



***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

**APPLE NEW ENGLAND LLC D/B/A APPLEBEE'S NEIGHBORHOOD GRILL & BAR  
900 SOUTH WASHINGTON STREET  
NORTH ATTLEBOROUGH, MA 02760  
LICENSE#: 00042-RS-0830  
VIOLATION DATE: 12/3/2020  
HEARD: 1/13/2021**

After a hearing on January 13, 2021, the Commission finds Apple New England LLC d/b/a Applebee's Neighborhood Grill & Bar 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. 53 (Nov. 2, 2020) – Failure to have patrons exit licensed premises before 10:00 PM.;
- 4) 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);
- 5) 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 **INDEFINITELY SUSPENDS** the license of Apple New England LLC d/b/a Applebee's Neighborhood Grill & Bar **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  
Nicole Smith, Investigator  
Christopher Temple, Investigator  
Michael Flanagan, Dept. of Labor Standards  
John Connell, Esq.  
Administration, File



***Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, Massachusetts 02150-2358***

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

**DECISION**

**APPLE NEW ENGLAND LLC D/B/A APPLEBEE'S NEIGHBORHOOD GRILL & BAR  
900 SOUTH WASHINGTON STREET  
NORTH ATTLEBOROUGH, MA 02760  
LICENSE#: 00042-RS-0830  
VIOLATION DATE: 12/3/2020  
HEARD: 1/13/2021**

Apple New England LLC d/b/a Applebee's Neighborhood Grill & Bar (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: Mass. Exec. COVID- 19 Order No. 53 (Nov. 2, 2020)- Failure to have patrons exit licensed premises before 10:00 PM.;
- 4) 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); and
- 5) 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 December 3, 2020 according to Investigator Smith's Report.

The following documents are in evidence:

1. Investigator Smith's Report;
2. Form 43 License Transfer Approval, 10/19/2011;
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. 54, 11/2/2020;
7. Massachusetts Executive COVID-19 Order No. 55, 11/2/2020;
8. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 11/05/2020;
9. ABCC Enforcement Memorandum, 1/12/2021; and
10. Copy of Table 64 Receipt, 12/3/2020.

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

#### FINDINGS OF FACT

1. On Thursday, December 3, 2020, at approximately 10:10 p.m., Investigators Temple and Smith ("Investigators") conducted an investigation of Apple New England LLC d/b/a Applebee's Neighborhood Grill & Bar 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. From the parking lot, Investigators observed through a window of the restaurant one (1) male and one (1) female patron seated at a table consuming what appeared to be alcoholic beverages and eating food. The patrons' beverages appeared to be full. Id.
3. Investigators attempted to enter the premises through the front door, but it was locked. Investigators made their way to a side door and entered the licensed premises. Upon entry, Investigators encountered an employee and asked to speak with a manager outside. Id.
4. While waiting for a manager, the Investigators observed two (2) females seated at a table near the door who were consuming what appeared to be alcoholic beverages and had a full plate of chicken wings. Id.
5. Investigators also observed two (2) females seated at a table near the bar area consuming what appeared to be alcoholic beverages and a male seated at another table consuming what appeared to be an alcoholic beverage. Id.
6. Investigators identified themselves to a male bartender who wore no facial covering while working behind the bar. Id.
7. The manager on duty, Megan Gagney, stated to Investigators that the two (2) females seated near the door with chicken wings were employees taking their meal. She stated that the other patrons were just finishing up. Id.
8. Ms. Gagney stated the establishment was open for take-out. Id.

9. Upon their request, Ms. Gagney provided Investigators with the receipt for the male and female patrons seated at the table by the window. (Testimony, Exhibit 10)
10. Investigators advised Ms. Gagney of the violations and that a report would be filed with the Chief Investigator for further review. (Testimony, Exhibit 1)
11. Ms. Gagney appeared at the Commission hearing and testified that the Investigators arrived at the licensed premise at approximately 10:05 P.M. She testified that there were two (2) patrons on premise at the time the Investigators entered. (Testimony)
12. Ms. Gagney explained that on the night of the investigation, the time on the licensee's computer system was off by approximately 10 minutes which would account for the discrepancy between the close-out time of 10:13 P.M. on the receipt from Table 64 and Ms. Gagney's claim that the party left the premise at approximately 10:10 P.M. Ms. Gagney acknowledged that even with taking the discrepancy into account, there were two (2) patrons inside the establishment after 10:00 P.M. (Testimony, Exhibit 10)
13. Ms. Gagney further testified the bartender was taking a mask break when the Investigators arrived because he had worked a 9-hour shift, was hot, and could not breathe. She stated this took place after the restaurant was closed to the public. (Testimony)
14. The Licensee has held a license under M.G.L. c. 138, § 12 since 2011 with no prior 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);

Massachusetts Executive COVID-19 Order No. 54 (November 2, 2020); and

Massachusetts Executive COVID-19 Order No. 55 (November 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.

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

Massachusetts Executive COVID-19 Order No. 53 (Nov. 2, 2020) mandates Licensees must close their premises to the public by 9:30 p.m. with all patrons exiting the premises by 10:00 PM.

Massachusetts Executive COVID-19 Order No. 55 (November 2, 2020) mandates that all persons in Massachusetts over the age of 5 years old are required to wear a mask or cloth face covering over their mouth and nose when in a public location, whether indoors and outdoors.

Direct evidence was presented through the testimony of Investigator Smith and the Licensee as to patrons inside the licensed premise after 10:00 p.m., as well as an employee working without wearing any facial covering. The Commission is not persuaded by the Licensee's argument that the employee was allowed to remove his facial covering because the premises was not open to the public. There were, in fact, two (2) patrons still on premises and the establishment remained open for take-out business, with other employees on site. The Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 "[r]equire 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." Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, November 5, 2020.

The Commission is persuaded by the evidence that a violation of 204 CMR 2.05(2) to wit Massachusetts Executive COVID-19 Orders 37, 40, 53, 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;
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Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Apple New England LLC d/b/a Applebee's Neighborhood Grill & Bar **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.

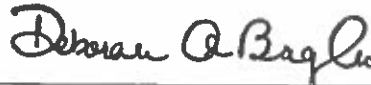
Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspension will include, but not be limited to the Licensee receives approval from the Massachusetts Department of Labor Standards ("DLS") as to a reopening plan. The Licensee must submit to the 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](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

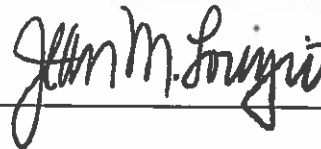
Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Jean M. Lorizio, Chairman



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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Administration, File