

**FILED VIA EMAIL**

DATE 6-4-2020 TIME 4:25 pm

**MAUREEN G. KELLY, CLERK OF COURTS**

IN THE COURT OF COMMON PLEAS  
LAKE COUNTY, OHIO

MFRS LLC d/b/a DIAMONDBACK BAR )  
AND GRILL )  
34471 Vine Street )  
Eastlake, Ohio 44795 )

And )

JSJ KLUB, LLC d/b/a HARRY BUFFALO )  
2120 E. 4<sup>TH</sup> Street )  
Cleveland, Ohio 44115 )

And )

OVER THE COALS, INC. d/b/a )  
ISLANDER BAR AND GRILL )  
7581 Pearl Rd. )  
Middleburg Heights, Ohio 44130 )

And )

BDP ENTERTAINING LLC d/b/a )  
GRAYTON ROAD TAVERN )  
4760 Grayton Road )  
Cleveland, Ohio 44135 )

And )

I LOVE THIS BAR LLC d/b/a PARK )  
STREET CANTINA )  
491 Park Street )  
Columbus, Ohio )

And )

1909 W25, LLC d/b/a TOWNHALL OHIO )  
CITY )  
18605 Detroit Ave. )  
Lakewood, Ohio 44107 )

And )

DDEUCE, LLC d/b/a BAR 30 )

**COMPLAINT FOR**  
**DECLARATORY JUDGMENT**  
**AND INJUNCTIVE RELIEF**

**20CV000734**  
**JOHN P. O'DONNELL**

3415 Brook Park Blvd. )  
Parma, Ohio 44134 )

And )

FRANK AND TONY'S, INC. d/b/a )  
FRANK AND TONY'S )  
38107 Second Street )  
Willoughby, Ohio 44094 )

Plaintiffs, )

v. )

**AMY ACTON,** )  
*In her official capacity as Director of the* )  
*Ohio Department of Health* )

**THE HONORABLE MICHAEL** )  
**DEWINE,** )  
*In his official capacity as the Governor of* )  
*the State of Ohio* )

Defendants.

**COMPLAINT**

Now come Plaintiffs, MFRS LLC d/b/a Diamondback Bar and Grill ("MFRS"), JSJ Klub, LLC d/b/a Harry Buffalo ("JSJ"), Over the Coals, Inc. d/b/a Islander Bar and Grill ("Islander"), BDP Entertainment LLC d/b/a Grayton Road Tavern ("BDP"), I Love This Bar LLC d/b/a Park Street Cantina (Cantina"), 1909 W25, LLC d/b/a Townhall Ohio City ("Townhall"), Ddeuce, LLC d/b/a Bar 30 ("Bar 30"), and FRANK & TONY'S, INC. d/b/a FRANK & TONY'S ("FRANK & TONY'S") (sometimes referred to collectively as "Plaintiffs"), by and through their undersigned counsel Thomas J. Connick and CONNICK LAW, LLC, and Edward W. Cochran, and for their Complaint for Declaratory Judgment and Injunctive Relief against Defendants Amy Action, in her official capacity as Director of the Ohio Department of Health ("Acton") and Governor Michael

DeWine, in his official capacity as the Governor of the State of Ohio ("DeWine"), and hereby alleges as follows::

### INTRODUCTION

1. This is an action for declaratory judgment, and preliminary and permanent injunction brought pursuant to O.R.C. § 2712, O.R.C. § 2727, Ohio Civ. R. Proc. 65, and arising out of Defendants' unconstitutional Order(s) mandating that restaurants and bars in the State of Ohio enforce unconstitutionally vague regulations and laws against their patrons, and which, if not followed, expose the restaurant and bar owners to unconstitutional strict criminal penalties and/or reprisal for conduct of others that they have no reasonable control over.

2. As a direct and proximate result of the unconstitutional Order(s) issued by Acton, together with the enforcement efforts by local health departments, all Plaintiffs face imminent risk of losing their businesses, their livelihoods and economic security, of being criminally prosecuted and suffering irreparable harm to their rights as citizens in the State of Ohio to be treated equally under the law, to receive due process and to be protected from the arbitrary conduct of an unelected official in whom virtually all powers of government, legislative and executive power, have been singularly, unconstitutionally and unlawfully reposed.

3. Due to Defendants' unconstitutional Order(s), mandates and decrees, Plaintiffs will suffer irreparable harm that must be enjoined to protect Plaintiffs' constitutional right to be secure in the possession, and use and enjoyment of their properties, liberties, and freedoms.

4. The Plaintiffs seek a preliminary injunction enjoining the Defendants from relying on the authority of O.R.C. § 3701.13 and O.R.C. § 3701.352 to impose criminal, civil and/or equitable penalties on Plaintiffs that arise from Orders that exceed Acton's authority regarding

Defendants' newly issued rules imposed upon restaurants and bars including without limitation, the mandated requirements that Plaintiffs:

- a. "Ensure minimum of six feet between parties waiting and when dining – if not possible, utilize barriers or other protective devices."
- b. Ask customers and guests not to enter if symptomatic."<sup>1</sup>
- c. "Food service establishments offering dine-in-service must take [undefined] affirmative steps with customers to achieve safe social distancing guidelines."
- d. "When appropriate, establish ordering areas and waiting areas with clearly marked safe distancing and separations per individual/social group for both restaurant and bar service."
- e. "Private dining and bar seating areas within a foodservice establishment must follow all approved safe social distancing guidelines."
- f. Moreover, these new rules require customers to remain seated at their tables.<sup>2</sup>

5. Under these mandatory and unconstitutionally vague rules, restaurant and bar owners may be criminally punished and have their property, such as their liquor licenses, unconstitutionally seized if, for example, patrons waiting in line to be seated decide to move closer to each other, or remove or navigate around any barrier to a distance of less than 6 feet, thus subjecting restaurant and bar owners to strict criminal liability for the acts of their patrons. Even more ridiculous is the requirement that Plaintiffs ask patrons not to enter if they are symptomatic of COVID-19. How can a non-medical doctor be expected to diagnose a patron standing in line waiting to get in? And, then once in, if the patron is found to be infected with COVID-19, be

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<sup>1</sup> Plaintiffs are not medical doctors nor qualified in any manner to diagnose the patent and/or latent health condition of their patrons, nor are Plaintiffs legally entitled to inquire of their patrons' medical conditions under HIPPA.

<sup>2</sup> <https://www.fox19.com/2020/05/20/list-requirements-guidelines-indoor-dining-ohio-restaurants-reopen/>

subject to strict criminal liability for a failure to diagnose. Moreover, what constitutes “affirmative steps” to achieve safe distancing guidelines? Who decides what an affirmative step is or whether such undefined affirmative steps are sufficient – the government? The problems in giving clarity to the vague mandates of the unelected Anton in order to avoid strict criminal liability for the actions of others, for violations that can only be arbitrarily enforced by the government, is subject to incalculable hypotheticals governed only by the unfettered discretion of an unelected public official. That is unconstitutional.

### JURISDICTION AND VENUE

6. This Honorable Court has jurisdiction over the parties and this dispute, including for declaratory relief, pursuant to Ohio Revised Code § 2307.382, *et seq.*, Ohio Revised Code § 2721.02, *et seq.* and Rule 57 of the Ohio Rules of Civil Procedure.

7. An actual controversy between Plaintiffs and Defendants exists within the meaning of Ohio Revised Code § 2721.02, *et seq.* regarding whether Defendants can impose unconstitutionally vague rules, regulations and laws upon Plaintiffs which, if not complied with, will subject Plaintiffs to unconstitutional strict criminal penalties and/or reprisals for conduct of others that they have no reasonable control over.

8. Venue is proper in Lake County, Ohio under Ohio Rules of Civil Procedure 3(C)(3), 3(C)(5), 3(C)(6), 3(F), and Ohio Revised Code § 2721.14 because Defendants conducted activity giving rise to Plaintiffs' Claims for relief in Lake County, because all or part of Plaintiffs' claims for relief arose in Lake County.

9. Plaintiffs have standing to bring this action for declaratory and injunctive relief, because there is a substantial likelihood that Plaintiffs will suffer injury in the future, which injury is individualized and not borne by the general population in the State of Ohio. Plaintiffs' rights are in imminent peril, and speedy relief is necessary to preserve Plaintiffs' rights.

## THE PARTIES

10. MFRS is an Ohio Limited Liability Company that engages in the restaurant and bar business, and is located in Lake County, Ohio. MFRS received a verbal warning from governmental authorities that if it did not comply with Acton's Order(s) as outlined herein, its owners would be subjected to strict criminal liability. The threat and risk of harm to MFRS is real and imminent, because the challenged exercise of governmental power, i.e. Acton's Orders are regulatory, proscriptive, and compulsory in nature, and MFRS is either presently or prospectively subject to the regulations, proscriptions, or compulsions that it is challenging.

11. JSJ is an Ohio Limited Liability Company that engages in the restaurant and bar business, and is located in Cuyahoga County, Ohio. JSJ received a written Notice of Violation from governmental authorities advising it was in non-compliance with Acton's Orders as outlined herein, subjecting its owners to strict criminal liability.<sup>3</sup> The threat and risk of harm to JSJ is real and imminent, because the challenged exercise of governmental power, i.e. Acton's Orders are regulatory, proscriptive, and compulsory in nature, and the JSJ is either presently or prospectively subject to the regulations, proscriptions, or compulsions that it is challenging.

12. Islander is an Ohio corporation that engages in the restaurant and bar business located in Cuyahoga County, Ohio, and is currently operating under threat of strict criminal liability, which threat and risk of harm to Islander is real and imminent, because the challenged exercise of governmental power, i.e. Acton's Orders are regulatory, proscriptive, and compulsory in nature, and the Islander is either presently or prospectively subject to the regulations, proscriptions, or compulsions that it is challenging.

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<sup>3</sup> May 16, 2020 Notice of Violation attached hereto as Exhibit A.

13. BDP is an Ohio Limited Liability Company that engages in the restaurant and bar business located in Cuyahoga County, Ohio, and is currently operating under threat of strict criminal liability, which threat and risk of harm to BDP is real and imminent, because the challenged exercise of governmental power, i.e. Acton's Orders are regulatory, proscriptive, and compulsory in nature, and the BDP is either presently or prospectively subject to the regulations, proscriptions, or compulsions that it is challenging.

14. Cantina is an Ohio Limited Liability Company that engages in the restaurant and bar business located in Franklin County, Ohio, and is currently operating under threat of strict criminal liability, which threat and risk of harm to Cantina is real and imminent, because the challenged exercise of governmental power, i.e. Acton's Orders are regulatory, proscriptive, and compulsory in nature, and Cantina is either presently or prospectively subject to the regulations, proscriptions, or compulsions that it is challenging. Cantina received a written Notice of Violation from governmental authorities advising it was in non-compliance with Acton's Orders as outlined herein, subjecting its owners to strict criminal liability<sup>4</sup>

15. Townhall is Ohio Limited Liability Company that engages in the restaurant and bar business located in Cuyahoga County, Ohio, and is currently operating under threat of strict criminal liability, which threat and risk of harm to Townhall is real and imminent, because the challenged exercise of governmental power, i.e. Acton's Orders are regulatory, proscriptive, and compulsory in nature, and Townhall is either presently or prospectively subject to the regulations, proscriptions, or compulsions that it is challenging. Townhall received a written Notice of Violation from governmental authorities advising it was in non-compliance with Acton's Orders as outlined herein, subjecting its owners to strict criminal liability.<sup>5</sup>

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<sup>4</sup> May 16, 2020 Notice of Violation attached hereto as Exhibit B.

<sup>5</sup> May 16, 2020 Notice of Violation attached hereto as Exhibit C.

16. Bar 30 is an Ohio Limited Liability Company that engages in the restaurant and bar business located in Cuyahoga County, Ohio, and is currently operating under threat of strict criminal liability, which threat and risk of harm to Bar 30 is real and imminent, because the challenged exercise of governmental power, i.e. Acton's Orders are regulatory, proscriptive, and compulsory in nature, and the Bar 30 is either presently or prospectively subject to the regulations, proscriptions, or compulsions that it is challenging.

17. FRANK & TONY'S is an Ohio corporation that engages in the restaurant and bar business, and is located in Lake County, Ohio. FRANK AND TONY'S received an email warning from governmental authorities, i.e. the Lake County General Health District warning<sup>6</sup> that it was allegedly in non-compliance with Acton's Order as outlined herein, and which would subject its owners to strict criminal liability. The threat and risk of harm to FRANK & TONY'S is real and imminent, because the challenged exercise of governmental power, i.e. Acton's Orders are regulatory, proscriptive, and compulsory in nature, and the FRANK & TONY'S is either presently or prospectively subject to the regulations, proscriptions, or compulsions that it is challenging.

18. Defendant Acton is sued in her official capacity as the Director of the Ohio Department of Health ("ODH"). In her official capacity, Acton is the Chief Health Administrator of the State of Ohio. Acton's duties are statutorily defined in O.R.C. § 3701.04. Acton maintains an office in Columbus, Ohio. Acton is a person within the meaning of 42 U.S.C. § 1983 and was always acting under the color of state law relevant to this Complaint.

19. Defendant DeWine is sued in his official capacity as the Governor of the State of Ohio. In his official capacity, the Governor is the executive officer of the State of Ohio. It is his responsibility to ensure that the laws of the State are properly and constitutionally enforced. This

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<sup>6</sup> Attached hereto as Exhibit D



includes the ability to direct state employees regarding enforcement of the law. The Governor maintains an office in Columbus, Ohio. DeWine is a person within the meaning of 42 U.S.C. § 1983 and was always acting under color of state law relevant to this Complaint.

### **FACTUAL BACKGROUND**

20. This case, in part, is about the assertion of power by one unelected official, Acton, and her Order(s) to all restaurant and bar owners within the State of Ohio...

21. On January 23, 2020, the Ohio Department of Health issued a Director's Journal Entry making COVID-19 a Class A reportable disease in the State of Ohio.

22. On March 14, 2020 DeWine issued Executive Order 2020-01D, declaring a State of Emergency in the State of Ohio, wherein he, directed other things: (1) the Ohio Department of Health to issue guidelines for private businesses regarding appropriate work and travel restrictions, if necessary; (2) state agencies, including the Ohio Department of Health, to implement procedures, including suspending or adopting temporary rules within an agency's authority, consistent with recommendations from the Department of Health designed to prevent or alleviate the public health threat. DeWine made this Declaration in accordance with Ohio Revised Code § 5502.22, which provides, as follows:

### **5502.22 Emergency management agency.**

(A) There is hereby established within the department of public safety an emergency management agency, which shall be governed under rules adopted by the director of public safety under section 5502.25 of the Revised Code. The director, with the concurrence of the governor, shall appoint an executive director, who shall be head of the emergency management agency. The executive director may appoint a chief executive assistant, executive assistants, and administrative and technical personnel within that agency as may be necessary to plan, organize, and maintain emergency management adequate to the needs of the state. The executive director shall coordinate all activities of all agencies for emergency management within the state, shall maintain liaison with similar agencies of other states and of the federal government, shall cooperate with those agencies subject to the approval of the governor, and shall develop a statewide emergency operations plan that shall meet any applicable federal requirements for such plans. The executive director shall have such additional authority, duties, and responsibilities as are prescribed by the governor and the director or provided by law in all matters relating to emergency management

that may be reflected in other sections of the Revised Code. The executive director shall advise the governor and director on matters pertaining to emergency management on a regular basis.

Whenever the disaster services agency or director is referred to or designated in any statute, rule, contract, or other document, the reference or designation shall be deemed to refer to the emergency management agency or executive director, as the case may be.

(B) For the purposes of emergency management, the executive director, with the approval of the director, may participate in federal programs, accept grants from, and enter into cooperative agreements or contractual arrangements with any federal, state, or local department, agency, or subdivision thereof, or any other person or body politic. Whenever the duties of the emergency management agency overlap with rights or duties of other federal, state, or local departments, agencies, subdivisions, or officials, or private agencies, the executive director shall cooperate with, and not infringe upon the rights and duties of, the other public or private entities.

Funds made available by the United States for the use of the emergency management agency shall be expended by that agency only for the purposes for which the funds were appropriated. In accepting federal funds, the emergency management agency shall abide by the terms and conditions of the grant, cooperative agreement, or contractual arrangement and shall expend the funds in accordance with the laws and regulations of the United States.

23. As stated, Ohio Revised Code § 5502.22, the Emergency Management Agency (“EMA”) shall be governed under the rules adopted by the director of public safety under Ohio Revised Code § 5502.25, which provides:

## **5502.25 Rules for emergency management of state.**

The director of public safety, in accordance with Chapter 119. of the Revised Code, shall adopt, may amend, or rescind, and shall enforce rules with respect to the emergency management of the state for the purpose of providing protection for its people against any hazard. The rules shall be made available for public inspection at the emergency operations center/joint dispatch facility and at such other places and during such reasonable hours as fixed by the executive director of emergency management.

24. The Order(s) issued by Acton under O.R.C. § 3701.13, which derived from the EMA, required, but lacked, the enabling legislation and administrative rulemaking mandated by O.R.C. 119.

25. On March 14, 2020<sup>7</sup>, Acton issued a Director's Order limiting and/or prohibiting mass gatherings in the State of Ohio, pursuant to O.R.C. § 3701.13.<sup>8</sup> Under this Order<sup>9</sup>, Acton prohibited mass gatherings in the State of Ohio, and defined "mass gatherings" as any event or convening that brings together one hundred (100) or more persons in a single room or single space at the same time. Acton also dictated that this Order remain in full force and effect until the State of Emergency declared by DeWine no longer exists, "or the Director of the Ohio Department of Health rescinds or modifies this Order."

26. In her March 14, 2020 Order, Acton also Ordered, in part, as follows:

*"Accordingly, to avoid an imminent threat with a high probability of widespread exposure to COVID-19 with a significant risk of substantial harm to a large number of people in the general population, including the elderly and people with weakened immune systems and chronic medical conditions, I hereby **ORDER** that mass gatherings are prohibited in the State of Ohio."*

27. On March 15, 2020 Acton issued a Director's Order limiting the sale of food and beverages, liquor, beer, and wine to carry-Out and delivery only and prohibiting onsite consumption.<sup>10</sup>

28. On May 14, 2020 Acton issued the *Director's Dine Safe Ohio Order* ("Order").<sup>11</sup>

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<sup>7</sup> Amended on March 17, 2020. [https://coronavirus.ohio.gov/wps/wcm/connect/gov/dd504af3-ae2c-4d2e-b2bd-02c1a3beed89/Director%27s+Order-+Amended+Mass+Gathering+3.17.20+%281%29.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=ROOTWORKSPACE.Z18\\_M1HGGIK0N0JO00QO9DDDDM3000-dd504af3-ae2c-4d2e-b2bd-02c1a3beed89-n6XVz7y](https://coronavirus.ohio.gov/wps/wcm/connect/gov/dd504af3-ae2c-4d2e-b2bd-02c1a3beed89/Director%27s+Order-+Amended+Mass+Gathering+3.17.20+%281%29.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_M1HGGIK0N0JO00QO9DDDDM3000-dd504af3-ae2c-4d2e-b2bd-02c1a3beed89-n6XVz7y)

<sup>8</sup> <http://codes.ohio.gov/orc/3701.13v1>

<sup>9</sup> [https://coronavirus.ohio.gov/wps/wcm/connect/gov/b815ab52-a571-4e65-9077-32468779671a/ODH+Order+to+Limit+and+Prohibit+Mass+Gatherings%2C+3.12.20.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=ROOTWORKSPACE.Z18\\_M1HGGIK0N0JO00QO9DDDDM3000-b815ab52-a571-4e65-9077-32468779671a-n6IAHNT](https://coronavirus.ohio.gov/wps/wcm/connect/gov/b815ab52-a571-4e65-9077-32468779671a/ODH+Order+to+Limit+and+Prohibit+Mass+Gatherings%2C+3.12.20.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_M1HGGIK0N0JO00QO9DDDDM3000-b815ab52-a571-4e65-9077-32468779671a-n6IAHNT)

<sup>10</sup> [https://coronavirus.ohio.gov/wps/wcm/connect/gov/aa5aa123-c6c9-4e95-8a0d-bc77409c7296/Health+Director+Order+Limit+Food%2C+Alcohol+Sales+to+Carry+Out+Delivery+Only.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=ROOTWORKSPACE.Z18\\_M1HGGIK0N0JO00QO9DDDDM3000-aa5aa123-c6c9-4e95-8a0d-bc77409c7296-n6XNQLo](https://coronavirus.ohio.gov/wps/wcm/connect/gov/aa5aa123-c6c9-4e95-8a0d-bc77409c7296/Health+Director+Order+Limit+Food%2C+Alcohol+Sales+to+Carry+Out+Delivery+Only.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_M1HGGIK0N0JO00QO9DDDDM3000-aa5aa123-c6c9-4e95-8a0d-bc77409c7296-n6XNQLo)

<sup>11</sup> <https://coronavirus.ohio.gov/static/publicorders/Directors-Order-Dine-Safe-Ohio.pdf>

29. On May 20, 2020 Acton issued her “Responsible Restart Ohio” Order for Restaurant and Bars.<sup>12</sup>

30. Acton’s Orders described herein were undertaken without standards provided by the General Assembly, were issued in an arbitrary manner, and have resolved in arbitrary and unequal treatment of restaurant and bar owners, such as Plaintiffs.

31. As of this writing, the State of Ohio has confirmed 37,282 COVID-19 cases under the Center for Disease Control’s expanded case definition, for a total death count of 2,339.<sup>13</sup> As of July 1, 2019 the population estimate for the State of Ohio was 11,689,100.<sup>14</sup> Using these values, the State of Ohio’s COVID-19 infection rate is approximately 0.0032%, with a death rate of 0.00020%.

32. In other words, 99.99% of Ohio’s population is not infected by COVID-19, and Ohio’s mortality rate from COVID-19 is generously estimated as deminimis.

33. O.R.C. § 3701.13 provides, as follows:

*The department of health shall have supervision of all matters relating to the preservation of the life and health of the people and have ultimate authority in matters of quarantine and isolation, which it may declare and enforce, when neither exists, and modify, relax, or abolish, when either has been established.*

34. “‘Isolation’ means the separation of an infected individual from others during the period of disease communicability in such a way that prevents, as far as possible, the direct or indirect conveyance of an infectious agent to those who are susceptible to infection or who may spread the agent to others.” *Ohio Admin. Code § 3701-3-01(R)*.

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<sup>12</sup>[https://content.govdelivery.com/attachments/OHOOD/2020/05/07/file\\_attachments/1446150/Sector%20fact%20sheet%204%20Restaurants%2005.07.20.pdf](https://content.govdelivery.com/attachments/OHOOD/2020/05/07/file_attachments/1446150/Sector%20fact%20sheet%204%20Restaurants%2005.07.20.pdf)

<sup>13</sup> <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/home>

<sup>14</sup> <https://www.census.gov/quickfacts/OH>

35. “‘Quarantine’ means the restriction of the movements or activities of a well individual or animal who has been exposed to a communicable disease during the period of communicability of that disease and in such a manner that transmission of the disease may have occurred. The duration of the quarantine ordered shall be equivalent to the usual incubation period of the disease to which the susceptible person or animal was exposed.” *Ohio Adm. Code 3701-3-01(W)*.

36. “‘Period of communicability’ means the interval during which an infected individual or animal is shedding the specific microorganism of a communicable disease in such a manner that those are susceptible could acquire the infection. *Ohio Adm. Code § 3701-3-01(U)*.”

37. The department of health informed the public and stated on its official website the incubation period for COVID-19:

*The incubation period can be up to 14 days so people who are incubating the illness also aren't showing symptoms.*<sup>15</sup>

38. While Acton has legislatively been vested with “ultimate authority” in matters of quarantine and isolation, that authority is not *unlimited*. Acton has quarantined and attempted to isolate the entire State of Ohio beyond the 14 day incubation period, and upon persons who are *not infected individuals and or “well” individuals who have not been exposed to COVID-19 during the period of communicability*. Nonetheless, Acton now attempts to impose the enforceability of her unconstitutional directives upon restaurant and bar owners in the State of Ohio, and then impose strict criminal liability upon them, including potential forfeiture of liquor licenses, if they cannot or do not comply. But criminalizing mere disobedience and/or non-compliance via Acton’s Orders is constitutionally prohibited.

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<sup>15</sup> <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/families-and-individuals/how-can-you-respond/covid-19-and-community-spread>

39. Such *ultra vires* actions by Acton, and any attempt by her or DeWine to require compliance of those unconstitutional directives by restaurant and bar owners in the State of Ohio, is impermissibly arbitrary, unreasonable, and oppressive and completely void of any due process procedural safeguards.

40. All Plaintiffs herein have either received written Notice of Violations of Acton's Orders, threatened with violations and/or are currently operating under threat of strict criminal liability, which threat and risk of harm is real and imminent, because the challenged exercise of governmental power, i.e. Acton's Orders are regulatory, proscriptive, and compulsory in nature, and Plaintiffs are either presently or prospectively subject to the regulations, proscriptions, or compulsions that it is challenging.

**COUNT ONE**  
**DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**  
**(VIOLATION OF SEPARATION OF POWERS AND DUE PROCESS BECAUSE OF**  
**IMPERMISSIBLE DELIGATION OF LEGISLATIVE AUTHORITY AND/OR VAGUE**  
**DELEGATION)**

41. Plaintiffs hereby restate the allegations and averments contained in the preceding paragraphs of this Complaint, as if fully rewritten herein, and further state as follows:

42. Through enactment of Ohio Revised Code §3701.13, the Ohio General Assembly delegated to the Ohio Department of Health, *inter alia* "ultimate authority in matters of quarantine and isolation."

43. In delegating "ultimate authority in matters of quarantine and isolation," to the Ohio Department of Health, the Ohio General Assembly has delegated legislative authority without intelligible standards.

44. The vagueness concerns raised by the delegation of “ultimate authority” to Acton is aggravated by the unilateral creation of strict liability crimes by the various Orders issued by Acton.

45. The due process and separation of powers concerns raised by the delegation of “ultimate authority” to the Ohio Department of Health is aggravated by the unilateral creation of strict liability crimes by the various Orders issued by Acton.

46. “Without sufficient limitations, the delegation of authority can be deemed void for vagueness as allowing *ad hoc* decision or giving unfettered discretion.” *Biener v. Calio*, 361 F.3d 206, 215-17 (3d Cir. 2004).

47. Absent applicable standards, the delegation of authority must be deemed void for vagueness as allowing *at hoc* decisions or giving unfettered discretion to an unelected bureaucrat.

48. A delegation of core legislative authority offends due process especially when made to an unelected individual and is unaccompanied by discernable standards, such as the delegates’ action cannot be measured against objective criteria, or “measured for its fidelity to the legislative will.” *Ctr. For Powell Crossing, LLC v. City of Powell, Ohio*, 173 F. Supp.3d 639, 675-679 (S.D. Ohio 2016).

49. “To pass muster under the void-for-vagueness doctrine, Ohio law dictates an ordinance must survive the tripartite analysis set for the in *Grayned*. The three aspects examined under *Grayned* are: (1) the ordinance must provide fair warning to the ordinary citizen of what conduct is proscribed; (2) the ordinance must preclude arbitrary, capricious, and discriminatory enforcement; and (3) the ordinance must not impinge constitutionally protected rights.” *Viviano v. City of Sandusky*, 2013-Ohio-2813 | 991 N.E.2d 1263 (6<sup>th</sup> Dist. 2013).

50. In *Norwood v. Horney*, 2006-Ohio-3799, at ¶ 83, the Ohio Supreme Court explained that “[i]f arbitrary and discriminatory enforcement is to be prevented, *laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to police [officers], judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.*” Though the degree of review for vagueness is not described with specificity, if enacted ‘threatens to inhibit the exercise of constitutionally protected rights,’ (such as property rights in Ohio), a more stringent vagueness test is to be applied.” *Yoder v. City of Bowling Green, Ohio*, No. 3:17 CV 2321, 2019 WL 415254, at 4-5 (N.D. Ohio Feb. 1, 2019), citing *Norwood*, 110 Ohio St.3d at 379).

51. Because there is no means of exerting judicial review over any Order issued by Acton purportedly under the authority of O.R.C. § 3701.13, that delegation is impermissibly vague. Moreover, criminalizing mere disobedience and/or non-compliance related to any of Acton’s Orders is unconstitutional and impermissible.

52. Ohio has always considered the right of property to be a *fundamental* right. There can be no doubt that the bundle of vested rights associated with property is strongly protected in the Ohio Constitution and must be tried upon lightly, no matter how great the emergency since the free use property is guaranteed by Section 19, Article 1 of the Ohio Constitution.

53. The void delegation of legislative authority to an unelected member of the executive branch, both on its own and in combination with the various orders issued by Acton, has violated, continues to violate, and will further violate Plaintiffs’ due process right.

54. Acton has conceded and repeatedly stated that her generally applicable orders are legislative acts.



55. Acton claims that the Ohio Department of Health may usurp the function of the Ohio General Assembly by creating strict liability criminal penalties, i.e. disobedience with any Order issued by Acton, including without limitation, the reopening Orders related to Ohio restaurants and bars. However, if the Ohio General Assembly has delegated to the Director of Health the unfettered power to create her own crimes, then that delegation is impermissibly vague and violates the Ohio Constitution's separation of powers.

56. Moreover, to the extent the State of Ohio, through Acton's and/or DeWine's Orders attempt to impose strict criminal penalties, those Orders are void pursuant to the Ohio General Assembly's 2015 criminal justice reforms, because the Orders fail to specify the degree of mental culpability required for commission of the offense.

57. One of two conclusions is necessarily true: either (i) the General Assembly's delegation of authority to the Ohio Department of Health in Ohio Revised Code §3701.13 is too broad or vague; or (ii) the Ohio Department of Health's exercise of the delegated authority is too board. Under either conclusion, the requirement by Acton that bar and restaurant owners comply with her vague, undefined, and nebulous rules mandated for reopening or otherwise be subject to criminal penalties including, without limitation, seizure of liquor licenses, is unconstitutional and/or unauthorized.

58. In order to prevent the continued violation of Plaintiffs' constitutional rights by Defendants, it is appropriate and proper that a declaratory judgment be issued, declaring unconstitutional the Responsible Restart Ohio provisions applied to Plaintiffs that require Plaintiffs to comply with and, in fact, engage in non-existent police power to enforce vague, undefined and unreasonable regulations; and if they fail to do so, subject them to strict criminal liability and improper seizure of their property.

59. It is further appropriate and hereby requested that preliminary and permanent injunctions be issued that prohibit Defendants from enforcing Acton's Orders against Plaintiffs.

**COUNT TWO**  
**DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**  
**(DR. ACTON'S ORDERS ARE ULTRA VIRES)**

60. Plaintiffs hereby restate the allegations and averments contained in the preceding paragraphs of this Complaint, as if fully rewritten herein, and further state as follows:

61. Ohio Revised Code § 3701.04 defines Acton's powers and duties, in part, as follows:

*(B) The director, in accordance with Chapter 119. of the Revised Code, shall adopt rules jointly with the executive director of the emergency management agency to do both of the following, as required by section 5502.281 of the Revised Code:*

*(1) Advise, assist, consult with, and cooperate with agencies and political subdivisions of this state to establish and maintain a statewide system for recruiting, registering, training, and deploying volunteers reasonably necessary to respond to an emergency declared by the state or a political subdivision;*

*(2) Establish fees, procedures, standards, and requirements necessary for recruiting, registering, training, and deploying the volunteers.*

62. Ohio Revised Code § 3701.04 authorizes Acton to mobilize, train and deploy volunteers in the event of an emergency, only. Acton's legislated authority is well-defined and *limited*.

63. Nothing in Ohio Revised Code § 3701.04 grants Acton with the unchecked and elastic authority to invoke and institute, i.e. issue any Order(s) mandating the requirements in the May 14, 2020 *Director's Dine Safe Order* and/or the Responsible Restart Ohio Rules.

64. Moreover, Acton's legislated authority is further confined by Ohio Revised Code § 119, which requires that, as the Director of Ohio' Department of Health, she follow the required Rule-making Procedures required under Ohio Administrative Procedures Act.

65. The Orders at issue in this case were allegedly issued pursuant to Defendant Acton's authority under O.R.C. § 3701.13.
66. O.R.C. §3701.13 provides that: the Department of Health shall have supervision of all matters relating to the preservation of the life and health of the people and have ultimate authority in matters of quarantine and isolation which it may declare and enforce when neither exist, and modify, relax or abolish when either has been established.
67. "Isolation means the separation of an infected individual from others during the period of disease, communicability in such a way that prevents as far as possible, the direct or indirect conveyance of an infectious agent to those who are susceptible to infection or who may spread the agent to others." *Ohio Adm. Code § 3701-3-01(R)*.
68. "Quarantine means the restriction of the movements or activities of a well individual or animal who has been exposed to a communicable disease during the period of communicability of that disease and in such a manner that transmission of that disease may have occurred. The duration of the quarantine ordered shall be the equivalent to the usual incubation period of the disease to which the susceptible person or animal was exposed." *Ohio Adm. Code §3701-3-01(W)*.
69. The duration of the quarantine ordered shall be the equivalent to the usual incubation period of the disease to which the susceptible person was exposed. *Ohio Adm. Code §3701-3-01(W)*. The incubation period can be up to fourteen (14) days up to the according to the Department of Health.
70. Acton has quarantined the entire population for the State of Ohio for much more than fourteen (14) days. Acton has no statutory authority to require businesses, including the Plaintiffs, to enforce vague and undefined regulations related to quarantine and

isolation beyond the legislated period of communicability, and then subject Plaintiffs to strict criminal liability and improper seizure of their property if they fail to do so.

71. Acton has acted beyond her authority in an impermissibly arbitrary, unreasonable, and oppressive manner.

**COUNT THREE**  
**DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**  
**(EQUAL PROTECTION)**

72. Plaintiffs hereby restate the allegations and averments contained in the preceding paragraphs of this Complaint, as if fully rewritten herein, and further state as follows:

73. Article I, Section 2, of the Ohio Constitution provides that “[a]ll political powers inherent in the people. Government is instituted for their equal protection and benefit ...”

74. No classification may be arbitrary. Rather, the attempted classification must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed and can never be made arbitrarily and without any such basis.

75. In accordance with the “Ultimate Authority” powers legislated to the Ohio Department of Health, Acton has instituted rules, regulations, and penalties as to restaurant and bar owners for noncompliance with ODH Orders that are unconstitutional as applied to Plaintiffs.

76. Plaintiffs, by Acton's Orders, are being subjected to distinctly different treatment than any other business owner(s) in the State of Ohio is being subjected to. By way of non-exhaustive example, Plaintiffs are being compelled not only to comply with, but to enforce Acton's Orders as to restaurant/bar patrons, without any definable standards or

concrete guidelines for doing so. And, in the event the State of Ohio arbitrarily decides that Plaintiffs failed to properly enforce the Orders on its patrons, which Plaintiffs have no control over, Plaintiffs will be subject to strict criminal liability, and potential seizure/forfeiture of their liquor licenses.

77. In selectively singling out Plaintiff's restaurant and bar owners to comply with – and enforce – Acton's vague Orders, or be subject to strict criminal liability and illegal seizure of their liquor licenses, Defendants have failed to afford equal protection under its Orders, rules and statutes as applied to Plaintiffs.

#### **COUNT FOUR**

#### **DECLARATORY AND INJUNCTIVE RELIEF (THE PLAINTIFFS CANNOT BE HELD VICARIOUSLY CRIMINALLY LIABLE FOR THE ACTIONS AND/OR OMISSIONS OF THEIR PATRONS)**

78. Plaintiffs hereby restate the allegations and averments contained in the preceding paragraphs of this Complaint, as if fully rewritten herein, and further states as follows:

79. Under Acton's May 14, 2020 Order as well as Responsible Restart Ohio Rules, Plaintiffs may be vicariously criminally liable for the actions and/or inactions of their patrons.

80. For example, Defendants' newly issued rules imposed upon restaurants and bars including without limitation, the mandated requirements that Plaintiffs:

- a. "Ensure minimum of six feet between parties waiting and when dining – if not possible, utilize barriers or other protective devices."
- b. Ask customers and guests not to enter if symptomatic."<sup>16</sup>

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<sup>16</sup> Plaintiffs are not medical doctors nor qualified in any manner to diagnose the patent and/or latent health condition of their patrons, nor are Plaintiffs legally entitled to inquire of their patrons' medical conditions under HIPPA.

- c. "Food service establishments offering dine-in-service must take [undefined] affirmative steps with customers to achieve safe social distancing guidelines."
- d. "When appropriate, establish ordering areas and waiting areas with clearly marked safe distancing and separations per individual/social group for both restaurant and bar service."
- e. "Private dining and bar seating areas within a foodservice establishment must follow all approved safe social distancing guidelines."
- f. Moreover, these new rules require customers to remain seated at their tables.<sup>17</sup>

81. Defendants, by their Orders, actions and threats, have implemented a policy of vicarious criminal liability as against Plaintiffs, by charging Plaintiffs (or threatening to charge Plaintiffs) for the actions and/or inactions of their patrons over which they have no control – or right to control.

82. Moreover, Acton's Orders place Plaintiffs in the untenable position of having to exercise police power that Plaintiffs does not have, in order to force compliance of Acton's Orders on its Patrons.

83. For example, under Acton's Orders, patrons must remain seated at their tables while eating. Under these Orders, if a patron were to get up out of their seat to use the bathroom, Plaintiffs must monitor whether the patron delays in returning to his seat, and, if he delays instruct, perhaps forcibly, the patron to return to the table and remain seated. These are police powers that Plaintiffs have no authority to exercise and may, in fact, subject Plaintiffs to civil liability for restraint of a patron's individual liberties.

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<sup>17</sup> <https://www.fox19.com/2020/05/20/list-requirements-guidelines-indoor-dining-ohio-restaurants-reopen/>

**COUNT FIVE**

**DECLARATORY AND INJUNCTIVE RELIEF  
(R.C. § 3701.13 IS UNCONSTITUTIONAL)**

84. Plaintiffs hereby restate the allegations and averments contained in the preceding paragraphs of this Complaint, as if fully rewritten herein, and further state as follows:

85. R.C. § 3701.13 vests unconstitutional power and unbridled discretion in the unelected Acton, without the required legislative Rulemaking mandated under Ohio law, and has allowed Acton to unconstitutionally impose restrictions and Orders on Plaintiffs that carry with them unconstitutional strict criminal liability penalties in violation of Plaintiffs' due process rights. These Orders and restrictions include, without limitation, Acton's original emergency Order, pursuant to R.C. § 3701.13, closing (except for take-out) all restaurants/bars.

86. Acton's unconstitutional exercise of power and discretion has caused and will continue to cause Plaintiffs loss of use of property, loss of liberty, loss of freedom and loss of pursuit of happiness as guaranteed under the Constitutions of the State Ohio and United States of America.

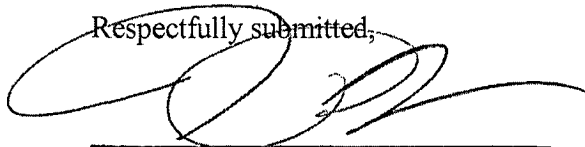
87. Plaintiffs are entitled to a declaration that R.C. § 3701.13 is unconstitutional under the United States and Ohio State Constitutions, both as applied to the Plaintiffs and on its face.

88. The State of Ohio and all local County and/or City health Departments that have and are relying upon R.C. § 3701.13 should be permanently enjoined from enforcing any of Acton's Orders deriving therefrom.

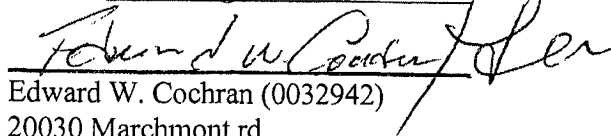
**WHEREFORE**, Plaintiffs pray for a declaration and a preliminary injunction against

Defendant Amy Acton in her official capacity as the Director of the Ohio Department of Health, Governor Michael DeWine in his official capacity as the Governor of the State of Ohio, together with their officers, agents, servants, employees and attorneys, and those persons or entities acting at their direction or behest, or in active concert or participation with them including, without limitation, all local Departments of Health, and who receive actual notice of this Order, whether by personal service or otherwise, including, without limitation, law enforcement officers, prosecuting attorneys, and the attorney general, are hereby ENJOINED from imposing or enforcing penalties solely for non-compliance with the Acton's Order against the businesses listed in the Complaint, for the reasons alleged herein. Plaintiffs further pray that they be awarded all costs, fees, including attorney fees, they have incurred because of Defendants' unconstitutional Orders.

Respectfully submitted,



Thomas J. Connick (0070527)  
**CONNICK LAW, LLC**  
25550 Chagrin Blvd., Suite 101  
Beachwood OH 44122  
PH: 216-364-0512 | FX: 216-609-3446  
Email: [tconnick@connicklawllc.com](mailto:tconnick@connicklawllc.com)



Edward W. Cochran (0032942)  
20030 Marchmont rd.  
Shaker Heights, OH 44122  
PH: 216-751-5546  
Email: [edwardcochran@wowway.com](mailto:edwardcochran@wowway.com)

*Attorneys for Plaintiffs*





Cleveland Department of Public Health

### COVID-19 COMPLAINT NOTICE

<b>Name of Establishment</b> Harry Buffalo E 4th	<b>Address</b> 2120 E 4th Street
<b>Phone Number</b> 216.621-8887	<b>Date</b> 5/16/2020

It has come to our attention that your business or facility may not be in compliance with the Ohio Department of Health Orders. Based upon information provided to the Cleveland Department of Public Health, this Notice serves to inform you of the complaint.

There is a state of emergency in Ohio due to COVID-19. Pursuant to Ohio Revised Code 3701.13, the Ohio Director of Health has issued several Public Health Orders. **Failure to comply with any Order listed below is a misdemeanor criminal offense subject to prosecution pursuant to Ohio Revised Code 3701.352.** Businesses that do not comply and are found to be in violation will be ordered to immediately close until the applicable public health order is lifted and may be subject to inspection. Order can be found at the this link, <https://coronavirus.ohio.gov/static/publicorders/Directors-Stay-Safe-Ohio-Order.pdf>

All businesses must implement the strategies in the Order. Noncompliant sections are checked off below. Upon this notice, this business or facility is ordered to immediately implement the required safety precautions.

#### Stay Safe Ohio Order (04/30/20 – 05/29/20)

- Facial Coverings – all employees are required to wear appropriate facial coverings (8)
- Business/Operation is to remain closed until Order is amended or rescinded (13)
- Limit food, alcohol sales to carry-out delivery only (13b)

#### Applies to all Sector Specific COVID-19 Information and Checklist for Businesses/Employers

- Ensure minimum 6 feet between people, if not possible, install barriers
- Establish maximum capacity in facility
- Employee daily symptom assessment (take temperature, monitor fever, watch for cough, etc.)
- Require employees to stay home if symptomatic
- Require regular handwashing (by employees)
- Stagger or limit arrivals/entry of employees /guests/ customers
- Shutdown shop/floor for deep sanitation if possible
- Immediately isolate/seek medical care for individual(s) who develops symptoms while at work

- Contact local health district about suspected cases/exposures

#### Manufacturing, Distribution & Construction (5/4)

- Daily disinfection of desks and workstations
- Change shift patterns (e.g. fewer shifts)
- Stagger lunch and break times
- Daily deep disinfection of high-contact surfaces
- Spacing on factory floor to allow for distancing
- Regulate maximum number of people in cafeterias/common spaces

#### Consumer, Retail & Services (5/12)

- After May 1, 2020 11:59 pm Restrict operations to curbside pickup, delivery or appointment-only (limit to 10 customers at one time)
- Food courts remain closed



- Cease self-service food stations, product samples
- Clean merchandise before stocking if possible
- Post social distancing signage and disinfect high-contact surfaces hourly
- Clean high-touch items after each use (e.g. baskets, carts)
- Place hand sanitizer in high-contact locations
- Specify hours for at-risk populations
- Ensure minimum 6 feet between customers

- Limit travel as much as possible
- No buffet service in cafeteria
- Daily disinfection of common areas
- Frequent disinfection of desks, workstations, and high-contact surfaces
- Post signage on health and safety guidelines in common areas
- Cancel/postpone in-person events when social distancing guidelines cannot be met
- Utilize disposable tableware and other materials

**General Office Environments (5/4)**

- Reduce sharing of work materials

**Other**

Item Number \_\_\_\_\_

Continuing to operate this business while in violation of any of the above is a public health nuisance and can constitute as a danger to life and the public. If found in violation of ORC 3707.01 you will be ordered to cease the above identified activity pursuant to ORC 3709.21 and 3707.01. Due to COVID-19, this Order is considered an emergency and is effective immediately.

Additional Notes:

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You may reach us at 216-664-2300.

A copy of this notice will be sent to the Ohio Department of Health.



Cleveland Department of Public Health

# COVID-19 INVESTIGATION Inspection Report

<b>Name of Establishment</b> Harry buffalo E 4th	<b>Address</b> 2120 E 4th Street
<b>Phone Number</b> 216 (216) 888-8887	<b>Date</b> 5/16/20

### NOTICE

There is a state of emergency in Ohio due to the prevalence of COVID-19. Pursuant to Ohio Revised Code 3701.13, the Ohio Director of Health has issued several public health orders. If a facility cannot comply with these orders they are to shut down.

- This facility is currently in violation of one or more public health orders. Violation of an order is a criminal offense under Ohio Revised Code (ORC) 3701.99 and a civil offense.
- At time of inspection this facility was **NOT** found in violation of one or more public health orders.

### Applicable Section of Director's Stay Safe Ohio Order (04/30/20 – 05/29/20)

- Facial Coverings – all employees are required to wear appropriate facial coverings (8)
- Business/Operation is to remain closed until order amended or rescinded (13)
- Limit Food, Alcohol Sales to Carry Out Delivery Only (13b)

#### Applies to all Sector Specific COVID-19 Information and Checklist for Businesses/Employers

- Ensure minimum 6 feet between people, if not possible, install barriers
- Establish maximum capacity
- Employees daily symptom assessment (take temperature, monitor fever, watch for cough, etc.)
- Require employees to stay home if symptomatic
- Require regular handwashing (by employees)
- Stagger or limit arrivals/entry of employees/guests
- Shutdown shop/floor for deep sanitation if possible
- Immediately isolate/seek medical care for individual who develops symptoms while at work
- Contact local health district about suspected cases/exposures

#### Manufacturing, Distribution & Construction (5/4)

- Daily disinfection of desks and workstations

- Change shift patterns (e.g. fewer shifts)
- Stagger lunch and break times
- Daily deep disinfection of high-contact surfaces
- Space factory floor to allow for distancing
- Regulate max number of people in cafeterias/common spaces

#### Consumer, Retail & Services (5/12)

- May 1, 2020 11:59 pm Restrict operations to curbside pickup, delivery or appointment-only (limit to 10 customers one time)
- Food courts remain closed
- Cease self-service food stations, product samples
- Clean merchandise before stocking if possible
- Post social distancing signage and disinfect high-contact surfaces hourly
- Clean high-touch items after each use (e.g. baskets, carts)
- Place hand sanitizer in high-contact locations
- Specify hours for at-risk populations
- Ensure minimum 6 feet between customers

**General Office Environments (5/4)**

- Reduce sharing of work materials
- Limit travel as much as possible
- No buffet in cafeteria
- Daily disinfection of common areas
- Frequent disinfection of desks, workstations, and high-contact surfaces

- Post signage on health safety guidelines in common areas
- Cancel/postpone in person events when social distancing guidelines cannot be met
- Utilize disposable tableware and other materials

**Other**  
Item Number \_\_\_\_\_

Continuing to operate this business while in violation of any of the above is a nuisance and a danger to life and public health in violation. If found in violation of ORC 3707.01 you will be ordered to cease the above identified activity pursuant to ORC 3709.21 and 3707.01. Due to COVID-19, this order is an emergency and is effective immediately.

**OBSERVATIONS/COMMENTS**

Operation is servicing at bar, most customers are seated near open windows  
Drinks at bar sold in glasses.  
Operation is not in compliance.

Inspected by (print name)

Brian Kimball

Received by (print name)

Taylor McGuinness



OHIO DEPARTMENT OF PUBLIC SAFETY  
OHIO INVESTIGATIVE UNIT

NO. I-42850

VIOLATION NOTICE

NAME MIDWEST BAR-B-Q BAR & RESTAURANT		CITY COLUMBUS		STATE OH
PERMIT ADDRESS 512 PARK ST + RATIO		HOME ADDRESS 8450 DOLLINGER RD COLUMBUS OH 43217		
SUBMITTED TO SAINT MICHAEL		DATE VIOLATION NOTICE ISSUED MAY 14 2020		
DATE OF VIOLATION MAY 14 2020		TIME 10:35 PM	TYPE OF PERMIT C-20	
INVESTIGATOR VICTOR S. AUMOND #910		PERMIT NO. 415062-0205	EXPIRATION DATE 05-20-2021	

This is to notify you that the above establishment was inspected by Agents of the Investigative Unit, Ohio Department of Public Safety, on the above date, and the following violations were noted:

1. FAILURE TO COOPERATE WITH EMERGENCY POLICE RESPONDING FOR A DISTURBANCE
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

V 0008 2/13 (760-1494)    White - Permit Holder    Canary - Central Office    Pink - District Office    Goldenrod - Retain In Book





OHIO DEPARTMENT OF PUBLIC SAFETY  
OHIO INVESTIGATIVE UNIT

NO. I-42860

VIOLATION NOTICE

NAME I LOVE THIS BAR LLC		D.B.A.	
PERMIT ADDRESS 491 PARK ST + PATIO		CITY Columbus	STATE OH 43215
SUBMITTED TO FAD = MICHAEL MICHAEL		HOME ADDRESS 2501 PUNDERSCH RD WABR OH 43026	
DATE OF VIOLATION MAY 16, 2020		TIME 10:35 PM	
DATE VIOLATION NOTICE ISSUED MAY 16, 2020		TIME 4:15 PM	TYPE OF PERMIT D5, D6
INVESTIGATOR ALST N. OW		PERMIT NO. 4103160	EXPIRATION DATE 02/01/2021

This is to notify you that the above establishment was inspected by Agents of the Investigative Unit, Ohio Department of Public Safety, on the above date, and the following violations were noted:

1. IMPROPER CONDUCT - DISORDERLY ACTIVITY
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_



Cleveland Department of Public Health

# COVID-19 COMPLAINT NOTICE

<b>Name of Establishment</b> TownHall	<b>Address</b> 1909 W 25th Street
<b>Phone Number</b> 216.344.9400	<b>Date</b> 5/16/2020

It has come to our attention that your business or facility may not be in compliance with the Ohio Department of Health Orders. Based upon information provided to the Cleveland Department of Public Health, this Notice serves to inform you of the complaint.

There is a state of emergency in Ohio due to COVID-19. Pursuant to Ohio Revised Code 3701.13, the Ohio Director of Health has issued several Public Health Orders. **Failure to comply with any Order listed below is a misdemeanor criminal offense subject to prosecution pursuant to Ohio Revised Code 3701.352.** Businesses that do not comply and are found to be in violation will be ordered to immediately close until the applicable public health order is lifted and may be subject to inspection. Order can be found at the this link, <https://coronavirus.ohio.gov/static/publicorders/Directors-Stay-Safe-Ohio-Order.pdf>

All businesses must implement the strategies in the Order. Noncompliant sections are checked off below. Upon this notice, this business or facility is ordered to immediately implement the required safety precautions.

### Stay Safe Ohio Order (04/30/20 – 05/29/20)

- Facial Coverings – all employees are required to wear appropriate facial coverings (8)
- Business/Operation is to remain closed until Order is amended or rescinded (13)
- Limit food, alcohol sales to carry-out delivery only (13b)

#### Applies to all Sector Specific COVID-19 Information and Checklist for Businesses/Employers

- Ensure minimum 6 feet between people, if not possible, install barriers
- Establish maximum capacity in facility
- Employee daily symptom assessment (take temperature, monitor fever, watch for cough, etc.)
- Require employees to stay home if symptomatic
- Require regular handwashing (by employees)
- Stagger or limit arrivals/entry of employees /guests/ customers
- Shutdown shop/floor for deep sanitation if possible
- Immediately isolate/seek medical care for individual(s) who develops symptoms while at work

- Contact local health district about suspected cases/exposures

#### Manufacturing, Distribution & Construction (5/4)

- Daily disinfection of desks and workstations
- Change shift patterns (e.g. fewer shifts)
- Stagger lunch and break times
- Daily deep disinfection of high-contact surfaces
- Spacing on factory floor to allow for distancing
- Regulate maximum number of people in cafeterias/common spaces

#### Consumer, Retail & Services (5/12)

- After May 1, 2020 11:59 pm Restrict operations to curbside pickup, delivery or appointment-only (limit to 10 customers at one time)
- Food courts remain closed



- Cease self-service food stations, product samples
- Clean merchandise before stocking if possible
- Post social distancing signage and disinfect high-contact surfaces hourly
- Clean high-touch items after each use (e.g. baskets, carts)
- Place hand sanitizer in high-contact locations
- Specify hours for at-risk populations
- Ensure minimum 6 feet between customers

- Limit travel as much as possible
- No buffet service in cafeteria
- Daily disinfection of common areas
- Frequent disinfection of desks, workstations, and high-contact surfaces
- Post signage on health and safety guidelines in common areas
- Cancel/postpone in-person events when social distancing guidelines cannot be met
- Utilize disposable tableware and other materials

**General Office Environments (5/4)**

- Reduce sharing of work materials

**Other**

Item Number \_\_\_\_\_

Continuing to operate this business while in violation of any of the above is a public health nuisance and can constitute as a danger to life and the public. If found in violation of ORC 3707.01 you will be ordered to cease the above identified activity pursuant to ORC 3709.21 and 3707.01. Due to COVID-19, this Order is considered an emergency and is effective immediately.

Additional Notes:

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You may reach us at 216-664-2300.

A copy of this notice will be sent to the Ohio Department of Health.





Cleveland Department of Public Health

# COVID-19 INVESTIGATION Inspection Report

<b>Name of Establishment</b> Town Hall	<b>Address</b> 1909 W 25 <sup>th</sup> St
<b>Phone Number</b> 344-9400	<b>Date</b> 5/16/20

### NOTICE

There is a state of emergency in Ohio due to the prevalence of COVID-19. Pursuant to Ohio Revised Code 3701.13, the Ohio Director of Health has issued several public health orders. If a facility cannot comply with these orders they are to shut down.

- This facility is currently in violation of one or more public health orders. Violation of an order is a criminal offense under Ohio Revised Code (ORC) 3701.99 and a civil offense.
- At time of inspection this facility was **NOT** found in violation of one or more public health orders.

### Applicable Section of Director's Stay Safe Ohio Order (04/30/20 – 05/29/20)

- Facial Coverings – all employees are required to wear appropriate facial coverings (8)
- Business/Operation is to remain closed until order amended or rescinded (13)
- Limit Food, Alcohol Sales to Carry Out Delivery Only (13b)

#### Applies to all Sector Specific COVID-19 Information and Checklist for Businesses/Employers

- Ensure minimum 6 feet between people, if not possible, install barriers
- Establish maximum capacity
- Employees daily symptom assessment (take temperature, monitor fever, watch for cough, etc.)
- Require employees to stay home if symptomatic
- Require regular handwashing (by employees)
- Stagger or limit arrivals/entry of employees/guests
- Shutdown shop/floor for deep sanitation if possible
- Immediately isolate/seek medical care for individual who develops symptoms while at work
- Contact local health district about suspected cases/exposures

#### Manufacturing, Distribution & Construction (5/4)

- Daily disinfection of desks and workstations

- Change shift patterns (e.g. fewer shifts)

- Stagger lunch and break times

- Daily deep disinfection of high-contact surfaces *1/14/20*

- Space factory floor to allow for distancing

- Regulate max number of people in cafeterias/common spaces

#### Consumer, Retail & Services (5/12)

- May 1, 2020 11:59 pm Restrict operations to curbside pickup, delivery or appointment-only (limit to 10 customers one time)

- Food courts remain closed

- Cease self-service food stations, product samples

- Clean merchandise before stocking if possible

- Post social distancing signage and disinfect high-contact surfaces hourly

- Clean high-touch items after each use (e.g. baskets, carts)

- Place hand sanitizer in high-contact locations

- Specify hours for at-risk populations

- Ensure minimum 6 feet between customers

**General Office Environments (5/4)**

- Reduce sharing of work materials
- Limit travel as much as possible
- No buffet in cafeteria
- Daily disinfection of common areas
- Frequent disinfection of desks, workstations, and high-contact surfaces

- Post signage on health safety guidelines in common areas
- Cancel/postpone in person events when social distancing guidelines cannot be met
- Utilize disposable tableware and other materials

**Other**  
Item Number \_\_\_\_\_

Continuing to operate this business while in violation of any of the above is a nuisance and a danger to life and public health in violation. If found in violation of ORC 3707.01 you will be ordered to cease the above identified activity pursuant to ORC 3709.21 and 3707.01. Due to COVID-19, this order is an emergency and is effective immediately.

**OBSERVATIONS/COMMENTS**

No face coverings - 1st / # not meeting 6' rule  
not in compliance

<b>Inspected by (print name)</b> Brian Kuban	<b>Received by (print name)</b> Bobby George 650-67411
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**From:** Stromp, Cady <cstromp@lcghd.org>  
**To:** 'fsoponcic@skodaminotti.com' <fsoponcic@skodaminotti.com>; 'clevogirl@gmail.com' <clevogirl@gmail.com>; 'gallo6464@yahoo.com' <gallo6464@yahoo.com>  
**Cc:** Stromp, Paul <pstromp@lcghd.org>  
**Sent:** Thursday, June 4, 2020, 09:29:32 AM EDT  
**Subject:** COVID related complaint

Hello-

I am contacting you regarding a COVID related complaint we received. A complainant stated that when picking up a to-go food order the employee had their mask around their neck and not on their face. The employee also took the customers phone out of his hand without his permission to check on his order number. They were also concerned with how social distancing was being handled when patrons were waiting for food.

Basically, we are notifying you of the complaint and asking that you make every attempt to accomplish the Gov. guidelines in regards to social distancing. I know that is may be difficult at times. Additionally, staff must wear a mask at all times and should not be handling people's personal property.

Please let us know if you have any questions.

Cady Stromp, MPH, RS

Lead Public Health Sanitarian

Environmental Health Division

Lake County General Health District

5966 Heisley Road

Mentor, Ohio 44060

Desk (440)350-2835

Cell (216)403-1058

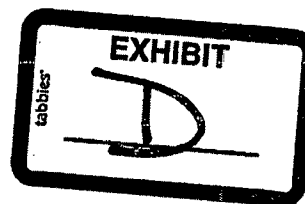
Office (440)350-2543

Fax (440)350-2548

[cstromp@lcghd.org](mailto:cstromp@lcghd.org)



**Lake County**  
**General Health District**  
**Public Health**  
Prevent. Promote. Protect.



**Our Mission: Working to prevent disease, promote health, and protect our community**

**FILED VIA EMAIL**

DATE 6-4-2020 TIME 4:25pm MON PLEAS COURT

KE COUNTY, OHIO  
nation Form Loc. R II(C)(1)

MAUREEN G. KELLY, CLERK OF COURTS  
case

**20CV000734**  
**JOHN P. O'DONNELL**

MFRS LLC dba DiamondBack Bar & Grill, et al.

VS

Amy Acton, et al.

Per LOC R. II (C)(3), refiling of cases previously dismissed under Civ. R. 41 must have a designation upon the face of the complaint that the action is being refiled. The word "REFILING" must appear in upper case letter under the word "COMPLAINT". Directly beneath the word "REFILING" the complaint shall identify the case number of this dismissed action. **Former Case no.** \_\_\_\_\_

**Case Categories (Mark one category only)**

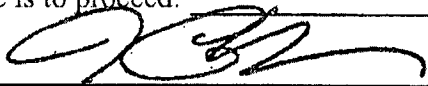
**Administrative Appeal** (Specific ORC Sec.) Section \_\_\_\_\_

**Consumer Sales Practices:** Actions commenced under applicable section of ORC Chapters: 109, 1315, 1317, 1321, 1322, 1333, 1334, 1345, 1349, 3953, 4505, 4549, 4710, 4712, 4719, 4775, 4905 or 5311

- Contract or Quasi Contract**
- Criminal**
- Declaratory Judgment**
- See Foreclosure Case Designation Form*
- Foreign Judgment**
- Malpractice** (specify) \_\_\_\_\_
- Credit Card (CI)**
- Personal Injury**
- Product Liability**
- Professional Tort**
- Provisional Remedy** (Replevin, Attachment, Garnishment)
- Workers Compensation**
- Other Tort** \_\_\_\_\_
- xx  **Other Civil** \_\_\_\_\_

The designation "money only" may not be used if one of the above specific categories is applicable. Further, the caption shall note any statutory provision that is unique to the particulate cause and controls the time within which the case is to proceed, once filed. (EX. Miscellaneous – Contest of Election (ORC Section 3515.10 – Hearing within 30 days.)

Revised Code Section unique to this particular cause which controls the time within which the case is to proceed: \_\_\_\_\_

 \_\_\_\_\_ **Signature**

Thomas J. Connick, Esq. **Printed name & Registration No.**

Connick Law LLC **Firm name**

25550 Chagrin Blvd Suite 101 Beachwood OH 44122 **Address**

216-364-0512 **Phone number**

**MAUREEN G. KELLY**

**CLERK OF COURTS**

**Lake County Common Pleas Court**

**ATTENTION ALL PARTIES TO THE CASE**

**Whether you are represented by an Attorney or representing yourself in this Legal action, LAKE COUNTY LOCAL COURT RULES require that all participants familiarize themselves with, and follow the requirements of each court.**

**Pre-trial orders and procedures are available on our website at**

**[www.lakecountyohio.gov/coc](http://www.lakecountyohio.gov/coc)**

**Select DOWNLOADS**

**Scroll to PRE-TRIAL ORDERS**

**Select the appropriate pre-trial order/procedure for YOUR respective case and Judge.**

**If you are unable to access or unclear as to which pre-trial order/procedure applies to you, contact the Office of the Clerk of Courts, New Case Department (440.350.2657) during normal business hours and a copy will be immediately mailed to you.**

**Maureen G. Kelly, Clerk of Courts**

Revised 7/1/2013 Pretrial orders