



*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**

November 18, 2020

**DIRT MCGIRT'S LLC D/B/A DIRT MCGIRT'S  
1051 MAIN STREET  
WORCESTER, MA 01608  
LICENSE#: 05282-GP-1508  
VIOLATION DATE: 9/17/2020  
HEARD: 10/21/2020**

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After a hearing on October 21, 2020, the Commission finds Dirt McGirt's LLC d/b/a Dirt McGirt's 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 Massachusetts Executive COVID-19 Order No. 46 (August 7, 2020).

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of Dirt McGirt's LLC d/b/a Dirt McGirt's **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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Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.  
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Kyle E. Gill, Esq., Associate General Counsel  
Dennis Keefe, Investigator  
Michael Flanagan, Dept. of Labor Standards  
Officer Patrick Harrington, Worcester Police Department  
Administration, File

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Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
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**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**DIRT MCGIRT'S LLC D/B/A DIRT MCGIRT'S  
1051 MAIN STREET  
WORCESTER, MA 01608  
LICENSE#: 05282-GP-1508  
VIOLATION DATE: 9/17/2020  
HEARD: 10/21/2020**

Dirt McGirt's LLC d/b/a Dirt McGirt's (the "Licensee") holds an all alcoholic beverages license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a hearing on Wednesday, October 21, 2020, 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; and
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Violation of Massachusetts Executive COVID-19 Order No. 46 (August 7, 2020).

The above-mentioned occurred on September 17, 2020<sup>1</sup>, according to Investigator Keefe's Report.

The following documents are in evidence:

1. Investigator Keefe's Report;
2. Copy of New License Approval, 10/28/2019;
3. Massachusetts Executive COVID-19 Order No. 37;
4. Massachusetts Executive COVID-19 Order No. 40;
5. Massachusetts Executive COVID-19 Order No. 46;

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<sup>1</sup> Associate General Counsel Kyle Gill announced at the start of the hearing that the hearing notice and Investigative Report erroneously cited the violation date as Friday, September 18, 2020, due to a scrivener's error. The correct date of violation was Thursday, September 17, 2020.

6. Massachusetts COVID-19 Specific Workplace Safety Standards for Restaurants to Address COVID-19, 8/10/2020;
7. ABCC Enforcement Memorandum, 10/7/2020.

A. Copies of Photographs of Interior of Licensed Premises.

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

FINDINGS OF FACT

1. On Thursday, September 17, 2020, at approximately 9:30 p.m., Investigator Dennis Keefe ("Investigator") with Worcester Police Officer Patrick Harrington, conducted an investigation of Dirt McGirt's LLC d/b/a Dirt McGirt's 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. While outside the licensed premises, Investigator Keefe observed through a window into the establishment. Investigator Keefe observed many people standing inside, and a male individual standing at the bar who was served an alcoholic beverage directly from the bartender. Id.
3. Investigator Keefe entered the licensed premises in an undercover capacity and observed two (2) more patrons served alcoholic beverages directly from the bar. Id.
4. Investigator Keefe observed a male individual, without any facial covering, walk from a table to the restroom. He further observed a male patron and female patron standing in the bar area. The male patron was not wearing a facial covering. Id.
5. Investigator Keefe and Officer Harrington observed very little food service. Id.
6. Investigator Keefe and Officer Harrington spoke with the bartender on duty, Robin Jones, who stated that the kitchen was open, and she was serving food. Id.
7. Investigator Keefe and Officer Harrington reviewed the COVID-19 guidelines and Sector Specific Workplace Safety Standards for Restaurants with Ms. Jones. Id.
8. Investigator Keefe advised Ms. Jones of the violations and that a report would be submitted to the Chief Investigator for review. Id.
9. Ms. Stacey Blanchette, the Licensee, was not present on the night of the incident. Id.
10. Ms. Blanchette appeared at the Commission hearing and testified that she was unaware that service to patrons at the bar was prohibited. Since she re-opened in mid-June, tables have been pushed up against the bar to keep patrons from standing at the bar. Ms. Blanchette set up a "waitress station" at the bar where, it was expected that patrons would approach one at a time to place an order for food and drink and pick up their order to bring back to their table. (Testimony)
11. Ms. Jones was the only person working on the night of the incident and was responsible for tending bar, taking food orders, and preparing food. She was terminated by the

Licensee who acknowledged Ms. Jones should have done a better job at monitoring the patrons in regard to standing and failing to wear masks. (Testimony)

12. The Licensee has taken steps to ensure compliance with the Governor's Orders including adding Plexiglas along the entire bar, adding signage at each table reminding patrons of the requirement to wear a mask, hiring an additional staff member dedicated to ensuring compliance with the Governor's Orders, and keeping receipts at each table as proof of food service. (Testimony)
13. The Licensee has held a license under M.G.L. c. 138, § 12 since 2019 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; and

Violation of Massachusetts Executive COVID-19 Order No. 46 (August 7, 2020).

The Executive COVID-19 Orders require adherence to all Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (August 10, 2020) including:

Restaurants may not seat any customers at the bar;

All customers must be seated; and

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 (August 10, 2020)

Patrons were being served food and alcoholic beverages directly from the bar and patrons were allowed to move throughout the premises without facial coverings. The Licensee acknowledged that patrons were served at the bar and admitted she was unaware bar service was prohibited. The Licensee also acknowledged her employee failed to monitor patrons' adherence to the mask requirement when standing or moving throughout the licensed premises.

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 46 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 Massachusetts Executive COVID-19 Order No. 46 (August 7, 2020).

The Commission hereby **INDEFINITELY SUSPENDS** the license of McGirt's LLC d/b/a Dirt McGirt's **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/phase-iii-step-1-restaurants-checklist-92220/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 Cybil Matthews

Deborah A. Baglio, Commissioner Deborah A. Baglio

Jean M. Lorizio, Chairman Jean M. Lorizio

Dated: November 18, 2020

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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