



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**TAMWORTH SALOON LLC D/B/A THE TAM
222 TREMONT STREET
BOSTON, MA 02116
LICENSE#: 04452-GP-0116
VIOLATION DATE: 8/27/2020
HEARD: 9/23/2020**

Tamworth Saloon LLC d/b/a The Tam ("Licensee") holds an alcoholic beverages license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a hearing on Wednesday, September 23, 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;
- 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).

The above-captioned occurred August 27, 2020 according to Investigator Smith's Report.

The following documents are in evidence:

1. Investigator Smith's Report;
2. Copy of License Transfer Application Approval, 10/31/2018;
3. Massachusetts Executive COVID-19 Order No. 37;
4. Massachusetts Executive COVID-19 Order No. 40;
5. Massachusetts Executive COVID-19 Order No. 46;
6. Massachusetts COVID-19 Sector Specific Workplace Safety Standards, 8/10/2020;
7. ABCC Enforcement Memorandum, 9/22/2020.

A. Licensee's Common Victualler License, 7/13/2020.

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

FINDINGS OF FACT

1. On Thursday, August 27, 2020, at approximately 11:00 p.m., Investigators Teehan and Smith (“Investigators”) conducted an investigation of Tamworth Saloon LLC d/b/a The Tam (“Licensee”) 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 premises and observed all tables were occupied, patrons were consuming alcoholic beverages and there were bowls of popcorn on each table. The sector specific workplace standards state that, “alcoholic beverages may only be served for on-site consumption if accompanied by food prepared on-site. For each customer, an item of food must be ordered at the same time as the initial alcoholic beverage.” Id.
3. Investigators spoke to the manager, Jean Mehler, outside of the establishment and informed her of their observations. Ms. Mehler stated to Investigators that the establishment did not have a kitchen on the premises, and they were providing customers with free popcorn. Id.
4. Ms. Mehler stated to Investigators that the owner had recently obtained a food permit. Id.
5. Investigators advised Ms. Mehler of the violations and advised her that a report would be filed with the Chief Investigator for further review. Id.
6. Brian O’Donnell, General Manager for the Licensee, appeared at the Commission hearing and testified. (Testimony)
7. The Licensee obtained a Common Victualler License from the City of Boston which issued on July 13, 2020. As the holder of a license to serve food, the establishment has undergone 3 successful health inspections. (Testimony, Exhibit A)
8. The Licensee provided each patron with complimentary gourmet popcorn which was prepared and seasoned on-site. Each patron was given approximately 1 liter of popcorn with their initial order of an alcoholic beverage. The Licensee also offered sandwiches for purchase, with said sandwiches made daily on-site, or every other day, depending on demand. Table tents were on each table listing the sandwich offerings and their ingredients. (Testimony)
9. The Licensee has held a license under M.G.L. c. 138, § 12 since 2018 with no prior violations. (Exhibit 2, Commission Records)

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).

Pursuant to the Executive COVID-19 Orders and the Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, “[a]lcoholic beverages may only be served for on-site consumption if accompanied by food prepared on-site. Potato chips, pretzels, and other pre-packaged shelf stable foods, or other food prepared off-site, do not constitute food “prepared on-site.” For each customer, an item of food must be ordered at the same time as an initial alcoholic beverage(s) order. One or more shareable food item(s) may be ordered, as long as it/they would sufficiently serve the number of people at the table.” Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, August 10, 2020.

Direct evidence, through the testimony of the Licensee, was given as to food being prepared on-site and provided to each customer with the first order of an alcoholic beverage. The presence of food on every table was corroborated by the testimony of the Investigator.

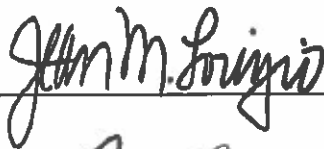
The Commission is persuaded that all patrons inside the licensed premises had been seated and served alcohol in conjunction with food service. As such, the Commission finds NO VIOLATION of 204 CMR 2.05(2) to wit Massachusetts Executive Orders 37, 40 and 46 occurred.

CONCLUSION

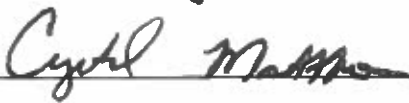
Based on the evidence, the Commission finds that NO VIOLATION of 204 CMR 2.05(2) to wit: Massachusetts Executive Orders 37, 40, and 46 occurred.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: February 5, 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.

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
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
Nicole Smith, Investigator
Michael Teehan, Investigator
Michael Flanagan, Dept. of Labor Standards
Michael Ford, Esq.
Administration, File