

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

IN THE MATTER OF:

Café Rosetta
102 Fifth Street
Calumet, MI 49913

Case Type: Revocation

**EMERGENCY 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 Café Rosetta to operate a food service establishment is summarily suspended. This summary suspension proceeding is undertaken pursuant to 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. Café Rosetta operates a food establishment located at 102 Fifth Street in Calumet, Michigan. Café Rosetta'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).

Café Rosetta’s operations in violation of MDHHS’s order

11. On November 23, 2020, the Western Upper Peninsula Health Department issued Café Rosetta a “Warning Order Finding Imminent Danger to the Public Health and Requiring Corrective Action” (Health Department Order). The Health Department Order stated that Café Rosetta was not requiring customers or employees to wear masks and the food establishment was open to the public for indoor dining. Based on its findings, the Western Upper Peninsula Health Department determined that Café Rosetta’s operations posed an imminent danger to the health and lives of citizens in the County.

12. The Health Department Order required that Café Rosetta comply with all applicable public health laws and orders and submit a corrective action within 72 hours.

13. In spite of the Health Department’s Order, Café Rosetta continued to offer indoor dining and did not require customers or employees to wear face masks.

14. On November 25, 2020, MDARD issued Café Rosetta an “Order to Cease and Desist Food Operations” (Cease and Desist Order). MDARD’s Cease and

Desist Order was hand delivered to Café Rosetta by the Western Upper Peninsula Health Department on the same date at 1:30 pm. At that time, Amy Heikkinen, owner of Café Rosetta indicated that she did not attend to voluntarily comply with the Cease and Desist Order.

15. On November 27, 28, and 30 and December 1, 2020, the Western Upper Peninsula Health Department conducted follow-up inspections and surveillance at Café Rosetta. On each occasion the Health Department documented that the firm was operating in violation of the MDARD's Cease and Desist Order, was operating in violation of MDHHS's Gatherings and Face Mask Order, was continuing to offer indoor dining, and was not requiring customers or employees to wear face coverings.

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 Café Rosetta's continued operations providing indoor dining and not requiring staff and customers to wear facial coverings has creates an imminent threat to the public health, safety, and welfare.

20. Additionally, consistent with the Administrative Procedures Act, MDARD finds that that emergency action is required because Café Rosetta's

current operations pose a significant risk to the community's health, safety, and welfare.

21. For the foregoing reasons:

A. Effective immediately, Café Rosetta'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 Café Rosetta's food establishment license on December 10, 2020 at 9:00 am via Zoom.

A handwritten signature in blue ink that reads "Gary McDowell". The signature is written in a cursive, flowing style.

Gary McDowell, Director
Michigan Department of Agriculture
& Rural Development

Date: December 2, 2020