



**STATE OF RHODE ISLAND
RHODE ISLAND DEPARTMENT OF HEALTH**

**IN THE MATTER OF:
FabCity Cigar Lounge
Violations of Executive Orders and
RI Department of Health Regulations**

**IMMEDIATE COMPLIANCE ORDER
HEALTHY ENVIRONMENT**

Now comes the Director of the Rhode Island Department of Health (“RIDOH”), as informed by the Chair (“Chair”) of the Rhode Island COVID-19 Enforcement Task Force (“Task Force”), and pursuant to R.I. Gen. Laws § 23-1-21, Executive Orders 20-32 and 20-58 (“Executive Orders”), and the RIDOH rules and regulations pertaining to Safe Activities By Covered Entities During the COVID-19 Emergency (216-RICR-50-15-7) (“Safe Regulations”), determines that FabCity Cigar Lounge (“Respondent”) is in violation of applicable Executive Orders and/or the Safe Regulations, which violation requires immediate action to protect the health, welfare, and safety of the public.

NEED FOR IMMEDIATE ACTION

On March 9, 2020, Governor Gina M. Raimondo declared a state of emergency for the State of Rhode Island due to the dangers to health and life posed by COVID-19. The Safe Regulations were promulgated as an emergency rule, pursuant to R.I. Gen. Laws § 42-35-2.10, based on a finding that an imminent peril to the public health, safety, or welfare required immediate promulgation of the rule, specifically that “[i]n order to prevent further spread of COVID-19 as individuals begin to leave their homes more frequently and establishments begin to reopen, protective measures must be followed and

implemented for individuals and establishments to resume operations so that the public's health and welfare is protected."

GROUND S FOR DETERMINATION VIOLATIONS

- I. Respondent is a cigar lounge located at 1438 Newport Avenue in Pawtucket.
- II. Respondent is a covered entity, as defined in the Safe Regulations. As such, Respondent is required to comply with applicable Executive Orders and the Safe Regulations.
- III. On August 15, 2020, at approximately 12:05 AM, the Pawtucket Police Department was dispatched to the Respondent establishment for a liquor establishment check. It was reported that the establishment was over the limit and there were fights outside. Upon arrival, officers observed approximately 20 people outside the establishment drinking and being extremely loud and disruptive. Officers attempted to make entry into the establishment but were unable to reach the bar area due to the large number of patrons crowded inside. Officers observed no mask usage by the customers and the employees. Officers also noted that physical distancing was not, and due to the number of patrons in the establishment, could not be followed. Officers estimated that at least 140 people were inside the establishment. While officers were speaking with the manager, multiple fights broke out in the outside crowd. Eventually, order was restored. Manager Josimar Duarte ("Manager") advised officer Vega that "things got a little away from them this evening." He further stated that no one carries a clicker/counter to ensure that the building does not go over capacity. (See "Exhibit A")
- IV. Also, on August 15, 2020, at approximately 1249 AM, the Rhode Island State Police COVID-19 Task Force received an anonymous tip of a large social gathering taking place at the Respondent establishment. Troopers responded and were met by Pawtucket Police who were already on scene and advised of the earlier incident. Troopers did not observe any patrons still on the premises but did also speak with Manager. Troopers advised Manager of the importance of

complying with the public health measures, such as social distancing and wearing a mask. Manager stated that Respondent understood and that they would comply. (See "Exhibit B")

- V. Later, on August 15, 2020, at approximately 11:41 PM, Pawtucket Police were once again called to the Respondent establishment for a report of COVID-19 restriction violations. Officers noted that, upon arrival, approximately 20 patrons were outside, entering and exiting the establishment. Just 1 of those observed entering or exiting was wearing a cloth face covering despite the fact that these patrons were all standing in close proximity and unable to feasibly maintain physical distancing. When the officer entered the establishment, he observed approximately 65-80 patrons inside, none of which were practicing physical distancing or wearing a mask. The failure to wear a cloth face covering extended to the staff as well. The officer spoke with owner Allen Correia, who stated that he closed the bar area at 11:00 PM but was allowed to keep the establishment open until 1:00 AM. Although Correia stated that he was strictly enforcing the regulations due to the fight that occurred earlier, the officer observed that very few people were wearing masks or keeping the proper distance amongst one another. (See "Exhibit C")
- VI. On August 17, 2020, a Task Force inspector met with owner/partner Frank Gomes and conducted a Healthy Environment inspection of the Respondent establishment. The inspector performed a checklist inspection based on the Safe Regulations and determined that Respondent scored a 7/11 for overall requirements, a 4/5 for dining requirements, and a 2/6 for bar requirements.
- VII. Of note is the fact that the Respondent failed to ensure that if parties were seated at the bar, no staff were permitted to work in any areas behind the bar unless a physical, non-porous barrier of appropriate height is installed between the bar work areas and customers; that even with physical barriers between the bar work areas and customers, staff may only serve seated customers drinks and food through a gap or opening in the barrier that is no more than eight (8) inches in size;

and/or that working bar areas, such as drink making stations or glassware storage, must be located at least six feet from the gaps.

- VIII. Based on the foregoing, and in the absence of any other information to rebut the allegations, the Director of RIDOH has determined that Respondent is in present violation of multiple provisions of applicable Executive Orders and/or the Safe Regulations and that immediate action is necessary to protect the health, welfare, or safety of the public.

VIOLATIONS

The following violations stem from the occurrences of August 15, 2020 and the inspection of August 17, 2020:

- I. Respondent is in violation of Section 7.4.1(A)(3) of the Safe Regulations, which requires all individuals in an establishment to wear cloth face coverings unless physical distancing or an exception applies and requires establishments to deny entry to any employee, who is not otherwise exempt from the requirement, who refuses to wear a cloth face covering when required. The Pawtucket Police noted in their reports that they observed few patrons or staff to be wearing masks at either incident. Further, during the inspection of August 17, 2020, the inspector observed 4 employees in the establishment, of which 2 were not wearing a cloth face covering.
- II. Respondent is in violation of Section 7.4.1(A)(1) of the Safe Regulations, which requires each covered entity to develop, maintain, and ensure compliance with a written plan for the safe operation of the establishment. Upon request by the inspector on August 17, 2020, the Respondent could not produce a written plan.
- III. Respondent is in violation of Section 7.4.1(A)(6) & (7) of the Safe Regulations, which requires each covered entity to ensure the performance of environmental cleaning of its establishments once per day and to maintain records documenting such environmental cleaning. Upon request by the

inspector on August 17, 2020, the Respondent did provide a cleaning log, however, there were no entries made in it. Therefore, the inspector concluded that Respondent was not documenting its environmental cleaning in accordance with the Safe Regulations.

- IV. Respondent is in violation of Section 7.4.1(A)(1)(a) of the Safe Regulations, which requires establishments to ensure compliance with a plan that includes procedures relative to, among other things, physical distancing at all times, to the extent feasible, additional measures to be taken in high traffic, communal, or other areas where physical distancing is not feasible and wearing of cloth face coverings. As stated above, Respondent failed to produce a plan with which to comply and, based on the observations of the Pawtucket Police, as documented in reports 20-4074-OF and 20-4096-OF, Respondent was not ensuring compliance with any plan relative to physical distancing and wearing of cloth face coverings, as physical distancing was not feasible to maintain due to the large volume of patrons inside the establishment and few were wearing cloth face coverings.
- V. Respondent is in violation of Section 7.4.2(A)(2) of the Safe Regulations, which prohibits self-service seating. On August 17, 2020, the inspector observed multiple customers seating themselves.
- VI. Respondent is in violation of Section 7.4.2(A)(6) of the Safe Regulations, which requires that:
 - a. when parties are seated at the bar, no staff are permitted to work in any areas behind the bar and all work areas behind the bar unless a physical, non-porous barrier (i.e., plexiglass) of appropriate height is installed between the bar work areas and customers; and
 - b. even with physical barriers between bar work areas and customers, staff may only serve seated customers drinks and food through a gap or opening in the barrier that is no more than eight (8) inches in size; and,

- c. working bar areas (e.g. drink making stations or glassware storage) must be located at least six (6) feet from these gaps. Drinks and/or food may not be passed to customers under, over, or around such barrier by staff behind the bar.

On August 17, 2020, the inspector observed that there was no physical non-porous barrier installed between the bar work areas and customers despite the fact that the bar was in use. The inspector further observed a customer walk up to the bar and be served a drink while standing.

- VII. Respondent is in violation of Section 7.4.2(A)(3) of the Safe Regulations, which prohibits service to standing customers. On August 17, 2020, the inspector observed a customer walk up to the bar and be served a drink while standing.
- VIII. Respondent is in violation of Section 7.4.1(A)(12) of the Safe Regulations, which prohibits congregating and/or mingling in an establishment or areas under the establishment's control. Based on the observations of Pawtucket Police, as documented in reports 20-4074-OF and 20-4096-OF, Respondent allowed excessive congregating and/or mingling in its establishment.

ORDER

It is hereby **ORDERED**, that Respondent is immediately closed until such time as the following violations are remedied to the satisfaction of the Director of RIDOH:

- I. Respondent shall develop and implement a corrective plan that brings Respondent into compliance with applicable Executive Orders and the Safe Regulations.
- II. Respondent establishment shall be cleaned and sanitized in accordance with applicable CDC guidance.
- III. Each employee shall be interviewed by RIDOH to ensure that none has symptoms of COVID-19. In accordance with § 7.4.1(A)(2), any employee exhibiting multiple symptoms of COVID-19 or who is COVID-19 positive shall be denied access to the establishment.

- IV. Respondent shall develop, maintain, and ensure compliance with a written plan for the safe operation of the establishment.
- V. Respondent shall require all employees in its establishment to wear cloth face coverings unless physical distancing can be continuously maintained, or an exception applies. In accordance with Section 7.4.1(3)(a) of the Safe Regulations, Respondent shall deny access to its establishment to any employee who refuses to wear a cloth face covering when required by the Safe Regulations unless an exception applies.
- VI. Respondent shall ensure the performance of environmental cleaning of its establishment once per day and shall clean commonly touched surfaces, such as shared workstations, elevator buttons, door handles, and railings, in accordance with CDC guidance. Respondent shall maintain records documenting such cleaning.
- VII. Respondent shall ensure compliance with its plan for safe operation, required pursuant to Section 7.4.1(A)(1) of the Safe Regulations, including compliance with, among other things, procedures consistent with the Safe Regulations relative to physical distancing at all times, to the extent feasible, additional measures to be taken in high traffic, communal, or other areas where physical distancing is not feasible, and wearing of cloth face coverings.
- VIII. Respondent shall ensure that service is made only to seated customers and that no service to standing customers occurs.
- IX. Respondent shall ensure that no congregating and/or mingling occurs within the establishment or any area under the establishment's control.
- X. Respondent shall ensure that:
 - a. when parties are seated at the bar, no staff are permitted to work in any areas behind the bar and all work areas behind the bar unless a physical, non-porous barrier (i.e., plexiglass) of appropriate height is installed between the bar work areas and customers; and

- b. even with physical barriers between bar work areas and customers, staff may only serve seated customers drinks and food through a gap or opening in the barrier that is no more than eight (8) inches in size; and,
- c. working bar areas (e.g. drink making stations or glassware storage) are located at least six (6) feet from these gaps and that drinks and/or food is not passed to customers under, over, or around such barrier by staff behind the bar.

Entered this 19th day of August 2020.

A handwritten signature in black ink, appearing to read "Nicole Alexander-Scott". The signature is fluid and cursive, with the first name "Nicole" being the most prominent.

Nicole Alexander-Scott, MD, MPH
Director
Rhode Island Department of Health
Cannon Building, Rm. 401
Three Capitol Hill
Providence, RI 02908

EXHIBIT A

Pawtucket Police Report

20-4074-OF



Pawtucket Police Department
Incident Report

Page: 1
08/15/2020

Incident #: 20-4074-OF
Call #: 20-52875

Date/Time Reported: 08/15/2020 0009
Report Date/Time: 08/15/2020 0209
Occurred Between: 08/15/2020 0005-08/15/2020 0100
Status: No Crime Involved

Reporting Officer: Patrol ARIEL VEGA
Approving Officer: Sergeant RICHARD LAFOREST

Signature: _____

Signature: _____

EVENTS (S)

LOCATION TYPE: Bar/Night Club
FAB CITY CIGAR LOUNGE
1438 NEWPORT AVE
PAWTUCKET RI 02860

Zone: Tab 1-5

1 LIQUOR EST. CHECKS- SUSPECTED OVER CAP AND FIGHT OUTSIDE

PERSON(S) PERSON TYPE SEX RACE AGE SSN PHONE

#	PERSON(S)	PERSON TYPE	SEX	RACE	AGE	SSN	PHONE
1	DUARTE, JOSIMAR M [REDACTED]	OTHER	M	B	28		[REDACTED]

EMPLOYER:

2	CORREIA, ALAN [REDACTED]	OTHER	M	U	00	NOT AVAIL	[REDACTED]
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Ref: 20-4074-OF

On 8.15.2020 at approximately 0015 hrs., I, Officer Vega (car #301), Officer Galvin (car #303) and cruiser #308 (Jesse/ Richards) responded to Fab City to attempt to move a group that was standing outside of the establishment.

Upon my arrival, I observed that there were approximately 20 people standing outside of the bar in the designated outdoor area. The group was drinking and being extremely loud and disruptive. As we approached we observed that the inside of the establishment was completely filled with people and appeared to be over maximum capacity. There was also loud music coming from inside of the establishment that could be heard from directly outside of the building. I quickly spoke to a bouncer and asked him to get the owner or manager to come outside and speak to me. We waited for several minutes and when no one responded we attempted to head inside to the bar area. When we entered, the entire establishment was so filled that we could not move people to get to the bar area. I observed that no one was wearing masks and no one was adhering to any form of social distancing, including all of the employees. I stopped a waitress and advised her that I needed the person in charge to head outside to speak to me. Because we could not make it to the bar area, I am not sure if the employees had stopped serving liquor at this time. We subsequently waited outside again, because there were too many people inside and we could not move.

A male party, Josimar Duarte then exited and advised me that he was the manager. Duarte advised me that the owner was not at the establishment. Duarte explained that 'things got a little away' from them this evening. Duarte explained that they do not employ anyone to carry a clicker to ensure that the building does not go over capacity. As I was speaking to Duarte there were people beginning to exit and leave the premises. There were approximately 140 or more people that exited the building. There was no one checking to ensure that people did not take their drinks with them.

As I continued to advise Duarte of these issues, a fight broke out between a group of males. There were approximately 7 males fighting in the street on Benefit St. Officers advised Dispatch and the remainder of the third platoon officers responded. The group began to block traffic and several parties joined the fight. Several smaller fights began to break out as a result. Officers gave several verbal commands but the crowd was now actively fighting. At this time, Officers began to administer short bursts of OC pepper spray into the air to attempt to disperse the crowd and stop the fights. The bursts of OC pepper spray had the desired affect and the crowd began to slowly disperse. As the crowd was dispersing they were not doing so in an orderly manner. There were several crowds blocking traffic, screaming at each other and several vehicles speeding and blaring music as they left.

Once the majority of people exited the building, the employees locked the door to the establishment to keep people from going back inside. Over time the crowd slowly dispersed without further incident.

EXHIBIT A

RI State Police Report

20RIX4-653-OF

PERSONNEL NARRATIVE FOR TROOPER SAMUEL W HEBB

Ref: 20RIX4-653-OF

On Saturday, August 15, 2020, at approximately 12:45AM, Corporal Doherty and I, Trooper Hebb, responded to Fab City Cigar 1438 Newport Avenue, Pawtucket as part of the COVID-19 Task Force, for an anonymous tip of a large social gathering.

When the Pawtucket Police Department was contacted regarding that Troopers would be responding for a COVID-19 complaint Desk Sergeant Vasatka advised several officers were already responding there for a disturbance. Sergeant Vasatka additionally indicated that it is a frequent occurrence for members of the Pawtucket Police Department to respond to the establishment for a disturbance. When Troopers arrived on scene there were no patrons there but during the response for a disturbance by the Pawtucket Police Department there was an estimated 50-60 people congregating inside and outside the establishment. Corporal Doherty emphasized to the manager identified as Jesmair Duert the importance of complying with the public health measures such as social distancing and wearing a mask. All parties on scene stated they understood the health measures and stated they would adhere to the guidelines. We then cleared without incidents.

Nothing Further to Report.

EXHIBIT A

Pawtucket Police Report

20-4096-OF

Ref: 20-4096-OF

On 15 August 2020 at approximately 2341 hours, I, Officer Muse (Bike 1), was dispatched to 1438 Newport Avenue (Fab City) in reference to Covid-19 restriction violations.

Upon arrival, I observed a large group (approximately 20 people) outside of the bar both exiting and entering. Only one person was wearing a mask, and the rest were standing in close proximity together with no staff present. The establishment was small and there were approximately 65-80 people were inside none of which were practicing social distancing protocol. I did not see anyone wearing a mask inside to include the staff.

I spoke with the owner Allen Correia. He said he had closed the bar area, and the outside area at 2300 hours in accordance with the Covid-19 guidelines. He further informed that an establishment could stay open until 0100 hours, but nothing could be served. He said he was in compliance, and began ushering people off the property as I was on scene. Allen advised he was strictly enforcing the regulation due to the fight that had occurred earlier in the morning (08/15/20). However, very few people were wearing masks or keeping the proper distance amongst one another.