



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

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

**DECISION**

**LHGC HOSPITALITY MANAGEMENT INC. D/B/A THE PROPRIETOR'S LODGE  
22 WAUBEK ROAD  
PITTSFIELD, MA 01201  
LICENSE#: 04459-RS-0974  
HEARD: 3/16/2022**

This is an appeal of the action of the Licensing Board of the City of Pittsfield (the "Local Board" or "Pittsfield") in suspending the M.G.L. c. 138, § 12 all alcoholic beverages license of LHGC Hospitality Management Inc. d/b/a The Proprietor's Lodge ("Licensee" or "Proprietor's Lodge") located at 22 Waubeek Road, Pittsfield, Massachusetts. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a remote hearing via Microsoft Teams was held on Wednesday, March 16, 2022.

The following documents are in evidence as agreed-upon exhibits:

1. Governor Baker's COVID-19 Order No. 44, 7/2/2020;
2. Governor Baker's COVID-19 Order No. 46, 8/7/2020;
3. City of Pittsfield Board of Health's Notice of Violation, 8/6/2020;
4. Local Board's Notice of Hearing, 8/11/2020;
5. Local Board's Notice of Decision, 8/26/2020;
6. Local Board's Statement of Reasons with Exhibits, 8/26/2020;
7. Minutes of Local Board Meeting, 8/26/2020;
8. Licensee's Appeal, 9/2/2020.

There is one (1) audio recording of this hearing, and three (3) witnesses testified.

**FINDINGS OF FACT**

The Commission makes the following findings based on the evidence presented at the hearing:

1. LHGC Hospitality Management Inc. d/b/a The Proprietor's Lodge ("Licensee" or "Proprietor's Lodge") holds an all-alcoholic beverages license and operates a business at 22 Waubeek Road, Pittsfield, MA.
2. On March 10, 2020, Governor Charlie Baker declared a State of Emergency in Massachusetts due to the outbreak of COVID-19. (Exhibit 1)

3. On July 2, 2020, Governor Baker issued COVID-19 Order No. 44 – SECOND REVISED ORDER REGULATING GATHERINGS THROUGHOUT THE COMMONWEALTH. Order No. 44 set forth ‘applicable indoor and outdoor gathering limits wherein:
  - indoor gatherings were limited to 8 persons per 1,000 square feet of accessible, indoor floor space, and never more than 25 persons in a single enclosed, indoor space;
  - outdoor gatherings in enclosed, permitted or leased spaces were limited to 25% of the maximum permitted occupancy of the facility as documented in the facility’s occupancy permit on record with the municipal building department or other municipal record holder, if there is a capacity limitation on record, and never more than 100 persons in a single outdoor space that is enclosed, permitted, or leased. Id.
4. COVID-19 Order No. 44 also required that “...all persons over the age of two must wear a face covering when they attend indoor and outdoor gatherings in public places if the circumstances of the gathering could limit their ability to maintain at least six feet of distance from others, unless they are prevented from wearing a face covering by a medical or disabling condition.” Id.
5. On July 31, 2020, Proprietor’s Lodge hosted a wedding with 118 guests. 93 guests were seated outside, and 25 guests were seated inside the premises, with no interaction between the two groups. Proprietor’s Lodge was closed to the public during the event. (Testimony)
6. Ms. Candace Lyon is the Licensee’s General Manager and was working at the wedding on July 31, 2020. Ms. Lyon observed wedding guests without facial coverings. She informed anyone without a mask that they must put one on. Id.
7. The wedding party took photographs while not wearing any facial coverings and while standing in close proximity to one another. (Testimony, Exhibit B to Exhibit 6)
8. On August 11, 2020, the Local Board issued a Notice of Show Cause Hearing to Proprietor’s Lodge to determine if Proprietor’s violated “certain provisions of your license, to wit: Violations of COVID-19 Workplace Safety Standards under Massachusetts Emergency COVID-19 Orders.” The Local Board held the hearing on August 24, 2020. (Exhibit 4)
9. By decision dated August 26, 2020, the Local Board found the Licensee in violation of COVID-19 Workplace Safety Standards under Massachusetts Emergency COVID-19 Orders and voted to suspend its license for seven (7) days. (Exhibits 5, 6)
10. On September 2, 2020, the Licensee filed its Petition on Appeal to the Commission. (Exhibit 8)

## 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).

Chapter 138 was “enacted . . . to serve the public need and . . . to protect the common good.” M.G.L. c. 138, § 23. In order to effectuate the purpose of Chapter 138, the Commission has “general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages. . . .” M.G.L. c. 10, § 71. As part of these “comprehensive powers of supervision over licensees,” Connolly, 334 Mass. at 617, the Commission has the authority to grant, revoke and suspend licenses. “[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) (emphasis supplied).

The law is well-settled that “the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is ‘bound at his own peril to keep within the condition of his license.’” Rico’s of the Berkshires, Inc. v. Alcoholic Beverages Control Comm’n, 19 Mass. App. Ct. 1026, 1027 (1985) (quoting Commonwealth v. Gould, 158 Mass. 499, 507 (1893), and citing Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm’n, 7 Mass. App. Ct. 186, 190 (1979)).

In order for the Commission to make a finding, there must be substantial evidence that a violation has occurred. “Substantial evidence of a violation is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938); accord Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm’n, 12 Mass. App. Ct. 879 (1981).

The Local Board has the burden of producing satisfactory proof that the Licensee committed the violations that allegedly occurred on July 31, 2020.

The Licensee is charged with the violation of COVID-19 Workplace Safety Standards under Massachusetts Emergency COVID-19 Orders. (Exhibit 4)

Direct evidence was presented through the testimony of the Licensee’s employee and supported by photographic evidence (Exhibit B to Exhibit 6), that people were on the licensed premises while not wearing facial coverings and standing less than 6 feet apart.

In addition, the Local Board argued the number of people on the premises was in excess of that allowed under COVID-19 Order No. 44. Order No. 44 allowed for “never more than 100 persons in a single outdoor space that is enclosed, permitted, or leased” and no “more than 25 persons in a single enclosed, indoor space.” (Exhibit 1) The Licensee argued it complied with Order No. 44. with 93 guests outside and 25 guests inside. However, direct evidence was again presented through the testimony of the Licensee’s employee who was working on July 31, 2020. The evidence demonstrates there were at least 26 people inside, 25 guests as well as an employee. (Testimony)

The Commission is persuaded by the evidence that the Licensee violated the COVID-19 Workplace Safety Standards under Massachusetts Emergency COVID-19 Orders.

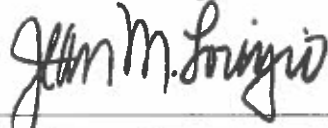
### CONCLUSION

The Alcoholic Beverages Control Commission (“Commission”) **APPROVES** the action of the Licensing Board of the City of Pittsfield in finding that LHGC Hospitality Management Inc. d/b/a The Proprietor’s Lodge, committed a violation of COVID-19 Workplace Safety Standards under Massachusetts Emergency COVID-19 Orders.

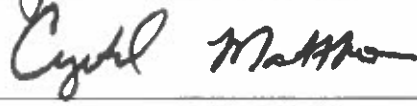
The Commission **APPROVES** the action of the Licensing Board of the City of Pittsfield in imposing a penalty of a seven (7) day suspension.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: May 19, 2023

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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2022-000006-ad-enf

cc: Dennis G. Egan Jr., Esq.  
Stephen V. Pagnotta, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File