



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

**IN THE MATTER OF:
Portsmouth Publick House
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 Orders 20-32 and 20-50 (“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 there are reasonable grounds to believe that the Portsmouth Publick House (“Respondent”) is in violation of applicable Executive Orders and/or the Safe Regulations, and that, with respect to bar requirements, 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.”

GROUNDINGS FOR DETERMINATION OF VIOLATIONS

- I. Respondent is a dining establishment located at 600 Clock Tower Square in Portsmouth.
- 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 July 14, 2020, a Task Force inspector met with sous chef Paul Boucher and 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 11/11 for overall requirements, a 5/5 for dining requirements, and a 3/4 for bar requirements. In response, the inspector provided information and resources to the Respondent to help it achieve full compliance. This included a recommendation to the Respondent on how to access www.ReopeningRI.com and the relevant websites for the Executive Orders, rules, regulations, and guidance. The Respondent was also advised that a reinspection would take place in the near future.
- IV. On or about July 24, 2020, a different Task Force inspector conducted a reinspection of the Respondent. The inspector met with manager Alan Chaves and again performed a checklist inspection based on the Safe Regulations. The inspector determined that the Respondent scored a 10/11 for overall requirements, 5/5 for dining requirements, and a 3/4 for bar requirements.
- V. 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.

- VI. 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 bar requirements, immediate action is necessary to protect the health, welfare, or safety of the public.

VIOLATIONS

The following violations stem from the July 24, 2020 reinspection:

- I. Respondent is in violation of Section 7.4.1(A)(4) of the Safe Regulations, which requires each covered entity to ensure the placement of posters or signs at entry to its establishments educating any individual at the establishment concerning entry screening, required social distancing, use of cloth face coverings, and other subjects as provided in guidance issued by the Department. The inspectors observed that although several posters were properly displayed, not all required posters were present. Missing was the poster that describes the symptoms of COVID -19.
- II. 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.

The inspector observed that although a physical barrier was present between work areas and customers, the barrier was not in compliance with the Safe Regulation because the barrier was non continuous due to gaps between sheets. The inspector also noted that at the sushi bar, the physical barrier did not adequately separate the service area from the customer due to gaps in the bottom of the barrier.

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 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

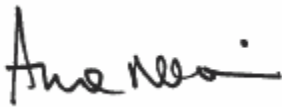
It is further **ORDERED**, that on or before the tenth (10th) day from service of this Notice of Violation and Compliance Order, Respondent shall remedy the above cited violations and come into full compliance with applicable Executive Orders and Regulations, by fulfilling the conditions as set forth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

- I. Respondent shall ensure the placement of all required posters or signs at entry to its establishment educating any individual at the establishment concerning entry screening, required social distancing, use of cloth face coverings, and other subjects as provided in guidance issued by RIDOH.

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 28th day of July 2020.



_____ for

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