



*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

May 20, 2021

**1981 RAMEN BAR LLC
129-131 MERRIMACK STREET
LOWELL, MA 02124
LICENSE#: 00308-RS-0630
VIOLATION DATE: 3/17/2021
HEARD: 5/19/2021**

After a hearing on May 19, 2021, the Commission finds 1981 Ramen Bar 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: 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;
- 4) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 63 (Feb. 4, 2021);
- 5) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: Mass. Exec. COVID-19 Order No. 65 (Feb. 25, 2021) – Failure to comply with applicable sector-specific COVID-19 workplace safety rules.

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of 1981 Ramen Bar LLC **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
David Bolcome, Investigator
Joseph Di Cicco, 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

**1981 RAMEN BAR LLC
129-131 MERRIMACK STREET
LOWELL, MA 02124
LICENSE#: 00308-RS-0630
VIOLATION DATE: 3/17/2021
HEARD: 5/19/2021**

1981 Ramen Bar LLC (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, May 19, 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. 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;
- 4) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 63 (Feb. 4, 2021);
- 5) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: Mass. Exec. COVID-19 Order No. 65 (Feb. 25, 2021) – Failure to comply with applicable sector-specific COVID-19 workplace safety rules.

The above-captioned occurred March 17, 2021 according to Investigator Bolcome's report.

The following documents are in evidence:

1. Investigator Bolcome's Report;
2. ABCC Form 43 New License Approval, 4/22/2015;
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. 55, 12/8/2020;
6. Massachusetts Executive COVID-19 Order No. 63, 2/4/2021;
7. Massachusetts Executive COVID-19 Order No. 65, 2/25/2021
8. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 2/25/2021;
9. ABCC Enforcement Memorandum, 5/17/2021.

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

FINDINGS OF FACT

1. On Wednesday, March 17, 2021, Investigators Di Cicco and Bolcome (“Investigators”) conducted an investigation of 1981 Ramen Bar LLC 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 10:20 p.m., Investigators were traveling down Merrimack Street in Lowell. Although the window shades were drawn, Investigators were able to observe the interior of the Ramen Bar through a glass door. Investigators observed a crowded bar room with patrons standing in close proximity to each other. Id.
3. After brief observation, Investigators entered the licensed premises and observed a crowd of approximately 25 individuals. Investigators observed that approximately 20 patrons were standing in groups talking to one another, while only 5 patrons were seated. Id.
4. Investigators observed at least 10 patrons standing without wearing any facial covering. Additionally, some individuals had facial coverings but wore the coverings below their mouth and nose. Id.
5. Investigators observed that the patrons who were standing in groups were less than 6 feet apart from one another. The patrons appeared to be nearly touching one another. Id.
6. Investigators asked to speak with the manager. A male employee, Pete, identified himself as the manager and owner. Investigators walked outside to speak with Pete and reviewed the COVID guidelines and Sector Specific Safety Standards with him. Id.
7. Pete acknowledged their observations and stated that he would “close everyone out” and close the restaurant within fifteen minutes. Id.
8. Investigators advised Pete that a violation report would be submitted to the Chief Investigator for review. Id.
9. Peter Huynh, the Licensee, attended the Commission hearing and testified. Mr. Huynh stated it was St. Patrick’s Day and he admitted he let things get out of hand. Mr. Huynh indicated it was a lesson learned and has reviewed all COVID safety protocols with his staff. (Testimony)
10. The Licensee has held a license under M.G.L. c. 138, § 12 since 2015, 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. 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;

Massachusetts Executive COVID-19 Order No. 63 (Feb. 4, 2021); and

Massachusetts Executive COVID-19 Order No. 65 (Feb. 25, 2021) – Failure to comply with applicable sector-specific COVID-19 workplace safety rules.

The Executive COVID-19 Orders require adherence to all Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (February 25, 2021) 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; and

Licensees must ensure separation of 6 feet between all individuals.

Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (February 25, 2021)

Direct evidence was presented through the testimony of Investigator Bolcome, and corroborated by the Licensee, as to patrons standing inside the establishment, without any facial coverings in close proximity to one another.

The Commission is persuaded by the evidence that a violation of 204 CMR 2.05(2), to wit: Massachusetts Executive Orders 37, 40, 55, 63, and 65 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. 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;
- 4) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 63 (Feb. 4, 2021);
- 5) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: Mass. Exec. COVID-19 Order No. 65 (Feb. 25, 2021) – Failure to comply with applicable sector-specific COVID-19 workplace safety rules.

The Commission hereby **INDEFINITELY SUSPENDS** the license of 1981 Ramen Bar 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/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

Deborah A. Baglio, Commissioner Deborah A. Baglio

Crystal Matthews, Commissioner Crystal Matthews

Jean M. Lorizio, Chairman Jean M. Lorizio

Dated: May 20, 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
David Bolcome, Investigator
Joseph Di Cicco, Investigator
Michael Flanagan, Dept. of Labor Standards
Administration, File