



*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 18, 2021

**CLUB FRANCO AMERICAIN DE WESTFORD INC.
D/B/A FRANCO AMERICAN CLUB
55 WEST PRESCOTT STREET
WESTFORD, MA 01866
LICENSE#: 00018-CL-1442
VIOLATION DATE: 1/22/2021
HEARD: 3/09/2021**

After a hearing on March 9, 2021, the Commission finds Club Franco Americain De Westford Inc. d/b/a Franco American Club 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. 58 (Dec. 8, 2020) – Failure to comply with rules applicable to Step 1 of Phase III of the Re-Opening Plan.

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Club Franco Americain De Westford Inc. d/b/a Franco American Club **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
David Bolcome, Investigator
Joseph Di Cicco, Investigator
Michael Flanagan, Dept. of Labor Standards
James Arciero, Esq.
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

**CLUB FRANCO AMERICAIN DE WESTFORD INC.
D/B/A FRANCO AMERICAN CLUB
55 WEST PRESCOTT STREET
WESTFORD, MA 01866
LICENSE#: 00018-CL-1442
VIOLATION DATE: 1/22/2021
HEARD: 3/09/2021**

Club Franco Americain De Westford Inc. d/b/a Franco American Club (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, March 9, 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. 58 (Dec. 8, 2020) – Failure to comply with rules applicable to Step 1 of Phase III of the Re-Opening Plan.

The above-mentioned occurred on January 22, 2021 according to Investigator Bolcome's report.

The following documents are in evidence:

1. Investigator Bolcome's Report;
2. Form 43 New License Approval, 12/28/1964;
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. 58, 12/8/2020;
6. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 12/11/2020;
7. ABCC Enforcement Memorandum, 3/3/2021;

8. ABCC Decision, 7/28/2015;
9. ABCC Decision, 4/30/2002;
10. Massachusetts Sector Specific Workplace Safety Standards for Arcades and Other Indoor and Outdoor Game and Recreation Businesses to Address COVID-19, 12/11/2020;
11. Photograph of Licensed Premises.

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

FINDINGS OF FACT

1. On Friday, January 22, 2021, at approximately 7:20 p.m., Investigator Di Cicco and Bolcome ("Investigators") conducted an investigation of Club Franco Americain De Westford Inc. d/b/a Franco American Club 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. Upon entering the licensed premises, Investigators observed approximately 30 individuals both standing and walking throughout the bar area; most were not wearing facial coverings. Investigators observed one bartender behind the bar without a facial covering. Id.
3. Patrons were being served by the employee from behind the bar, and there was no barrier between the employee and patrons. Investigators observed at least two individuals walk up to the bar, order and receive alcoholic beverages directly from the bartender. Id.
4. Investigators observed individuals seated at high-top tables located next to the bar, and tables throughout the club. Investigators observed multiple individuals standing next to the bar and playing pool in possession of alcoholic beverages, without facial coverings. Id.
5. Investigators identified themselves to the bartender, Diane, who was not wearing a facial covering. Diane informed Investigators she did have a facial covering with her. Id.
6. Investigators informed Diane of their observations and reviewed the COVID guidelines and Sector Specific Safety Standards with her. Investigators asked Diane to notify the club president of the incident. Id.
7. President of the club, Richard Crocker, contacted the Investigators approximately one hour after they left the premises. Investigators informed Mr. Crocker of their observations and that a report would be filed with the Chief Investigator for review. Id.
8. Mr. Crocker attended the Commission hearing and testified that after speaking with the Investigators he immediately contacted all bartenders to inform them of the violations and the seriousness of following the regulations. He instructed his bartenders that if patrons are not complying, they should be asked to leave the premises. Mr. Crocker also explained that Diane was not wearing a mask because she has severe asthma but was apprehensive about informing Investigators as to her condition. (Testimony)
9. The Licensee has held a license under M.G.L. c. 138, § 12 since 1964. (Exhibit 2)

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;

Violation of Massachusetts Executive COVID-19 Order No. 58 (December 8, 2020).

The Executive COVID-19 Orders require adherence to all Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (December 11, 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 may only remove face coverings in the actual act of eating and drinking. Face coverings are required at all other times while seated at tables and when waitstaff are present at tables;

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).

Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (December 11, 2020)

Evidence was presented through the testimony of Investigator Bolcome, and corroborated by the Licensee, as to patrons standing and walking throughout the premises without facial coverings, and patrons standing and receiving direct bar service.

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, and 58 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: Mass. Exec. COVID-19 Order No. 58 (Dec. 8, 2020) – Failure to comply with rules applicable to Step 1 of Phase III of the Re-Opening Plan.

The Commission hereby **INDEFINITELY SUSPENDS** the license of Club Franco Americain De Westford Inc. d/b/a Franco American Club **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

Crystal Matthews, Commissioner

Crystal Matthews

Deborah A. Baglio, Commissioner

Deborah A. Baglio

Jean M. Lorizio, Chairman

Jean M. Lorizio

Dated: May 18, 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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