

Linda J. Johnson  
Ruth Botstein  
Assistant Municipal Attorney  
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**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-20-07424 CI

FILED  
STATE OF ALASKA  
THIRD JUDICIAL DISTRICT  
2020 AUG 10 AM 10:23  
CLERK OF THE TRIAL COURTS  
BY  
DEBORAH C. BROWN

**NOTICE OF SUPPLEMENTAL AUTHORITIES**

Plaintiff Municipality of Anchorage hereby gives notice to the Court of the following supplemental authorities that are relevant to the Municipality's Motion and Memorandum in Support of Temporary Injunction (filed August 6, 2020):

1. Order Granting Plaintiff's Motion for Temporary Injunction, *Municipality of Anchorage v. Kriner's Diner LLC et al.*, Case No. 3AN-20-7394 CI. This order, issued by Superior Court Judge Hon. Eric Aarseth on August 7, 2020, grants the Municipality's motion for a temporary injunction on nearly identical facts. A copy of the order is attached for the Court's convenience.

**MUNICIPALITY  
OF  
ANCHORAGE**

**OFFICE OF THE  
MUNICIPAL ATTORNEY**

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

Telephone: 343-4545  
Facsimile: 343-4550

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2. Complaint of Municipal Code Violation. *MOA v. Little Dipper Diner, et al.*, LUE Case No. LUE118960/SR202147, served on Plaintiffs on August 7, 2020 at 3:37 pm. This complaint is filed by the Municipality of Anchorage, Land Use Enforcement. A copy of this document is attached for the Court's convenience.

Respectfully submitted this 8th day of August, 2020.

KATHRYN R. VOGEL  
Municipal Attorney

By: s/ Linda J. Johnson & Ruth Botstein  
Linda J. Johnson  
Assistant Municipal Attorney  
Alaska Bar No. 8911070  
Ruth Botstein  
Assistant Municipal Attorney  
Alaska Bar No. 9901016

**MUNICIPALITY  
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Notice of Supplemental Authorities  
*MOA v. Little Dipper Diner LLC, et al.*; Case No. 3AN-20-07424 CI  
Page 2 of 2

**BEFORE THE ADMINISTRATIVE HEARING OFFICER  
FOR THE MUNICIPALITY OF ANCHORAGE**

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

Administrative Hearing No.: \_\_\_\_\_  
Code Enforcement Case No.: LUE118960/SR202147

**COMPLAINT OF MUNICIPAL CODE VIOLATION**

**Name and Address of the persons responsible for the violation:** Dewey C. Wells and  
Samantha L. Wells dba Little Dipper Diner, 1921 W. Dimond Blvd, Anchorage, Alaska

**Street Address of violation:** 1921 W. Dimond Blvd. #106, Anchorage, Alaska

**Legal Description of violation:** Bruce, Lot 8-A1

**Zoning of Property & Section:** B-3, General Business District, (AMC 21.04.030.D)

**Date of violation:** August 6 and 7, 2020, two (2) days. (second violation)

- 1) **Specific violations:** **AMC 15.20.020.A, Public Nuisance:** 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. **Violation of Emergency Order 15, Paragraph 7, By Mayor Ethan Berkowitz, "Four Week Reset. "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."

**Municipality  
of  
Anchorage**

Land Use  
Enforcement  
P.O. Box 196630  
Anchorage, Alaska  
99519-6650  
(907) 343-8331

**Violation:** Operating/ permitting/serving, indoor dining in Little Dipper Diner on August 6, 2020 and August 7, 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 \$1,200.00 per violation, per day for two (2) days; 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

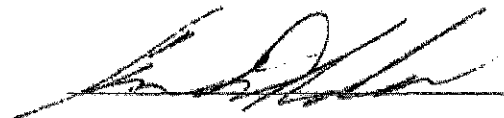
\_\_\_\_\_  
Date

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.

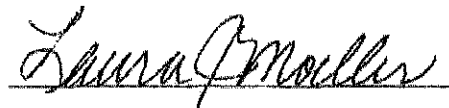


Signature

8-7-20

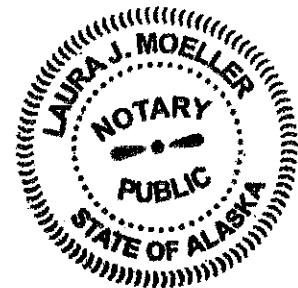
Date

SUBSCRIBED AND SWORN TO before me this 7th day August 2020.



Notary Public in and for Alaska

My Commission Expires: 2-22-21



**Municipality  
of  
Anchorage**

Land Use  
Enforcement  
P.O. Box 196650  
Anchorage, Alaska  
99519-6650  
(907) 343-8331

Municipality of Anchorage vs Dewey and Samantha Wells dba Little Dipper Diner  
Land Use Enforcement case #118960

## 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. 6<sup>th</sup> 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. 6<sup>th</sup> 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

Municipality of Anchorage vs Dewey and Samantha Wells dba Little Dipper Diner  
Land Use Enforcement case #118960

**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.

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**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 \_\_\_\_\_

Municipality of Anchorage vs Dewey and Samantha Wells dba Little Dipper Diner  
Land Use Enforcement case #118960



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Municipality of Anchorage,

Plaintiff,

vs.

Kriner's Diner, LLC. et al,

Defendants.

3AN-20-7394 CI

**ORDER GRANTING PLAINTIFF'S MOTION FOR TEMPORARY  
INJUNCTION**

The Plaintiff's motion for a temporary injunction is GRANTED. Defendants are ordered to comply with EO-15. Specifically they are prohibited from providing, allowing or facilitating, directly or indirectly, indoor dining.

The Plaintiff has demonstrated that the Anchorage public will suffer irreparable harm by allowing businesses such as Kriner's Diner to violate Emergency Order – 15. Specifically, that indoor dining exacerbates the risk of the spread of COVID-19. If infected with COVID-19, individuals face a significant risk of serious harm to their health to include death.

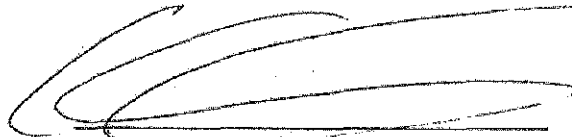
The economic interests of Kriner's Diner and businesses similarly situated are adequately protected by the ability to continue business operations by serving food outdoors, curbside, to-go orders or for delivery. That the nature of the potential harm to the Anchorage public is of such significant importance, that the

closure of a business would be warranted. A property interest cannot outweigh a person's interest in life.

The issues raised by the Plaintiff, specifically the Defendant's willful non-compliance with EO-15, raise serious and substantial questions regarding the merits of the case. The Plaintiff demonstrated and the defendants did not oppose that the Mayor of Anchorage has the authority to issue emergency orders; that EO-15 was issued; that the defendants received notice of EO-15; and that the defendants willfully violated EO-15.

**IT IS SO ORDERED.**

Dated at Anchorage, Alaska this 7<sup>th</sup> day of August 2020.



Eric A. Aarseth  
Superior Court Judge

I certify that on 8/7/2020 a copy  
of the above was mailed to each of the following  
at their addresses of record.

Nancy Botstein Johnson  
Nancy McKewin, Judicial Assistant

Quackenbush