



*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

**BURBANK INC. D/B/A FULL RACK SMOKE HOUSE
297-299 LEE BURBANK HIGHWAY
REVERE, MA 02151
LICENSE#: 00308-RS-0630
VIOLATION DATE: 3/13/2021
HEARD: 5/19/2021**

After a hearing on May 19, 2021, the Commission finds Burbank Inc. d/b/a Full Rack Smoke House 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 Burbank Inc. d/b/a Full Rack Smoke House **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
Jack Carey, Investigator
Michael Flanagan, Dept. of Labor Standards
Administration, File



Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
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Jean M. Lorizio, Esq.
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DECISION

BURBANK INC. D/B/A FULL RACK SMOKE HOUSE
297-299 LEE BURBANK HIGHWAY
REVERE, MA 02151
LICENSE#: 00308-RS-0630
VIOLATION DATE: 3/13/2021
HEARD: 5/19/2021

Burbank Inc. d/b/a Full Rack Smoke House (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 on March 13, 2021 according to Investigator Guarino's Report.

The following documents are in evidence:

1. Investigator Guarino's Report;
2. ABCC Form-43 License Transfer Approval, 10/14/2005;
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 Saturday, March 13, 2021, Investigators Carey and Guarino (“Investigators”) conducted an investigation of Burbank Inc. d/b/a Full Rack Smoke House 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 1:00 p.m., Investigators observed approximately nine (9) patrons seated at six different tables around the bar area. Id.
3. At approximately 1:19 p.m., Investigators observed a patron walk up to the bar and order a draft beer. The bartender served the beer across the bar and exchanged money with him. The patron returned to a table. Investigators did not observe any evidence of food service for this patron. Id.
4. Investigators observed two (2) patrons leave their seats and walk to the restroom. Neither patron wore a facial covering. Id.
5. Investigators were on the licensed premises for approximately 45 minutes. They observed only one patron order food during their visit. Id.
6. Investigators spoke to the bartender, Noelle Giacchetti. Mrs. Giacchetti is the Licensee and Manager of Record. Investigators requested to see the bar tabs for all patrons consuming alcoholic beverages. Ms. Giacchetti stated the other patrons had already paid their bills. Ms. Giacchetti was only able to provide the bar tab for the one patron who had ordered food. Id.
7. Investigators then spoke with Vincent Giacchetti and reviewed the COVID guidelines and Sector Specific Safety Standards with him. Mr. Giacchetti stated that the patrons do order food. Investigators advised Mr. Giacchetti that they had been in the establishment for over 45 minutes, and they did not observe any food service to the patrons consuming alcoholic beverages. Id.
8. Investigators advised Mr. Giacchetti that a violation report would be submitted to the Chief Investigator for review. Id.
9. Noelle and Vincent Giacchetti attended the Commission hearing. Mr. Giacchetti testified it is their practice to ask patrons walking throughout the premises without a facial covering to put on a mask and if patrons do not comply, they are asked to leave the premises. He

stated the two (2) patrons observed by Investigators walking to the restroom without masks were not observed by staff. Mr. Giacchetti stated that during busy times patrons are allowed to order drinks directly from the bar and also purchase lottery tickets while standing at the bar 6-feet apart. (Testimony)

10. Mr. Giacchetti testified that one of the parties at the licensed premise on the night of the Investigators' visit is a regular group that was allowed to order drinks while waiting for the rest of their party to arrive before ordering food. He admitted they had not ordered food with their alcoholic beverages and were served said alcoholic beverages. Id.

11. The Licensee has held a license under M.G.L. c. 138, § 12 since 2005 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 (November 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 (February 4, 2021);

Massachusetts Executive COVID-19 Order No. 65 (February 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;

All customers must be seated;

Bar seating is permitted provided that either: there is no active work areas or working staff behind the bar at least 6 ft away; or there is a physical barrier (e.g. Plexi-glass) separating customers from the bar space; in addition, parties must be seated at bars (no standing customer service); and

Alcoholic beverages may only be served for on-site consumption if accompanied by food prepared on-site...for each customer, an item of prepared food must be ordered at the same time as an initial alcoholic beverage order.

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

Direct evidence was presented through the testimony of Investigator Guarino as to patrons walking within the licensed premises without facial coverings, an employee serving an alcoholic beverage to a patron standing at the bar, and patrons in possession of alcoholic beverages without any evidence of food service. The Licensee admitted patrons were allowed to order drinks at the bar. In addition, patrons were allowed to order and were served alcoholic beverages without having ordered any food. While the Licensee may have had food service available for patrons, that is not sufficient for compliance with the Orders.

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;
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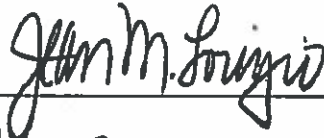
The Commission hereby **INDEFINITELY SUSPENDS** the license of Burbank Inc. d/b/a Full Rack Smoke House **effective forthwith** until further written order of the Commission.

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

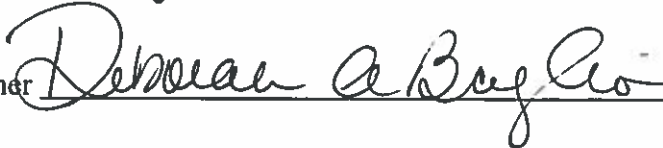
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



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.

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