



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LIQUOR CONTROL COMMISSION

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In the matter of) HARBRINEL, INC.) d/b/a HARPER'S RESTAURANT) AND BREWPUB) 131 Albert Avenue) East Lansing, Michigan 48823)) Ingham County) <hr style="width: 100%; border: 0.5px solid black;"/>	Request ID No. 2007-09475 Business ID No. 2149
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At the July 16, 2020 meeting of the Michigan Liquor Control Commission (Commission) via teleconference.

PRESENT: Patrick Gagliardi, Chair
Dennis Olshove, Commissioner
Geraldyn Lasher, Commissioner

ORDER TO SHOW CAUSE

Harbrinel, Inc., d/b/a Harper’s Restaurant and Brewpub (Harper’s), has been licensed by the Commission since February 1997 and currently holds a Class C license and a Brewpub license. Among the factors the Commission must consider in deciding whether to issue a license is the “effect[] that issuing it would have on the health, welfare, and safety of the general public.” Mich Admin Code, R 436.1105(2)(j).

I. Background

On March 10, 2020, Governor Whitmer issued Executive Order 2020-4 declaring a state of emergency due to the breakout of COVID-19 in the State of Michigan. COVID-19

is a respiratory disease that can result in serious illness or death. COVID-19 is caused by a new strain of coronavirus not previously identified in humans and it easily spreads between persons. To date, there have been over 70,000 confirmed cases of COVID-19 in the State of Michigan, resulting in over 6,000 deaths. There is currently no approved vaccine or antiviral treatment for this disease.

Given the state of emergency, Governor Whitmer has issued several executive orders to address the COVID-19 pandemic and limit the disease's spread. On March 16, 2020, Governor Whitmer issued Executive Order 2020-9, which prohibited on-premises food and beverage consumption at several types of places of public accommodation, including many businesses licensed by the Commission. After various extensions of the limitations in Executive Order 2020-9, Governor Whitmer issued Executive Order 2020-110, which authorized on-premises consumption of food and beverages throughout the state beginning on June 8, 2020.

The Governor also established parameters for businesses to "do their part to protect their employees, their patrons, and their communities" in Executive Order 2020-114, which was effective when on-premises consumption at restaurants and bars was again permitted statewide. Like its predecessor, Executive Order 2020-114 required businesses whose employees had to leave home for work to "[k]eep everyone on the worksite premises at least six feet from one another to the maximum extent possible, including through the use of ground markings, signs, and physical barriers, as appropriate to the worksite." EO 2020-114, § 1(e). Such businesses also had to "[r]equire face coverings to be worn when

employees cannot consistently maintain six feet of separation from other individuals in the workplace” *Id.* at § 1(g). Specific to bars and restaurants, the EO required establishments to limit capacity to 50% of normal seating and to maintain six feet of separation between groups or parties to preserve social distancing. *Id.* at § 8(a)-(b). Among other things, the EO also required restaurants and bars to “[p]rovide physical guides, such as tape on floors or sidewalks and signage on walls to ensure that customers remain at least six feet apart in any lines.” *Id.* at § 8(f).

II. The Harper’s Outbreak

Like many other licensed establishments, Harper’s reopened its doors to the general public for on-premises consumption once permitted by the Governor. Soon after Harper’s opened, news outlets reported long lines of customers forming on the stairs and along the sidewalk adjacent to Harper’s. Although Harper’s placed signs on and around the establishment directing patrons to practice social-distancing measures and wear masks, many of the patrons disregarded these directions and congregated in large crowds.

News outlets also reported even more concerning activity inside the establishment. Reports that included photographs or videos showed large crowds inside the establishment failing to adhere to social-distancing guidelines and congregating on the dance floor. Most people in the photographs and video footage were seen without masks, even though the Governor had ordered individuals to wear a face covering when in any enclosed public space and had permitted individuals in restaurants and bars to remove their face covering only when seated, EO 2020-110, § 4(b)(1).

After Harper's was open for less than a week, 14 patrons tested positive for COVID-19. The number of confirmed cases related to Harper's has since reportedly ballooned to over 180, and the cases spread across several counties throughout the State of Michigan. One of those cases involved an employee from another licensed establishment in Lansing, creating an outbreak risk at that licensed establishment. That bar closed its doors on June 22, 2020, to address the issue.

Officials encouraged all patrons who went to Harper's between June 12 and June 20 to self-quarantine and monitor their health. County health officials have reportedly concluded that this outbreak is not traced to a particular date as a number of the cases were traced back to Harper's on different dates. As a result of the outbreak, Harper's voluntarily closed its doors to take steps such as upgrading its HVAC system. The Ingham County Health Department has opened an investigation regarding Harper's and has reportedly decided not to allow Harper's to reopen without having reviewed its plan for reopening. Ingham County health officials have also issued an emergency order requiring all restaurants to limit occupancy to the lesser of 50% or 75 patrons.

The outbreak at Harper's has generated alarm well beyond the State of Michigan. Several national media outlets have reported on the story. Recently, New York Governor Andrew Cuomo and New York City Mayor Bill De Blasio cited Harper's as an example of why New York City establishments should remain closed.

In response to this and other outbreaks following the re-opening of bars, Governor Whitmer issued Executive Order 2020-143 on July 1, 2020. Outside of Regions 6 and 8, as

defined in Executive Order 2020-110, Executive Order 2020-143 indefinitely prohibits certain on-premises alcohol retailers from offering indoor service and requires those offering indoor or outdoor service to, among other things, prohibit customer access to gathering areas, such as dance floors.

Under Mich Admin Code, R 436.1925(1), the Commission, on its own motion, may order a hearing on a matter within its jurisdiction. After discussing the issues on the record at the July 16, 2020 meeting, the Commission finds that it should conduct a Show Cause Hearing concerning Harper's under Mich Admin Code, R 436.1925(1).

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

A. Harbrinel, Inc., d/b/a Harper's Restaurant and Brewpub, shall appear before the Commission on Thursday, July 23, 2020, at 1:00 p.m. via Zoom to show cause as to the status of its Class C and Brewpub licenses, permits, and permissions under the Liquor Control Code and the Commission's administrative rules; to answer questions regarding the steps it took or failed to take relative to complying with Executive Order 2020-114; and to demonstrate to the Commission that its plan for reopening will protect its patrons and employees from another outbreak at its establishment.

B. Harper's is ordered to have an officer or stockholder present for these proceedings. If the licensee chooses to be represented by an attorney, that attorney must submit a written appearance to the Commission prior to the hearing. Finally, if a stockholder or officer of the licensed corporation is not able to attend the hearing, counsel representing the entity must supply a written statement before the hearing providing the

reasons for that individual's absence.

MICHIGAN LIQUOR CONTROL COMMISSION



Pat Gagliardi, Chair



Dennis Olshove, Commissioner



GERALYN A. LASHER, Commissioner

Date Mailed: July 16, 2020

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