

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

IN THE MATTER OF:

All Star Coney Island, Inc.
934 S. Michigan Avenue
Howell, Michigan 48843-2655

CASE TYPE: REVOCATION

**EMERGENCY SUMMARY SUSPENSION ORDER PURSUANT TO MCL
289.4125 AND MCL 24.292(2) AND NOTICE OF HEARING**

GENERAL ALLEGATIONS

1. The food establishment license issued to All Star Coney Island, Inc. (All Star Coney Island) to operate a food service establishment at 934 S. Michigan Ave. in Howell, Michigan, is summarily suspended. This summary suspension proceeding is undertaken pursuant to the Michigan Department of Agriculture and Rural Development's (MDARD's) authority under Section 4125 of the Michigan Food Law, MCL 289.1101 *et seq.*, and in accordance with the Administrative Procedures Act, MCL 24.201 *et seq.*

BACKGROUND

2. The All Star Coney Island operates a food service establishment located at 934 S. Michigan Ave. in Howell, Michigan. The All Star Coney Island's food establishment license is issued by MDARD.

3. Pursuant to the Food Law, if the MDARD Director determines that an imminent threat to the public health, safety, or welfare exists, the MDARD Director may summarily suspend a food establishment license.

4. Additionally, the Administrative Procedures Act, provides that if an agency concludes that the health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later. See MCL 24.292(2).

Michigan's efforts to curb Covid-19

5. 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 480,800 confirmed cases of COVID-19 in the State of Michigan, resulting in over 12,000 deaths.

6. The Public Health Code gives the Michigan Department of Health and Human Services (MDHHS) "general supervision of the interests of health and life of people of this state," MCL 333.2221(2), and requires it to "endeavor to prevent disease, prolong life, and promote the public health," MCL 333.2221(1). MDHHS may "[e]xercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department." MCL 333.2226(d). Further, MDHHS is authorized to issue emergency orders to address epidemics, pursuant to MCL 333.2253(1):

If the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws.

7. On December 18, 2020, MDHHS issued its most recent Gatherings and Face Mask Order, which took effect on December 21, 2020, and remains in effect until January 15, 2021. The December 18, 2020 Order states that, “[t]he death rate is nine times higher than it was in early October, and there are more than 800 weekly deaths in Michigan.” The order concludes that “the COVID-19 pandemic continues to constitute an epidemic in Michigan” and “that it is necessary to restrict gatherings and establish procedures to be followed during the epidemic to ensure the continuation of essential public health services and enforcement of health laws.”

8. MDHHS’s order generally prohibits indoor gatherings at non-residential venues. See 12/18/2020 Gatherings and Face Mask Order, section 2(a)(2). A “gathering” is “any occurrence, either indoor or outdoor, where two or more persons from more than one household are present in a shared space.” *Id.* at section 1(g). Specifically, the order prohibits indoor gatherings at food service establishments except in “custodial settings, medical facilities, school and university cafeterias, shelters, and soup kitchens.” *Id.* at section 3(b)(1).

9. Further, subject to limited exceptions, “[a]ll persons participating in gatherings are required to wear a face mask.” *Id.* at section 7(a). “Except as provided elsewhere in [the] order, a person responsible for a business . . . must prohibit gatherings of any kind unless the person requires individuals in such

gatherings (including employees) to wear a face mask[] and denies entry or service to all persons refusing to wear face masks while gathered.” *Id.* at section 7(c).

10. Violations of the Gatherings and Face Mask Order constitute misdemeanors and are punishable by up to six months imprisonment and certain fines. See *id.* at section 10(e), (h).

The All Star Coney Island’s operations in violation of MDHHS’s order

11. On December 11, 2020, the Livingston County Health Department issued ordered All Star Coney Island to cease and desist offering indoor dining and otherwise violating the MDHHS Order (Health Department Order). The Health Department Order stated that the All Star Coney Island was open to the public for indoor dining.

12. The Health Department Order required that the All Star Coney Island to cease operations and comply with the MDHHS Order and the Public Health Code.

13. In spite of the Health Department’s Order, the All Star Coney Island continued to offer indoor dining, did not require social distancing, and did not require customers to wear facial coverings.

14. On December 17, 2020, MDARD issued the All Star Coney Island an order to Cease and Desist Food Operations. MDARD’s Cease and Desist Order was hand delivered to the All Star Coney Island by Matt Bolang of the Livingston County Health Department on the same date.

15. The Livingston County Health Department has continued to surveil and monitor the All Star Coney Island's operations. On multiple occasions since December 17, 2020, employees of the Livingston County Health Department have observed the All Star Coney Island offering indoor dining services.

16. As of December 28, 2020, Livingston County, where the All Star Coney Island is located, has had 7,671 confirmed and probable cases of Covid-19 and 68 deaths from Covid-19.¹

17. Between December 12, 2020, and December 21, 2020, Livingston County, where the All Star Coney Island is located, had 400 confirmed cases and 45 probable cases of Covid-19 and 6 deaths from Covid-19.² In other words, more than 5.8% of the total confirmed and probable Covid-19 cases and more than 8.9% of the probable deaths from Covid-19 in Livingston County since March occurred in the ten days between December 12 and 21, 2020.

SUMMARY SUSPENSION

18. The Food Law provides that MDARD's Director can summarily suspend a food establishment license upon a determination that an imminent threat to the public health, safety, or welfare exists. MCL 289.4125(4).

¹ See https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html, accessed December 29, 2020.

² See *Id.*

19. MDARD's Director has determined that the All Star Coney Island's continued offering of indoor dining creates an imminent threat to the public health, safety, and welfare.

20. Additionally, consistent with the Administrative Procedures Act, MDARD finds that emergency action is required because the All Star Coney Island's current operations pose a significant risk to the community's health, safety, and welfare.

21. For the foregoing reasons:

A. Effective immediately, the All Star Coney Island's food establishment license is summarily suspended;

B. MDARD's December 17, 2020 Cease and Desist Order is replaced with this summary suspension; and

C. The Michigan Office of Administrative Hearings and Rules will hold a hearing on MDARD's summary suspension of the All Star Coney Island's food establishment license on January 13, 2021, at 9:00 am via video conference.



Gary McDowell, Director
Michigan Department of Agriculture
& Rural Development

Date: December 29, 2020