



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

**IN THE MATTER OF:
Shogun Restaurant
Violations of Executive Orders and
RI Department of Health Regulations**

**IMMEDIATE COMPLIANCE ORDER AND
NOTICE OF VIOLATION AND COMPLIANCE ORDER**

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 §§ 23-1-20 and 23-1-21, Executive Order 105 (“Executive Order”), 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 there are reasonable grounds to believe that Shogun Restaurant (“Respondent”) is in violation of applicable Executive Orders and/or the Safe Regulations, and that, with respect to bar requirements (hibachi work stations), 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 OF VIOLATIONS

- I. Respondent is a dining establishment located at 76 Jefferson Boulevard in Warwick.
- 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 or about December 12, 2020, a Task Force inspector conducted a Healthy Environment inspection of the Respondent. The inspector performed a checklist inspection based on the Safe Regulations and determined that Respondent scored an 11/12 for overall requirements and a 4/5 for dining requirements.
- IV. Of significance is the fact that the Respondent failed to ensure that if parties were seated at the hibachi workstations/bars/counter, no staff were permitted to work in any areas behind the hibachi workstations/bars/counter 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.
- V. 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, with respect to the hibachi

workstation/bar/counter requirements, immediate action is necessary to protect the health, welfare, or safety of the public.

VIOLATIONS

ALLEGED VIOLATIONS

The following alleged violations stem from the December 12, 2020 inspection.

- I. 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 of appropriate height and made of a material which complies with the interior finish requirements of the State Fire Code, 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.

The inspector observed multiple hibachi workstations/bars/counters to be in use without the required physical, non-porous barriers of appropriate height installed between the hibachi work area and the customers. (See "Exhibit A")

- II. Respondent is in violation of Executive Order 20-105, paragraph 25, which limits an establishment's indoor dining capacity to 33% of its regular seating capacity. The Respondent's regular indoor seating capacity is 91 patrons. Therefore, during the "Pause", the Respondent's indoor seating capacity is 30. The inspector counted more than 45 patrons seated and dining.

- III. Respondent is in violation of Section 7.4.2(A)(5) of the Safe Regulations, which requires that all parties seated at a bar be separated by at least 6 feet, unless separated by a physical, non-porous barrier of an appropriate height. The inspector observed parties to be seated at the hibachi areas who were neither separated by a physical, non-porous barrier of an appropriate height, nor seated at least six feet apart.

ORDER

IMMEDIATE COMPLIANCE

It is hereby **ORDERED**, that Respondent is to immediately close its bar/bar area until such time as violations are remedied to the satisfaction of the Director of RIDOH by fulfilling the conditions as set forth below:

- I. 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 and made of a material which complies with the interior finish requirements of the State Fire Code 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.

NOTICE OF COMPLIANCE

It is further **ORDERED**, that on or before the tenth (10th) day from service of this Notice of Violation and Compliance Order, Respondent shall remedy the above cited violations and come into full compliance with applicable Executive Orders and Regulations, by fulfilling the conditions as set forth below:

- I. Respondent shall limit its indoor dining capacity to the requirements as set forth in Executive Order 105, and any successor Executive Order thereto, until such time as the limits on indoor dining are lifted.
- II. Respondent shall ensure that all parties seated at a bar be separated by at least 6 feet, unless separated by a physical, non-porous barrier of an appropriate height.

With respect to the Notice of Compliance, a written request for a hearing may be filed within ten (10) days of this notice.

Failure to comply with this ORDER may result in the imposition of civil penalties and/or any other action authorized by applicable law or regulation.

Entered this 15th day of December 2020.



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EXHIBIT A

