Since licensees may continue to operate without addressing the violations until the Board holds a hearing, timely hearings for all cases would be in the best interest of BLLC and the public.

| Table 6 Timeliness of Board Hearings from the Date of the Violations (in Days) | | | | | | | | |
|--|------|-------|-------|--------|---------|---------|----------|-------------|
| Days | 0-30 | 31-60 | 61-90 | 91-120 | 121-150 | 151-180 | Over 180 | Total Cases |
| Number of Cases | 9 | 43 | 23 | 14 | 22 | 14 | 11 | 136 |

Source: OLA compiled database, Board hearing transcripts
Note: We could not determine timeliness for 3 of the 139 cases. Specifically, the licensee paid a fine in lieu of a hearing for two cases, and we could not determine the violation date for the third case.

Recommendation 18

We recommend that the Board and BLLC develop and implement written policies and procedures to govern the disciplinary process that, at a minimum, address

- guidance on what constitutes an infraction and a violation,
- the types of violations that should be presented to the Board for a hearing,
- processes for notifying known interested parties of post-hearing actions, and
- an appropriate standard for conducting hearings timely.

Finding 19

BLLC did not monitor closed establishments to determine whether the alcoholic beverage licenses had expired in accordance with State law.

Analysis

BLLC did not monitor closed establishments to determine whether the alcoholic beverage licenses had expired in accordance with State law. BLLC became aware of business closures through the inspection process, when advised by the licensee, or when notified by the community. However, BLLC did not maintain a listing of or formally track these business closures unless a licensee requested a hardship extension or requested to transfer the license to another location or person. The failure to track this information means that BLLC was not in a position to notify the Board that a licensed establishment had been closed for 180 days so that the Board could take formal action regarding the disposition of the license. The Board Chairman informed us that, as long as a licensee could show progress towards re-opening the establishment, the Board would continue to approve hardship extensions to keep the license active, even beyond the 360 days specified in the law.

Using our compiled database, we found 80 licensed establishments that appeared to have been closed for more than 180 days based on Inspector's Reports or other file documentation (such as the renewal application). Our review of 10 of these licenses on June 19, 2012 disclosed that, in accordance with State law, nine licenses should have expired between November 25, 2007 and May 15, 2012. Furthermore, 5 of these licenses had expired before the 2011 - 2012 renewal period; however, BLLC allowed these licensees to renew their licenses. As a result, BLLC allowed non-operating businesses to retain licenses and may have denied the chance for other interested parties to obtain an alcoholic beverage license. State law generally restricts the total number of alcoholic beverage licenses issued in the City. Finally, although the law provides for only a single 180-day hardship extension, we found that the Board granted two 180-day hardship extensions to 3 of the 10 licensees tested and three 180-day extensions to another licensee.

State law requires that, 180 days after a licensed establishment has closed or has ceased active alcoholic beverage operations, the alcoholic beverage license shall expire except under defined circumstances, such as when an application for a license transfer (to another location or person) has been approved or is pending. Licensees may also submit a written request for a hardship extension within the 180-day period. The law further states that its intent is that the total time for which a license may be deemed unexpired is 180 days, or 360 days if an undue hardship extension has been granted.

Recommendation 19

We recommend

- a. that BLLC develop a process to monitor licensed establishments that have closed or ceased active alcoholic beverage operations,
- b. that BLLC notify the Board of licensed establishments that have been closed for more than 180 days for appropriate action, and
- c. that the Board discontinue granting additional hardship extensions beyond that permitted by law.

Finding 20

Certain Board hearing practices may not comply with the Open Meetings Act.

Analysis

Certain aspects of the Board's hearing practices may not comply with the Open Meetings Act as required by State law governing BLLC. The Open Meetings Act requires, in part, that written minutes be prepared as soon as possible after a public body meets and that the minutes reflect each item considered, the action taken on each item, and each vote. Although all Board hearings were fully transcribed by an independent vendor, BLLC generally obtained only a certified copy of the decision phase of the transcript for inclusion in the licensee file. The Board did not prepare any other record of the meeting minutes; therefore, it did not review and approve transcripts from prior meetings. The Board generally obtained complete transcripts only for disciplinary decisions appealed to the Circuit Court.

The Assistant Attorney General for the State Open Meetings Law Compliance Board advised us that meeting minutes generally require subsequent approval by the public body. In addition, each Board Commissioner did not state his or her individual vote for the record during the hearing as also required by the Act; rather, after discussion by the Commissioners off the record, the Board Chairman stated the overall decision of the Commissioners for the record.

Although State law governing BLLC requires BLLC to be subject to the Open Meetings Act, it is unclear as to whether all actions taken at Board hearings are subject to the Open Meetings Act. Public Board hearings include actions relating to the approval of new licenses, the approval of license transfers, and disciplinary proceedings for licensee violations. Certain of these administrative actions can be appealed to the Circuit Court and, therefore, are considered quasi-judicial in nature. Quasi-judicial functions, by law, are generally not subject to the Open Meetings Act.

We spoke with the Assistant Attorney General for the State Open Meetings Law Compliance Board who concurred that the Board operates in a quasi-judicial manner for certain proceedings. According to the Assistant Attorney General, there was not sufficient information to make an immediate determination if these hearing practices violated the law.

Recommendation 20

We recommend that BLLC

- a. obtain written advice from the Office of the Attorney General over what Board hearing actions are subject to the minutes provisions of the Open Meetings Act, and**
- b. properly document Board hearings based on the advice obtained from the Office of the Attorney General.**

Objective 4 – Management Oversight

Objective and Methodology

Our objective was to review management processes to determine whether proper oversight exists over BLLC operations. To accomplish this objective, we interviewed the Board and BLLC employees, and we reviewed BLLC's procedures with respect to payroll, employee performance evaluations, financial disclosures, and potential conflicts of interest. We also tested payroll processing.

Conclusion

BLLC had not implemented management practices to oversee its operations and to help ensure efficient and effective practices. Available automated systems were not used to generate reports that would allow management to review operations and, in certain critical areas, BLLC had not established any process to provide oversight. We also found that BLLC did not formally evaluate employee performance and obtain required financial disclosure statements. Finally, internal controls over payroll were not adequate and BLLC made a number of errors in recording and reporting time worked.

Findings

Finding 21

BLLC had not implemented management practices to effectively oversee and manage the agency's functions.

Analysis

BLLC management had not established sufficient practices and procedures to oversee and assess the effectiveness and efficiency of its operations. BLLC had automated systems for licensing and 311 complaint investigations; however, BLLC did not routinely generate reports from the systems that would provide management with adequate information to determine the status of licensing actions and complaint investigations and to evaluate the effectiveness and efficiency of BLLC operations. BLLC used manual processes to document inspection and disciplinary operations; however, management did not develop tools or practices to help monitor these activities and to ensure that the agency accomplished its inspection goals and met requirements pertaining to its disciplinary actions.

Many of our previous findings describe our specific observations and testing results that demonstrated the impact from the lack of effective management oversight of BLLC activities. For example, we commented on the differences between our review of licensee files and the information recorded in the

automated licensing system. We also commented that, although inspectors completed Daily Summary Reports of inspection activity, supervisors did not review these Reports and upper management did not use this information to manage and direct BLLC activities.

Recommendation 21

We recommend that BLLC

- a. develop procedures and tools that provide summary and status information on all BLLC operations that would allow BLLC management to effectively oversee agency operations and ensure that resources are used in the most efficient and effective manner, and
- b. ensure that data recorded in its systems that are used to generate management reports are accurate and reliable.

Finding 22
Financial disclosure forms were not filed as required.

Analysis

Board Commissioners and employees did not file financial disclosure forms as required. Although current Baltimore City Code requires the forms to be submitted to the Baltimore City Board of Ethics no later than April 30 of each year, 16 of 29 employees tested had not submitted the forms for calendar year 2010 as of December 2, 2011, including one Commissioner and one executive management employee. All of these 29 employees were employed as of October 28, 2011 and were employed during calendar year 2010. Table 7 shows the most recent financial disclosure filing for these 29 employees.

| Table 7 Most Recent Year for Which Employees Filed Financial Disclosure Form | | | | | | | |
|--|------|------|------|------|------|------|-----------------------|
| Calendar Year | 2010 | 2009 | 2008 | 2007 | 2006 | 2005 | Has Never Filed |
| Number of Persons Who Filed | 13 | 5 | 4 | 4 | 1 | 1 | 1 |

Source: Baltimore City Records

The one employee who had not filed a disclosure form since starting employment with BLLC was hired in calendar year 2006. In addition, 12 of the 13 employees who filed most recently for calendar year 2010 filed after the April 30 deadline. The forms for these 12 employees were filed between June 16 and July 21, 2011.

We were advised by the State Ethics Commission that, although BLLC is a State agency, it is not covered by existing State ethics laws. However, Baltimore City Code specifically includes the Board and its employees as subject to the City ethics laws. That law requires that all Board members and employees file required forms with the Baltimore City Board of Ethics by April 30 of each year for information related to the preceding calendar year.

In addition, BLLC had not established an ongoing process to help ensure that the Board Commissioners and employees complied with State law regarding prohibitions from having any interests in the alcohol beverage industry in any manner. BLLC management stated that it had verbally advised staff of these prohibitions but did not obtain written statements from each staff member regarding the existence of any potential conflicts, and the City's financial disclosure form does not require this information.

Recommendation 22

We recommend that BLLC

- a. ensure that Board members and employees file annual financial disclosure forms as required by the Baltimore City Code, and**
- b. establish a formal process to identify potential conflicts regarding interests in the alcohol beverage industry.**

Finding 23

BLLC did not document formal evaluations of employee performance on a routine basis as required.

Analysis

BLLC did not formally evaluate employee performance on a routine basis as required by Baltimore City policy. Our review of the personnel files for 27 active employees (excluding Board Commissioners) who had been employed for at least six months at the time of our review disclosed the following conditions:

- Nineteen of the employees tested had no record of ever receiving a formal evaluation since the beginning of their employment. Eleven of these employees were hired during the period from 1989 to 1999.

- Personnel files for seven employees included at least one documented performance appraisal; however, the most recent of these evaluations was dated March 1996. For example, the most recent formal evaluation for one supervisory employee was dated January 31, 1996. Subsequent to our review, BLLC provided us with an evaluation for one of these seven employees dated in 2008.
- For the remaining employee, we could not determine the existence of any evaluations as we were advised the personnel file was either missing or stolen.

BLLC advised us that upper management and inspectors were formally evaluated in 2009 and 2011, respectively. However, as noted in our test, the personnel files did not contain this information and management was unable to provide any documentation of these evaluations.

According to State law, almost all BLLC employees are part of Baltimore City's classified civil service. Baltimore City policy requires each supervisor to evaluate each employee's performance six months prior to his or her anniversary date (interim evaluation) and on their anniversary dates and to provide formal written performance evaluations at these times.

Recommendation 23

We recommend that management adhere to Baltimore City policy and provide formal written evaluations for each employee in accordance with that policy.

Finding 24

Proper internal controls were not established over payroll processing and payroll testing disclosed various problems.

Analysis

Internal controls over payroll, which totaled approximately \$1.8 million during fiscal year 2012, were inadequate. Specifically, our review disclosed the following conditions:

Time Records

The use of Daily Log Sheets by inspectors to record their daily time and for approval by supervisors is mandated by BLLC's Letter of Understanding (LOU) with Baltimore City. The amended LOU was adopted in April 2010 by both parties to be consistent with state and federal law and best practices for payroll and attendance. The LOU details requirements for work schedules, sign-in and sign-out procedures, alternative workweeks (night 311 complaint shifts), working from home, and leave approval.

Inspector time records were not approved by supervisory personnel. Specifically, inspection supervisors did not approve the Daily Log Sheets used by inspectors to record time in and time out as required by BLLC's Letter of Understanding (LOU) with the City. Our review of Daily Log Sheets from January 2009 through March 2012 showed that none of the Daily Log Sheets were approved.

We also found that three management employees did not record their time in and time out on the Daily Log Sheet as required by the LOU. In addition, other staff routinely recorded time in and out for other employees when those employees had not recorded any time. Based on our review of the Daily Log Sheets, we could not always determine which employee entered time information for other employees (as the employee did not always initial the entry). Finally, inspectors assigned to night duty did not record their time in and out on the Daily Log Sheets or notify the timekeeper via e-mail as required. Inspectors or timekeepers simply recorded "311" or "311 night" on the Daily Log Sheet.

Information on the Daily Log Sheets is entered into the City's automated payroll system by BLLC employees for subsequent processing and generation of the payroll.

User's System Access

BLLC did not adequately segregate duties and did not properly control user access capabilities on the Baltimore City's automated payroll system, which is used to process BLLC's payroll. Specifically, two employees were responsible for entering certain timesheet information and had capabilities that allowed them to approve timesheet information and process payroll adjustments. Furthermore, we were advised that a third employee, who served in a back-up capacity, used the username and password of one of these employees to perform these duties.

Payroll Testing

Our testing of BLLC payroll disclosed a number of issues regarding the support for payments made to BLLC inspectors. For example, our review of the sign-in and sign-out entries recorded on the Daily Log Sheet on April 4, 2012 found that the entries did not always correspond with our observations. That day, five employees recorded their time in as 8:30 a.m. even though we observed that the employees were still not in the office as of 9:30 a.m., when we ceased monitoring. Further, at 4:20 p.m., the Daily Log Sheet included sign-out entries for four employees for times ranging from 5 p.m. to 3 a.m. even though the employees were not in the office. Although the time recorded may be accurate if these inspectors were conducting inspections of licensees prior to arriving at or after leaving the office, this practice does not adhere to

the LOU or BLLC's *Inspection Division Guidelines* which require that each inspector sign-in and sign-out each day. Furthermore, as previously noted, inspectors rarely recorded the time of an inspection on the Inspector's Reports; accordingly, we could not determine if this was the case.

Recommendation 24

We recommend that BLLC

- a. ensure employees record time in accordance with the Letter of Understanding and discontinue recording time for other employees;
- b. institute proper internal controls over payroll, including the review and approval of all time records by supervisory personnel and an adequate separation of payroll processing duties; and
- c. modify users' system access capabilities consistent with assigned payroll processing duties, and require appropriate user IDs and passwords for employees responsible for processing and approving payroll information.

Exhibit 1

| Findings, Recommendations, and Agency Response February 2007 Baltimore City Department of Audits Performance Audit of BLLC | | | | |
|---|--|--|--------------------------------------|---------------------------------|
| 1 of 2 | | | | |
| Number | Finding | Recommendation | BLLC Response (Agree or Disagree) | Similar Finding in OLA Audit |
| 1 | BLLC did not adhere to the policies and procedures established by the City regarding the maintenance of positive time-keeping payroll attendance records and related supporting documentation. | Implement internal control procedures that provide a positive time-keeping system to support the attendance of all employees. | Generally agree | Yes (Finding 24) |
| 2 | The days and hours worked as reported on the City's payroll and accounting records did not reflect the actual days and hours worked by BLLC employees. | Seek the assistance of various City agencies to develop appropriate payroll and attendance procedures that address issues unique to the staffing of BLLC. | Generally agree | Yes (Finding 24) |
| 3 | Employee expense reimbursement forms were not adequately documented so that the claims could be verified for reasonableness and some claims appeared questionable. | Develop procedures to ensure that the employee expense reimbursement forms are properly completed and contain adequate documentation. | Generally agreed | Not included in audit scope |
| 4 | Controls to monitor efficiency, effectiveness, and productivity of the inspectors and to determine whether BLLC's inspection goals had been achieved were not adequate. | Develop procedures that report and summarize routine inspections on a current basis and utilize those reports to monitor the efficiency, effectiveness, and productivity of the inspectors. | Generally agree | Yes (Findings 9 to 11) |
| 5 | Routine Inspector's Reports were not fully documented in a consistent manner. | Develop procedures to identify the necessary information required to be documented as part of the routine Inspector's Reports. Implement appropriate supervisory review to ensure adherence to those procedures and evaluate the Inspector's Reports for reasonableness. | Agree | Yes (Finding 9) |
| 6 | Dispatchers' reports to record complaint information received during the night shift were not adequately documented. | Develop procedures to identify pertinent information that should be documented as part of the Dispatcher's report for the Chief Inspectors' review to enhance the ability to determine whether the complaints were adequately addressed. | Agree | Yes (Finding 14) |

**Exhibit 1
(Continued)**

| Findings, Recommendations, and Agency Response February 2007 Baltimore City Department of Audits Performance Audit of BLLC | | | | |
|---|---|---|-----------------|--------------------|
| | | | | 2 of 2 |
| 7 | Records were not adequately maintained to demonstrate whether BLLC consistently enforced the 180-day rule for inactive licenses. | Develop and implement written procedures to readily identify all licenses that have been inactive for 180 days or more and continue its efforts to obtain resolution for those cases. | Agree | Yes Finding 18) |
| 8 | Controls were not adequate to determine whether late fees were properly assessed and collected. | Consult with the Mayor's Office of Information Technology to provide a field in the automated license and receipts systems that would identify the date the applications were received. Procedures could be developed to automatically calculate the late fees due. In addition to assessing late fees based on when the application is received, BLLC should pursue the possibility of assessing late fees for license fees that are paid late. | Generally agree | Yes (Finding 4) |
| 9 | Procedures for performing monthly reconciliations of BLLC receipts to the applicable amounts deposited and recorded in the City's accounting records were not adequate. | Develop appropriate reconciliation procedures that include accounting for the numerical sequence of all receipts generated by BLLC during the month. Correcting journal entries should be processed for those transactions identified as part of the reconciliation process that were posted to an incorrect account number. Transactions not identified in the City's accounting records should also be actively pursued in a timely manner, and adjusting journal entries should be made accordingly. | Agree | Yes (Finding 7) |

Exhibit 2

| BLLC Licenses Issued and Related Fees As of December 1, 2011 | | |
|---|--------------------|--|
| License Type | Annual License Fee | Number of Licenses Issued as of December 1, 2011 |
| Class A Beer and Wine | \$110 | 36 |
| Class B Beer and Wine | \$165 | 17 |
| Class C Beer and Wine | \$82.50 | 20 |
| Class D Beer and Wine | \$165 | 48 |
| Class A Beer, Wine, and Liquor | \$858 | 238 |
| Class A-2 Beer, Wine, and Liquor | \$858 | 12 |
| Class B Beer, Wine, and Liquor (seating capacity of 200 or fewer) | \$1,320 | 204 |
| Class B Beer, Wine, and Liquor (seating capacity over 200) | \$1,800 | 88 |
| Class B Beer, Wine, and Liquor (Hotel-Motel) | \$6,500 | 23 |
| Class B-D-7 Beer, Wine, and Liquor | \$1,320 | 495 |
| Class B Beer, Wine, and Liquor (Arena) | \$12,000 | 6 |
| Class C Beer, Wine, and Liquor | \$550 | 61 |
| Class D Beer, Wine, and Liquor | \$825 | 74 |
| All other alcoholic beverage licenses | Varies | 6 |
| Adult Entertainment license | \$1,000 | 32 |

Source: BLLC's licensing database

License Type Classes: A-Package Goods; B-Restaurant; C-Private Membership Club; D-Tavern

Notes:

1. The license types above exclude additional permits obtained under certain license types above (such as, outdoor table service and live entertainment) and one day or special event licenses (such as, wine and beer festivals).
2. Class A beer, wine, and liquor licenses are valid for six days a week from 6 a.m. to 12 a.m. the following day. Class A-2 beer, wine, and liquor licenses are valid for six days a week from 9 a.m. to 12 a.m. the following day. Class D beer, wine, and liquor licenses are valid for six days a week from 6 a.m. to 1 a.m. the following day.
3. Class B, C, and B-D-7 beer, wine and liquor licenses are valid for seven days a week from 6 a.m. to 2 a. m. the following day.

Licensees may apply to provide additional services not covered by the basic license. If approved, the applicant must pay an additional fee (below).

| Additional Fees | |
|---|---|
| Additional Service | Annual Fee (in addition to license fee above) |
| Room Service | \$1,000 |
| Live Entertainment (such as a DJ or bands) – Class B license only | \$500 |
| Outdoor Table or Café Service – Class B license only | \$200 |
| Caterer (off premises) | \$500 |

Exhibit 3

Attributes Tested and Results of the Testing for the Licensing Process

As detailed in Finding 3, we tested 30 judgmentally selected license files: 10 new licenses issued after May 1, 2011, 10 license transfers that occurred after May 1, 2011, and 10 license renewals processed for the 2011-2012 license year. Our test disclosed that 28 out of 30 licenses did not comply with one or more requirement in State law or BLLC policy.⁷ The results are detailed in the table below. (Items marked “N/A” were not applicable to that type of license transaction).

| Test of Licenses | | | |
|--|-----------------------------|---------------------------------|----------------------------------|
| Licensing Attribute Tested | New Licenses (10 Tested) | Renewal Licenses (10 Tested) | Transfer Licenses (10 Tested) |
| (Number of instances of noncompliance) | | | |
| Capital Investment Requirements | 1 | N/A | N/A |
| Applications Completely Filled Out (Includes Location) | 6 | 0 | 1 |
| Zoning Approval Documented on Application | 0 | N/A | 2 |
| Renewal Applications Date Stamped | N/A | 1 | N/A |
| Public Notification by Newspaper Advertisement | 0 | N/A | 0 |
| Public Notification by Notice Posting on Establishment | 2 | N/A | 4 |
| Proximity to Schools, Churches and Other Establishments Verified | 6 | N/A | 0 |
| Proof of Personal Property Tax Payment | 5 | 2 | N/A |
| Trader’s License | 0 | 5 | 0 |
| Worker’s Compensation Insurance | 0 | 1 | 1 |
| Sales Tax License | 1 | N/A | 0 |
| Inspection Ticket to other Depts. for Inspection | 0 | N/A | 0 |
| Occupancy Permits Obtained | 0 | N/A | 0 |
| Health Department Permit | 2 | N/A | 0 |
| Seating Capacity Documentation from Baltimore City Fire Dept. | 8 | 6 | 1 |
| Alcohol Awareness Certificate | 0 | 3 | 0 |
| Articles of Incorporations and Corporate Charter | 0 | N/A | 0 |
| Required Food Sales Information | N/A | 0 | N/A |
| Release of Hold Letters from State Comptroller’s Office and/or State Department of Assessment and Taxation | N/A | 2 | 0 |
| Criminal Background Review Documented on Licensee File | 5 | N/A | 3 |
| Transfer Authorization Form and Affidavit of Compliance | N/A | N/A | 2 |
| Bulk Transfer Permit/Letter Stating No Stock in Transfer | N/A | N/A | 2 |
| License Fee Charged was Proper | 7 | 1 | 1 |
| Late Fee Assessed and Paid | N/A | 1 | N/A |
| \$500 Application Fee Paid for License Transfers | N/A | N/A | 0 |
| \$200 Transfer Fee Paid for License Transfers | N/A | N/A | 0 |
| Establishments in Restricted Areas Obtained Allowed License Type | 0 | N/A | 0 |
| License Transfer Completed within 180 days of Board Approval | N/A | N/A | 4 |
| License was Viable (Active) Prior to the License Transfer | N/A | N/A | 5 |

⁷ Certain issues discovered during testing have been used in other findings to show the effect of procedural exceptions.

APPENDIX

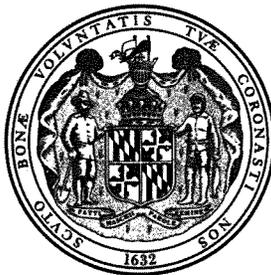
STEPHAN W. FOGLEMAN

CHAIRMAN

COMMISSIONERS

ELIZABETH C. SMITH

HARVEY E. JONES



SAMUEL T. DANIELS, JR.

EXECUTIVE SECRETARY

JANE M. SCHROEDER

DEPUTY EXECUTIVE SECRETARY

STATE OF MARYLAND

BOARD OF LIQUOR LICENSE COMMISSIONERS

FOR BALTIMORE CITY

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26 March 2013

Mr. Thomas Barnickel III, CPA
Legislative Auditor
Department Of Legislative Services
301 W. Preston Street Room 1202
Baltimore Maryland 21201

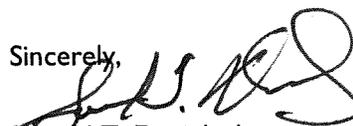
Re: Legislative Audit Process, Finding & Response

Dear Mr. Barnickel:

From October of 2011 through June of 2012, the Board of Liquor License Commissioners for Baltimore City availed our facility, personnel and records to several members of the Department of Legislative Services. They were furnished with their own office and when necessary we expanded their operations to include our main conference room. Although their onsite attendance constituted several thousand person hours; we found their presence and interaction to be courteous and unobtrusive. As anticipated, the fruit of their labor was thorough and insightful.

While all of the report's findings are addressed in the traditional manner, we are compelled to provide greater clarification and exception for certain finding elements. We are hopeful that the responses regarding the issues of Trader's Licenses and Discretion will provide your team with a greater understanding of these processes and their legal basis. Except where otherwise noted, we generally agree with the audit findings and foresee the experience as positive, with the subsequent implementations as beneficial to the growth of our agency.

Sincerely,


Samuel T. Daniels, Jr.

Executive Secretary



B.L.L.C. RESPONSE
to
O.L.A. AUDIT FINDINGS

Board of Liquor License Commissioners for Baltimore City
Samuel T. Daniels, Jr.; Executive Secretary

26 March 2013

Findings

Finding 1

BLLC lacked formal written policies to guide the licensing process.

Recommendation 1

We recommend that BLLC

- a. develop and implement formal written policies to ensure that the licensing process is carried out consistently in accordance with State law and BLLC requirements; and**
- b. establish effective controls, including a documented supervisory review process, to help ensure that licensees file all required documentation and pay all related fees.**

Liquor Board response:

Recommendation 1a: The Board agrees that formal written policies will be developed to ensure that the licensing process is carried out consistently in accordance with State law and Board requirements.

Recommendation 1b: Only supervisory personnel may issue or transfer a liquor license but the Board agrees that it will document supervisory review of each new license issued and each license transfer.

Finding 2

BLLC frequently issued licenses without receiving all required documentation from licensees or applicants.

Recommendation 2

We recommend that BLLC obtain all required documentation from an applicant prior to issuing alcoholic beverage licenses. Specifically, we recommend that BLLC obtain documentation of

- a. payment of personal property taxes;**
- b. a current trader's license;**
- c. a sales and use tax license; and**
- d. license hold release letters, if applicable, from the Office of the Comptroller and/or SDAT.**

Liquor Board response:

Recommendation 2a; The Board agrees that proof of payment of personal property taxes should be obtained for all businesses licensed by the Board.

The Baltimore City Law Department Collections Division is notified of all applications for new licenses and transfers. They notify the Liquor Board if money is owed by a business. It is not legally possible to require proof of payment of personal property taxes before a renewal license is issued. The Liquor Board requests proof of payment of personal property taxes at renewal but under the provisions of Article 2B §10-301(j), licensees have until June 30th of each year to provide proof of payment of personal property taxes to the Liquor Board. When licensees have not submitted the required proof of payment, the matter is set for a public hearing before the Board.

Recommendation 2b: The Board agrees that all licensed establishments must provide a current Trader's license before a liquor license is issued or transferred. The same standard cannot be applied at renewal but the Board agrees that all open and operating establishments that are required to have a Trader's License should have one. (There are some non-profit clubs/organizations that are not required to have Trader's Licenses by the State.) All Trader's Licenses expire on April 30th of each year and the Business License Bureau at the Circuit Court for Baltimore City issues over 3,700 Trader's Licenses each year. The Bureau allows the holders of Trader's Licenses to obtain a new Trader's License without a penalty until May 31st each year. It is not possible, therefore, in Baltimore city to require liquor licensees to provide a current Trader's License before a renewal license is issued.

The agency has made concerted efforts to obtain copies of a current Trader's License for all licensees in Baltimore City and has scheduled violation hearings when a business is operating without a Trader's License.

Recommendation 2c: The Board agrees and does obtain a copy of the Sales and Use Tax license at the issuance of a new license or transfer and will require that it be on State letterhead when it is provided. The Board requests the Sales and Use Tax license number on the annual renewal application and staff does investigate any change in the number recorded in our database. The agency does not collect additional copies of the Sales and Use Tax license during the life of a liquor license. If a business has been in existence for several years, it is likely that a copy of the license will no longer be in the licensee's file since our files are purged every three years.

Recommendation 2d: The Board agrees that no new, transfer or renewal license is issued until a release is obtained from the Sales Tax Compliance Unit of the State Comptroller's Office. All sales tax clearance letters at transfer or issuance are included in an applicant's folder. All sales tax releases at renewal are sent electronically to a staff person who, beginning with renewal 2012, has retained permanent copies of the release letters on

an agency computer. Beginning with the 2012 renewal releases, a printed copy of the Sales Tax release letter was filed in each licensee's file. There are always licenses for which releases are not obtained but those businesses have either not renewed or are not open and operating. All sales tax renewal release letters will be filed in licensee's folder.

The Board agrees that licenses should only be issued to establishments whose corporate charter is in good standing. At issuance for a new license or transfer, this information is obtained. As part of the annual renewal process, Board personnel check the status of corporate charters and notify licensees if their charter is not in good standing or has been forfeited. The licensee is then required to provide a certificate of good standing before their renewal license is issued. There is no release letter provided by the State Department of Assessments and Taxation nor is information from that agency provided to the Liquor Board. In surveying Liquor Boards in other jurisdictions, many of them require a Certificate of Good Standing as part of the renewal process. Effective with renewal 2014, licensees will be required to submit a certificate of good standing as part of their renewal application.

Finding 3

Our detailed testing of the licensing process disclosed that BLLC lacked documentation that certain State law and BLLC licensing requirements were met.

Recommendation 3

We recommend that BLLC comply with State law and its own procedures when processing applications for new licenses, license transfers, and license renewals, as applicable. Specifically, we recommend that BLLC ensure that

- a. inspectors document and place in the licensee file information related to an applicant's proximity to other licensees, schools, and churches;**
- b. all licensee files include documentation of compliance with zoning laws that has been reviewed and verified by BLLC personnel;**
- c. the review of criminal history records for all applicants is properly documented;**
- d. applications include seating capacity if necessary for the type of license; and**
- e. staff verifies that applicants are in good standing with SDAT and include relevant documentation in the licensee files.**

Liquor Board response:

Recommendation 3a: The Board agrees that inspectors should document and place information in an applicant's file concerning the proximity to churches and schools when it is applicable. Under Article 2B §9-204.3, this

information is not required for transfers at the same location nor for most Class “B” restaurant licenses since they are an exception, except for the 46th Legislative District, to the required distance from a church or school.

Recommendation 3b: Article 2B §9-103 requires that no license be issued in violation of any zoning rule. The Board agrees that licenses may only be issued in compliance with zoning provisions for the city of Baltimore. The Liquor Board sends every application for a new license, expansion or transfer to the Zoning Enforcement Division of the Department of Housing and licenses are only issued or transferred in compliance with information received from that agency. Liquor Board personnel make no findings concerning compliance with zoning laws and no license may issued or transferred unless Zoning Enforcement has approved the use and has issued a Use and Occupancy Permit. There have been instances where Zoning Enforcement initially disapproved a transfer but the matter was resolved and a Use and Occupancy Permit was issued.

Recommendation 3c: The Board agrees that no license should be issued or transferred until a criminal background check has been completed and documented by Board personnel.

Recommendation 3d: The Board agrees that capacity information should be documented for Class “B” restaurants since that information is needed to determine the appropriate fee. The Board has requested capacity information on other classes of licenses to justify requesting the legislature to enact a license fee dependent of the capacity of an establishment. There is no requirement in Article 2B or in the Board’s rules, which requires capacity information on any other class of license.

Recommendation 3e: The Board agrees that the corporate charters of all establishments that are open and operating should be in good standing. Copies of all certificates of good standing are filed in licensees’ folders.

Finding 4

BLLC could not account for all fees for licenses issued and did not always assess late fees.

Recommendation 4

We recommend that BLLC properly account for, assess, and record all fees. Specifically, we recommend that BLLC

- a. print and issue the licenses only after payment and recordation of the appropriate license fees;**

- b. assess late fees for applications submitted after March 31 of each year, as allowed by State law;
- c. ensure that applicants record the seating capacity on the renewal license applications, as applicable; and
- d. investigate the aforementioned instances of incorrect fees and non-payment of fees and take appropriate corrective action.

Liquor Board response:

Recommendation 4a: The Board respectfully disagrees with the recommendation that licenses be printed only after payment is made. At renewal, it is not possible to process 1,300 renewals as licensees come into pick up their license. The Board does agree that no license should be released or issued until the appropriate license fee is paid. The license fees described as not being paid were associated with closed establishments for which no license was issued. If a renewal application was accepted for the following year, the license fee was paid. Only one fee was associated with an open establishment, that licensee was immediately contacted, and the fee was paid.¹

Recommendation 4b: Article 2B §10-301(j)(2)(iii) provides that a renewal filed after March 31st may be subject to a late fee. Upon review, late fees may be waived partially or completely depending on the circumstances that caused the late filing. The agency agrees that all requests for waiver of late fees should be reviewed the Board.

Recommendation 4c: The Board agrees that all Class “B” licenses must record seating capacity on their renewal.

Recommendation 4d: Since at least 1981 (the tenure of the longest employee), the Board has defined seating capacity as not including seats at a counter or bar or outdoor seating. We disagree, therefore, that license fees were not correct since the audit finding included these seats in the capacity

¹ **Auditor’s Comment:** BLLC disagrees with the recommendation that licenses be printed only after payment is made, due to logistical concerns. While it agrees that no license should be released or issued until the appropriate fee is paid, it has not indicated what alternative control mechanism would be instituted to ensure this occurs. The BLLC response indicates that the license fees described as not being paid were associated with closed establishments for which no licenses were issued. Our review of the 19 license files in question included only the BLLC copy of the multi-part 2011 - 2012 license, which indicates the license (the copy provided to licensees) was issued. Whether the establishment is closed does not alter the fact that the licensee has been granted a license for which fees should be paid. Furthermore, for 25 other licenses, the licensees paid the 2011 - 2012 license fees when processing their renewals for the 2012 - 2013 license renewal period, indicating the fees should have been previously paid.

numbers for an establishment. We will seek legislative action to define seating capacity for restaurant in Baltimore City.

Recommendation 4e: Appropriate action has been taken concerning any license fee that the Board agrees was not correct.

Finding 5

BLLC did not ensure that applications notarized at its office were proper.

Recommendation 5

We recommend that BLLC only accept applications that have been notarized.

Liquor Board response:

Effective with renewal 2013, the Board has advised all licensees that only applications that have been notarized will be accepted.

Finding 6

BLLC did not always ensure that license transfers were completed within 180 days of receiving Board approval.

Recommendation 6

We recommend that BLLC

- a. **obtain an Opinion from the Attorney General regarding the interpretation of the law governing completion of license transfers within 180 days and abide by that Opinion, and**
- b. **develop formal policies and procedures over the processing of license transfers consistent with the legal Opinion.**

Liquor Board response:

In the case of new construction, it is frequently impossible to complete the process for a new license or transfer within 180 days.

Recommendation 6a: The Board had previously sought advice from our legal advisor in the Attorney General's Office concerning this requirement in Article 2B §10-503(d)(4). We will, however, request an opinion from the Attorney General concerning this provision of Article 2B.

Recommendation 6b: When that legal opinion is received, formal policies and procedures will be developed consistent with it.

Finding 7

Internal controls over cash receipts were not adequate.

Recommendation 7

We recommend that BLLC

- a. institute proper internal controls over cash receipts, including restrictively endorsing all checks immediately upon receipt, properly securing checks, documenting the transfer of receipts to the City, and ensuring that an employee independent of the cash receipts function verifies that all amounts received are subsequently deposited;**
- b. assign specific user access capabilities only to those employees who require such capabilities to perform their job duties, and periodically generate computer system security reports and review the reports to evaluate assigned user access capabilities; and**
- c. ensure the timely preparation of reconciliations of receipts to the City's accounting records and the timely corrections of any errors found, and include an independent supervisory review and approval of the reconciliations.**

Liquor Board response:

Recommendation 7a: The agency has ordered and is using a stamp to restrictively endorse all checks to the Director of Finance prior to submitting the checks to the Bureau of Collections. Steps have also been taken to properly secure checks until they are delivered to the Municipal Building and supervisory personnel at the Bureau of Collections have been contacted concerning a procedure by which cashiers acknowledge receipt of a Liquor Board deposit. Every attempt will be made to ensure that an employee independent of the cash receipt function verifies deposits but the office staff is small and this is not always possible.

Recommendation 7b: The Mayor's Office of Information Technology (MOIT) has been contacted to determine who has access to the Liquor Board information. One of the Liquor Board employees who had access to the database and cash receipt system often assisted in the front office and prepared cash receipts and one day licenses. The other Liquor Board employee should not have authorization to modify information in the Liquor Board computer system and MOIT will address that. In the future, periodic reviews of individuals having access to the system will be conducted with the assistance of MOIT.

Recommendation 7c: The Board agrees that there should be timely preparation of reconciliation reports and supervisory review and approval of those reports. The Liquor Board office staff is small, however, and the

Accounting Assistant must often assist with performing other duties within the office. Until March 1, 2013, the agency had four Office Assistant positions. That number was reduced by the City when one of our office employees died and the Board was not allowed to fill the position. In addition, two of the three remaining Office Assistants have been out for extended sick leave including one who has been out for five months and the other was out for almost three months.

Finding 8

BLLC lacked comprehensive written policies and procedures over the inspection process.

Recommendation 8

We recommend that BLLC develop and implement comprehensive written procedures over the inspection process that at least address the aforementioned bulleted areas.

Liquor Board response:

We agree, and plan to develop a comprehensive set of written protocols for all aspects of Inspection Division structure and function. These policies will be furnished to every inspector and will remain available in a centralized location within the division office. Updates will be created and disseminated as needed. Projected completion for this element is 1 October 2013.

- *“Existing procedures did not detail the process to be used to conduct inspections and the specific criteria for evaluating each broad area covered during an inspection. For example, while the inspector is to inspect the kitchen, including the storage of food, trash containers, and its general condition, a satisfactory level of compliance was not defined for each area. BLLC staff advised us that they apply common sense and their own criteria to complete the areas listed on the Inspector’s Report.”*

While we cannot disagree with the general premise of this example, we must state the obvious. Board’s inspectors are not trained in the intricacies necessary to perform the job of health sanitarians, nor are we interested in duplicating or conflicting with Health Department findings. The common sense, referred to above, in reality would accrue to any and all regulatory agents’ ability to employ discretionary judgment in the determination of advisory or remedial application. To some extent we suspect that this item owes to equivocation or lack of precise communication between inspectors and auditors.

- *“Licensee infractions and violations were not defined. We were advised that infractions generally represent minor noncompliance with laws or rules (such as improper signage) while violations represent significant noncompliance, such as*

selling alcohol to persons under the age of 21; however, inspectors were left to apply their own criteria in evaluating noncompliance.”

This is a compound issue of communication. From a legal stand point there is little to no difference between the definitions of violation and infraction. Arguably there is a common sense difference in semantics, reflected in a general interpretation that infraction may be the lesser to violation. The Board takes strong exception to the positing of underage sales, short of misfeasance, every inspector knows this to be a violation immune to varying interpretations of noncompliance.²

- *“Current BLLC written procedures did not specify a timeline for any follow-up action for violations and infractions, with the exception of the lack of a trader’s license.”*

The Board agrees that a reasonable written catalogue with recommended guidelines should be established. The guidelines will define and include provision for the application of discretion. Historically, most violations found by the inspecting agents during the performance of routine inspections, are given 3 to 10 days to remediate. This should not be construed as implying that staff does not react immediately and aggressively to address matters of a criminal or public safety nature.

- *“Procedures did not require the periodic rotation of inspectors among districts within the City. Our interview of six inspectors disclosed that these inspectors had been assigned to their current districts for periods ranging from one to six years.”*

We agree, and shall require the supervisors of Inspection to implement and sustain with due diligence.

- *“Inspectors were not required to record the time the inspections were performed on the Inspector’s Reports.”*
- *“The frequency of conducting routine inspections for each licensee was not specified by Board policy (or by State law)...”*

We agree; however, it is important to note that adequate unit supervision must be established and consistently maintained.

² **Auditor’s Comment:** As stated by BLLC, we agree that the law contains no legal distinction between the terms “infraction” and “violation” for matters of non-compliance. The terms “infraction” and “violation” were used by BLLC staff to differentiate the seriousness of non-compliance with inspection requirements, laws, rules, and regulations. Given the common usage of these terms by BLLC staff and their correlation to enforcement decisions, the Board needs to define these terms and provide appropriate guidance in its policies.

Finding 9

BLLC lacked an automated method to monitor inspections performed, inspection outcomes, and related enforcement and disciplinary actions taken.

Recommendation 9

We recommend that BLLC

- a. establish an automated system for tracking inspections performed, inspection outcomes, and any related enforcement actions taken;**
- b. ensure this automated system includes all relevant information, such as the date and time of the inspection, the name of the inspector who performed the inspection, and violations noted on the Inspector's Report; and**
- c. develop reports using the system to allow BLLC management to monitor inspector performance and workloads.**

Liquor Board response:

The Board agrees with recommendations "a" through "c"; but, at this time we are entirely dependent upon City funding to achieve and implement the system described above. Given the current economic climate and the municipal government's policies, without alternative funding, the proposed automated system is not attainable in the foreseeable future.

Finding 10

BLLC did not assess its workload requirements and related staffing needs.

Recommendation 10

We recommend that BLLC develop workload requirements to carry out its regulatory responsibilities and meet its performance goals, and resize its inspection staff to efficiently meet those requirements.

Liquor Board response:

The Board agrees that the number of inspections per establishment should be consistent, with an established minimum, to be exceeded where specific need may be required. This is not to say that overall the number of inspections is deficient; however, we do recognize the substantial lack of performance uniformity in the comparison of inspectors/districts. The remedy for inspection execution demands consistent and improved oversight by the Chief and Assistant Chief Inspector.

The Board disagrees with the calculation that six full-time inspectors are sufficient. While we concur with the need for required uniform inspections, we believe the balance of this recommendation is mistaken. Through

nomenclature it is arguable that the primary function of the Inspection Division is to conduct routine inspections; therefore, it would appear reasonable to suggest that current staff numbers appear excessive. The foundation for this premise is flawed by failure to account for enhanced service demand. The Inspection Division must concurrently perform 311 complaint response duties, special operations and investigations, while maintaining routine inspection service.³

Over the last 25 years, the public's concern for service has evolved from mundane inspection issues [licensee's names displayed in two inch letters on an exterior door or window], to complex complaint resolution. The Inspection Division's primary function to minimize or eliminate the negative impact of an establishment upon its' immediate environment, cannot be further compromised.

This unit's ability to provide administrative assistance and backup, along with the expanded citizen service would be unacceptably diminished by further staff reduction. Please note, in March 2013, at the behest of municipal government, three full-time inspectors were laid-off.

Finding 11

BLLC did not properly monitor part-time inspectors and these inspectors did not perform all required inspections, although they were paid for them.

We recommend that BLLC

- a. implement a process to review all Part-Time Inspector's Reports and to ensure that part-time inspectors comply with contract requirements regarding the number of inspections to be conducted;**
- b. review previously completed Part-Time Inspector's Reports to determine if the inspectors conducted valid inspections, and if inspections are determined to be invalid, in consultation with legal counsel, take appropriate action; and**
- c. if its workload evaluation shows that 12 part-time inspectors are not needed, request that legislation be submitted to amend State law regarding the employment of part-time inspectors.**

³ **Auditor's Comment:** BLLC disagrees with the calculation that six full-time inspectors are sufficient and further states that the foundation for the premise that current staff numbers appear excessive is flawed by our failure to account for enhanced service demand. We disagree. The calculation of inspectors needed is based on BLLC's own written guidance, which states that "each full time inspector shall complete four routine inspections per day irrespective of other performed agency stops," and BLLC's reported intention to conduct 4,700 to 4,900 inspections per year. We did not include in our calculation the inspectors who primarily perform investigations.

Liquor Board response:

The Board agrees that part-time inspectors, like full-time inspectors need proper and responsible supervision. The Chief and Assistant Chief of Inspection shall directly review the previous performance of the part-time inspectors and submit their findings by June 1, 2013 to the Commission for determination of appropriate further action.

The existence of the part-time inspector slots has been predicated by the City's Senate delegation through State Law; therefore, any legislative proposals require their pre-approval.

Finding 12

Inspection Division supervisors did not document duties performed and did not account for completed Inspector's Reports.

Recommendation 12

We recommend that BLLC ensure that Inspection Division supervisors

- a. document the performance of their job duties, including the review and approval of Inspector's Reports; and**
- b. account for all completed Inspector's Reports and ensure that these Reports are filed in the applicable licensee files, in a timely manner, as required by BLLC's *Inspection Division Guidelines*.**

Liquor Board response:

The Board agrees with both recommendations, noting the essential requirement for improved skills, motivation and management by the Inspection Division supervisors.

Finding 13

BLLC often did not perform timely inspections to follow up on licensees without valid trader's licenses.

Recommendation 13

We recommend that BLLC comply with existing policy and conduct timely follow-up on all inspections where the lack of a valid trader's license was cited as an infraction.

Liquor Board response:

The Board agrees there must be consistency in executing present policy, from the inspectors and their supervisors, followed by monitoring and timely action from the Administrative Unit.

The issue of Trader's License compliance is complex at best. As previously addressed, the primary conflict of enforcement resides within the difference between the Liquor License and Trader's License policies subsequent to 1 May. While both licenses expire on 30 April, the enforcement for possession of a current [new] liquor license begins immediately and the Trader's License does not. Under the Clerk of the Court, the issuing bureau does not hold malingers in violation until sometime on or after 31 May. This is significant in that enforcement and revenue collection is deferred [out of sync with the Board's], resulting in the BLLC's incorrect inheritance of apparent error and consequence. This matter is further complicated by the absence of internal field enforcement from the issuing authority. Although we have responsibility per Rule 4.18 and seek no mitigation, we are not the agency of primary relevance in this matter, nor do we derive positive or direct benefit from this enforcement.

Finding 14

BLLC did not have written procedures regarding the 311 complaint investigations and resolution process, and BLLC often closed complaints in the 311 System prior to performing an investigation.

Recommendation 14

We recommend that BLLC

- a. develop and implement written procedures over the complaint investigation process, including the method for documenting these investigations; and**
- b. comply with the City's directive by not closing cases in the 311 System until the complaints are investigated and resolved.**

Liquor Board response:

The Board agrees, this entire function and its' management requires unbiased review and revision.

Finding 15

BLLC often did not resolve complaints properly and document that complaints were properly addressed.

Recommendation 15

- a. We recommend that BLLC investigate complaints timely and document the results,
- b. accurately record the investigation results in the System in a timely manner and retain the supporting documentation,
- c. use the 311 System's report capabilities to monitor complaint investigations and resolutions, and
- d. ensure complaints for non-licensed establishments are referred to other agencies for investigation and maintain the related referral documentation.

Liquor Board response:

We are in agreement that vast improvement is required within 45 days. The implementation of recommendations "a" through "d" has been previously inhibited by the administration's inability to successfully direct the 311 manager.

Finding 16

BLLC did not use available technology to investigate and resolve noise-related complaints.

Recommendation 16

We recommend that BLLC use available technology to investigate complaints related to loud noise and document the related findings.

Liquor Board response:

This is both correct and incorrect. The agency does have sound pressure meters, along with training and guidelines that were provided to special operations personnel. The Chief Inspector will be directed to review training and to provide a suitable program within 60 days. At present, we can only comply with upgraded and additional equipment as our operating budget will allow.

Finding 17

BLLC used alternatives to the Board hearing process to address violations and infractions and the Board had not formally approved these alternatives.

Recommendation 17

We recommend that BLLC

- a. obtain a formal Opinion from the Attorney General to determine if BLLC management has the legal authority to use alternative processes to address licensee violations and infractions;**
- b. formalize policies and procedures to comply with the legal Opinion and have them approved by the Board;**
- c. provide periodic reports of fines and fees assessed to licensees to the Board for informational purposes, if BLLC is determined to have this authority; and**
- d. document all decisions reached, including fines and fees assessed, and retain this documentation in the respective licensee files.**

Liquor Board response:

In the matters of recommendation for “a” through “d”, we agree to comply.

Finding 18

BLLC lacked written policies and procedures for the disciplinary process.

Recommendation 18

We recommend that the Board and BLLC develop and implement written policies and procedures to govern the disciplinary process that, at a minimum, address

- a. guidance on what constitutes an infraction and a violation,**
- b. the types of violations that should be presented to the Board for a hearing,**
- c. processes for notifying known interested parties of post-hearing actions,**
and
- d. an appropriate standard for conducting hearings timely.**

Liquor Board response:

The Board agrees with the essence and intent of these recommendations to commit policies and procedures to writing.

Recommendation 18a: This matter was addressed in **Finding #8**.

Recommendation 18b: We will formally annotate the distinctions between matters that require hearings. Any current absence of said written standards should not indicate that proper management and practice has not occurred. We do agree that by commitment to writing, the appearance or suggestion of question is eliminated.

Recommendation 18c: Our current practice duly notifies all legal parties pursuant to post hearing actions. Interested parties as written above, is vague and potentially cumbersome. Presently, we rely on the legal representatives (or case presenters for all sides) to notify their relevant members. The Board believes that subsequent notification is the absolute responsibility of said parties. While the notification of “interested parties” may be greater than incidental, it is not primary. The Board believes it impracticable to assume a role that relieves the responsibilities of those who are interested. Having so stated, we shall continue our practice of corresponding with known parties that have expressed an interest through written request. We agree to assign the aforementioned to writing.

Recommendation 18d: This recommendation presumes that our standard is inappropriate; yet, we are confident that we suitably adhere to “Maryland Rules”. Proceeding with specific and or arbitrary guidelines is an imposition likely to interfere with fundamental fairness through the inhibition of a hearing officer’s case by case application of discretion. At this time, the Board is compelled to disagree with this recommendation.⁴

Finding 19

BLLC did not monitor closed establishments to determine whether the alcoholic beverage licenses had expired in accordance with State law.

Recommendation 19

We recommend

- a. that BLLC develop a process to monitor licensed establishments that have closed or ceased active alcoholic beverage operations,**
- b. that BLLC notify the Board of licensed establishments that have been closed for more than 180 days for appropriate action, and**

⁴ **Auditor’s Comment:** BLLC disagrees with the recommendation because BLLC believes the recommendation presumes that its informal standard is inappropriate. The finding and recommendation did not intend to imply that the current informal standard for conducting hearings was inappropriate. Rather, the intent of the recommendation is that the Board should formalize, in written policy, a standard that it deems appropriate for conducting timely hearings (such as the 180 days it informally uses).

- c. that the Board discontinue granting additional hardship extensions beyond that permitted by law.

Liquor Board response:

The Board agrees with, and currently practices the recommendations “a” and “b”. The most frequent and relied upon source that an establishment is closed is the Inspection Division. The proposed and expected diligence in the performance of their duties shall enable the administration to more efficiently address the issue of vacated alcohol businesses.

Recommendation 19c: Here again is the matter of interpretation clashing with the principle of discretion. The Board disagrees with the premise of this recommendation, and shall continue to rely upon balanced judgment, case law and appellate review, until instructed to do otherwise by an appropriate legal authority.⁵

Finding 20

Certain Board hearing practices may not comply with the Open Meetings Act.

Recommendation 20

We recommend that BLLC

- a. obtain written advice from the Office of the Attorney General over what Board hearing actions are subject to the minutes provisions of the Open Meetings Act, and
- b. properly document Board hearings based on the advice obtained from the Office of the Attorney General.

Liquor Board response:

The Board is in receipt of O.A.G. guidelines for the proper conductance of open meetings. We believe that we have conformed to these prescriptions; but, shall redouble our efforts to ensure doing so.

⁵ **Auditor’s Comment:** BLLC disagrees with the recommendation and indicates it shall continue to rely on balanced judgment, case law, and appellate review until instructed to do otherwise by an appropriate legal authority. State law [Section 10-504(d) of Article 2B] states that a license expires by operation of law after a closure of more than 180 days unless an application for approval of a transfer to another location or to another person has been approved or is pending. The law further states that a licensee may apply for a hardship extension of 180 days within the initial 180 day period, but that all licenses expire by operation of law after a period of 360 days from the date of closure, even when a request for hardship extension has been granted. If BLLC wishes to continue its current practices, it should obtain formal independent legal advice to support its practices.

Finding 21

BLLC had not implemented management practices to effectively oversee and manage the agency's functions.

Recommendation 21

We recommend that BLLC

- a. develop procedures and tools that provide summary and status information on all BLLC operations that would allow BLLC management to effectively oversee agency operations and ensure that resources are used in the most efficient and effective manner, and**
- b. ensure that data recorded in its systems that are used to generate management reports are accurate and reliable.**

Liquor Board response:

We agree with both recommendations, having specifically addressed them and fiscal realities in preceding findings.

Finding 22

Financial disclosure forms were not filed as required.

Recommendation 22

We recommend that BLLC

- a. ensure that Board members and employees file annual financial disclosure forms as required by the Baltimore City Code, and**
- b. establish a formal process to identify potential conflicts regarding interests in the alcohol beverage industry.**

Liquor Board response:

Recommendation 22a: The Board agrees that all employees must file the financial disclosure form as required by the City of Baltimore.

Re commendation22b: For the forms due April 30, 2013, employees either must submit their forms through the Liquor Board or must present a receipt or acknowledgement from the Ethics Board that their form has been filed.

Finding 23

BLLC did not document formal evaluations of employee performance on a routine basis as required.

Recommendation 23

We recommend that management adhere to Baltimore City policy and provide formal written evaluations for each employee in accordance with that policy.

Liquor Board response:

The Board accepts this finding and shall conform, beginning the evaluation process on or about 1 July, 2013.

Finding 24

Proper internal controls were not established over payroll processing and payroll testing disclosed various problems.

Recommendation 24

We recommend that BLLC

- a. ensure employees record time in accordance with the Letter of Understanding and discontinue recording time for other employees;**
- b. institute proper internal controls over payroll, including the review and approval of all time records by supervisory personnel and an adequate separation of payroll processing duties; and**
- c. modify users' system access capabilities consistent with assigned payroll processing duties, and require appropriate user IDs and passwords for employees responsible for processing and approving payroll information.**

Liquor Board response:

Recommendation 24(a): The Board agrees that employees should not be recording work time for another employee. Where an employee is recording a phone call for sick or personal leave, the employee should initial the entry. The only personnel who should record work time for any employee are the supervisors and they must initial their entries. Exceptions to this practice would have to be exigent and subject to review, or with proper approval.

As Executive Secretary, I must affirm with all due respect, the sole purpose and relevance of the L.O.U. agreement is to have 311 personnel, who work seven straight evenings per shift, attain conformance with the federal Fair Labor Standards Act. This instrument was designed in a manner that neither compromised those workers nor the 311 service. The formation and execution

of the Letter of Understanding was achieved with the profound assistance of the Labor Commissioner. Having spent months in the evolution of this document, it is incomprehensible how its' specificity of address would suffer such expansive interpretation and application. ⁶

Recommendation 24(b): A supervisor will review all payroll sign in sheets and where possible, there will be separation of payroll processing duties. Again, in a small agency where there are only three employees authorized to process payroll, this is not always going to be possible.

Recommendation 24(c): An additional person has now been trained in how to record payroll and the supervisory personnel who have the authority to approve and sign off payroll each now has his/her own sign on and password.

⁶ **Auditor's Comment:** While agreeing that employees should not be recording work time for other employees, BLLC indicates that the Letter of Understanding (LOU) with the City of Baltimore applies only to a limited number of its employees. However, an amended LOU was adopted in April 2010 which applies to all BLLC staff to comply with state and federal law and best work practices. The amended LOU states that "All Liquor Board employees (excluding part-time employees, appeals counsel and Commissioners) will be required to sign-in / sign-out on a Daily Log Sheet." It further states that "...the Chief Liquor Board Inspector or his / her Assistant will review and sign as accurate the Daily Log Sheet at the close of each business day."

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