

*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

March 10, 2021

**LENZI CATERING INC. D/B/A THE TAVERN AT LENZI
810 MERRIMACK AVENUE
DRACUT, MA 01826
LICENSE#: 00059-RS-0292
VIOLATION DATE: 12/31/2020
HEARD: 2/10/2021**

After a hearing on February 10, 2021, the Commission finds Lenzi Catering Inc. d/b/a The Tavern at Lenzi 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. 57 (Dec. 8, 2020);
- 4) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 58 (Dec. 8, 2020) – Failure to comply with rules applicable to Step 1 of Phase III of the Re-Opening Plan.

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Lenzi Catering Inc. d/b/a The Tavern at Lenzi **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.

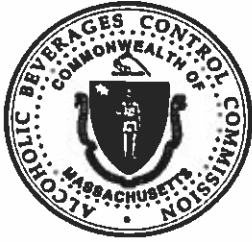
ALCOHOLIC BEVERAGES CONTROL COMMISSION



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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Kyle E. Gill, Esq., Associate General Counsel
Caroline Guarino, Investigator
Jack Carey, Investigator
Michael Flanagan, Dept. of Labor Standards
Colleen Garry, Esq.
Administration, File



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DECISION

**LENZI CATERING INC. D/B/A THE TAVERN AT LENZI
810 MERRIMACK AVENUE
DRACUT, MA 01826
LICENSE#: 00059-RS-0292
VIOLATION DATE: 12/31/2020
HEARD: 2/10/2021**

Lenzi Catering Inc. d/b/a The Tavern at Lenzi (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, February 10, 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. 53 (Nov. 2, 2020) – Failure to close licensed premises to the public before 10:00 PM;
- 4) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 57 (Dec. 8, 2020);
- 5) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 58 (Dec. 8, 2020) – Failure to comply with rules applicable to Step 1 of Phase III of the Re-Opening Plan.

The above-captioned occurred on December 31, 2020 according to Investigator Guarino's Report.

The following documents are in evidence:

1. Investigator Guarino's Report with 3 photos;
2. Form 43 License Approval, 11/14/2001;
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. 53, 11/2/2020;
6. Massachusetts Executive COVID-19 Order No. 57, 12/8/2020;
7. Massachusetts Executive COVID-19 Order No. 58, 12/8/2020;
8. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 12/11/2020;
9. ABCC Enforcement Memorandum, 2/8/2021.

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

FINDINGS OF FACT

1. On Thursday, December 31, 2020, Investigators Carey and Guarino ("Investigators") conducted an investigation of Lenzi Catering Inc. d/b/a The Tavern at Lenzi 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 9:55 p.m., Investigator Guarino observed several cars in the parking lot of the licensed premises. As she looked through the windows of the premises, she observed patrons seated at tables and in the bar area consuming alcoholic beverages. Investigator Guarino requested Investigator Carey meet her at the premises. Id.
3. At approximately 10:02 p.m., Investigators Guarino and Carey entered the licensed premises and observed approximately twenty-three (23) patrons inside the establishment. Some patrons were seated at tables in the dining room while others were in the bar area consuming alcoholic beverages. Investigators observed approximately six (6) patrons standing without any facial coverings. Id.
4. Investigators spoke to the owner, Michael Lenzi, and informed him of their observations, and that a report would be filed with the Chief Investigator for review. Id.
5. Michael Lenzi, the Licensee and Manager, attended the Commission hearing and testified that the patrons present that evening had made New Year's Eve reservations a year ago and he wanted to honor those reservations. He acknowledged that based on the time of some of the patrons' reservations, he had been aware it would be a challenge to have all patrons off the premises by 10:00 p.m. (Testimony)
6. Mr. Lenzi was wishing patrons a Happy New Year and the night was coming to an end when Investigators asked to speak with him. Mr. Lenzi then asked all patrons to leave the premises and they exited by 10:35 p.m. Id.

7. Mr. Lenzi has since informed the employee who oversees the dining room that the door shall be locked at 9:30 p.m. and not 10:00 p.m. as she mistakenly believed on the night of the Investigators' visit. *Id.*
8. The Licensee has held a license under M.G.L. c. 138, § 12 since 2001, with no 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;

Massachusetts Executive COVID-19 Order No. 53 (November 2, 2020) – Failure to close licensed premises to the public before 10:00 PM;

Massachusetts Executive COVID-19 Order No. 57 (Dec. 8, 2020);

Massachusetts Executive COVID-19 Order No. 58 (Dec. 8, 2020) – Failure to comply with rules applicable to Step 1 of Phase III of the Re-Opening Plan.

The Executive COVID-19 Orders require adherence to all Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (December 11, 2020) including:

All customers must be seated;

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;

Face coverings [must be worn by] all customers (unless in the actual act of eating and drinking) and workers at all times; and

All patrons must exit the licensed premise by 10:00 P.M.

Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (December 11, 2020)

Direct evidence was presented through the testimony of Investigator Guarino, and corroborated by the Licensee, as to the Licensee failing to ensure all patrons were off the premises by 10:00 p.m. In addition, Investigator Guarino testified she observed numerous patrons standing and not wearing facial coverings. The Commission is persuaded by the evidence that a violation of 204 CMR 2.05(2), to wit: Massachusetts Executive Orders 37, 40, 57, and 58 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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The Commission hereby **INDEFINITELY SUSPENDS** the license of Lenzi Catering Inc. d/b/a The Tavern at Lenzi **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-for-restaurants-to-address-covid-19-030121/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) and Mary Dozois (mary.dozois@mass.gov) requesting review and approval.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Crystal Matthews, Commissioner *Crystal Matthews*

Deborah A. Baglio, Commissioner *Deborah A. Baglio*

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

Dated: March 10, 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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这份文件是重要的，应立即进行翻译。

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