



*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 3, 2021

**CLUB PASSE-TEMPS OF LOWELL, MASS. INC.
369-371 MOODY STREET
LOWELL, MA 01851
LICENSE#: 00085-CL-0630
VIOLATION DATE: 12/09/2020
HEARD: 1/13/2021**

After a hearing on January 13, 2021, the Commission finds Club Passe-Temps of Lowell, Mass. 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).

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Club Passe-Temps of Lowell, Mass. 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

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



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DECISION

**CLUB PASSE-TEMPS OF LOWELL, MASS.
369-371 MOODY STREET
LOWELL, MA 01851
LICENSE#: 00085-CL-0630
VIOLATION DATE: 12/09/2020
HEARD: 1/13/2021**

Club Passe-Temps of Lowell, Mass. 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, 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: Violation of Mass. Exec. COVID-19 Order No. 54 (Nov. 2, 2020).

The above-captioned occurred December 9, 2020 according to Investigator Guarino's Report.

The following documents are in evidence:

1. Investigator Guarino's Report with three photographs;
2. Form 43 New License Approval, 12/14/1966;
3. ABCC Decision, 10/11/2013;
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 COVID-19 Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 11/05/2020;
8. Massachusetts COVID-19 Sector Specific Workplace Safety Standards for Arcades and Other Indoor and Outdoor Game and Recreation Businesses to Address COVID-19, 11/05/2020; and

9. ABCC Enforcement Memorandum, 1/12/2021.

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

FINDINGS OF FACT

1. On Wednesday, December 9, 2020, at approximately 7:15 p.m., Investigator Guarino ("Investigator") conducted an investigation of Club Passe-Temps of Lowell, Mass. 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. Investigator Guarino entered the licensed premises and observed several patrons, without facial coverings, standing around the premises or playing pool at two different pool tables. Id.
3. Investigator Guarino observed approximately nine (9) patrons seated at the bar with no indication of food service. Id.
4. Investigator Guarino asked the bartender on duty if the establishment had a kitchen facility. The bartender replied there was no kitchen, but they do sell hot dogs. Id.
5. Investigator Guarino informed the bartender of the violations and that a report would be filed with the Chief Investigator for review. Id.
6. Mr. Robert Arcand, President and Manager of Record, attended the Commission hearing and testified the photographs taken by the Investigator accurately depict the circumstances on the night of the investigation. (Testimony)
7. Mr. Arcand testified the Club does have a kitchen, on the 2nd floor, and added the Licensee employs a chef who was out of work due to an injury. Id.
8. The Licensee has held a license under M.G.L. c. 138, § 12 since 1966 with one prior violation. (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;

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;

Recreation amenities which are allowed to open in Step 1 of Phase III (such as arcade games) may be open if adhering to all safety protocols in the Arcades & Other Indoor & Outdoor Game & Recreation Businesses.

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

Sector Specific Workplace Safety Standards for Arcades and Other Indoor and Outdoor Game and Recreation Businesses to Address Covid-19 (November 5, 2020) require face coverings for all workers and customers, except where unsafe due to medical condition or disability.

Direct evidence was presented through the testimony of Investigator Guarino as well as photographs taken by the Investigator as to a number of patrons failing to wear facial coverings while standing in the pool table area of the establishment. (Testimony)

The Commission is persuaded by the evidence that a violation of 204 CMR 2.05(2), to wit: Massachusetts Executive 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: Violation of Mass. Exec. COVID-19 Order No. 54 (Nov. 2, 2020).

The Commission hereby **INDEFINITELY SUSPENDS** the license of Club Passe-Temps of Lowell, Mass. 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/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) and Mary Dozois (mary.dozois@mass.gov) requesting review and approval.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

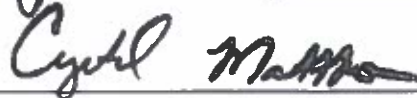
Deborah A. Baglio, Commissioner



Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Dated: February 3, 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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