

Linda J. Johnson
Ruth Botstein
Assistant Municipal Attorney
Email: courtdocs@muni.org

FILED
STATE OF ALASKA
THIRD DISTRICT
2020 AUG -6 PM 3:45
CLERK OF THE TRIAL COURTS

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

MUNICIPALITY OF ANCHORAGE,)

Plaintiff,)

vs.)

DEWEY C. WELLS, SAMANTHA)

WELLS, dba LITTLE DIPPER DINER,)

Defendants.)

Case No. 3AN-20- 07724 CI

COMPLAINT

Plaintiff Municipality of Anchorage (MOA) files this Complaint against Defendants and alleges as follows.

PARTIES

1. Plaintiff Municipality of Anchorage ("MOA") is a home rule municipal corporation, organized and existing under the laws of the State of Alaska, with a principal mailing address of Post Office Box 196650, Anchorage, Alaska, 99519-6650, and as such can sue and be sued under the statutes of the State of Alaska.

2. The continued operation of Little Dipper Diner, located at 1921 W. Dimond Blvd, Suite 106, Anchorage, Alaska, in violation of municipal law, is the subject of this complaint. At all times material to the allegations in this complaint, Defendants Dewey Wells and

**MUNICIPALITY
OF
ANCHORAGE**

**OFFICE OF THE
MUNICIPAL
ATTORNEY**

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

Samantha Wells (Defendants) operate a restaurant in Anchorage, Alaska, in the Third Judicial District. Defendants had notice of the orders to close in-person dining inside their restaurant, but have knowingly and willfully refused to comply with lawful orders to cease indoor operation.

3. At all times material to the allegations in this complaint, Defendants Dewey Wells and Samantha Wells, who operate Little Dipper Diner, are residents within the Third Judicial District.

Defendants' business license lists them as owners of Little Dipper Diner. Ex. 1 Business License for Dewey Wells and Samantha Wells.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction in this action pursuant to AS 22.15.030(a).

5. The Court has personal jurisdiction over the parties to this action pursuant to AS 09.05.015(a).

6. Venue is proper pursuant to Alaska R. Civ. P. 3(c).

FACTUAL ALLEGATIONS

7. Anchorage is currently in the midst of a global pandemic. As noted by national, state, and local health officials and medical providers, COVID-19 is a highly contagious virus. The United States of America, the State of Alaska, and the Municipality of Anchorage all have declared states of emergency due to the COVID-19 pandemic. On July 28, 2020, the Anchorage Assembly extended Anchorage Mayor Ethan Berkowitz's Proclamation of Emergency until October 16, 2020. The Proclamation was issued pursuant to Anchorage

Municipal Code (AMC) 3.80.040, which permitted the Mayor to proclaim an emergency for a reason defined in AMC 3.80.030. *See* AMC 3.80.030 (defining “contagious disease”). COVID-19 poses a grave risk to the health and safety of Anchorage residents.

8. Residents have been urged to continue to keep social bubbles small, wear cloth face coverings in indoor public places, stay 6 feet away from others, and wash hands often. Despite these efforts, the MOA recently experienced the worst week of the pandemic to date, as measured by new cases, active cases, and cases per day. New local cases are being found at more than double the rate of prior weeks. The number of cases has exceeded the Anchorage Health Department's capacity to rapidly trace and monitor every known case. More people are in the hospital with COVID-19 in Anchorage now than at any point in the epidemic, and modeling from the University of Alaska Anchorage shows a deteriorating situation in which Anchorage will exceed hospital ICU capacity by mid-September if the MOA does not immediately act to flatten the curve.

9. In response to the worsening pandemic in the Municipality, and in order to preserve the health and safety of the residents of the Municipality of Anchorage from COVID-19, on July 31, 2020, Anchorage Mayor Ethan Berkowitz signed his fifteenth Emergency Order (EO) of this pandemic, EO-15, effective at 8 a.m. August 3, 2020. EO-15 and the continuation of other emergency orders acknowledged that our community remains in the midst of an active, evolving pandemic. This order is to remain in effect until 11:59 pm on August 30, 2020. This “four-week reset” is intended to curb the widespread community transmission and ongoing increase in COVID-19 cases in Anchorage.

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10. EO-15's "four-week reset" was aimed at limiting spread of the virus by targeting the specific situations and behaviors that science has shown are most likely to spread COVID-19 to large numbers of individuals: large gatherings of people in close proximity, especially indoors and unmasked. EO-15 placed limits on gatherings, defined to include any meeting or event whether indoors or in an outside setting. It also restricted certain business operations—preventing situations where people congregate together indoors, where mask-wearing is not feasible, and/or where social distancing cannot be observed. Thus, EO-15 placed new limits on bars and nightclubs, restaurants and breweries, and bingo halls and theaters. EO-15 permits and encourages restaurants to continue to operate take-out, curbside pick-up, and delivery services. It also continues to permit outdoor dining at restaurants, allowing table service, with each table 10 feet or more apart, as measured edge to edge. But EO-15 specifically prohibits indoor restaurant dining, stating that "All restaurants and breweries are closed to indoor dining."¹

11. Emergency Order 12, enacted in June 2020, allowed restaurants to expand outdoor seating. Thirty establishments in the Municipality have done so. Defendants have not expanded restaurant service for Little Dipper to serve customers outdoors.

11. On August 3, 2020, Little Dipper Diner posted the following on its Facebook account, indicating its knowledge of EO-15:

¹ Mayor Berkowitz also signed EO-13 version 2, extending the requirement to wear cloth face coverings or masks in indoor public spaces. EO-13 version 2 required individuals to wear masks or cloth face coverings at all outdoor gatherings when six feet of physical distancing from non-household members cannot be maintained. EO-13 version 2 took effect August 3, 2020 to remain in effect until modified or revoked.

Hello All, once again the Mayor has shut us down for Dine-in. We are still open for Take-out, curbside and Delivery. I hope for your continued support through this Month. Thank you all for supporting us, we really appreciate all of our loyal Customers.

Ex. 2

12. On August 4, 2020, Little Dipper Diner posted the following on its Facebook account, indicating its intent to defy EO-15:

Hello All, We are going to be open for Dine-in starting tomorrow, we will still be practicing all sanitation and safety standard[s]. As most of our guests already know we are family owned and operated. We are not trying to be unlawful, but we feel EO15 is just so unfair, we just will not survive this month of closure after the last one, we barely survived that. The municipality is not helping us or anyone other (sic) restaurant or bar in any way. We have put our whole lives into this restaurant and don't want to lose everything we've worked so hard to obtain. I hope you all support our decision [emoji]

Ex. 3

13. On August 5, 2020, Defendants opened the Little Dipper Diner for business and were in operation after 9 a.m. on August 5, 2020, intentionally defying EO-15 by offering indoor dining.

14. On August 5, 2020, at 10:26 a.m., a MOA Code Enforcement Officer went to Little Dipper Diner and observed that the restaurant was actively serving customers indoors. The Code Enforcement Officer personally served a "Complaint of Municipal Code Violation" (Code Enforcement Complaint) to Dewey Wells and Samantha Wells DBA Little Dipper Diner for violation of EO-15 on August 5, 2020. Ex. 4 attached hereto. A Certification of Service states that the Complaint was personally served on Samantha Wells.

Id. The Code Enforcement Complaint stated that Little Dipper Diner was operating in violation of EO-15, which constituted a public nuisance pursuant to AMC 15.20.020.A and

levied a fine, of \$300.00. *Id.* The Code Enforcement Complaint ordered Defendants to immediately discontinue any indoor dining as directed by EO-15.

15. Code Enforcement also handed Samantha Wells a Stop Work Order for Little Dipper Diner on August 5, 2020. *Id.* The Stop Work Order stated that Defendants were to: “Immediately close the restaurant to indoor dining.” The Order stated that the restaurant was in violation of EO-15. The Stop Work Order ended with a Warning:

The failure to stop work, the resuming of work without permission from the Municipality or the removal, mutilation, destruction or concealment of this Notice is punishable by fine and imprisonment. AMC 8.30.010).”

Id.

16. Pursuant to AMC 8.30.010.A.6, if a person intentionally, recklessly or knowingly disobeys the lawful orders of any public official, the person has committed a crime. Violation of A.6 is a class B misdemeanor. AMC 3.80.090 makes will failure and refusal to comply with an Emergency Order a criminal offense, concurrent with and in addition to any civil penalties provided for in the Code, including but not limited to AMC 05.20.020.

17. Defendants were aware of the Stop Work Order, as evidenced by the posted of a copy of the Stop Work Order on the Facebook Page for Little Dipper Diner stating: “Well that didn’t take long!!!” Ex. 5 Facebook Post from Little Dipper Diner page, dated August 5, 2020.

18. Little Dipper Diner is still operating indoor dining in violation of EO-15 and the Stop Work Order. Code Enforcement will return to Little Dipper Diner and provide another Stop Work Order to Defendants, directing them to immediately discontinue any indoor

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dining as directed in EO-15, and will serve Defendants with a second Complaint of Municipal Code Violation, this time with a \$600.00 fine.

COUNT ONE
(Civil Penalties – AMC 15.20.130)

19. Plaintiff realleges paragraphs 1 through 19 as if fully set forth herein.

20. Defendants have disobeyed and continue to knowingly and intentionally disobey a lawful order of the MOA Code Enforcement officer to remain open for indoor dining on August 5, 2020, continuing to August 6, 2020 in violation of AMC 15.20.020.

21. Pursuant to AMC 15.20.130, the MOA may set a fine for a violation, pursuant to AMC 14.60.030, up to \$300.00 for a first offense, and set a fine up to \$600.00 for the second and all subsequent offenses.

22. AMC 15.20.130A.5 permits the MOA to “assess up to double the amount of the fine, penalty, costs and damages for a second or subsequent offense...” Defendants have willfully disregarded the initial Stop Work Order and Code Enforcement Complaint and therefore the Court should grant double the fine for each day of operation in violation of EO-15.

23. The MOA seeks payment of the fine levied by the Code Enforcement Complaint for violation of the EO-15 on August 3, 2020, which amounted to \$300.00, and seeks payment for fines that have been or will be levied for subsequent and continuing violations, amounting to \$600.00 *per day*.

COUNT TWO
(Abatement – AMC 15.20.120)

24. The MOA realleges paragraphs 1 through 23 as if fully set forth herein.

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25. The MOA relied upon AMC 15.05.070.A which protects the "imminent or present danger to the health or welfare of the people of the municipality ... and it appears to be prejudicial to the interests of the people of the municipality to delay action until an opportunity for a hearing can be provided, the director may without prior hearing order that person by notice to discontinue, abate or alleviate such condition or activity. The proscribed condition or activity shall be immediately discontinued, abated or alleviated."

26. The MOA also relied upon AMC 15.20.020.A, which states:

No person shall allow, maintain or permit a public nuisance to exist or allow, maintain or permit recurrence of a public nuisance. Such existence, allowance, maintenance, permitting or recurrence of a public nuisance is a violation of this chapter.

27. Defendants failed to comply with the lawful Code Enforcement order and continued to serve customers inside the restaurant in defiance of the Code Enforcement Complaint and Stop Work Order. Pursuant to AMC 15.20.120.B the MOA may abate the violation of AMC 15.20.020 and recover the costs of abatement.

28. The MOA requests a writ of assistance for entry onto the property to assist with the abatement of the ongoing violations, if necessary.

29. The MOA requests an order authorizing MOA officials to enter the property and abate the nuisance, if necessary.

30. The MOA requests an order for its costs in abating this nuisance.

COUNT THREE
(Injunctive Relief – AMC 15.20.120)

31. The MOA realleges paragraphs 1 through 30 as if fully set forth herein.

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32. AMC 15.20.120.E authorizes the MOA to bring a civil action to enjoin the violations.

33. The MOA is entitled to an injunctive order against Defendants enjoining further violations.

34. The MOA seeks a Court order pursuant to AMC 14.50.010.A, directing Defendants to immediately discontinue any indoor dining, as directed by EO-15.

35. The actions of Defendants to allow indoor dining at Little Dipper Diner in the midst of the COVID-19 pandemic and in violation of EO-15's specific prohibition of indoor dining pose an imminent health risk to the citizens of Anchorage. Allowing Little Dipper Diner to continue to operate in violation of EO-15 would irreparably harm Anchorage and all its residents by increasing the spread of COVID-19.

36. The MOA also seeks a Court order prohibiting Defendants from conducting, permitting, or allowing others to continue providing indoor dining at Little Dipper Diner while EO-15 remains in effect, or to permit or conduct any similar violation on the property.

PRAYER FOR RELIEF

WHEREFORE, the MOA prays for the following relief:

- a. A temporary and permanent injunction against further violations by Defendants.
- b. Imposition of a fine of \$300.00 for the first offense and a fine of \$600.00 per day for the second and any subsequent offense.
- c. The costs of abating the nuisance.
- d. A writ of assistance directing law enforcement officials to assist the MOA in abating the violation.

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f. An order authorizing MOA officials to enter the property and abate the on-going violation

g. Interest in the amount of 8 percent per annum, pursuant to AMC 14. 50.040D.

h. An award of costs and attorney's fees incurred by the MOA in bringing and prosecuting this action.

i. Any such other relief as the Court deems just and equitable.

Respectfully submitted this 6th day of August, 2020.

KATHRYN R. VOGEL
Municipal Attorney

By: 

Linda J. Johnson
Assistant Municipal Attorney
Alaska Bar No. 8911070
Ruth Botstein
Assistant Municipal Attorney
Alaska Bar No. 9906016

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Alaska Department of Commerce, Community, and Economic Development

Division of Corporations, Business, and Professional Licensing

PO Box 110806, Juneau, AK 99811-0806

This is to certify that

LITTLE DIPPER DINER

1921 W. DIMOND BLVD SUITE 106, ANCHORAGE, AK 99515

owned by

DEWEY C WELLS; SAMANTHA L WELLS

is licensed by the department to conduct business for the period

December 30, 2019 to December 31, 2020
for the following line(s) of business:

72 - Accommodation and Food Services



This license shall not be taken as permission to do business in the state without having complied with the other requirements of the laws of the State or of the United States.

This license must be posted in a conspicuous place at the business location.
It is not transferable or assignable.

Julie Anderson
Commissioner



Little Dipper Diner

August 3 at 9:49 AM · 🌐

...

Hello All,

once again the Mayor has shut us down for Dine-in.

We are still open for Take-out, curbside and Delivery.

I hope for your continued support through this Month.

Thank you all for supporting us, we really appreciate all of our loyal Customers

👍👍👍 73

36 Comments 12 Shares



Little Dipper Diner

August 4 at 7:21 PM · 🌐

...

Hello All,

We are going to be open for Dine-in starting tomorrow, we will still be practicing all sanitation and safety standard.

As most of our guest already know we are Family owned and operated.

We are not trying to be unlawful, but we feel EO15 is just so unfair, we just will not survive this month of closure after the last one, we barely survived that.

The municipality is not helping us or anyone other restaurant or bar in any way

We have put our whole lives into this restaurant and don't want to lose everything we've worked so hard to obtain.

I hope you all will support our decision 🙏

👍👎🗨️ 1K

572 Comments 993 Shares

MUNICIPALITY OF ANCHORAGE,
Plaintiff,
vs.
DEWEY C. WELLS AND
SAMANTHA L. WELLS
DBA LITTLE DIPPER DINER
Defendants.

Exhibit 4
Page 1 of 6

offer takeout, curbside, and delivery service.”

Violation: Operating/ permitting/serving, indoor dining in Little Dipper Diner on August 5th, 2020, in violation of Emergency Order 15, Paragraph 7.

Relevant Code Provisions:

- 2) **Anchorage Municipal Code 3.80.060.H:** Imposition of orders and regulations during period of emergency: Issue such other orders of regulations immediately necessary for the protection of life and property
- 3) **Anchorage Municipal Code 15.05.070.A** Emergency Orders: When the director finds after investigation that a person is causing, engaging in or maintaining a condition or activity which in the judgement of the director presents an imminent or present danger to the health or welfare of the people of the Municipality, or would result in or be likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interests of the people of the Municipality to delay action until an opportunity for a hearing can be provided, the director may without prior hearing order that person by notice to discontinue, abate or alleviate such condition or activity. The proscribed condition or activity shall be immediately discontinued, abated or alleviated.
- 4) **Anchorage Municipal Code 15.02.020.A: Public nuisances prohibited; enumeration.** No person shall allow, maintain, or permit a public nuisance to exist or allow, maintain or permit recurrence of a public nuisance. Such existence, allowance, maintenance, permitting or recurrence of a public nuisance is a violation of this chapter.

Relief request:

1. Civil penalty in the amount of \$300.00 per violation, per day for one (1) day; Account:192020-101000-407050.
2. A compliance order under AMC 14.50.010.A directing defendant to: immediately discontinue any indoor dining as directed in Emergency Order-15.
3. Other relief, specifically: defendant shall not conduct, permit, or allow others to permit or conduct any similar violation on the subject property *or be subject to*

applicable civil penalties set forth in AMC Title 14. (Pre-hearing costs and costs of abating nuisances may also be sought.)

BY MY SIGNATURE BELOW I CERTIFY THAT THIS COMPLAINT WAS SERVED:

- ☒ A) In person on date of issuance.
- ☐ B) By certified mail, restricted delivery, to the last known address of
- ☐ C) By affixing a copy of this complaint to the property which is the subject of the violation: _____
- ☐ D) By delivery to the authorized representative of Defendant, _____
_____ at _____

Officer Name Printed

Signature

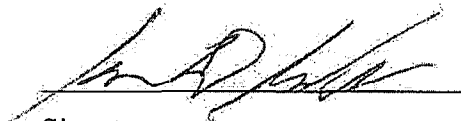
Date

Proceeding initiated by Code Enforcement

Officer: Cora D. Weaver

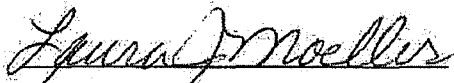
Phone No.: (907) 343-8331

I, Cora Weaver, state that I have read the above complaint and that the statements and attachments are true and correct to the best of my knowledge and belief.

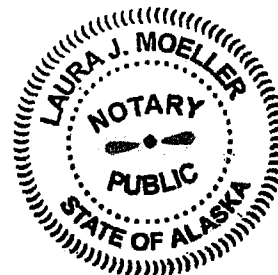

Signature

8-5-20
Date

SUBSCRIBED AND SWORN TO before me this 5th day August 2020.


Notary Public in and for Alaska

My Commission Expires: 12-22-21



Notice of Rights

If you do not dispute the claim in this Complaint please correct the violation(s) as requested above and submit check or money order payable to the Municipality of Anchorage for the civil penalty amount indicated above and mail to: Administrative Hearing Office, PO Box 196650, Anchorage, AK 99519-6650 or deliver in person to: City Hall, 632 W. 6th Avenue, Suite 740 with a copy of the Complaint.

If you wish to contest the allegations in the Complaint, please complete the request for hearing form below **within 15 days** of receipt of Complaint and mail to: Administrative Hearing Office, PO Box 196650, Anchorage, AK 99519-6650 or deliver in person to: City Hall, 632 W. 6th Avenue, Suite 740 with a copy of the Complaint. Phone: (907) 343-4535, Facsimile: (907) 343-4541. A brief description of the rights and procedures before the Administrative Hearing Officer is included with this Complaint. More complete information concerning guidelines and procedures for the administrative hearing process are available from the Administrative Hearings Office.

You are hereby notified that the relief request above will be granted and decision entered for the relief requested unless you file an Application for Administrative Hearing within FIFTEEN (15) DAYS after you receive this Complaint. In addition, be advised that a fine of \$250.00 per day may be assessed for noncompliance of an order issued by the Administrative Hearings Officer. If not paid in full within thirty (30) days from the date of this final order, a one-time late payment fee of \$25.00 will be assessed pursuant to AMC 14.50.040(E). Interest on fines and assessments not paid within thirty (30) days of the decision shall accrue at the rate of eight percent (8%) per year pursuant to AMC 14.50.040(D).

The notice of hearing date, time and place, and all decisions will be served by mail. If you request a hearing but fail to appear at the time and place set for the hearing, your failure to appear may result in a Default Order being entered against you. A default may not be entered if the facts alleged in this Complaint fail to support the violation claimed to have occurred

Municipality
of
Anchorage

Land Use
Enforcement
P.O. Box 196650
Anchorage, Alaska
99519-6650
(907) 343-4141

IMPORTANT: READ THE FOLLOWING NOTICE CAREFULLY

Notice of Rights and Procedures
Before the Municipal Administrative Hearings Officer

1. The Administrative Hearings Officer is an employee of the Municipality of Anchorage appointed by the Mayor and confirmed by the Assembly pursuant to the provisions of Title 14 of the Anchorage Municipal Code. The Administrative Hearings Officer is empowered to determine whether violations of the Municipal Code have occurred and, if so, to order appropriate remedial action to correct the violation and/or impose civil penalties.
2. The Administrative Hearings procedure is a quasi-judicial proceeding although generally less formal and more flexible than court proceedings. All testimony is under oath or affirmation. You will have the right to cross examine witnesses and you have the right to be represented by an attorney at your own expense and choosing. The burden of proof and of going forward with the evidence will usually be on the Municipality.
3. A request for a hearing must contain:
 - a) Your full name and address;
 - b) The name and address of your attorney should you choose to hire an attorney;
 - c) A statement that you admit, deny or do not have, and are unable to obtain, sufficient information to admit or deny the allegations in the Complaint. Failure to respond to an allegation shall be treated as an admission; and
 - d) A statement of your defense or basis for denying the facts alleged in this Complaint and the facts supporting your defense.
4. The procedure used at the hearing is set forth generally in AMC 14.30 and under control of the Hearings Officer. You will be given an opportunity to present witnesses and evidence on your own behalf, and to cross examine the Municipality's witnesses. Prior to or in the course of the hearing, the Hearings Officer may encourage an off-the-record discussion between the parties for the purposes of defining or limiting the issues and/or exploring the possibilities of a stipulated settlement.
5. A recording will be made of all hearings. A copy of such record will be available to you upon request and receipt of duplication fees.
6. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. You are expected to have all relevant evidence available at the time set for hearing. If you have documents or photos you wish to be in evidence you must provide a copy for the opposing party as well as a copy for the Administrative Hearing Officer. Hearsay evidence may be excluded at the discretion of the Hearings Officer.
7. An attorney will not normally represent the Municipality in hearings, although the Municipality may be represented by counsel if it so desires. You may be represented by an attorney at your own expense and choosing in these proceedings if you wish.
8. If you are not represented by an attorney, you may, during the course of the proceedings, request a recess to obtain an attorney if you determine that representation by an attorney is necessary to protect your rights. Such request is, however, addressed to the sound discretion of the Hearings Officer.
9. If you require accommodations to attend or participate in the hearing please advise the Hearing Office at least three business days prior so that arrangements can be made. Failure to do so may cause delays in the hearing process.
10. If you are aggrieved by any final order of the Hearings Officer, you may appeal such order to the Superior Court of the State of Alaska within thirty (30) days of effective date of the order.



**MUNICIPALITY OF ANCHORAGE
ADMINISTRATIVE HEARING OFFICE
City Hall, 632 West 6th Avenue, Suite 740
Anchorage, Alaska 99501
(907) 343-4535; Facsimile (907) 343-4541**

REQUEST FOR HEARING

LAND USE, RIGHT-OF-WAY AND ON-SITE SVS.

**You must file this request for hearing within fifteen (15) days of the date of service of the Complaint.
*Please type or print clearly.***

Land Use Case #: _____ **OR** Right-of-Way Case #: _____

Your Name(s): _____

Mailing Address: _____

City: _____ Zip Code: _____

Home Phone: _____ Cell Phone: _____ Work Phone: _____

State why you are requesting a hearing. If more space is needed, attach additional sheets. At the hearing, you may present photographs, diagrams, documents and other relevant evidence. You may call witnesses. If a witness is unable to attend, you may present his/her notarized sworn statement.

STATEMENT OF RIGHTS

I understand that I am entitled to attend the hearing and submit evidence at the hearing. I understand that I may present witnesses, cross-examine witnesses called by Land Use or Right-of-Way, and may engage the services of an attorney to represent me; I may also subpoena witnesses. If I do not attend for any reason, I waive the right to present evidence in my defense at the hearing. I understand that if for any reason I do not attend, a decision may be rendered against me by default. I understand that the notice of the hearing date, time and place, and all decisions will be served by mail.

I declare that all information provided above is true, accurate and complete. In the absence of a notary public, I personally certify under penalty of perjury, that the foregoing statements are true.

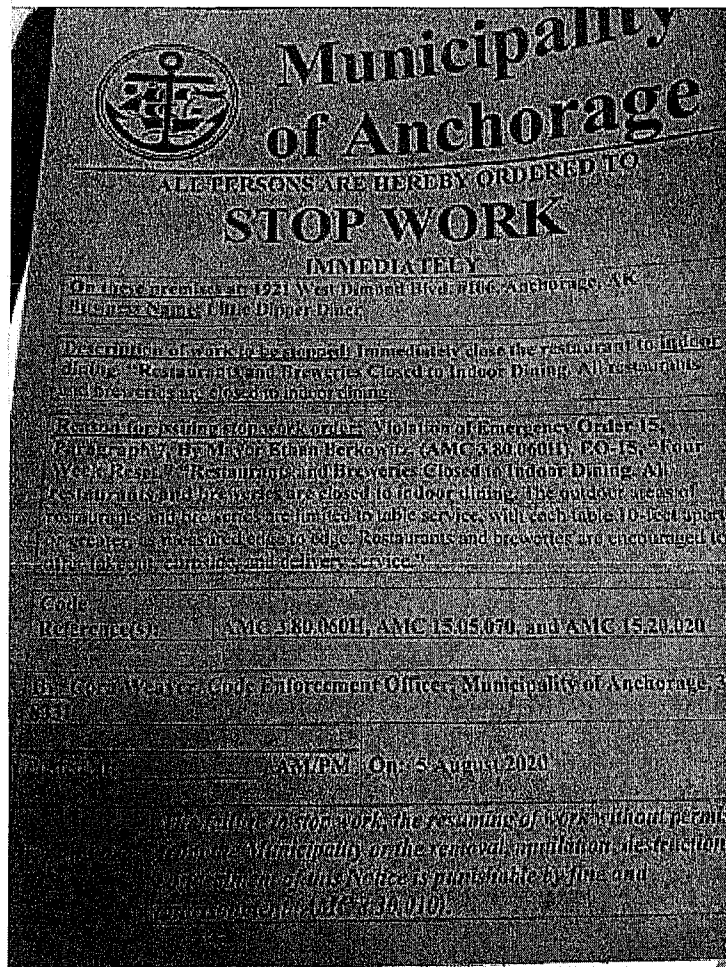
Signature _____ Date _____



Little Dipper Diner

Yesterday at 10:29 AM · 🌐

Well that didn't take long!!!



260

195 Comments 99 Shares