

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

IN THE MATTER OF:

Moore Murphy Hospitality, LLC
d/b/a Iron Pig Smoke House
143 W. Main Street
Gaylord, Michigan 49735

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 Moore Murphy Hospitality, LLC, d/b/a Iron Pig Smoke House (Iron Pig) to operate a food service establishment at 143 West Main Street in Gaylord, 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 Iron Pig operates a food service establishment located at 143 West Main Street in Gaylord, Michigan. The Iron Pig'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 458,800 confirmed cases of COVID-19 in the State of Michigan, resulting in over 11,400 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. See attached Ex. 1. 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 Iron Pig’s operations in violation of MDHHS’s order

11. Following MDHHS’s November 15 Gatherings and Face Mask Order prohibiting indoor dining, the Health Department of Northwest Michigan issued the Iron Pig an “Order to Cease Food Service Operations” (Health Department Order). The Health Department Order stated that the Iron Pig was open to the public for indoor dining.

12. The Health Department Order required that the Iron Pig cease operations and comply with the MDHHS Order and the Public Health Code.

13. In spite of the Health Department’s Order, the Iron Pig continued to offer indoor dining, did not require social distancing, and did not require employees and customers to wear facial coverings.

14. On December 2, 2020, the Liquor Control Commission summarily suspended the Iron Pig’s liquor license for allowing illegal activities on the licensed

premises—specifically permitting indoor dining in violation of the November 15 Gatherings and Face Mask Order.

15. Also on December 2, 2020, MDARD issued the Iron Pig an order to Cease and Desist Food Operations. MDARD's Cease and Desist Order was hand delivered to the Iron Pig by Chuck Edwards, Environmental Health Coordinator, Health Department of Northwest Michigan on the same date.

16. On December 11, 2020, an administrative hearing regarding the summary suspension of the Iron Pig's Liquor License was held. Following the hearing and based on the ALJ's factual findings that the Iron Pig was operating in violation of the MDHHS Gatherings and Face Mask Order and therefore in violation of the Michigan Liquor Control Commission Rules, the Iron Pig's liquor license was suspended for 90 days.

17. The Health Department of Northwest Michigan has continued to surveil and monitor the Iron Pig's operations. On multiple occasions since December 11, 2020, employees of the Health Department of Northwest Michigan have observed the Iron Pig offering indoor dining services.

18. The Iron Pig continues to openly violate the Health Department of Northwest Michigan's order and MDARD's Cease and Desist Order, and openly admits so on their Facebook page, including a post on December 25, 2020 specifically stating:

Thank you to all our wonderful friends & guests we've entertained over the last 30 days since we opened our Dining Room back up. It's because of your amazing support our families will have a Merry Christmas!

[<https://www.facebook.com/ironpigsmoke/>, accessed December 28, 2020.]

19. As of December 29, 2020, Otsego County, where the Iron Pig is located, has had 1,007 confirmed and probable cases of Covid-19 and 19 deaths from Covid-19.¹

20. Between December 12, 2020, and December 21, 2020, Otsego County, where the Iron Pig is located, had 42 probable cases of Covid-19 and 2 deaths from Covid-19.² In other words, more than 4.2% of the total confirmed and probable Covid-19 cases in Otsego County since March occurred in the ten days between December 12 and 21, 2020.

SUMMARY SUSPENSION

21. 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).

22. MDARD's Director has determined that the Iron Pig's continued offering of indoor dining creates an imminent threat to the public health, safety, and welfare.

23. Additionally, consistent with the Administrative Procedures Act, MDARD finds that emergency action is required because the Iron Pig's current operations pose a significant risk to the community's health, safety, and welfare.

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

² See *Id.*

24. For the foregoing reasons:

A. Effective immediately, the Iron Pig's food establishment license is summarily suspended;

B. MDARD's December 2, 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 Iron Pig's food establishment license on January 12, 2021, at 9:00 a.m. 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 29, 2020