



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

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In the matter of)	
Birdies Indoor Golf & Bar, LLC)	Complaint No. CV-509013
d/b/a Birdies Indoor Golf & Bar)	
980 N. Lapeer Road)	Business ID No. 261308
Oxford, MI 48371)	
)	
Oakland County)	
_____)	

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

The Michigan Liquor Control Commission's Enforcement Division has submitted a request for an emergency suspension of the licenses and permits held by the above-named licensee based on an investigation conducted on January 29, 2021.

Article IV, § 40 of the Michigan Constitution authorized the Legislature to create the Michigan Liquor Control Commission. Implementing that authority, the Legislature enacted the Michigan Liquor Control Code, MCL 436.1101, et seq., and established the Michigan Liquor Control Commission, MCL 436.1209. The Code vests the Commission with plenary authority over Michigan's alcoholic liquor industry, including the manufacture, importation, possession, and sales thereof. See MCL 436.1203(2).

Pursuant to the Administrative Procedures Act, if an agency concludes that the public 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, and effective during the proceedings. See MCL 24.292(2). Further, MCL 436.1903(1) permits the Commission or any Commissioner or duly authorized agent

of the Commission designated by the Chairperson to suspend or revoke any liquor license on a violation of the Liquor Control Code or the Commission's administrative rules.

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. There is currently no vaccine or antiviral treatment for this disease widely available to the general public. To date, there have been over 548,000 confirmed cases of COVID-19 in Michigan, resulting in over 14,000 deaths.

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). The 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, the 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.

On November 15, 2020, the MDHHS issued a Gatherings and Face Mask Order that took effect on November 18, 2020. That order stated 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 concluded that "the COVID-19 pandemic continues to constitute an epidemic in Michigan." Thus, the MDHHS generally prohibited indoor

gatherings, including indoor gatherings at food service establishments. The MDHHS issued similar orders on December 7, 2020, and December 18, 2020. Both December orders rested on the same legal authority as the November 15 order and contained many similar provisions, including provisions prohibiting indoor gatherings at food service establishments.

On January 13, 2021, the MDHHS issued an order that took effect on January 16, 2021, and rescinded the December 18, 2020 Gatherings and Face Mask Order on that date. See Ex. 1. The January 13 MDHHS order, which likewise rested on the same legal authority as the preceding orders, stated that the seven-day average case rate in Michigan remained nearly three times higher than on October 1, 2020. In addition, the death rate was six times higher than in October; more than 500 persons were dying each week in Michigan of COVID-19. Like the preceding orders, the January 13 order concluded that the COVID-19 pandemic continues to constitute an epidemic in Michigan.

Also like its predecessor orders, the January 13 order generally prohibited indoor gatherings at non-residential venues. See 1/13/2021 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). The January 13 order prohibited 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). The order defined “indoors” as “a space that is fully or partially enclosed on the top, and fully or partially enclosed on two or more contiguous sides. Additionally, in a space that is fully or partially enclosed on the top, and fully or partially enclosed on two non-contiguous sides, any part of that space that is more than 8 feet from an open side is indoors.” *Id.* at section (1)(j).

Despite the general prohibition on indoor gatherings, the January 13, 2021 order allowed “lower risk entertainment facilities” and “lower and moderate risk recreational facilities” to permit indoor gatherings under certain conditions, including operating at limited capacity. See January 13, 2021 Gatherings and Face Mask Order, section

3(a)(5)(A)-(C). Additional limitations included a prohibition on the sale and consumption of food and beverage on the premises. *Id.* at 3(a)(4). Further, groups from the same households are limited to six people, and persons from different households must maintain six feet distance from one another. *Id.* at section (3)(a)(1)-(3).

Also, subject to limited exceptions, the January 13 order requires “[a]ll persons participating in gatherings . . . to wear a face mask.” *Id.* at section 7(a). “Except as provided elsewhere in [the January 13] 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).

Violations of the January 13 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).

Based on the investigative report received from the Michigan Liquor Control Commission’s Enforcement Division, and the dictates of the MDHHS’s January 13, 2021 Gatherings and Face Mask Order, the Commissioner finds on behalf of the Commission that the public health, safety, and welfare requires emergency action, as contemplated by MCL 24.292(2). The Commissioner therefore issues an emergency suspension of the licenses and permits held by Birdies Indoor Golf & Bar, LLC located at 980 N. Lapeer Road, Oxford. A post-suspension hearing is scheduled for **February 8, 2021 at 2:30 pm**, to determine whether this suspension should continue or other fines and penalties should be imposed.

I. Findings of Fact

Birdies Indoor Golf & Bar, LLC (Licensee) currently holds Class C liquor license as well as a Sunday Sales Permit (A.M. and P.M.) at its licensed location. On January 8, 2021, an investigator from the Michigan Liquor Control Commission’s Enforcement

Division inspected the Licensee's establishment in response to a complaint from the local health department regarding the Licensee's alleged violations of the MDHHS's Gatherings and Face Mask Orders. Upon arrival, the investigator observed several unmasked patrons inside. Toward the rear of the establishment there is a recreation section containing multiple stalls where patrons can play indoor golf. Five patrons were playing golf without masks and some were consuming alcoholic beverages. At the bar, patrons were observed sitting close together, failing to maintain adequate social distancing. The patrons seated at the bar did not appear to be of the same household or group as they did not speak with each other. The investigator documented the above observations with video footage and photographs.

The investigator returned to the licensed establishment on January 29, 2021, to determine the Licensee's compliance with the January 13, 2021 MDHHS Gatherings and Face Mask Order. The investigator arrived at the licensed establishment at approximately 5:45 p.m. Deputies from the Oakland County Sheriff's Department escorted the investigator into the licensed establishment. Upon entering the licensed establishment, the investigator observed nine persons seated at the bar who were not seated at least six feet apart and were not wearing face masks. The persons observed sitting at the bar were consuming alcoholic beverages and consuming food despite that the MDHHS order prohibited such activities. Two additional tables were located adjacent to the bar. Both tables were occupied by patrons without masks. In total, 17 patrons were allowed to gather in the bar area near the front of the establishment. All of the patrons were observed drinking alcoholic beverages.

The investigator also reported that six of the indoor golf stalls were occupied by patrons who were not wearing masks. Additionally, the rear recreation area contained seven dining tables located between the indoor golf stalls, and alcoholic beverages were on each of the seven tables. Two of seven tables located in the recreation area were served food. In total, there were 45 patrons located inside the licensed establishment and an additional three employees. Neither the patrons nor the staff wore masks. The

establishment was approved for 99 occupants and was thus operating at nearly 50% capacity.

While the investigator documented her observations with video footage, owner Thomas Morrissey approached and asked whether there was a problem. The investigator advised Mr. Morrissey that the licensed establishment was violating the MDHHS Gatherings and Face Mask Order, despite previously being advised on January 8 that the Licensee must comply with the MDHHS order. Mr. Morrissey admitted he previously received requests to cease and desist indoor gatherings.

The Licensee is a food service establishment that did not qualify for an exception permitting it to serve food and beverage indoors in the January 13, 2021 MDHHS Gatherings and Face Mask Order. The Licensee is also a lower risk recreational facility that, although allowed to have some indoor gatherings, was nevertheless prohibited from allowing the sale or consumption of food and beverages. The continued operation of the licensed premises allowing indoor gatherings involving illegal food and beverage sales and consumption, and allowing those gatherings without requiring individuals to wear face masks, poses an immediate threat to the health, safety, and welfare of the public and if allowed to continue is likely to result in additional significant outbreaks of COVID-19.

II. Conclusions of Law:

The Licensee violated the MDHHS Gatherings and Face Mask Order dated January 13, 2021, by allowing non-residential indoor gatherings without requiring persons to wear face masks, contrary to section 7(a), (c). This also violates Mich Admin Code, R 436.1011(1).

As a lower risk recreational facility, the Licensee also violated the MDHHS Gatherings and Face Mask Order dated January 13, 2021, by allowing members of different households to be within six feet of one another without proper social distancing, contrary to Section 3(a)(3); by allowing the sale and consumption of food and beverages on the licensed premises, contrary to Section 3(a)(4); and by operating in excess of the

capacity limitations, contrary to Section 3(a)(5). These violations of the January 13, 2021 MDHHS order also violate Mich Admin Code, R 436.1011(1).

For these reasons, the Commissioner orders the following, pursuant to MCL 24.292(2):

THEREFORE, IT IS ORDERED that:

- A. The Class C license, and all permits, at the above-captioned licensed premises are hereby immediately suspended.
- B. Birdies Indoor Golf & Bar, LLC, shall appear before an Administrative Law Judge on **Monday, February 8, 2021 at 2:30 p.m. for a virtual hearing via Zoom** on the charges identified above and listed in Complaint No. CV-509013 in accordance with the Michigan Administrative Procedures Act, MCL 24.201, et. seq., and the Commission's Hearing and Appeals Practice administrative rules.

IT IS SO ORDERED.

MICHIGAN LIQUOR CONTROL COMMISSION



Lee Gonzales, Hearing Commissioner

Date Mailed: _____