

*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 23, 2021

**WAMESIT ENTERTAINMENT CENTER INC. D/B/A WAMESIT LANES
434 MAIN STREET
TEWKSBURY, MA 01876
LICENSE#: 00085-RS-1270
VIOLATION DATE: 11/19/2020
HEARD: 1/12/2021**

After a hearing on January 12, 2021, the Commission finds Wamesit Entertainment Center Inc. d/b/a Wamesit Lanes 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 Wamesit Entertainment Center Inc. d/b/a Wamesit Lanes **effective forthwith** until further written order of the Commission.

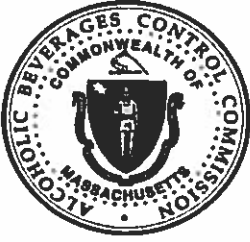
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ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio
Chairman

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



Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
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Jean M. Lorizio, Esq.
Chairman

DECISION

WAMESIT ENTERTAINMENT CENTER INC. D/B/A WAMESIT LANES
434 MAIN STREET
TEWKSBURY, MA 01876
LICENSE#: 00085-RS-1270
VIOLATION DATE: 11/19/2020
HEARD: 1/12/2021

Wamesit Entertainment Center Inc. d/b/a Wamesit Lanes (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 Tuesday, January 12, 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 November 19, 2020 according to Investigator Doyle's Report.

The following documents are in evidence:

1. Investigator Doyle's Report;
2. Form 43 New License Application Approval, 9/15/2015;
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. 54, 11/2/2020;
6. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 11/5/2020;
7. ABCC Enforcement Memorandum, 1/11/2021;
8. Massachusetts Sector Specific Workplace Safety Standards for Arcades and Other Indoor and Outdoor Games and Recreation Businesses to Address COVID-19, 11/5/2020.

- A. Pictures of Licensed Premises Interior;
- B. DVD of Licensee's Video Announcement re: Facial Coverings Required for all Guests.

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

FINDINGS OF FACT

1. On Thursday, November 19, 2020, Investigators Bailey and Doyle ("Investigators"), conducted an investigation of Wamesit Entertainment Center Inc. d/b/a Wamesit Lanes 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. Investigators entered the licensed premises and proceeded to the bowling area where they observed that individuals in the first few lanes were not wearing any facial covering. Id.
3. On the approximately 25 remaining lanes, Investigators observed bowlers and individuals waiting to bowl, without any facial coverings. Of the approximately 60 individuals in the bowling lanes area, Investigators observed fewer than 10 persons wearing facial coverings while either actively bowling or seated waiting to bowl. Id.
4. Investigators observed the individuals in the lanes and the bowling seating area were in possession of alcoholic beverages, with food resting on the bowling ball return. Id.
5. Investigators observed patrons and employees outside the bowling area wore facial coverings. Id.
6. Investigators spoke with Donald MacLaren, Licensee and Manager of Record, and reviewed the COVID-19 guidelines and Sector Specific Safety Standards for Restaurants with him. Mr. MacLaren stated that he had just arrived on the premises. Id.
7. MacLaren stated to Investigators that some people refuse to wear a facial covering and his employees had been instructed not to engage in any verbal confrontations with these patrons. Id.
8. Investigators advised Mr. MacLaren of the violations and that a report would be filed with the Chief Investigator for review. Id.
9. Mr. MacLaren attended the Commission hearing along with Jeffrey Rzepka, Restaurant Manager, and Samantha Little, Human Resources Manager.
10. Mr. MacLaren testified that the patrons bowling on the night of the Investigator's inspection were league bowlers who had previously been informed as to mask requirements. He acknowledged there were patrons without masks in the establishment. (Testimony)
11. Mr. MacLaren explained precautions he had in place at the licensed premises prior to the Investigators' visit to address COVID concerns. These precautions included signage posted throughout the premise and regularly timed announcements on the televisions in the

bowling area stating masks must be worn while bowling, as well as stressing the importance of social distancing. Id.

12. 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. 54 (November 2, 2020).

The Executive COVID-19 Orders require adherence to all applicable Sector Specific Rules.

The Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (November 5, 2020) mandates that restaurant owners and operators:

- 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; and

- Customers must wear face coverings unless seated at tables.

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

The Massachusetts Sector Specific Workplace Safety Standards for Arcades and Other Indoor and Outdoor Game and Recreation Businesses to Address COVID-19 states that owners and operators

must “[r]equire face coverings for all workers and customers, except where unsafe to due to medical condition or disability.” Massachusetts Sector Specific Workplace Safety Standards for Arcades and Other Indoor and Outdoor Game and Recreation Businesses to Address COVID-19 (11/5/2020)

Direct evidence was presented through the testimony of Investigator Doyle, and corroborated by the Licensee, as to numerous patrons on the licensed premises who were not wearing facial coverings. 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).

Therefore, the Commission hereby **INDEFINITELY SUSPENDS** the license of Wamesit Entertainment Center Inc. d/b/a Wamesit Lanes **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

Jean M. Lorizio, Chairman

Jean M. Lorizio

Crystal Matthews, Commissioner

Crystal Matthews

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Deborah A. Baglio, Commissioner

Deborah A. Baglio

Dated: February 23, 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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