



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

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

May 3, 2021

**OLD COLONIAL CORP. D/B/A BELL IN HAND TAVERN
45-55 UNION STREET
BOSTON, MA 02108
LICENSE#: 00781-RS-0116
VIOLATION DATE: 10/03/2020
HEARD: 11/10/2020**

After a hearing on November 10, 2020, the Commission finds Old Colonial Corp. d/b/a Bell in Hand Tavern violated:

- 1) 204 CMR 2.05 (2) 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;
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive 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. 46 (August 7, 2020).

Therefore, the Commission **SUSPENDS** the license of Old Colonial Corp. d/b/a Bell in Hand Tavern for a period of six (6) days, effective forthwith.

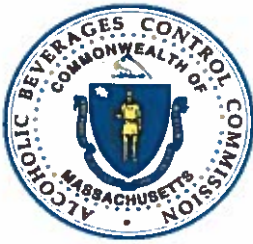
You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio
Chairman

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Questo documento è importante e dovrebbe essere tradotto immediatamente.
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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
Katelyn Quinn, Investigator
Brian Gould, Investigator
Dennis Keefe, Investigator
Michael Flanagan, Dept. of Labor Standards
Edward W. Krippendorf, Jr., Esq.
Administration, File



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DECISION

**OLD COLONIAL CORP. D/B/A BELL IN THE HAND TAVERN
45-55 UNION STREET
BOSTON, MA 02108
LICENSE#: 00781-RS-0116
VIOLATION DATE: 10/03/2020
HEARD: 11/10/2020**

Old Colonial Corp. d/b/a Bell in Hand Tavern (the "Licensee" or "Bell in Hand Tavern") holds an 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, November 10, 2020, regarding alleged violations of:

- 1) 204 CMR 2.05 (2) 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;
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 40 (June 19, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19; and
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Violation of Massachusetts Executive COVID-19 Order No. 46 (August 7, 2020).

Prior to the commencement of the hearing, the Licensee stipulated to the facts alleged in Investigator Quinn's Report.

The following documents are in evidence:

1. Investigator Quinn's Report;
2. Licensee Stipulation of Facts;
3. Copy of License Transfer Approval, 11/2/1982;
4. Change of Manager/Alteration of Premises Application Approval 9/17/2019;
5. Investigator Quinn's Photographs of Licensed Premises, 10/3/2020;
6. ABCC Decision, 2/3/2016;
7. ABCC Decision, 5/16/2014;
8. ABCC Decision, 12/20/1994;

9. ABCC Decision, 5/12/1994;
 10. Massachusetts Executive COVID-19 Order No. 37, 6/6/2020;
 11. Massachusetts Executive COVID-19 Order No. 40, 6/19/2020;
 12. Massachusetts Executive COVID-19 Order No. 46, 8/7/2020;
 13. Massachusetts Specific Workplace Safety Standards for Restaurants to Address COVID-19, 9/22/2020;
 14. ABCC Enforcement Memorandum, 10/26/2020.
- A. Licensee's COVID-19 Control Plan;
 - B. Photographs (7) of Signage inside Licensed Premises;
 - C. Photographs (5) of Interior of Licensed Premises with Reconfigured Seating;
 - D. Licensee's Submission to Department of Labor Standards with COVID-19 Control Plan, Checklist & Attachments, 11/4/2020.

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

FINDINGS OF FACT

1. On Saturday, October 3, 2020, Investigators Gould, Keefe, and Quinn along with Chief Investigator Mahony ("Investigators") conducted an investigation of Old Colonial Corp. d/b/a Bell in Hand Tavern 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. At approximately 11:50 p.m., while in her motor vehicle, Investigator Quinn observed activity at the Bell in Hand Tavern. She observed through the windows of the establishment that the premises appeared full of patrons, with some patrons walking around. Id.
3. At approximately 11:54 p.m., Investigator Quinn observed two male individuals inside the premises hugging, standing, and socializing with no facial coverings. Investigator Quinn took photographs of this incident which she shared with Chief Mahony. Id.
4. Investigator Quinn was joined by Investigators who were already on-foot conducting observations of §12 licensees in the Faneuil Hall area and the group continued making observations directly outside the licensed premises. Id.
5. Investigators observed staff members checking identifications at the door. At approximately 11:58 p.m., Investigators entered the premises and were approached by an employee, who wore no facial covering and asked if they wanted a table. Investigators identified themselves to the employee and advised him to put on a facial covering, which he did immediately. Id.
6. Once inside the premises, Investigators observed patrons in close proximity to one another, with no facial coverings standing and walking about. Id.
7. Investigators observed staff members instructing patrons to sit down and put on facial coverings. Some patrons did sit and cover up, while others did not and continued moving about the premises. Id.

8. Investigators informed the manager on duty of the violations and that a report would be submitted to the Chief Investigator for review. *Id.*
9. Adam Kessler, Manager, appeared at the Commission hearing and testified as to the Licensee's extensive effort to comply with all COVID Orders, including, among other things, hiring a consultant to assist in developing a COVID Control Plan, formulating new policies and procedure which were discussed weekly with staff, adding signage within the licensed premise regarding COVID Safety Standards and reducing the number of tables in the establishment. Their policies include a requirement for patrons to wear facial coverings. (Testimony, Exhibits A & B)
10. Mr. Kessler further testified the employee who opened the door for Investigators was a doorman who had been sitting eating his dinner when he noticed people approaching the door. He got up to open the door and forgot to put his mask on. This employee was initially suspended and has since been terminated as Mr. Kessler explained employees are required to wear a mask at all times. (Testimony)
11. Hector Huertas, a manager at the establishment, attended the Commission hearing and testified as to the events of October 3, 2020. Prior to the Investigator's visit, Mr. Huertas had observed the two male patrons whom Investigator Quinn observed hugging. At that time, he asked them to sit down and put on their masks and informed them they must remain seated. He stated they complied. *Id.*
12. Mr. Huertas confirmed it was the doorman who approached Investigators without a mask. Mr. Huertas was the manager who informed the doorman that his failure to wear a mask was unacceptable and that he was being suspended for such behavior. *Id.*
13. Mark McHugh, another manager at the licensed premise, testified at the Commission hearing that he was working on the night of the Investigator's visit. He stated he was informed the Investigators were at the establishment and he spoke with them outside. Mr. McHugh was wearing a mask while interacting with Investigators. *Id.*
14. Beorn Brueckner, also a manager at the licensed premises, appeared at the Commission hearing and testified he was working on the night of October 3, 2020 and began his shift as a manager but ended-up filling in for a bartender. He stated part of his duties as bartender was to inform patrons, once seated, of the requirement to remain seated and to wear masks when going to and from the restroom. He testified that he did not observe any patrons or employees without a mask. Mr. Brueckner testified tables are spaced out with 6 feet of distance between them and there is no dance floor in the establishment and no dancing allowed. *Id.*
15. The Licensee has held a license under M.G.L. c. 138, § 12 since 1982.

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; and

Violation of Massachusetts Executive COVID-19 Order No. 46 (August 7, 2020);

The Executive COVID-19 Orders require adherence to all Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (September 22, 2020) including:

Require 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;

Customers must wear face coverings unless seated at tables;

All customers must be seated;

Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (September 22, 2020)

Direct evidence was presented through the testimony of Investigator Quinn, and corroborated by the Licensee, as to patrons and an employee on the licensed premises without any facial coverings and patrons standing within the licensed premises.

The Commission is persuaded by the evidence that a violation of 204 CMR 2.05(2) to wit Massachusetts Executive COVID-19 Orders 37, 40 and 46 did occur.

CONCLUSION

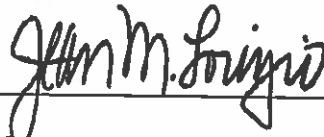
Based on the evidence, the Commission finds the Licensee violated:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive 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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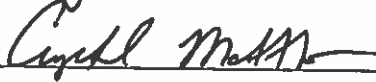
Therefore, the Commission **SUSPENDS** the license of Old Colonial Corp. d/b/a Bell in Hand Tavern for a period of six (6) days, effective forthwith.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: May 3, 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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