

STATE OF MICHIGAN  
MICHIGAN DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

IN THE MATTER OF:

Bullseye Marketplace TR, LLC  
350 Johnnycake Lane  
Three Rivers, Michigan 49093

CASE TYPE: REVOCATION

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**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 Bullseye Marketplace TR, LLC (Bullseye Marketplace) to operate a retail food establishment 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. Bullseye Marketplace operates a food establishment located at 350 Johnnycake Lane in Three Rivers, Michigan. Bullseye Marketplace'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 340,000 confirmed cases of COVID-19 in the State of Michigan, resulting in over 8,900 deaths. There is currently no vaccine or antiviral treatment for this disease available to the general public.

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 November 15, 2020, MDHHS issued its most recent Gatherings and Face Mask Order, which took effect on November 18, 2020, and remains in effect until December 8, 2020. See attached Ex. 1. The November 15, 2020 Order states that the recent “sharp rise in new [COVID-19] infections suggests that the state is entering the most challenging phase of the pandemic thus far.” The order concludes that “the COVID-19 pandemic continues to constitute an epidemic in Michigan.”

8. MDHHS’s order generally prohibits indoor gatherings at non-residential venues. See 11/15/2020 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(3). More specifically, the order prohibits indoor gatherings at numerous types of entertainment venues and recreational facilities. *Id.* at section 3(a)(1)-(2). It also 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).

### **Bullseye Marketplace’s operations in violation of MDHHS’s order**

11. In response to complaints MDARD received from the public, on November 10, MDARD contacted Bullseye Marketplace concerning alleged violations of a previous MDHHS epidemic order. Specifically, the complaints alleged that workers at Bullseye Marketplace were working and interacting with the public without wearing face coverings and that employees had been told by their employer that face coverings were not required.

12. Following the November 10, 2020 call, MDARD continued to receive complaints alleging that Bullseye Market was not posting signage indicating that customers were required to wear face coverings, no employees were wearing face coverings, and Bullseye Marketplace was not requiring customers to wear face coverings.

13. On November 16, 2020, MDARD issued Bullseye Marketplace a warning letter informing it that if it failed to require employees to wear face coverings, MDARD may determine that its continued operation poses an imminent and substantial hazard to public health under the Food Law.

14. Despite the November 16, 2020 warning letter, Bullseye Marketplace still does not require face coverings for employees, has not placed signage stating that face coverings are required, and is permitting customers to shop without face coverings. MDARD continues to receive multiple complaints regarding the establishment. Additionally, complainants alleged that Bullseye Marketplace has a deli area, a buffet, and an area with tables where customers can sit and eat food and is permitting indoor dining.

15. On December 4, 2020, an MDARD inspector visited Bullseye Marketplace. The inspector observed that there were no postings on the main entrance advising customers they were required to wear face coverings; of the approximately 20 customers observed shopping in the store, only two were wearing face coverings; employees at the full-service meat counter, deli counter, in the café, and at the cash register were not wearing face coverings; and booths and tables were open in the café area and customers were observed seated and eating.

16. As of December 3, 2020, St. Joseph County, where Bullseye Marketplace is located, has had 2,731 confirmed and probable cases of Covid-19 and 37 deaths from Covid-19.<sup>1</sup>

17. Between November 25, 2020, and December 3, 2020, St. Joseph County, where Bullseye Marketplace is located has had 198 confirmed cases and 4 probable cases of Covid-19 and 3 deaths from Covid-19.<sup>2</sup>

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<sup>1</sup> See [https://www.michigan.gov/coronavirus/0,9753,7-406-98163\\_98173---,00.html](https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html), accessed December 3, 2020.

<sup>2</sup> See *Id.*

## 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).

19. MDARD's Director has determined that Bullseye Marketplace's failure to require staff and customers to wear facial coverings, failure to post signage stating face coverings and social distancing are required, and providing an area for 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 Bullseye Marketplace's current operations pose a significant risk to the community's health, safety, and welfare.

21. For the foregoing reasons:

A. Effective immediately, Bullseye Marketplace's food establishment license is summarily suspended; and

B. The Michigan Office of Administrative Hearings and Rules will hold a hearing on MDARD's summary suspension of Bullseye Marketplace's food establishment license on December 15, 2020, at 9:00 a.m. via Zoom.



Gary McDowell, Director  
Michigan Department of Agriculture  
& Rural Development

Date: December 7, 2020