



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

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

**NOTICE OF INDEFINITE SUSPENSION**

February 5, 2021

**TOM ENGLISH COTTAGE INC. D/B/A TOM ENGLISH'S TAVERN  
112-118 EMERSON STREET  
BOSTON, MA 02127  
LICENSE#: 00343-RS-0116  
VIOLATION DATE: 12/11/2020  
HEARD: 1/13/2021**

After a hearing on January 13, 2021, the Commission finds Tom English Cottage Inc. d/b/a Tom English's 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: Mass. Exec. COVID-19 Order No. 54 (Nov. 2, 2020).

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Tom English Cottage Inc. d/b/a Tom English's Tavern **effective forthwith** until further written order of the Commission.

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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Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.  
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cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Kyle E. Gill, Esq., Associate General Counsel  
Dennis Keefe, Investigator  
Robert Gardner, Investigator  
Nicholas Velez, Investigator  
Michael Flanagan, Dept. of Labor Standards  
Curt Bletzer, Esq.  
Administration, File



*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
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*Chairman*

**DECISION**

**TOM ENGLISH COTTAGE INC. D/B/A TOM ENGLISH'S TAVERN  
112-118 EMERSON STREET  
BOSTON, MA 02127  
LICENSE#: 00343-RS-0116  
VIOLATION DATE: 12/11/2020  
HEARD: 1/13/2021**

Tom English Cottage Inc. d/b/a Tom English's Tavern (the "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 remote hearing via Microsoft Teams on Wednesday, January 13, 2021, 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: Mass. Exec. COVID-19 Order No. 54 (November 2, 2020).

The above-captioned occurred on December 11, 2020, according to Investigator Keefe's Report.

The following documents are in evidence:

1. Investigator Keefe's Report;
2. Copy of New License Approval, 12/18/1962;
3. Photograph of Front of the Licensed Premises;
4. Massachusetts Executive COVID-19 Order No. 37;
5. Massachusetts Executive COVID-19 Order No. 40;
6. Massachusetts Executive COVID-19 Order No. 54;
7. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 11/5/2020;
8. ABCC Enforcement Memorandum, 1/12/2021.

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

### FINDINGS OF FACT

1. On Friday, December 11, 2020, at approximately 9:45 p.m., Investigators Gardner, Velez, and Keefe ("Investigators") with Chief Investigator Mahony, conducted an investigation of Tom English Cottage Inc. d/b/a Tom English's 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. From outside the licensed premise, Investigators observed that the establishment was still busy, with a crowd of individuals inside. Investigators observed individuals, without any facial coverings, walking throughout the establishment. Id.
3. At approximately 10:00 p.m., Investigators observed approximately 25 – 30 individuals still inside the licensed premises. Id.
4. Investigator Keefe observed four patrons, without facial coverings, standing in close proximity to one another. A patron near the front window, was also not wearing any facial covering. Id.
5. At approximately 10:02 p.m., Investigator Keefe observed a bartender with his facial covering resting below his chin. Id.
6. At approximately 10:15 p.m., after observing some but not all patrons exit the establishment, Investigators entered the licensed premises and observed approximately eight (8) patrons still inside the establishment consuming alcoholic beverages. Some of these individuals were seated, some were standing at the bar, and none of the patrons wore facial coverings. Id.
7. Investigators informed the bartender, Mike, of their observations and reviewed the Sector Specific Safety Standards for Restaurants and COVID-19 Order 54 with him, specifically advising him of the requirement that all patrons must exit the premises before 10:00 p.m. Id.
8. Attorney Curt Bletzer appeared at the Commission hearing on behalf of the Licensee and acknowledged problems arose at the end of the night as patrons said goodbye, and managing the timely exit of all patrons by 10:00 p.m. The Licensee now turns the lights up at 9:00 p.m. and ensures all patrons are off the premise by 9:40 p.m.
9. The Licensee has held a license under M.G.L. c. 138, § 12 since 1962 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. 54 (Nov. 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:

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;

Restaurants must be closed to the public by 9:30 pm and may not re-open to the public before 5:00 am the following day (“mandatory closing period”);

During mandatory closing period, restaurants must not admit any customers, patrons, or members of the public, except for the limited purposes of take-out dining, and may not provide in-person, on-premise service or consumption. Table service customers seated before the start of the mandatory closing period may remain at the table to finish any food and beverages that have been ordered and served to them before 9:30pm, but they must exit the premises by 10pm at the latest.

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

Direct evidence was offered, through the testimony of Investigator Keefe, that numerous patrons were not wearing facial coverings while walking in the establishment and standing in close proximity to one another, the bartender was without a facial covering, and patrons were on the

licensed premises after 10 p.m. consuming alcoholic beverages. The Licensee acknowledged violations occurred.

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 54 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;
- 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: Mass. Exec. COVID-19 Order No. 54 (November 2, 2020).

The Commission hereby **INDEFINITELY SUSPENDS** the license of Tom English Cottage Inc. d/b/a Tom English's Tavern **effective forthwith** until further written order of the Commission.

The Commission will not issue any further order without a written request from the licensee showing good cause to reconsider this indefinite suspension.

Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspension will include, but not be limited to the Licensee receives approval from the Massachusetts Department of Labor Standards ("DLS") as to a reopening plan. The Licensee must submit to the DLS a COVID Control Plan to reopen (see link here: <https://www.mass.gov/doc/sector-specific-workplace-safety-standards-phase-iii-step-1-for-restaurants-to-address-covid-1/download>) and operate in compliance with COVID 19 Orders Nos. 33, 37, 40 and 43, and the Restaurant Sector Specific Standards. Said plan must be submitted to both Michael Flanagan ([michael.flanagan@mass.gov](mailto:michael.flanagan@mass.gov)) and Mary Dozois ([mary.dozois@mass.gov](mailto:mary.dozois@mass.gov)) requesting review and approval.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Deborah A. Baglio, Commissioner \_\_\_\_\_

*Deborah A. Baglio*

Jean M. Lorizio, Chairman \_\_\_\_\_

*Jean M. Lorizio*

Crystal Matthews, Commissioner \_\_\_\_\_

*Crystal Matthews*

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.

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