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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

DEPUTY CLERK

THIRD JUDICIAL DISTRICT AT ANCHORAGE

MUNICIPALITY OF ANCHORAGE,)

Plaintiff,)

vs.)

DEWEY C. WELLS, SAMANTHA)

WELLS, dba LITTLE DIPPER DINER)

Defendants.)

Case No. 3AN-20- 07424 CI

MOTION AND MEMORANDUM IN SUPPORT OF
TEMPORARY INJUNCTION

This emergency motion arises at a critical time in fight against the COVID-19 pandemic in the United States in general, as well as in Anchorage. As the virus spreads through the community and threatens to overwhelm the health care system, the Municipality passed an emergency measure, Emergency Order 15 (EO-15), that takes the difficult but necessary step of closing bars and indoor dining at all Anchorage restaurants in order to protect the health and safety of Anchorage residents. Defendants own and operate a restaurant that has willfully refused to follow this law, putting its employees, customers, and the residents of Anchorage at risk. The restaurant has been served with a Stop Work Order that it has intentionally defied.

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OF
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OFFICE OF THE
MUNICIPAL
ATTORNEY

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

Telephone: 343-4545
Facsimile: 343-4550

For these reasons, Plaintiff Municipality of Anchorage (MOA) moves for a temporary restraining order and injunction against Defendants Samantha Wells and Dewey Wells. Defendants operate Little Dipper Diner located at 1921 W. Dimond Blvd, Suite 106, Anchorage, Alaska, because Little Dipper Diner is operating in violation of municipal law, and has intentionally ignored the MOA's directions that it immediately stop work. Defendants had notice of the orders to close in-person dining inside their restaurant and have knowingly and willfully refused to comply with all lawful orders to cease indoor operation.

Specifically, the MOA seeks an order for Defendants to immediately cease operating the restaurant Little Dipper Diner for indoor customer seating in violation of Emergency Order (EO) 15.

I. APPLICABLE LAW.

The Court has the jurisdiction to issue an injunction pursuant to AS 22.10.020(c).

Alaska R. Civ. P. 65(d) states:

Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

II. ELEMENTS NECESSARY FOR AN INJUNCTION.

In order to obtain an injunction, a plaintiff must first meet the appropriate standard.

The showing required to obtain an injunction depends on the nature of the threatened injury.

State, Div. of Elections v. Metcalf, 110 P.3d 976, 978 (Alaska 2005). A party seeking a temporary restraining order carries the same burden as a party seeking a preliminary

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injunction. *See Alaska v. United Cook Inlet Drift Association*, 815 P.2d 378 (Alaska 1991); *see also State v. Norene*, 457 P.2d 926, 934 n.5 (Moody, J. dissenting).

A plaintiff may obtain an injunction by meeting either 1) the balance of hardships standard, or 2) the probable success on the merits standard. *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014). The Supreme Court adopted the balance of hardships standard as an alternative to the rule requiring a clear showing of probable success on the merits. *A.J. Indus., Inc. v. Alaska Pub. Serv. Comm'n*, 470 P.2d 537, 540 (Alaska 1970), modified in other respects, 483 P.2d 198 (Alaska 1971).

The Supreme Court has articulated when the trial courts should apply the two standards:

The showing required to obtain a preliminary injunction depends on the nature of the threatened injury. If the plaintiff faces the danger of “irreparable harm” and if the opposing party is adequately protected, then we apply a “balance of hardships” approach in which the plaintiff “must raise ‘serious’ and substantial questions going to the merits of the case; that is, the issues raised cannot be ‘frivolous or obviously without merit.’” If, however, the plaintiff’s threatened harm is less than irreparable or if the opposing party cannot be adequately protected, then we demand of the plaintiff the heightened standard of a “clear showing of probable success on the merits.”

State, Div. of Elections v. Metcalfe, 110 P.3d 976, 979 (Alaska 2005) citing to *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1273 (Alaska 1992) and *A.J. Indus., Inc.*, 470 P.2d at 540.

The Court should apply the balance of hardships test in this case. Defendants’ decision to ignore a critical public safety order in the midst of a deathly pandemic places their customers, employees, and the entire community at immediate risk of contracting a deadly disease; by any definition, this is irreparable harm.

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III. FACTUAL BACKGROUND.

Anchorage is currently in the midst of a global pandemic. 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.

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 to flatten the curve.

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 of

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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.

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. 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

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.

Emergency Order 12, enacted in June 2020, allowed restaurants to expand outdoor seating. Thirty establishments in the Municipality have done so. It appears that Little Dipper Diner has not attempted to expand its service outdoors, take-out, curbside pick-up, or delivery service.

Little Dipper Diner is owned and operated by Defendants Samantha Wells and Dewey Wells, as indicated on their Business License. Ex. 1

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

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

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

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. On August 5, 2020, at 10:26 a.m., a MOA Code Enforcement Officer went to Little

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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.

Code Enforcement also personally 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.*

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.

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Defendants were aware of the Stop Work Order, as evidenced by a copy of the Stop Work Order they posted 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.

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 directing them to immediately discontinue any indoor 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.

IV. THE INJUNCTION SHOULD BE GRANTED.

AMC 15.20.120.E authorizes the MOA to bring a civil action to enjoin the violations. The MOA is entitled to an injunctive order against Samantha Wells and Dewey Wells, enjoining further violations. Little Dipper Diner and its operators, Samantha Wells and Dewey Wells, have disobeyed and continue to knowingly and intentionally disobey a lawful order of the MOA Code Enforcement officer to remained open for indoor dining until at least 3 pm on August 4, 2020 in violation of AMC 15.20.020. The MOA seeks a Court order pursuant to AMC 14.50.010.A, directing Defendants to immediately discontinue any indoor dining at Little Dipper Diner, as directed by EO-15. The MOA also seeks a Court order prohibiting Defendants from conducting, permitting, or allowing others to permit or conduct any similar violation on the property.

The MOA relied upon AMC 15.05.070.A which states:

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When the director finds after investigation that a person is causing, engaging in or maintaining a condition or activity which in the judgment 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.

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.

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.

This Court must direct Defendants to comply with EO-15. The restrictions on indoor restaurant dining are undeniably difficult for affected businesses, but they are necessary for the health of the entire community. The risks include large gatherings of non-household or social bubble members, bars, and restaurants offering indoor dining, which are especially risky when they are indoor, because social distancing is difficult or impossible, and because masks cannot be worn while people eat and drink. In Anchorage and elsewhere, these environments have resulted in “superspreader events” – clusters of disease resulting from a single infected person who spreads the contagion to other attendees.

The ordinance follows the current data about the status of this disease in Alaska, and the MOA has determined that indoor bar and restaurant operations cannot be open safely at

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this time in the Municipality. Even when bar and restaurant owners and operators in good faith diligently use best practices for sanitation and other efforts to prevent disease transmission, at this time these environments pose an unacceptable risk to the community. This is not the fault of any business owner; it simply reflects that the virus spreads very well in these particular settings. EO-15's restrictions on bars and restaurants are well-tailored to the current status of COVID-19 in Anchorage today. Furthermore, all restaurants have been subjected to the same requirements under the EO. And restaurant owners can minimize economic harm by properly setting up outdoor dining and focusing on take out orders.

A. Injunction Should Apply the Balance of Hardships Test.

The Supreme Court set forth the elements needed for a balance of hardships standard:

A preliminary injunction is warranted under that standard when three factors are present: "(1) the plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise serious and substantial questions going to the merits of the case; that is, the issues raised cannot be frivolous or obviously without merit."

Alsworth. at 54, citing *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d, 1270, 1273 (Alaska 1992) (quoting *Messerli v. Dep't of Natural Resources*, 768 P.2d 1112, 1122 (Alaska 1989)). Given the facts in this case, the balance of hardships test should be applied. The risk of sickening Anchorage diners and others in the community with a contagion is irreparable harm by any definition.

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1. Without an Injunction, The Public Health and Safety will Be Jeopardized, Causing Irreparable Harm.

As stated above, the public health is in jeopardy in Anchorage from Covid 19. The Mayor's order in EO-15 is designed to prevent the spread of disease which has proved to be deadly to some residents, and has sickened thousands in Alaska.

Defendants have willfully failed and refused to comply with EO-15. Defendants are aware of the order but have refused to comply. Instead Defendants have refused to comply with EO-15, and are serving customers inside Little Dipper Diner who cannot eat or drink with a mask on, which contributes to the spread of Covid-19.

2. Defendants are Adequately Protected.

Defendants are adequately protected because EO-15 did not halt all restaurant business, and EO-15 is only intended to last for four weeks. Although Little Dipper Diner is set up to provide indoor dining service to customers, EO-12, dated June 2020, permitted restaurants to set up outdoor dining for customers. EO-15 continues to permit the continued consumption of food or drink, so long as the gathering is outdoors. Restaurants also have the option to offer take-out service, curbside pick-up and delivery services, and Little Dipper Diner indicated via its Facebook post that the diner was going to be open for take-out, curbside, and delivery. Little Dipper Diner has options to continue to operate its business during the time that EO-15 is in place.

Even if these measures were not available, the pandemic presents a sufficiently serious imminent public health risk that would still permit the Municipality to close Little Dipper Diner entirely.

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3. The MOA Can Demonstrate Serious and Substantial Questions Going to the Merits of the Case.

The protection of the health and safety of Anchorage residents is a serious and substantial question going to the merits of the case. Defendants' failure to comply with EO-15 is a serious and substantial question. The Court has evidence of the Defendant's actions that indicate willful defiance of a lawful order.

The MOA has not been unreasonable in its enforcement. Unfortunately, even after Defendants were cited by the MOA Code Enforcement Officer and a Stop Work Order was provided, ordering the Defendants to cease indoor restaurant service, Defendants continued to serve customers inside the diner. The MOA was required to file the Complaint to enforce EO-15 and the Code Enforcement Officer's unambiguous orders to force Defendants to cease indoor restaurant service.

A. If Necessary, The MOA Can Demonstrate a Clear Showing Of Probable Success On The Merits.

Although it is not necessary because the harm to the MOA is great if the injunction is denied, and defendants are adequately protected if the injunction is granted, it is not necessary to demonstrate that there is a clear probability of success of the merits. However, even if this Court determines it is necessary to evaluate the likelihood of success on the merits, the MOA can demonstrate probable success on the merits of its claims.

The MOA is highly likely to prevail on the allegations in its complaint, based on the willful and intentional violations of the Anchorage Municipal Code committed by Defendants. EO-15 was intended to further a legitimate Municipal goal – to restrain all restaurants in the Municipality from engaging in behavior that has been identified as

contributing to a public health and safety emergency. The pandemic caused by Covid-19 has spread throughout the Municipality. Anchorage's cases have increased substantially since the Mayor ended the order to "hunker down" and allowed restaurants to begin operating once again. Since that time, it is clear that the disease has continued to increase among Anchorage residents.

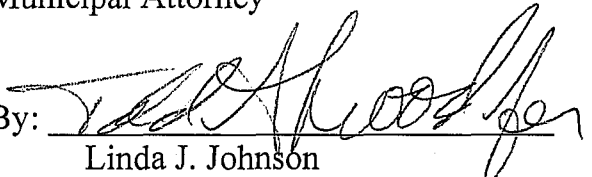
Defendants had prior knowledge of EO-15's mandate to stop indoor dining. However, despite that knowledge, Defendants willfully continued to serve customers inside their restaurant. They have violated the Stop Work Order and have continued to serve in the face of the Code Enforcement Complaint, personally served upon Samantha Wells on August 5, 2020. Accordingly, the MOA can demonstrate a clear showing of probable success on the merits.

V. CONCLUSION.

For all the reasons set forth above, the Court should grant the temporary restraining order and injunction against Defendants and direct them to immediately close Little Dipper Diner to indoor dining.

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

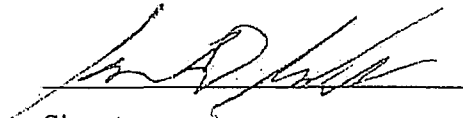
Date

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.

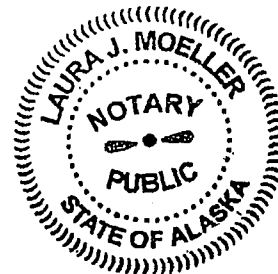

Signature

8-5-20
Date

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


Notary Public in and for Alaska

My Commission Expires: 02-22-21



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!!!

 **Municipality
of Anchorage**

**ALL PERSONS ARE HEREBY ORDERED TO
STOP WORK
IMMEDIATELY**

**On this premises: 1921 West Dimond Blvd #100, Anchorage, AK
Business Name: Little Dipper Diner**

Description of work to be stopped: Immediately close the restaurant to indoor dining. Restaurants and Breweries Closed to Indoor Dining. All restaurants and breweries are closed to indoor dining.

Reason for issuing stop work order: Violation of Emergency Order 15, Paragraph 7. By Mayor Ethan Berkowitz (AMC 3.80.0601B) P.O. 15. After Week Restart Restaurants and Breweries Closed to Indoor Dining. All restaurants and breweries are closed to indoor dining. The outdoor areas of restaurants and breweries are limited to table service with each table 10 feet apart or greater as measured edge to edge. Restaurants and breweries are encouraged to offer takeout, curbside, and delivery service.

Code: _____

Reference(s): AMC 3.80.0601B, AMC 15.05.070, and AMC 15.20.020

By: Cori Weaver, Code Enforcement Officer, Municipality of Anchorage, 3-6341

Date/Time: _____ AM/PM On: 5 August 2020

Failure to stop work, the resuming of work without permits from the Municipality or the removal, mutilation, destruction, or alteration of this Notice is punishable by fine and imprisonment (AMC 8.30.010).

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195 Comments 99 Shares