

*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**

December 28, 2020

**FALL RIVER SPORTS CLUB INC.  
233 HOPE STREET  
FALL RIVER, MA 02721  
LICENSE#: 00045-CL-0388  
VIOLATION DATE: 11/13/2020  
HEARD: 12/09/2020**

After a hearing on December 9, 2020, the Commission finds Fall River Sports Club Inc. 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 Mass. Exec. COVID-19 Order No. 54 (Nov. 2, 2020);
- 4) 204 CMR 2.05(2)- Permitting an illegality on the licensed premises, to wit: Mass. Exec. 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.

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Fall River Sports Club Inc. **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

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  
Christopher Temple, 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**

**FALL RIVER SPORTS CLUB INC.  
233 HOPE STREET  
FALL RIVER, MA 02721  
LICENSE#: 00045-CL-0388  
VIOLATION DATE: 11/13/2020  
HEARD: 12/09/2020**

Fall River Sports Club Inc. (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, December 9, 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 Mass. Exec. COVID-19 Order No. 54 (Nov. 2, 2020);
- 4) 204 CMR 2.05(2)- Permitting an illegality on the licensed premises, to wit: Mass. Exec. 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.

The above-mentioned occurred on November 13, 2020 according to Investigator Smith's Report.

The following documents are in evidence:

1. Investigator Smith's Report;
2. Copy of Form 43 License Approval, 8/15/1972;
3. Massachusetts Executive COVID-19 Order No. 37;
4. Massachusetts Executive COVID-19 Order No. 40;
5. Massachusetts Executive COVID-19 Order No. 54;

6. Massachusetts Executive COVID-19 Order No. 55;
7. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 11/05/2020;
8. ABCC Enforcement Memorandum, 12/8/2020;
9. ABCC Decision, 2/13/1996;
10. ABCC Decision, 9/23/2008;
11. ABCC Stipulation & Consent Order, 6/16/1998.

- A. Photograph of Interior of Licensed Premise; and
- B. Photograph of Exterior Door/ Entry of Licensed Premises.

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

#### FINDINGS OF FACT

1. On Friday, November 13, 2020, at approximately 6:30 p.m., Investigators Temple and Smith ("Investigators") conducted an investigation of Fall River Sports Club Inc. 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 approximately twenty (20) patrons consuming alcoholic beverages, with no indication of food service. Id.
3. Investigators observed a bartender serving patrons with his facial covering pulled beneath his chin. Id.
4. Investigators noted four (4) patrons, without any facial coverings, standing and consuming alcoholic beverages. Id.
5. Investigators observed three (3) additional patrons standing and leaning on the bar while consuming alcoholic beverages. None of these patrons were wearing facial coverings. Id.
6. Investigators observed that the tables were in close proximity to each other and did not allow for proper social distancing. Id.
7. Investigators spoke to the bartender on duty and asked to speak with the manager. The bartender informed Investigators that the manager was not there today. Investigator Temple provided a business card and requested that the manager contact him. Id.
8. Mr. Pedro Pavao, the President of the Licensee Club, later contacted Investigator Temple, who informed Mr. Pavao of the Investigators' observations. Mr. Pavao stated he had tested positive for COVID-19 and had not been on the premises.
9. The club was in communication with the Center for Disease Control ("CDC") and Investigator Temple advised Mr. Pavao to cooperate with all recommendations made by the CDC. Id.
10. Investigator Temple informed Mr. Pavao of the violations and that a report would be filed with the Chief Investigator for further review. Id.

11. Mr. Pavao appeared and testified before the Commission. Mr. Pavao had not been on the licensed premises for twenty (20) days.
12. Sixteen (16) members of the club tested positive for COVID-19. Id.
13. The Officers and Directors of the Licensee Club are volunteers and are not at the establishment on a regular basis.
14. The licensed premises has been cleaned and disinfected twice, and tables are now six (6) feet apart. All employees and patrons have been instructed to wear a mask and yellow caution tape has been placed around the bar.
15. Mr. Pavao indicated he is aware that food must be ordered in conjunction with alcoholic beverage orders and stated the Club has a chef who prepares food on the premises. (Testimony, Exhibit A and Exhibit B)
16. The Licensee has held a license under M.G.L. c. 138, § 12 since 1972.

### 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 (Nov. 2, 2020); and

Violation of Massachusetts Executive COVID-19 Order No. 55 (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;

Tables must be positioned so to maintain at least a 6-foot distance from all other tables and any high foot traffic areas;

Ensure separation of 6 feet between all individuals;

All customers must be seated.

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

Direct evidence was presented through the testimony of Investigator Smith as to patrons standing throughout the establishment without any facial coverings while consuming alcoholic beverages, the employee on duty not wearing a mask, and tables not being properly distanced to allow for six (6) feet between all individuals. Id. The Licensee admitted the Officers and Directors of the Licensee Club are not on the licensed premises on a consistent basis and had not been present for some time due to illness. Id. Based upon a review of the evidence presented, the Commission is persuaded that a violation of 204 CMR 2.05(2) to wit Massachusetts Executive COVID-19 Orders 37, 40, 54 and 55 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: Violation of Mass. Exec. COVID-19 Order No. 54 (Nov. 2, 2020);
- 4) 204 CMR 2.05(2)- Permitting an illegality on the licensed premises, to wit: Mass. Exec. 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.


The Commission hereby **INDEFINITELY SUSPENDS** the license of Fall River Sports Club Inc. **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.

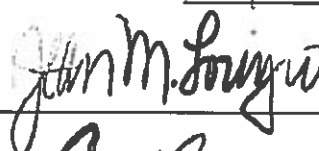
Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspension will include, but not be limited to the Licensee receives approval from the Massachusetts Department of Labor Standards ("DLS") as to a reopening plan. The Licensee must submit to the DLS a COVID Control Plan to reopen (see link here: <https://www.mass.gov/doc/phase-iii-step-1-restaurants-checklist-92220/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 \_\_\_\_\_



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



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



Dated: December 28, 2020

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  
Christopher Temple, Investigator  
Michael Flanagan, Dept. of Labor Standards  
Administration, File