



*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 31, 2020

**SPICKET RIVER BREWING LLC
56 ISLAND STREET
LAWRENCE, MA 01840
LICENSE#: 05062-BP-0594
VIOLATION DATE: 10/29/2020
HEARD: 11/17/2020**

After a hearing on November 17, 2020, the Commission finds Spicket River Brewing LLC 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. 52 (September 29, 2020);
- 4) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Ch. 138 § 34C - Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 Count).
- 5) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: 527 CMR 1.05 § 10.5.2.1 Overcrowding or admittance of any person beyond the established posted occupant load shall be prohibited.

Therefore, on the first, second, third, and fifth violations, the Commission **INDEFINITELY SUSPENDS** the license of Spicket River Brewing LLC **effective forthwith** until further written order of the Commission.

On the fourth violation, the Commission issues a **WARNING**.

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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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
Joseph Di Cicco, Investigator
Michael Flanagan, Dept. of Labor Standards
Administration, File



*Commonwealth of Massachusetts
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DECISION

**SPICKET RIVER BREWING LLC
56 ISLAND STREET
LAWRENCE, MA 01840
LICENSE#: 05062-BP-0594
VIOLATION DATE: 10/29/2020
HEARD: 11/17/2020**

Spicket River Brewing LLC (the "Licensee") holds an alcoholic beverages license issued pursuant to M.G.L. c. 138, § 19H. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, November 17, 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. 52 (September 29, 2020);
- 4) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Ch. 138 § 34C - Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 Count).
- 5) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: 527 CMR 1.05 § 10.5.2.1 Overcrowding or admittance of any person beyond the established posted occupant load shall be prohibited.

The above-captioned occurred October 29, 2020 according to Investigator Di Cicco's Report.

The following documents are in evidence:

1. Investigator Di Cicco's Report;
2. Copy of New License Approval, 7/22/2019;
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. 52, 9/29/2020;
6. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 10/1/2020;
7. ABCC Enforcement Memorandum, 11/16/2020.

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

FINDINGS OF FACT

1. On Thursday, October 29, 2020, Investigator Di Cicco along with City of Lawrence Police Lieutenant Jay Cerullo (“Investigators”) and representatives from the Lawrence Licensing Board, Lawrence Inspectional Services, and Massachusetts State Police conducted an investigation of Spicket River Brewing LLC to ensure compliance with Massachusetts Governor Charles Baker’s Executive COVID-19 Orders. (Testimony, Exhibit 1)
2. At approximately 10:15 p.m., Investigators entered the licensed premises and observed a high volume of individuals inside. Investigators observed a disc jockey (“DJ”) and heard loud dance music. Investigators observed individuals dressed in Halloween costumes inside the premises. The outside patio of the establishment was not in use. (Testimony, Exhibit 1)
3. Representatives from the City of Lawrence Licensing Board and Inspectional Services counted over 75 individuals, not including staff members, inside the establishment. The Occupancy Permit for the premises indicates a capacity of 49 individuals. (Testimony, Exhibit 1)
4. Investigators observed some employees without any facial coverings; some patrons walking around the premises without any facial coverings; tables and individuals close together; a table occupied by more than 10 individuals; patrons without any facial coverings standing by tables; a staff member without a facial covering who was preparing food; and a patron without a facial covering who was in possession of an alcoholic beverage, standing at the bar. (Testimony, Exhibit 1)
5. Investigators also observed a table of youthful appearing individuals in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age. (Testimony, Exhibit 1)
6. One of the youthful appearing individuals was found to be under 21 years of age. Underage #1 with an actual date of birth of 7/30/2001 (age 19) was in possession of a glass of Lawtown beer. (Testimony, Exhibit 1)
7. Investigators spoke with the manager and Licensee, John Cornejo and reviewed the COVID-19 guidelines and Sector Specific Safety Standards for Restaurants with him. Investigators informed him of the multiple violations of COVID-19 guidelines, occupancy load violations, and liquor law violations found. (Testimony, Exhibit 1)
8. While Investigators were still on the premises, Mr. Cornejo and staff members adjusted the spacing between tables, reduced the number of individuals inside the establishment, and took further corrective action. (Testimony, Exhibit 1)

9. Investigators advised Mr. Cornejo of the violations and that a report would be filed with the Chief Investigator for review. (Testimony, Exhibit 1)
10. Mr. Cornejo attended the Commission hearing along with Mr. Joe Errico. Mr. Errico also holds an interest in the Licensee LLC. (Testimony)
11. The DJ playing at the premises on the night of the incident had previously approached the Licensee and offered to help bring in more patrons. As a result, on October 29, 2020, an overwhelming number of patrons sought entrance to the premises. Since the Investigators' visit, the Licensee has cancelled any future events promoted by the DJ. (Testimony)
12. The Licensee has hired a hostess to assist with seating and keeping a seating chart. (Testimony)
13. The Licensee acknowledged an underage patron was in possession of an alcoholic beverage and argued that the patron had not been served but had picked up the glass of beer from a table. (Testimony)
14. The Licensee has held a license under M.G.L. c. 138, § 19H since 2019 with no prior violations. (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. 52 (September 29, 2020);

Ch. 138 § 34C - Possession of an alcoholic beverage by a person under twenty-one (21) years of age (1 Count); and

527 CMR 1.05 § 10.5.2.1 Overcrowding or admittance of any person beyond the established posted occupant load shall be prohibited.

The Executive COVID-19 Orders require adherence to all Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (October 1, 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;

All customers must be seated.

Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (October 1, 2020)

Direct evidence was presented through the testimony of Investigator DiCicco as to a number of patrons and employees failing to wear facial coverings, patrons standing and/or walking throughout the establishment, tables at the licensed premise not properly spaced, and the high volume of patrons at the establishment.

The Licensee acknowledged being overwhelmed by the number of patrons in attendance on the night of the incident and informed the Commission that a new employee has since been hired as a hostess to assist in maintaining compliance.

The Commission is persuaded by the evidence that a violation of 204 CMR 2.05(2), to wit: Massachusetts Executive Orders 37, 40 and 52, and 527 CMR 1.05 § 10.5.2.1 did occur.

Massachusetts General Laws, Chapter 138, § 34C states, in pertinent part, that: "Whoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses any alcohol or alcoholic beverages, shall be punished." M.G.L. c. 138, § 34C.

Direct evidence was presented through the testimony of Investigator DiCicco regarding his observations and interaction with the underage patron found to be in possession of an alcoholic beverage.

The Commission is persuaded by the evidence that a patron, younger than 21 years of age, was in possession of an alcoholic beverage, a beer, while inside the licensed premises of Spicket River Brewing LLC. The Commission finds that the Licensee committed a violation of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premise, to wit: M.G.L. c. 138, § 34C - Possession of an alcoholic beverage by a person under 21 years of age (1 count).

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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- 5) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: 527 CMR 1.05 § 10.5.2.1 Overcrowding or admittance of any person beyond the established posted occupant load shall be prohibited.

On the first, second, third, and fifth violations, 204 CMR 2.05 (2), to wit: Massachusetts Executive COVID-19 Orders No. 37, No. 40, No. 52, and 527 CMR 1.05 § 10.5.2.1, the Commission **INDEFINITELY SUSPENDS** the license of Spicket River Brewing LLC **effective forthwith** until further written order of the Commission.

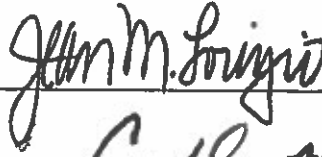
The Commission will not issue any further order without a written request from the licensee showing good cause to reconsider this indefinite suspension.

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) and Mary Dozois (mary.dozois@mass.gov) requesting review and approval.

On the fourth violation, 204 CMR 2.05 (2), to wit: Ch. 138 § 34C (1 Count), the Commission issues a **WARNING**.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: December 31, 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.

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