

*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, Massachusetts 02150-2358*

**Jean M. Lorizio, Esq.**  
*Chairman*

**NOTICE OF SUSPENSION**

June 16, 2021

**JAJB INC. D/B/A TAVERN IN THE SQUARE-ALLSTON  
161-165 BRIGHTON AVENUE  
BOSTON (ALLSTON), MA 02134  
LICENSE#: 00139-RS-0116  
VIOLATION DATE: 11/21/2020  
HEARD: 1/19/2021**

After a hearing on January 19, 2021, the Commission finds JAJB Inc. d/b/a Tavern in the Square-Allston violated:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 37 (June 6, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 40 (June 19, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Violation of Massachusetts Executive COVID-19 Order No. 54 (Nov. 2, 2020);
- 4) 204 CMR 2.05(2)- Permitting an illegality on the licensed premises, to wit: Massachusetts Executive COVID- 19 Order No. 55 (Nov. 2, 2020) – Patron or employee failing to wear a mask or cloth face covering over their mouth and nose when in a public location;
- 5) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Ch. 138 § 34C - Possession of an alcoholic beverage by a person under twenty-one (21) years of age (6 Counts).

On the first - fourth violations, 204 CMR 2.05 (2): Massachusetts Executive COVID-19 Order No. 37, No. 40, No. 54 and No. 55, the Commission **SUSPENDS** the license of JAJB Inc. d/b/a Tavern in the Square-Allston **for a period of seven (7) days to be served.**

On the fifth violation, 204 CMR 2.05 (2): M.G.L. Ch. 138, § 34C (6 Counts), the Commission **SUSPENDS** the license **for a period of seven (7) days to be served. This suspension shall be served concurrently with the one above.**

By decision dated April 16, 2019, the Commission had previously ordered a four (4) day license suspension, with two (2) days to be served and two (2) days to be held in abeyance for a period of two (2) years provided no further violations occurred. Based on the violations found above, the Commission, in its discretion, hereby orders that 2-day suspension to be served on and after the 7-day suspension. The Licensee will serve a total of nine (9) days.

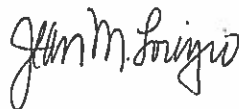
No Offer In Compromise will be considered for seven (7) of the nine (9) days to be served.

The suspension shall commence on Monday, August 2, 2021 and terminate on Tuesday, August 10, 2021. The license will be delivered to the Local Licensing Board or its designee on Monday, August 2, 2021 at 9:00 A.M. It will be returned to the Licensee on August 11, 2021.

You are advised that pursuant to the provisions of M.G.L. c.138 § 23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form which must be signed by the Licensee and a Massachusetts Licensed Accountant.

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

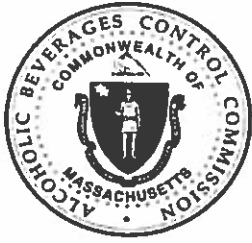
#### ALCOHOLIC BEVERAGES CONTROL COMMISSION



Jean M. Lorizio  
Chairman

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Questo documento è importante e dovrebbe essere tradotto immediatamente.  
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.  
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Kyle E. Gill, Esq., Associate General Counsel  
Christopher Temple, Investigator  
Dennis Keefe, Investigator  
Michael Flanagan, Dept. of Labor Standards  
Administration, File



*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, Massachusetts 02150-2358*

**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**JAJB INC. D/B/A TAVERN IN THE SQUARE-ALLSTON  
161-165 BRIGHTON AVENUE  
BOSTON (ALLSTON), MA 02134  
LICENSE#: 00139-RS-0116  
VIOLATION DATE: 11/21/2020  
HEARD: 1/19/2021**

JAJB Inc. d/b/a Tavern in the Square-Allston (the "Licensee") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, January 19, 2021, regarding alleged violations of:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 37 (June 6, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 40 (June 19, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Violation of Massachusetts Executive COVID-19 Order No. 54 (Nov. 2, 2020);
- 4) 204 CMR 2.05(2)- Permitting an illegality on the licensed premises, to wit: Massachusetts Executive COVID- 19 Order No. 55 (Nov. 2, 2020) – Patron or employee failing to wear a mask or cloth face covering over their mouth and nose when in a public location;
- 5) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Ch. 138 § 34C - Possession of an alcoholic beverage by a person under twenty-one (21) years of age (6 Counts).

The above-captioned occurred November 21, 2020 according to Investigator Temple's report.

The following documents are in evidence:

1. Investigator Temple's Report;
2. ABCC Form 43 License Transfer Approval, 3/15/2010;
3. Massachusetts Executive COVID-19 Order No. 37, 6/6/2020;
4. Massachusetts Executive COVID-19 Order No. 40, 6/19/2020;
5. Massachusetts Executive COVID-19 Order No. 54, 11/2/2020;
6. Massachusetts Executive COVID-19 Order No. 55, 11/2/2020;
7. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 11/5/2020;
8. ABCC Enforcement Memorandum, 12/18/2020;
9. Photograph of Pennsylvania Driver's License;
10. ABCC Decision, 6/12/2012;
11. ABCC Decision, 4/16/2019.

There is one (1) audio recording of this hearing.

#### FINDINGS OF FACT

1. On Saturday, November 21, 2020, at approximately 9:45 p.m., Investigators Keefe and Temple ("Investigators") conducted an investigation of JAJB Inc. d/b/a Tavern in the Square-Allston to determine the manner in which its business was being conducted, and to ensure compliance with Massachusetts Governor Charles Baker's Executive COVID-19 Orders. (Testimony, Exhibit 1)
2. Investigators entered the licensed premise and their attention was immediately drawn to a table of nine (9) youthful appearing female individuals, many of whom were in possession of alcoholic beverages. The table had eight chairs. Investigators observed that two or three of the female individuals were standing at the table with no facial coverings. Id.
3. Investigators identified themselves and requested to see proof of legal age. Of the nine (9) females, eight were under the age of 21. Two of the underage patrons stated they had not consumed any alcoholic beverages. Id.
4. Underage #1, actual date of birth 1/21/2001 (age 19), informed Investigators she was not asked to produce identification when she ordered a Downeast Hard Cider. Underage #1 stated that none of the patrons at her table were asked for identification. Id.
5. Underage #2, actual date of birth 8/29/2002 (age 19), was in possession of a Party Girl Punch mixed drink<sup>1</sup>. She had been at another table before joining the group observed by Investigators. Underage #2 informed Investigators she was not asked to produce identification when she ordered the alcoholic beverage while at the other table. Id.

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<sup>1</sup> The Licensee's website indicates that Party Girl Punch consists of Red Berry vodka, Cruzan Strawberry rum, raspberry liqueur, lemon juice, simple syrup, sparking elderflower lemonade, and fresh berries.

6. Underage #3, actual date of birth 4/13/2001 (age 19) informed Investigators she was not asked to produce identification when she ordered two Downcast Hard Ciders and a Bud Light beer. Id.
7. Underage #4, actual date of birth, 8/28/2001 (age 19), was in possession of a Long Island Iced Tea mixed drink. She provided to Investigators a Pennsylvania driver's license belonging to another person. Investigators determined Underage #3 did not resemble the person pictured on the identification she presented. (Testimony, Exhibits 1, 9)
8. Underage #5, actual date of birth 11/27/2000 (age 19), informed Investigators she was not asked to produce identification when she ordered an Angry Orchard Hard Cider. (Testimony, Exhibit 1)
9. Underage #6, actual date of birth 11/6/2001 (age 19), was in possession of a Party Girl Punch mixed drink. She informed Investigators she was not asked to produce identification when she ordered an alcoholic beverage. She informed Investigators she had been sitting at a different table with Underage #2 when she ordered and was served the alcoholic beverage. Id.
10. Investigators spoke to the server for the table of nine (9), Kelsey. Kelsey initially stated she had requested identifications from the nine (9) patrons but looked at them again and explained there had been a different group of patrons at the table earlier but some from another table joined and she was uncertain if she had requested identification from those who subsequently joined the table. Id.
11. Investigators spoke to the manager, Chris McGee about the underage patron, and reviewed the COVID-19 guidelines and Sector Specific Safety Standards for Restaurants with him. Id.
12. Mr. McGee informed Investigators the female patrons were moving amongst different tables making it was difficult to manage them. Id.
13. Investigators advised Mr. McGee of the violations and that a report would be filed with the Chief Investigator for review. Id.
14. Maxwell Rosen, Licensee, appeared at the Commission hearing and testified that staff are trained to request identification from every patron. He stated all patrons at the table of nine (9) had produced identification. Mr. Rosen explained patrons were moving about as they were in the process of exiting. He testified staff are trained to make sure people remain seated. Mr. Rosen closed his testimony by stating he was before the Commission with no defense and informed the Commission the licensed premises had been closed as of Thanksgiving Day and hope to reopen in the future. (Testimony)
15. The Licensee has held a license under M.G.L. c. 138, § 12 since 2010 with two prior violations. (Exhibits 2, 10, 11)

## DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in Massachusetts General Laws, Chapter 138.

Chapter 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was “enacted ... to serve the public need and ... to protect the common good.” M.G.L. c. 138, § 23. “[T]he purpose of discipline is not retribution, but the protection of the public.” Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981). The Commission is given “comprehensive powers of supervision over licensees.” Connolly, 334 Mass. at 617.

The Licensee is charged with a violation of 204 CMR 2.05 (2). “No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises.” 204 CMR 2.05 (2). More specifically the Licensee is charged with permitting an illegality on the licensed premises, to wit:

Massachusetts Executive COVID-19 Order No. 37 (June 6, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;

Massachusetts Executive COVID-19 Order No. 40 (June 19, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;

Violation of Massachusetts Executive COVID-19 Order No. 54 (November 2, 2020); and

Violation of Massachusetts Executive COVID-19 Order No. 55 (November 2, 2020).

The Executive COVID-19 Orders require adherence to all Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (November 5, 2020) including:

All customers must be seated;

Requiring face coverings for all customers and workers at all times, except where an individual is unable to wear a face covering due to medical condition or disability.

Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (November 5, 2020)

The Licensee is also charged with a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: Chapter 138, § 34C- Possession of an alcoholic beverage by a person under twenty-one (21) years of age (6 counts).

Massachusetts General Laws, Chapter 138, § 34C states, in pertinent part, that: “Whoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses any alcohol or alcoholic beverages, shall be punished.” M.G.L. c. 138, § 34C.

A Commission regulation promulgated at 204 CMR 2.05(2) provides in pertinent part, that “[n]o licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not.” The law is well-settled that,

under the regulation [204 C.M.R. 2.05(2)], the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is “bound at his own peril to keep within the condition of his license.” Commonwealth v. Gould, 158 Mass. 499, 507 (1893); Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm’n, 11 Mass. App. Ct. 785, 788 (1981). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter.

Rico’s of the Berkshires, Inc. v. Alcoholic Beverages Control Comm’n, 19 Mass. App. Ct. 1026, 1027 (1985). A licensee is responsible for illegalities that occur on the licensed premises. See id.

Direct evidence was presented through the testimony of Investigator Keefe as to patrons without any facial coverings standing within the licensed premises, as well as patrons under the age of 21 in possession of alcoholic beverages on the licensed premises.

The Licensee did not dispute the Investigator’s allegations but asserted that all patrons had produced identification.

A Massachusetts driver’s license which purports to show that a patron is 21 years of age or older is not an affirmative defense available for the statutory violation of permitting an illegality of a minor in possession of alcoholic beverages pursuant to Section 34C. Massachusetts General Laws, Chapter 138, § 34B offers protection from license suspension or revocation or criminal penalties to license holders who reasonably rely on one of four (4) pieces of identification specified in the statute, including a valid Massachusetts driver’s license, Massachusetts liquor identification card, Massachusetts identification card, a United States passport, or a passport issued by the government – recognized by the United States – of a foreign country, a passport card for a U.S. passport, or a valid U.S. military identification card. See M.G.L. c. 138, § 34B. Section 34B refers only to the activities of delivery and sale, and it omits any reference to the act of, possession. See id. Consequently, Section 34B offers no relief from liability for allowing possession of alcoholic beverages in violation of Section 34C.

The Commission is persuaded by the evidence that patrons without any facial coverings were standing within the licensed premises, and patrons under the age of 21 years were in possession of alcoholic beverages on the licensed premises.

The Commission is persuaded by the evidence that violations of 204 CMR 2.05(2), to wit: Massachusetts Executive Orders 37, 40, 57, and 58, and M.G.L. c. 138, § 34C- Possession of an alcoholic beverage by a person under 21 years of age (6 counts) did occur.

## CONCLUSION

Based on the evidence, the Commission finds the Licensee violated:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 37 (June 6, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
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- 5) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Ch. 138 § 34C - Possession of an alcoholic beverage by a person under twenty-one (21) years of age (6 Counts).

On the first - fourth violations, 204 CMR 2.05 (2): Massachusetts Executive COVID-19 Order No. 37, No. 40, No. 54, and No. 55, the Commission **SUSPENDS** the license of JAJB Inc. d/b/a Tavern in the Square-Allston for a period of seven (7) days to be served.

On the fifth violation, 204 CMR 2.05 (2): M.G.L. Ch. 138, § 34C (6 Counts), the Commission **SUSPENDS** the license for a period of seven (7) days to be served. This suspension shall be served concurrently with the one above.

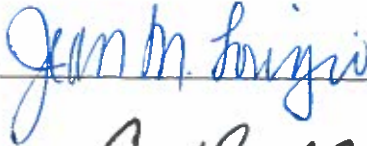
By decision dated April 16, 2019, the Commission had previously ordered a four (4) day license suspension, with two (2) days to be served and two (2) days to be held in abeyance for a period of two (2) years provided no further violations occurred. Based on the violations found above, the Commission, in its discretion, hereby orders that 2-day suspension to be served on and after the 7-day suspension. The Licensee will serve a total of nine (9) days.

No Offer In Compromise will be considered for seven (7) of the nine (9) days to be served.

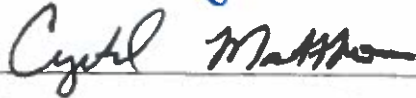


ALCOHOLIC BEVERAGES CONTROL COMMISSION

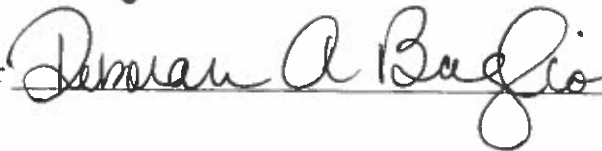
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: June 16, 2021

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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