

Executive Session 5:00 P.M.

Public Hearing 5:30 P.M.

Monday, March 22, 2021

REMOTE PARTICIPATION ONLY

Please join my meeting from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/891218997>

You can also dial in using your phone.

United States: [+1 \(872\) 240-3311](tel:+18722403311)

Access Code: 891-218-997

I. **CALL TO ORDER**

II. **EXECUTIVE SESSION – ADDED AT 12:10 P.M.**

- A. Executive Session pursuant to G.L. c. 30A, §21(a) (3) to discuss litigation strategy with respect to the case of 3137, LLC, et al. (Ember and Port) v. Town of Harwich, et al., United States District Court, C.A. No. 1:21-CV-10473, if discussing the matter in open session will have a detrimental effect on the Town's litigating position and the chair so declares.

III. **PUBLIC HEARING (NO EARLIER THAN 5:30 P.M.)**

- A. Ember Pizza, 600 Rt. 28 – Public hearing on applications for renewal of the Seasonal All Alcoholic Beverages License and the Annual Entertainment License; discussion and vote and public hearing on reconsideration of January 24, 2021 decision to renew the Annual Wine and Malt Beverage License for said premises; discussion and possible vote to order discipline based on Town Administrator's February 8, 2021 findings and recommendations.

IV. **ADJOURNMENT**

**Per the Attorney General's Office: The Board of Selectmen may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting following "New Business." If you are deaf or hard of hearing or a person with a disability who requires an accommodation contact the Selectmen's Office at 508-430-7513.*

Authorized Posting Officer:

Danielle Delaney, Executive Assistant

Posted by: _____
Town Clerk

Date: _____
March 19, 2021

HEARING NOTICE

**HARWICH BOARD OF SELECTMEN
NOTICE OF PUBLIC HEARING
EMBER PIZZA**

LIQUOR AND ENTERTAINMENT LICENSES

MARCH 22, 2021

The Board of Selectmen of the Town of Harwich, will hold a Public Hearing on Monday, March 22, 2021 at 5:30 pm, for the purpose of hearing applications for renewal of the Annual Entertainment and Seasonal All Alcoholic Beverages licenses for Ember Pizza., d/b/a Ember, located at 600 Route 28 in Harwich Port, as well as to reconsider its decision to renew the Annual Wine and Malt Beverage license for said establishment. The Board will hear evidence and testimony from interested parties, including from members of the public, and will decide whether to renew, not renew or to modify said licenses. The hearing will be held via remote video streaming only. All members of the public having an interest in the topic are cordially invited to log-in and view the hearing. Information for logging into and viewing the hearing is below and will be posted on the Town's website prior to the hearing.

Mon, Mar 22, 2021 5:30 PM

Please join my meeting from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/891218997>

You can also dial in using your phone.

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Access Code: 891-218-997

Joseph F. Powers
Town Administrator

Cape Cod Chronicle
March 11, 2021

BALLARIN FACTORS

**BOARD OF SELECTMEN
ACTING AS THE LOCAL LICENSING
AUTHORITY**

Ballarin Factors

- In reviewing and rendering a decision on this application, the board will consider MGL c.138, § 23 which speaks to the public need, common good and adequate number of locations.
- The Board will also use the Ballarin factors in its deliberations.

The Ballarin factors come from the MA Appeals Court case:
Ballarin, Inc. v. The Licensing Board of Boston.

The Ballarin case clearly articulates the factors that will be used by this board to form a basis in this application to determine the issuance or denial of the requested license.

The Ballarin factors are:

- 1) Public need, meaning a consideration of the public want and the appropriateness of a liquor license at a particular location
- 2) Consideration of the number of existing dispensaries in a locality;
- 3) Views of the inhabitants of the locality in which a license is sought;
- 4) Traffic;
- 5) Noise;
- 6) Size;
- 7) The sort of operation that carries the license;
- 8) Consideration of the reputation of the applicant

Procedures that will be followed:

- 1) Open the public hearing (by a motion);
- 2) Application documentation and comments from responding town departments will be reviewed;
- 3) The applicant will be given the opportunity to offer a presentation;
- 4) The board will have the opportunity to ask questions;
- 5) The board will hear comments from:
 - those individuals present in favor of the application,
 - those individuals present in opposition of the application;
- 6) Close the public hearing (by a motion)
- 7) Discussion by the board
- 8) Motion will be made regarding the application.

LICENSE APPLICATIONS

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Town Administrator*
Meggan Eldredge, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645



MEMO

TO: Board of Selectmen

FROM: Danielle Delaney, Executive Assistant – Licensing

CC: Joseph F. Powers, Town Administrator
Meggan M. Eldredge, Assistant Town Administrator

RE: 2021 Annual Entertainment License Renewal

DATE: March 22, 2021

The licensee below was contacted via email to outline the times and location (inside or outside) of where they are requesting to have entertainment.
All information below was emailed directly to staff. Included below is what the Board of Selectmen approved in 2020.

Ember Pizza
600 Route 28, Harwich Port

Requesting: Weekday 10AM – 10PM Outside & 10AM – 12AM Inside
Sunday 10AM – 10PM Outside & 10AM – 12AM Inside

Recorded or Live Music with amplification

Approved in 2020 by the Board of Selectmen
Weekday: 6PM – 10PM Outside
Sunday: 10AM – 12AM Inside & 10AM – 10PM Outside



OFFICE OF THE SELECTMEN
732 MAIN STREET
HARWICH, MA 02645
508-430-7513

APPLICATION FOR ENTERTAINMENT LICENSE

- Weekday Entertainment (\$75) _____ 1 day (\$25) _____
 Batters Box (\$50) _____
 Go Carts (\$50) _____
 Miniature Golf (\$50) _____
 Trampolines (\$25) _____
 Theater (\$150 per cinema) _____
Automatic Amusement:
 Juke Box (\$100 each) _____
 Video Games (\$100 each) _____ Other _____
- New application _____
Renewal _____
Annual _____
Seasonal _____
Opening Date _____

Business Name EMBER PIZZA INC Phone 508-430-0407
Business Address 1000 ROUTE 28
Mailing Address HARWICH, MA 02646
Owners Name & Address JUSTIN BRACKETT 51 OAK ST HARWICH
Email Address J.brackett@gmail.com
Managers Name & Address _____

TIMES AND DAYS OF WEEK FOR ENTERTAINMENT (Please note this application does not cover Sundays. You can obtain a Sunday license application at the Selectmen's Office):

ENTERTAINMENT TYPE: (Check all appropriate boxes)

- Concert Dance Exhibition Cabaret Public Show Other
 Dancing by Patrons
 Dancing by Entertainers or Performers
 Recorded or Live Music
 Use of Amplification System
 Theatrical Exhibit, Play or Moving Picture Show
 A Floor Show of Any Description
 A Light Show of Any Description
 Any Other Dynamic Audio or Visual Show, Whether Live or Recorded

At any time during this concert, dance exhibition, cabaret or public show, will any person(s) be permitted to appear on the premises in any manner or attire as to expose to the public view any portion of the body as described in Mass. General Laws Chapter 140, Section 183A, Para. 3.

___ Yes No

If Yes, answer questions 1 through 4 below. Attach a separate sheet and/or exhibits if necessary:

1. Describe in complete detail the extent of exposure during the performance and the nature of the entertainment: _____

2. Furnish additional information concerning the condition of the premises and how they are suitable for the proposed entertainment: _____

3. Fully describe the actions you will take to prevent any adverse effects on public safety, health, or order: _____

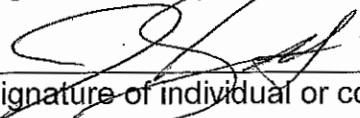
4. Identify whether and how you will regulate access by minors to the premises: _____

Days/Hours of Business Operation _____

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

Signature of applicant & title

Federal I.D. #



Signature of individual or corporate name

Federal I.D. #

Signature of Manager

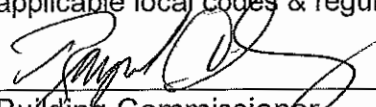
Federal I.D. #

Signature of Partner

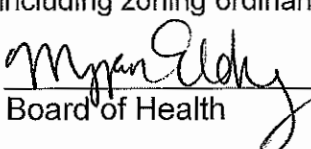
Federal I.D. #

REGULATORY COMPLIANCE FORM

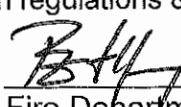
The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.



Building Commissioner



Board of Health



Fire Department



Police Department

comments:

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN STREET
HARWICH, MA 02645
508-430-7513

APPLICATION FOR SUNDAY ENTERTAINMENT LICENSE

- | | |
|--|---|
| <input type="checkbox"/> Music 1PM or After (Municipal Fee \$85/State \$50) | New application <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Music prior to 1PM (Municipal Fee \$175/State \$100) | Renewal <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Go Carts (\$50) | Annual <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Miniature Golf (\$50) | Seasonal <input type="checkbox"/> |
| <input type="checkbox"/> Trampolines (\$25) | Opening Date <input type="checkbox"/> |
| <input type="checkbox"/> Theater (\$150 per cinema) | |
| <input type="checkbox"/> Automatic Amusement (\$100) | |
| <input type="checkbox"/> Juke Box (\$100 each) | |
| <input type="checkbox"/> Video Games (\$100 each) | |
| | Other <input type="checkbox"/> |

Business Name EMBER PIZZA INC. Phone 508-430-0407

Business Address 600 ROUTE 28

Mailing Address Harwich, MA 02646

Owners Name & Address Justin Brackett 51 Oak St Harwich

Email Address J.brackett@gmail.com

Managers Name & Address _____

TIMES OF ENTERTAINMENT (Please specify where music will be located on your property and what type of entertainment such as live, DJ, recorded)

ENTERTAINMENT TYPE: (Check all appropriate boxes)

- Concert Dance Exhibition Cabaret Public Show Other
- Dancing by Patrons
- Dancing by Entertainers or Performers
- Recorded or Live Music
- Use of Amplification System
- Theatrical Exhibit, Play or Moving Picture Show
- A Floor Show of Any Description
- A Light Show of Any Description
- Any Other Dynamic Audio or Visual Show, Whether Live or Recorded

At any time during this concert, dance exhibition, cabaret or public show, will any person(s) be permitted to appear on the premises in any manner or attire as to expose to the public view any portion of the body as described in Mass. General Laws Chapter 140, Section 183A, Para. 3.

___ Yes No

If Yes, answer questions 1 through 4 below. Attach a separate sheet and/or exhibits if necessary:

1. Describe in complete detail the extent of exposure during the performance and the nature of the entertainment: _____

2. Furnish additional information concerning the condition of the premises and how they are suitable for the proposed entertainment: _____

3. Fully describe the actions you will take to prevent any adverse effects on public safety, health, or order: _____

4. Identify whether and how you will regulate access by minors to the premises: _____

Days/Hours of Business Operation _____

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

Signature of applicant & title

Federal I.D. #

Signature of individual or corporate name

Federal I.D. #

Signature of Manager

Federal I.D. #

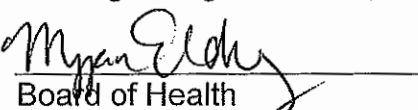
Signature of Partner

Federal I.D. #

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.


Building Commissioner


Board of Health


Fire Department


Police Department

comments:

Required signatures to be obtained by the applicant prior to submission of new applications.

2021

Request for continued Expansion of Outdoor Table Service

Establishment name: EMBER PIZZA

Establishment address: 600 ROUTE 28

If your establishment would like to continue expanded outdoor table service, please fill out below.

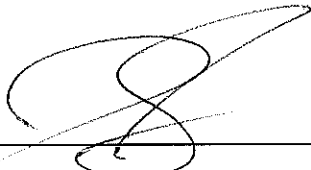
Please note this form is only for establishments that have completed the Board of Selectmen's application process.

Indicate that you are requesting to continue with expanded outdoor table service. YES

Indicate that you are continuing with what was previously approved by the town. If you would like to further expand your outdoor seating area, please contact staff for an application. SAME

Indicate if you will or will not be serving alcohol on the expanded outdoor premise. WILL

Indicate the dates from start to end of season when you will be utilizing the expanded outdoor area. MAY 28 - Oct 11

Manager: 

Date: 3-2-2021



Jean M. Lorizio, Esq.
Commission Chairman

Commonwealth Of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, MA 02150-2358

2021
Retail License Renewal

License Number: 00095-RS-0506	Municipality: HARWICH
License Name : Ember Pizza Inc	License Class: Seasonal
DBA : Ember	License Type: Restaurant
Premise Address: 600 Route 28 Harwich, MA 02646	License Category: All Alcoholic Beverages
Manager: Justin Brackett	

I hereby certify and swear under penalties of perjury that:

1. I am authorized to sign this renewal pursuant to M.G.L. Chapter 138;
2. The renewed license is of the same class, type, category as listed above;
3. The licensee has complied with all laws of the Commonwealth relating to taxes; and
4. The premises are now open for business (if not, explain below).



 Signature
 Justin Brackett

 Printed Name

3-2-2021

 Date
 President

 Title

Please sign this form only in the month of March and return to your Local Licensing Authority.

Additional Information:



WRITTEN
COMPLAINTS
FROM RESIDENTS

Danielle Delaney

From: Bob Cohn <
Sent: Thursday, March 18, 2021 10:42 AM
To: Larry Ballantine; Michael D. MacAskill; Ed McManus; Don Howell; Stephen Ford
Cc: Joe Powers
Subject: Port and Ember Hearings
Attachments: Informal Harwich Port Noise Survey; Updated with August and September readings.doc; Nantucket Outdoor Entertainment Licenses 2018.doc

March 18, 2021

Larry Ballantine
Harwich Board of Selectmen
732 Main Street
Harwich, MA 02645

Dear Chairman Ballantine and Board Members,

I'm writing in regard to the upcoming hearings for Ember Pizza and Port Restaurant and Bar. Though I can't speak to after-hours disturbances and Covid-related violations, I can speak to entertainment noise issues.

In July 2019, I conducted the attached Informal Noise Survey, which I presented at the last Noise Containment Committee meeting prior to the pandemic. (I'm a Committee member, but this letter is mine alone.)

The map only depicts noise from Ember, mainly in July with a few days from May and June. As you'll see, entertainment noise from Ember was at times greatly excessive, and could be heard more than 1200 feet away, deep in the residential zone.

Noise readings from the Port are not shown on the map, but referring to the spreadsheet, you'll see that their noise levels were also greatly excessive.

Because the distance noise carries is also a measure of volume, noise at 750 feet is 5 times the volume and nuisance allowed under the Noise Bylaw, while noise heard at 1200 feet is 8 times the allowed limit. Yet noise from both venues reached these extremes.

The noise was often loud enough to disturb us on Pleasant St. and sometimes kept us from being able to sleep. Worse, though, was the effect on neighbors close to the venues, who had to endure incredible levels of noise on a regular basis.

I stopped doing surveys after July, but continued to note readings from my house. Based on this partial information, it seemed that noise levels from both venues began to improve toward the end of the 2019 season. Still, as the spreadsheet shows, things were far from quiet. Additionally there were significant relapses, including, I believe, a violation by Ember in September 2019. While for a week in July 2020 we regularly heard noise from the Port, 1000 feet away from their new performance area in their parking lot. Additionally there were all the crowd noise, after-hours, and covid-related issues during the 2020 season that others have reported.

It seems pretty clear that neither the Port nor Ember have made the same effort to be good neighbors as has Perks.

Still, I believe that this is as much a problem of our noise policy, which has unintentionally encouraged this sort of behavior. In fact, all the venues, including Perks and the Mad Minnow have been extremely

loud at times and made things difficult for their neighbors. The same is true for the West Harwich venues as well.

Because of this, and because of constantly changing venue management, I feel that to address *only* the current issues at the Port and Ember and fail to address the larger noise policy issues, is to treat the symptom rather than the disease.

As you're no doubt aware, there are a number of underlying problems with our outdoor entertainment policy:

- Amplified music can carry great distances outdoors;
- Live performances exacerbate this and are the main source of difficulties;
- The Town has granted a large number of outdoor entertainment licenses in close proximity to neighbors; but
- Failed to provide adequate noise management to protect neighbors from regular nuisance, specifically, proactive guidelines and restrictions, and a standardized, measurable noise threshold.

I hope we can take up these issues more fully at a following meeting, and in particular discuss the need for a Plainly Audible definition.

For now, though, if you do decide to grant outdoor entertainment licenses to the Port and Ember, I'd suggest some new license conditions be considered:

- 1) Speakers to be pointed away from neighbors at all times.
- 2) Live music restrictions:
 - a) Live music to be played only through house systems. I believe Perks has recently purchased a house system. Given the closeness of neighbors to all the venues, this may be an appropriate measure for live music throughout town.
 - b) Decibel monitors to be used by venues for self-regulation. This was suggested by Chief Guillemette a couple years ago.
 - c) Alternatively, security details, paid for by the venues, could perform the same function. This was suggested at a Noise Committee meeting.
 - d) Limit days and times for live music.
- 3) Use the bylaw's Plainly Audible definition to provide a standardized noise measure and reduce noise levels. An objectively measurable and consistent limit is key to all aspects of noise management, including the above house systems, decibel monitors, and security details.

I'm also attaching copies of Nantucket's outdoor entertainment licenses from 2018, which are individualized for each venue and may be instructive.

Thank you very much.

Respectfully,
Bob Cohn

INFORMAL HARWICH PORT NOISE SURVEY, 2019

— Bob Cohn

The Noise Survey was conducted in order to document and increase awareness of noise levels and issues in Harwich Port. While there was a significant drop-off in noise levels from the highs of 2018, it could still often be quite noisy in 2019. The survey is far from perfect, but hopefully can shine some light on the situation.

How the Survey Was Conducted

The survey was very informal. I didn't go out on a regular basis, but instead when I felt like it and/or when it was particularly noisy. By the beginning of August, I grew pretty tired of it, and did surveys less frequently.

I usually followed the same route, but not always:

- South from Pleasant St. through the Schoolhouse Rd. parking lot;
- to Perks and The Port to see which business was the source of any noise;
- South on Sea St. and then back up to Rt. 28;
- East along Rt. 28 to Freeman St./Snow Inn Rd.;
- North on Freeman to Pleasant;
- West on Pleasant and back to the start at Schoolhouse Rd.
- Except once or twice, I didn't go south of Rt. 28 on Bank or Bayview.

As I heard noise at various points along the way, I'd make a voice recording on my phone, which I'd later transcribe. I haven't yet finished transcribing the data.

I used the Noise Bylaw's plainly audible definition, but also noted relative loudness, songs, voices, crowd noise, and instruments.

Some things to keep in mind

The survey data is *very incomplete* and forms a partial picture only.

- I didn't do the survey every day, but only:
 - 3 days in May
 - 4 days in June
 - 15 days in July
- Survey was conducted fairly randomly—only on days I felt inclined.
- I didn't survey very much south of Rt. 28.
- Measurements were generally not taken inside 150-foot limit.
- Wednesday night music events aren't shown.
- The summer of 2019 was far quieter than 2018:
 - The Mad Minnow had no outdoor entertainment.
 - There appears to have been increased awareness of noise issues and some scaling back. This may have been due in part to the Noise Committee being announced.
- All measurements in the survey are approximate.

Notes about the Map

The map is intended to help visualize the survey data. Because it took a lot of time to put the map together, only the noise readings from Ember are so far shown. Thus, this is *an even more partial picture* than the survey spreadsheet itself.

A truer picture of the situation would:

- include readings from Perks and The Port, easily doubling the number of incidents;
- show readings all through the summer on a nightly basis, perhaps doubling again;
- include a fuller set of readings south of Rt. 28, adding still more; and
- include readings *inside* the blue and green circles.

Wednesday night music events might also be considered to gauge noise levels, adding another 15% on top of the above.

Further, had a 2018 version of the survey been done, it would have included readings from the Mad Minnow and a great deal more noise in general throughout the village, and would likely more than double again.

That is to say that at the peak noise levels of 2018, a map depicting an entire summer's survey might well show 8 or 10 times as many noise incidents. Perhaps more.

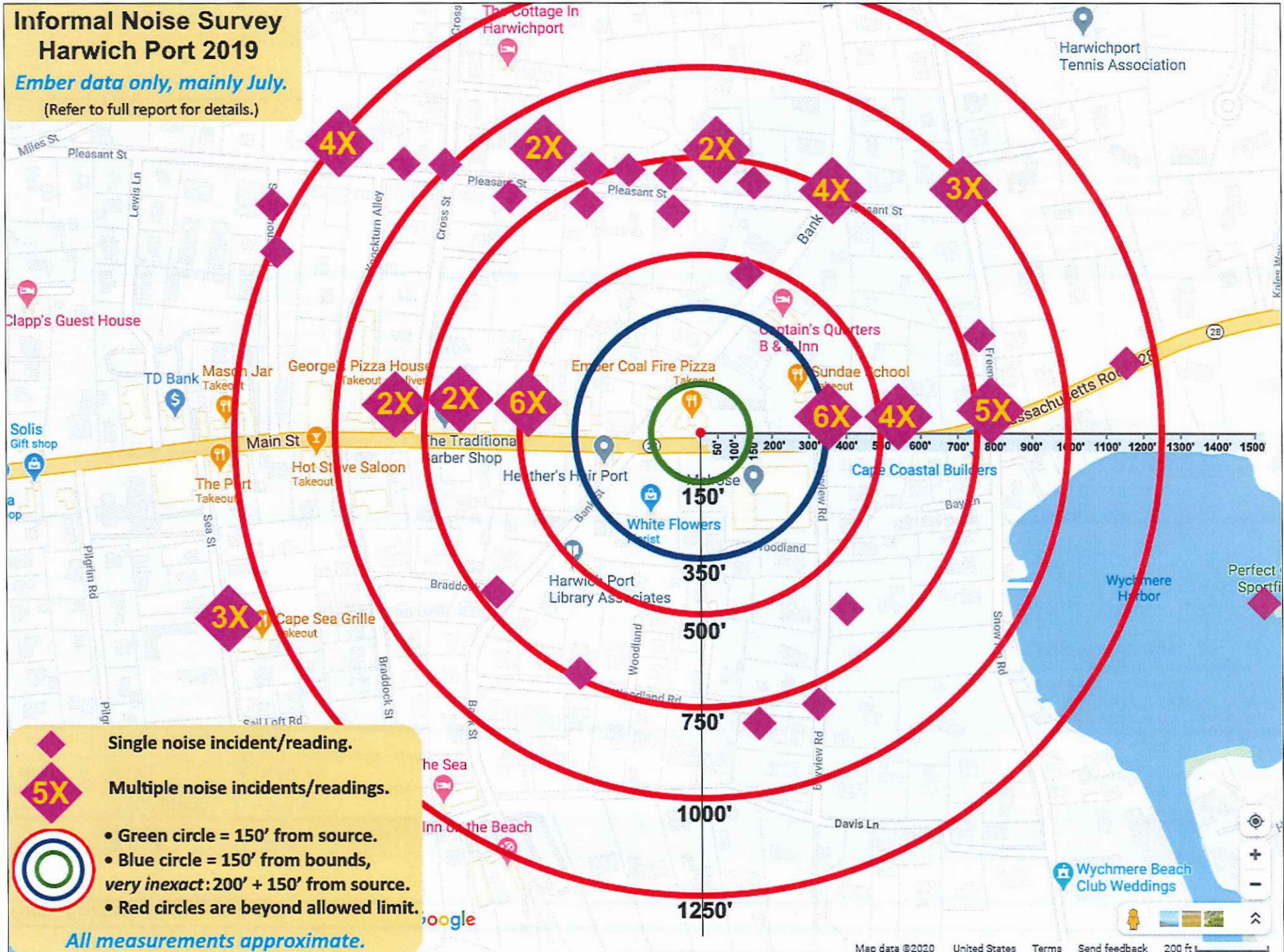
Some details:

- Circles are all centered at Ember's performance area,
 - The interior green circle has a radius of 150' from the performance area.
 - The blue circle *only very roughly* depicts the area 150' beyond Ember's boundaries. As the property line to the east is roughly 200' from the performance area, a circle of radius 350' is used (200'+ 150').
 - The red circles (500', 750', 1000', 1250') are all beyond permitted limits.
- Some addresses have been merged for easier depiction on map, e.g.:
 - George's Pizza // Cross & 28
 - 28 & Snow Inn // 28 & Freeman
 - United Gas // Cumberland Farm
- All numbers and measurements on the map are approximate.

Informal Noise Survey Harwich Port 2019

Ember data only, mainly July.

(Refer to full report for details.)



- Single noise incident/reading.
- Multiple noise incidents/readings.
- Green circle = 150' from source.
- Blue circle = 150' from bounds, very *inexact*: 200' + 150' from source.
- Red circles are beyond allowed limit.

All measurements approximate.

Noise Survey, Summer 2019

Date & Time	Wind & Weather	The Port	Perks	Ember Only Data Plotted on Map	Notes
Fri. May 24 7:30p	Quite Strong Wind North to South Cool & windy	<ul style="list-style-type: none"> • ~400 feet/ Halfway up Schoolhouse Rd. lot • ~1000 feet At bottom of Sea St., almost to water 			Friday of Memorial Day weekend <ul style="list-style-type: none"> • Strong wind was pushing music away from Pleasant St., toward water
Sat. May 25 9:15-9:45	Light wind South to North Nice	<ul style="list-style-type: none"> • @29 Pleasant /~800' — Music & shouting • @Cross & Pleasant ~1000' (faint but PA) • @Cape Sea Grille /~400' • @27 Sea St./~500' — crowd shouting & carrying on 		Music PA <ul style="list-style-type: none"> • @57 Pleasant/~725' — (not faint) • @Bank & Pleasant ~700' (quite loud) • @Melrose /200+' (crowd noise PA) • @617 Rt 28/500' (fairly loud) • @Snow Inn & 28 /800' (& PA further east too) • @Cumby's /~450' 	Saturday of Memorial Day weekend <ul style="list-style-type: none"> • Music loud from The Port & Ember; — crowd noise was as well. • Performer at Perks not noticeable over noise from the Port.
Sun. May 26	South to North -Light Sunny, pleasant	<ul style="list-style-type: none"> • 4:45p: @29 Pleasant/~800' — male voice plainly audible • 6:00p: @Schoolhouse Rd & Anchorage driveway /~450' • @Cape Sea Grille /~400' • @27 Sea St./~500' • 7:30p: @29 Pleasant/~800' • 8:30: @29 Pleasant/~800' • Schoolhouse & Pleasant/~850' (faint but PA, "Brown-eyed Girl") • 36 Cross St. PA @9:45/1175' • Lewis Lane & Cape Cod 5 lot/~450' 		<ul style="list-style-type: none"> • Freeman & Pleasant /900' • Bank & Pleasant /700' • 28 & Bayview (female voice, slow music) /~325' • 28 & Snow Inn /~800' • 28 & Cross (female voice) / ~800' 	Sunday afternoon & evening of Memorial Day weekend — heard music from direction of Port/Perks while outside doing yardwork (male voice, was the same music style as heard an hour later from Port)
Wed. June 26 9:30-10pm	Little Wind Fair			<ul style="list-style-type: none"> • 29 Pleasant/~1200' — Music intermittently audible • Pleasant & Bank /~700' • 67 Pleasant/~650' • 35 Pleasant/~1150' • 28 & Bayview/~325' • 28 & Freeman/~800' • @Traditional Barber Shop/~800' • @Cape Sea Grille /~1500' 	Wednesday night late <ul style="list-style-type: none"> • Music from Ember audible all around neighborhood — venue lightly attended — single performer (I think) — singing fairly low, but amplified enough to be heard intermittently at significant distances

Date & Time	Wind & Weather	The Port	Perks	Ember Only Data Plotted on Map	Notes
Thu. June 27 8:15p-8:45p	No Wind Cool, Foggy		<ul style="list-style-type: none"> • @29 Pleasant/~800' — music light, but plainly audible • Schoolhouse lot & Anchorage drive /~400' • @Cape Sea Grille /~450' 	<ul style="list-style-type: none"> • @56 Pleasant/~750' • @74 Pleasant/~650' • Bank & Pleasant /~700' • Pleasant & Freeman /~900' (wailing guitar) • 28 & Freeman/~800' (announcement/talking on PA & music) • very plainly audible @617 Rt 28 /~500' • @Heather's Hair/~200' • @Cumby's /~475' 	<ul style="list-style-type: none"> • Just 1 performer at Ember, but he uses generated backup music • Could hear music from Perks at 29 Pleasant, from about 8:15/8:30 on — light, intermittent, but audible — became louder from 9:30 on
Fri. June 28 9:00 9:30 10:00p	No Wind Pleasant	<ul style="list-style-type: none"> • @29 Pleasant back yard/800' • Top of Schoolhouse lot (edge of woods)/~625' 	<ul style="list-style-type: none"> • 19 Schoolhouse Rd/550' (9:55 "Can't always get what you want.") 	<ul style="list-style-type: none"> • Corner Braddock & Bank/700' • 54 Pleasant/750' • 9:55p: Halfway up Schoolhouse Rd wooded lot/1300' • 6 Freeman St. 800' • 28 & Bayview/335' (heavy rhythm w/bongos) • @Heathers Rt 28/~300' (bongos) 	<ul style="list-style-type: none"> • Readings attributed to The Port may have been from Perks—walked the other direction, so not sure
Sun. June 30 8:00p	Strong Wind— Variable, but mainly North to South Nice night, but windy	<ul style="list-style-type: none"> • Chamber of Commerce/275' • Anchorage driveway/450' • 39 Sea St./275' • Cape Sea Grille/450' • Port Pines Rd & Sea St./850' • In back of Pilgrim Church, (30' away from Pilgrim Rd.) /375' 		<ul style="list-style-type: none"> • 92 Bank St./~450' ("Only the good die young") • @28 & Freeman/800' • @617 Rt 28 (heavy bass)/500' • @28 & Bayview (pretty loud: Monkees "I'm a Believer")/335' • Cumby's: "Johnny B. Goode"/475' • George's Pizza/800'— can clearly hear bass line • @Cape Sea Grille, Sea St./1400' 	<ul style="list-style-type: none"> • 4 piece band at Ember — but not that many customers—less than half full • Single male performer at Perks — <i>under umbrella</i> & not audible even in front of venue • Female performer at the Port, voice carried, highly amplified • Minnow: recorded music w/empty
Mon. July 1 7:30-10:00p	Fair amount of wind blowing South to North		<ul style="list-style-type: none"> • 8:00p @29 Pleasant back yard/800' • Schoolhouse Rd & Pleasant/800'—pretty loud • 9:15p: @19 Schoolhouse/600' — "Take a load off Fanny" etc. • Cape Sea Grille/450' — music is <i>intermittently</i> plainly audible 		<ul style="list-style-type: none"> • Single male performer at Perks — no umbrella/coverage — soulful, moaning male voice • Sent text to Sarah & Taylor Powell telling them that the music has been carrying up to Pleasant St. • Duet at Ember—pretty light, can't hear very far away
Thu. July 4 7:45p		<ul style="list-style-type: none"> • 7:45p @29 Pleasant/800' • 10:02p: @29 Pleasant /800' • Cape Sea Grille/400' — "Lord I was born a gambling man" 			<ul style="list-style-type: none"> • Spoke w/Sarah & Taylor Powell of Perks—music not very loud from Perks

Date & Time	Wind & Weather	The Port	Perks	Ember Only Data Plotted on Map	Notes
Fri. July 5 8:00p		<ul style="list-style-type: none"> • 8:00p @29 Pleasant/800': Music plainly audible inside our house • Schoolhouse Rd & Pleasant/800' • Cape Sea Grille/400' • "Rolling on the river" • 27 Sea St./650': "I'm a joker, I'm a toker..." • Sail Loft Rd & Sea St./700' 		<ul style="list-style-type: none"> • Freeman & Pleasant/975' plainly audible (may have been from The Port) • @Heathers Rt 28/~200' 	<ul style="list-style-type: none"> • Ember performer: single guy w/music/rhythm generator
Sat. July 6 2:30				<ul style="list-style-type: none"> • 7:15p: Harbor Rd. wharf /~1800' • Wychmere Harbor overlook / ~1200' 	<ul style="list-style-type: none"> • Out driving around, could hear music from Ember all around Wychmere Harbor
Sun. July 7 7:45		<ul style="list-style-type: none"> • 8:00p @29 Pleasant /800' (plainly audible inside our house) 		<ul style="list-style-type: none"> • 72 Pleasant/650' • 62 Pleasant /675' • Cross & Pleasant/950' ("You're so vain you probably think this song is about you") • 8:30p 29 Pleasant /1200'(guy talking on PA) • 9:00p 29 Pleasant—music getting loud • 9:30p 29 Pleasant, still very loud • 9:45p called police again • 26 Bank St./~1100' • Bayview & Woodland/900' • 10 Woodland/775' • 29 Woodland/775' • 25 Bayview/600' • Bayview & Rt. 28/350':pretty loud • @Cape Sea Grille /~1500' 	<ul style="list-style-type: none"> • A couple people playing at Port • Ember very loud all over HP <ul style="list-style-type: none"> — called police @9:00pm — officer didn't come by house — no noticeable change in volume — got louder at @9:45p (trying to go to bed) — called police again and was told that the officer had asked them to turn it down — but if they music was turned down, it was only very briefly — and by 9:45p, it was still louder than before, and continued louder until 10pm • made recording of music 1200' away
Mon. July 8 9:20p			<ul style="list-style-type: none"> • 29 Pleasant /~800' —moany guy plainly audible 		<ul style="list-style-type: none"> • Monday night: moaning guy at Perks
Thu. July 11 from 7:30 on	A bit of wind blowing from the south	<ul style="list-style-type: none"> • 29 Pleasant/~800' —intermittently plainly audible • Schoolhouse Rd & Pleasant/800' —very clear: bass guitar riffs • 39 Sea St./275' —deeper male voice rhythmic/thumping component • 29 Pleasant 9:30p — music from The Port — intermittent guitar licks from Ember 		<ul style="list-style-type: none"> • @Traditional Barber Shop/~800' (electric guitar licks) • 29 Pleasant 9:30p — intermittent guitar licks 	<ul style="list-style-type: none"> • Port performer quite loud • Perks performer fairly quiet • Ember went on break as I went by
Sun. July 14				<ul style="list-style-type: none"> • 29 Pleasant St./1200' —music from Ember quite loud 	<ul style="list-style-type: none"> • Music fairly loud from Ember, but didn't do survey
Mon. July 15	No wind		<ul style="list-style-type: none"> • 7:15p 29 Pleasant /~800' —moaning guy plainly audible inside house • 9:00p: ditto 		<ul style="list-style-type: none"> • 3rd Monday in a row w/Perks' moaning guy: sounds low, but w/amplification, voice carries and is quite loud —good bit louder than previously —could be heard inside house

Date & Time	Wind & Weather	The Port	Perks	Ember Only Data Plotted on Map	Notes
Sat. July 20, 2019 7:30-on	Not much wind	<ul style="list-style-type: none"> • Music plainly audible from <i>either Perks or The Port</i> for a couple/few hours /800' — periodically howling • From 9:30 to closing, music was loud enough that it was echoing off houses to the north of us and still further away 			<ul style="list-style-type: none"> • Didn't do survey
Thu. July 25, 2019 8:45p		<ul style="list-style-type: none"> • 8:45p 29 Pleasant /~800' —electric guitar, wailing, almost steel guitar; intermittent, off & on — 9:00p singing "Blue Morning" — 9:20p: quite loud in house; wailing electric guitar, male singer • 9:20p; Schoolhouse Rd & Pleasant/800' —quite loud w/electric guitar licks • 9:50p 29 Pleasant/800' — getting louder as band goes into finale, heavy drums • 10:22p: music plainly audible • @Cape Sea Grille /~400' • Cape Sea Grille; • 39 Sea/275': quite/very loud 		<ul style="list-style-type: none"> • 28 & Bayview /~325' — plainly audible • @617 Rt 28/500' — guitar licks plainly audible • 49 Pleasant/850' (or might have been from the Port at 1050') • 19 Schoolhouse (in lot)/ ~1200: quite loud, people on PA system coming from Ember • @Cumby's /~450' — plainly audible 	
Fri. July 26, 2019 8:45p		<ul style="list-style-type: none"> • 39 Sea St./275' — loud; "Stuck in the Middle with You" • 9:00pm @29 Pleasant/~800' — music plainly audible • Anchorage parking lot • 9:45pm @29 Pleasant/~800' 		<ul style="list-style-type: none"> • 52-54 Pleasant/800' (or might have been from the Port at 1150') • @Cumby's /~450' — very plainly audible • 37 Bay View: ~350' — plainly audible 	
Sat. July 27 2019 6:15p		<p>(Port OR Perks—didn't do survey)</p> <ul style="list-style-type: none"> • 6:15pm @29 Pleasant/~800' — not loud, but plainly audible 		<ul style="list-style-type: none"> • 9:45pm @29 Pleasant/~1200' — plainly audible inside house—space age-y music; trying to go to bed 	
Sun. July 28 2019 8:30p	Wind coming from south	<p>(from Port OR Perks—couldn't be sure)</p> <ul style="list-style-type: none"> • @Cape Sea Grille /~450' — "Stand by Me" — pretty loud, though wind is coming from the south 		<ul style="list-style-type: none"> • Bank & Pleasant /700' — plainly audible • 72 Pleasant/650' — "Ain't No Sunshine When She's Gone" • 66 Pleasant /675' • @United Gas /~550' — very plainly audible 	
Mon. July 29 2019 8:15			<ul style="list-style-type: none"> • 8:15: @29 Pleasant/~800' — quite loud, male voice, moany • 9:00p: ditto • 9:30p: ditto 		

Data Below **NOT** Plotted on Map

Date & Time	Wind & Weather	The Port	Perks	Ember	Notes
Thu. Aug. 1		(Port OR Perks—didn't do survey)	<ul style="list-style-type: none"> from 7:30-9:30p: @29 Pleasant/~800' — hearing music inside our house from 9:15 on: heavy drums off & on 		<ul style="list-style-type: none"> Didn't go out on survey
Sat. Aug. 3		(Port OR Perks—didn't do survey)	<ul style="list-style-type: none"> 29 Pleasant 9:45p/~800' — music loud enough that it's echoing from across the street — could hear crowd woo-hoing, echoing from across the street 		<ul style="list-style-type: none"> Didn't go out on survey
Mon. Aug. 5				<ul style="list-style-type: none"> 29 Pleasant/~1200' 9pm - 10pm: music plainly audible inside house while trying to sleep 	<ul style="list-style-type: none"> Didn't go out on survey, quiet most of night;
Sat. Aug. 10		(Port OR Perks—didn't do survey)	<ul style="list-style-type: none"> 29 Pleasant/~800' 3:00p 		<ul style="list-style-type: none"> Didn't go out on survey
Mon. Aug. 12			<ul style="list-style-type: none"> 29 Pleasant /~800' —7:15: moany guy plainly audible <i>inside house</i> • 7:30: echoing from across street • 9:00: going to bed, can still hear inside house 		<ul style="list-style-type: none"> Didn't go out on survey
Thu. Aug. 15				<ul style="list-style-type: none"> 29 Pleasant /~1200' —6:45: electric guitar riffs —8:45: jazzy electric guitar still going • 8:45: Halfway down Schoolhouse Rd. wooded lot: guitar whining • United Gas: guitar can be heard between cars • Sundae School: very plainly audible • 28 & Bayview: very plainly audible 	
Sun. Aug. 18		(Port OR Perks—didn't do survey)	<ul style="list-style-type: none"> from 8:15 on: @29 Pleasant/~800' — got a little louder after 9 		<ul style="list-style-type: none"> Didn't go out on survey

Date & Time	Wind & Weather	The Port	Perks	Ember	Notes
Mon. Aug. 19			<ul style="list-style-type: none"> • 29 Pleasant /~800' —7:15: moany guy plainly audible — 8:00: getting louder, periodically echoing off house across street — 8:45: got quiet for 20 minutes while raining, now resumes — 9:15: raining out, but getting louder: "Whoa whoa, whoa whoa" — 9:25: getting worked up, cracky voice — 9:30: raining more, moany guy finally stops — 9:50: rain stops, moany guy starts back up 		<ul style="list-style-type: none"> • Didn't go out on survey
Tue Aug. 20		(Port OR Perks—didn't do survey)	<ul style="list-style-type: none"> • 9:00: @29 Pleasant/~800': plainly audible 		<ul style="list-style-type: none"> • Didn't go out on survey
Wed. Aug. 21		<ul style="list-style-type: none"> • Cape Sea Grille: 9:30 — music from both Perks & Port — guitar from Port 	<ul style="list-style-type: none"> • 29 Pleasant /~800' — 9:05 music quite loud *after* Wed. night music stroll • 9:30: Schoolhouse & Pleasant — Moany guy quite loud — shouting, hooting & hollering at bars, trumpet, getting louder • Cape Sea Grille: 9:30 — music from both Perks & Port — moany guy from Perks • 9:45: Pleasant & Cross: — moany guy plainly audible • 9:45: 36 Cross/~1100' — moany guy quite plainly audible • 9:45: 29 Pleasant — music echoing across street 		<ul style="list-style-type: none"> • Music quite loud *after* Wed. night stroll
Fri. Aug. 23		<ul style="list-style-type: none"> • 29 Pleasant /~800' —8:30: plainly audible —9:45: going to bed, can hear music inside house 			<ul style="list-style-type: none"> • Didn't go out on survey
Sat. Aug. 24				<ul style="list-style-type: none"> • 29 Pleasant /~1200' —8:30: plainly audible: guitar riffs, recognizable rhythms, etc. 	<ul style="list-style-type: none"> • Didn't go out on survey
Mon. Aug. 26			<ul style="list-style-type: none"> • 7:45: 29 Pleasant /~800' — moany guy: pretty faint, borderline plainly audible at 800'; most likely P.A. at 150' 	<ul style="list-style-type: none"> • 29 Pleasant /~1200' —7:45: Hooting and hollering from Ember 	<ul style="list-style-type: none"> • Didn't go out on survey

Date & Time	Wind & Weather	The Port	Perks	Ember	Notes
Thu. Aug. 29		<ul style="list-style-type: none"> • 29 Pleasant /~800' —8:20: absolutely plainly audible —9:15: plainly audible, pounding, thumping percussion • Pleasant & Schoolhouse —9:15: quite loud, heavy music • 9:20: Cape Sea Grille — Port P.A. system, plainly audible, including harmonica • 29 Pleasant /~800' —9:40: can hear music from The Port inside the house —9:45: went to Port, music was incredibly loud —9:55: music continues to be very loud inside house as we get in bed—even with windows mostly closed; loud for a couple hours, not singing loudly, just amped 		<ul style="list-style-type: none"> • 8:00pm: ~1400' /Bank St. beach, at edge of parking lot where sand begins 	
Fri. Aug. 30		<ul style="list-style-type: none"> • 29 Pleasant /~800' —8:45: hooting, hollering, a lot of screaming from one of the bars, out of control • Pleasant & Schoolhouse — 9:05: music plainly audible, crowd shouting • 9:05: Cape Sea Grille: — singer w/gruff, shouting voice, seems to encourage partygoers to join in 			<ul style="list-style-type: none"> • Didn't go out on survey
Sat. Aug. 31				<ul style="list-style-type: none"> • 29 Pleasant /~1200' —9:15: plainly audible. Starting to get louder. Performer on P.A. system going back and forth w/audience —9:15: rap music, kind of unpleasant, getting louder, definite violation — 9:20: loud drum thumping 	<ul style="list-style-type: none"> • Didn't go out on survey
Thu. Sep. 5		<ul style="list-style-type: none"> • 8:30: 50' into parking lot from Pleasant — drums, voices, plainly audible — can hear/feel drums inside house 		<ul style="list-style-type: none"> • 29 Pleasant /~1200' — 8:30 whiny electric guitar • Barbershop on 28: music from Ember plainly audible between cars • Bayview & 28: Electric guitar licks • 617 Rt. 28: plainly audible, but low 	

Date & Time	Wind & Weather	The Port	Perks	Ember	Notes
Sat. Sep. 7			<ul style="list-style-type: none"> • 29 Pleasant /~800' — 8:00: sounds like moany guy — 8:15: music plainly audible & crowd noise • 8:15: Schoolhouse Rd & Anchorage driveway, still plainly audible — same @Mason's Tree Service • 39 Sea St.: plainly audible • 43 Sea St.: plainly audible • 29 Pleasant /~800' — 9:00: plainly audible inside house w/windows closed — 9:30: still plainly audible w/windows closed, constant drumming 		
Sat. Sep. 14			<ul style="list-style-type: none"> • 8:30: @29 Pleasant /~800' — music plainly audible — @ Schoolhouse Rd & Pleasant: getting louder — 19 Schoolhouse/~600: quite loud, maybe moany guy — Cross and Pleasant/~1000 ft: plainly audible 	<ul style="list-style-type: none"> • 7:45: Lutz Gallery on 28 — music from Ember 	

Danielle Delaney

From: Danielle Delaney on behalf of Joe Powers
Sent: Thursday, March 18, 2021 2:49 PM
To: Danielle Delaney
Subject: FW: Ember hearing 3/22

From: Patricia ONEILL [mailto:patricia.oneill@townofharwich.us]
Sent: Thursday, March 18, 2021 2:30 PM
To: Larry Ballantine <lballantine@townofharwich.us>
Cc: Michael D. MacAskill <mmacaskill@townofharwich.us>; Don Howell <dhowell@townofharwich.us>; Ed McManus <emcmanus@townofharwich.us>; Stephen Ford <sford@townofharwich.us>; Joe Powers <jpowers@town.harwich.ma.us>
Subject: Ember hearing 3/22

2/18/22

Dear Mr. Ballantine,

I will be virtually attending the hearing for Port and Embers [on 3/22](#). I know time is short during these meetings, so I wanted to express my concerns in writing. Please include this letter in the public record and any packet being prepared for the hearing.

problems.





The above pictures say a lot about Ember. All the precautions we were all supposed to be taking, but there is their group photo from the start of the 2020 season, no masks. Then a nice shot of a waitress following protocol with her mask hanging half way down her face. I'm sure Embers will try to justify this behavior, they have been feeding you excuses for years.

It is simple. Ember is a bad neighbor. I question if they add anything at all to the community. I have lived in Harwich on Bayview Road since 1977. There has always been a restaurant on that corner. The neighborhood was never impacted by local businesses until Ember moved in. I should qualify that; the trouble really started when their outside space was enlarged; the outside bar was installed; and the music began.

I used to look forward to the Summer, but living down the street from a noisy and raucous bar has changed that. I never thought it would still be an issue after all these years, but they have brazenly continued to ignore town and state laws. It feels like they just do what they want. And listening to them 7 days a week is not just unpleasant, it is stressful.

They obviously have no respect for this community. Their behavior during the Summer of 2020 is just further proof of their complete disregard for the town's authority. I know you have heard this many times, but have you really listened? Because their behavior has not changed. I am relieved that next Summer might be near normal for the businesses in

town. But I wish Ember wasn't coming back because their behavior has a consistent negative impact on our quality of life.

This is what it means to live near Ember, Summer after Summer

- You never open your windows on a Summer night because the Ember's music and customers are too noisy
- If you call to ask Ember management that the music be turned down you are treated rudely.
- Then you call the police and quite often the dispatcher is also rude. And they just don't seem to think noise matters. I usually feel like the guilty party by the time I get off the phone.
- You hope the police are dispatched. Then you hope they do something. Then you hope the music is not turned back up when the police drive away.
- If you are lucky and the music stops [at 10:00](#) then there is still the crowd noise.
- Then it is closing time. I have had people puke in my front yard. Run through my yard in a game of chase or hide and seek at one o'clock in the morning, **Why do people do these things on their way home from Ember?
Because they are very drunk.**
- And although Massachusetts has an open container law there are always party cups, cans and bottles littering the streets around Embers the morning after and everyday is the morning after when you live near Ember. There is never a break.
- Entertaining guests is an exercise in embarrassment. You cannot sit outside and often the music and crowd noise is audible in the house.

And on top of all that they violated Covid law. Plus, their ridiculous delay tactics when Mr. Powers did his best to accommodate them in a fair hearing.

Embers is a bad citizen. And there is documentation to prove it. You have of complaints to the board and the police from neighbors on record. Please punish them accordingly, I wish they would lose their entertainment license and liquor license, but I know that will probably not happen yet. Please at least consider limiting the entertainment license. It really adds to the problems and the level of drinking that occurs. And that leads to more noise.

Perhaps another consideration is to grant them a beer and wine license and eliminate hard liquor. Excessive alcohol consumption, which Ember's appears to encourage certainly exacerbates the situation. It's time for the town to act.

Thank you for your time. We have many restaurants and bars in this town. So why always Ember and The Port who cause the problems?

Sincerely,

Patricia O'Neill

TOWN ADMINISTRATORS
RECOMMENDATION
PACKET

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039


Joseph F. Powers, *Town Administrator*

732 MAIN STREET, HARWICH, MA



MEMO

TO: Board of Selectmen

FROM: Joseph F. Powers, Town Administrator 

CC: David J. Guillemette, Chief – Police
Gregg J. Corbo, Esq. – KP Law

RE: Recommended action following disciplinary hearing held on
January 12, 2021 re: Ember Pizza, Inc., Liquor License Violations

DATE: February 8, 2021

The following is my report on a disciplinary hearing held on January 12, 2021 for alleged violations of the liquor license for Ember Pizza, Inc., 600 Route 28, Harwich, MA.

Violations alleged:

Specifically, the alleged violations were: two (2) violations of 204 CMR 2.05(2), permitting a disorder, disturbance or illegality to take place on the licensed premises, to wit: violations of the Governor’s COVID-19 orders and guidance on May 22 and May 24, 2020.

Hearing summary:

The hearing was originally commenced on August 12, 2020, with all participants joining the hearing via the Go to Meeting remote video platform. Participating in the hearing were four members of the Harwich Police Department: Chief Guillemette, Deputy Chief Considine, Officer Nolan, Officer Dutra and Sgt. Boorack; the licensee and his attorney, Raymond Tomlinson, Jr.

At various times during the original hearing, it became apparent that Attorney Tomlinson’s connection to the Go to Meeting platform was not working. He repeatedly claimed that he was unable to hearing witnesses, Town Counsel and the Hearing Officer. No other participants appeared to have the same level of difficulty. However, as a result of Attorney Tomlinson’s alleged inability to effectively participate in the hearing, the Hearing Officer decided to suspend the hearing.

The hearing was reconvened on January 12, 2021. To alleviate the difficulties experienced by Attorney Tomlinson, the Hearing Officer made arrangements to have him and his client participate from a separate location within Town Hall, connected to the other participants by a closed-circuit video feed.

The arrangement was reviewed and approved by the Town's Health Director. Attorney Tomlinson, however, refused to participate in the hearing, claiming that he would be unavailable until March, 2021 due to a medical condition. Based on the numerous delays already experienced, the Hearing Officer chose not to reschedule the hearing and informed Attorney Tomlinson of his decision in writing.

Neither Attorney Tomlinson nor his client appeared for the hearing on January 12, 2021. The Hearing Officer commenced the hearing from the beginning (without reference to anything that occurred during the original hearing), and heard oral testimony from Officer Nolan, Officer Dutra and Sgt. Boorack. The hearing officer also considered exhibits labeled A through J.

Legal Standard:

I applied the following legal standard, as suggested by Town Counsel, in making my recommendation:

- 204 CMR 2.05(2), prohibits license holders from permitting any disorder, disturbance or illegality to take place on the licensed premises.
- On March 10, 2020, Governor Baker declared a State of Emergency in the Commonwealth due to the COVID-19 pandemic, and he issued numerous executive orders designed to prevent the spread of the virus.
- The Governor's orders have the force of law.
- On March 23, 2020, the Governor issued COVID-19 Emergency Order No. 13, in which he allowed restaurants to be open to the public for take-out and delivery only, but prohibiting the on-premises consumption of food and beverages.
- On April 3, 2020, the ABCC issued an advisory informing all license holders that all alcohol sales must be part of a take-out order.
- On May 18, 2020, the ABCC issued an advisory reminding all license holders that all on-premises consumption was prohibited until June 8, 2020 at the earliest.
- On June 1 and June 6, 2020, the Governor issued orders allowing restaurants to open for outdoor table service on June 8, 2020, and on June 19, 2020, the Governor issued COVID-19 Emergency Order No. 40 in which he allowed restaurants to be open for indoor dining on June 22, 2020, subject to guidance and standards issued by the Department of Public Health.

Statement of findings:

I find that the licensed establishment did, in fact, permit a disorder disturbance or illegality to take place on the licensed premises by violating the Governor's orders and guidance relative to the operation of restaurants during the COVID-19 State of Emergency on one of the two dates in question, May 22, 2020, as follows:

- On May 22, 2020, Harwich Police Officer Nolan observed what appeared to be a full service bar area on the patio to the establishment, with in violation of the Governor's orders prohibiting on-premises consumption. There were a few people standing around the outside bar area and around the fire pit, he observed individuals with canned beverages in their hands and they were

drinking from containers. He also observed a staff member behind the bar area actively serving the beverages.

- On May 24, 2020, Harwich Police Officer Dutra observed an individual on the outdoor patio area of the establishment with a container that appeared to contain an alcoholic beverage in violation of the Governor's orders prohibiting on-premises consumption. Although the initial call log indicated that he observed this individual drinking from the container, during hearing it was clarified that the officers did not observe the container to be open and they did not observe the individual taking a drink. I, therefore, find no violation with respect to this report.

These observations are described in greater detail in reports admitted into evidence at the hearing, which reports are consistent with the sworn testimony offered by the witnesses and which I credit as true and which establish that the licensee permitted disorders, disturbances or illegalities to take place on the licensed premises.

Recommended disciplinary action:

Based on the facts admitted into evidence at the public hearing, I find that one (1) violation of the laws of the Commonwealth has been established. The licensee has been found responsible for six (6) violations in the two years prior to the violations described herein. In addition, the Hearing Officer is aware of numerous public complaints about the manner in which the establishment is operated, and that the Board intends to conduct a public hearing to determine whether or not the license should be renewed. Therefore, I will hold my recommendation in abeyance until after that hearing.

**HEARING SUMMARY
SHOW CAUSE HEARING
EMBER PIZZA, INC.
JANUARY 12, 2021 – 1:00 P.M.
HELD REMOTELY VIA GO TO MEETING
AND CLOSED CIRCUIT AT HARWICH TOWN HALL
732 MAIN STREET
HARWICH, MA 02645**

Present

Joseph F. Powers, Hearing Officer
Attorney Gregg Corbo, Town Counsel
Danielle Delaney, Executive Assistant – Licensing
Jamie Goodwin, Channel 18
Trish O’Neil, Resident
Bill Galvin, Reporter for the Cape Cod Chronicle
Laurel Beloin, Resident
Bob Nickerson, Resident
Police Chief David Guillemette, Harwich Police Department
Deputy Chief Kevin Considine, Harwich Police Department
Officer Neil Nolan, Harwich Police Department
Sergeant Paul Boorack, Harwich Police Department
Officer Derek Dutra, Harwich Police Department

The Hearing Officer opened the licensing hearing at 1:00 PM, introduces Town Council, Gregg Corbo and explains why the hearing is taking place and describes the overall hearing process. The Hearing Officer proceeds to ask all parties to identify themselves for the record. All parties comply. The Hearing Officer explains that on the Go To Meeting screen there are two empty chairs that are available for the licensed establishment. The Hearing Officer states to let the record show that are 1:03 P.M. there are no individuals from the licensed establishment present or on the Go To Meeting screen.

Attorney Corbo introduces Exhibit A which is the Notice of Hearing that was delivered via hand delivery and email to the licensee dated December 28, 2020. Attorney Corbo states as the Hearing Officer indicated earlier there does not appear to be any representatives from the licensed establishment. Attorney Corbo would like the record to note that subsequent to the notice, one of the representatives from Ember requested a continuance of the hearing and by written correspondence to Attorney Raymond Tomlinson dated January 7, 2021 the Hearing Officer rejected the request for continuance. This written correspondence will be entered into the record as Exhibit B.

Attorney Corbo explains to all parties why the hearing is being held and goes through the dates that the alleged incident's occurred. Police Chief Dave Guillemette joins the Go To Meeting and identifies himself for the record.

Attorney Corbo states the first incident that occurred was on May 22, 2020 and introduces the Harwich Call summary dated May 22, 2020, call 20-5519 as Exhibit C. Attorney Corbo continues to read the Harwich Police narrative for all parties. Attorney Corbo calls Officer Neil Nolan as a witness and proceeds to swear him in. Attorney Corbo asks Officer Nolan if he was on duty on May 22, 2020 and Officer Nolan states yes, he was. Attorney Corbo asks Officer Nolan if he submitted a report from his interactions at Ember Pizza and Officer Nolan confirmed he did. Attorney Corbo states Exhibit D will be Harwich Police Incident Report 20-5519-OF which consists of a cover page and narrative. Attorney states he will read the report into the record and confirms with Officer Nolan that he has a copy of the report presently. Attorney Corbo asks Officer Nolan if the report is accurately described, the officer confirms it is. Officer Nolan states he does not need to clarify anything in the report or add details. Attorney Corbo states he has no further questions.

The Hearing Officer states for the record at 1:16 P.M. there are no representatives from the licensed establishment present in person or via Go To Meeting.

Attorney Corbo calls Officer Derek Dutra as his next witness and swears him in. Attorney Corbo introduces Exhibit E Harwich Police Call Summary dated May 24, 2020 and reads the narrative for all parties. Attorney Corbo introduces Exhibit F Harwich Police Incident Report 20-5566-OF which consists of a cover page, a narrative from Officer Dutra and a supplement report from Sergeant Paul Boorack.

Attorney Corbo asks Officer Dutra if he was on duty on May 24, 2020. Officer Dutra stated he was. Officer Dutra stated he checked on a compliant that night, but did not make any contact with anyone working. Attorney Corbo confirmed with Officer Dutra that he offered a report and that he has it with him presently. Attorney Corbo proceeds to read to the report for all parties. Officer Dutra states the report is accurate and has nothing to add or clarify. Attorney Corbo has no further questions for Officer Dutra. The Hearing Officer states for the record it is 1:20 P.M. and there remain no representatives from the licensed establishment.

Attorney Corbo calls Sergeant. Paul Boorack to be his next witness. Sergeant Boorack confirms he was on duty the night of May 24, 2020 and that he drove by the licensed establishment. He also confirms he did offer a report. Attorney Corbo states that he will read the narrative which is already marked an exhibit as it's the third page of Exhibit E. Sergeant Boorack confirms that he has the report presently and that it is accurate. Attorney Corbo asks if the individual appeared to have a to-go bag of food with them and Sergeant Boorack states he could not see from his vantage point. Sergeant Boorack states he would like to clarify he forgot the word "can" next to 24 ounce in his report. Attorney Corbo states he has no further questions. The Hearing Officer states for the record it is 1:23 P.M. and there are no representatives from licensed establishment present.

The participants of the hearing experience a few moments of technical difficulties.

Attorney Corbo enters additional documents into the record as Exhibits.

Exhibit G – Covid order 13 from Governor Baker

Attorney Corbo directs attention to the next to last paragraph on second page and reads paragraph for all parties.

Exhibit H – Alcoholic Beverages Control Commission Advisory regarding on premise licensees' selling for off premise consumption dated April 3, 2020

Attorney Corbo reads the fourth and fifth paragraph of the Advisory for all parties.

Exhibit I – Covid order 35 from Governor Baker

Attorney Corbo directs attention to the chart on page three along with page six, sub-paragraph four and reads for all parties.

Exhibit J – Covid 19 order 37 from Governor Baker dated June 6, 2020

Attorney Corbo directs attention to page three, under paragraph 2 and reads for all parties.

Attorney Corbo states he has no more exhibits and would like to offer the Police Chief and Deputy Chief time to make any statements if they would like. Both Police Chief and Deputy Chief have nothing further at this time.

The Hearing Officer states for the record it is 1:28 P.M. and there remains no representatives from the licensed establishment.

Attorney Corbo makes his closing statement. He states two violations have been made while at the time the Governors orders were in effect and states two violations have been made valid.

The Hearing Officer states it is 1:30 P.M. and the record for this hearing is now closed. He continued to thank town staff for their efforts and states the town sought out every measure and spared no expense to have a safe and efficient method for any and all parties to participate in this matter. The Hearing Officer concludes by thanking all who participated.

Respectfully Submitted,

Danielle Delaney

Executive Assistant – Licensing

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Interim Town Administrator*

732 MAIN STREET, HARWICH, MA



December 28, 2020

VIA HAND-DELIVERY AND EMAIL

Mr. Justin Brackett, Manager
Ember Pizza, Inc.
600 Route 28
Harwich Port, MA 02646

Re: Notice of Liquor License Disciplinary Hearing
Ember Pizza, Inc.

Dear Mr. Brackett:

On **Tuesday, January 12, 2021, at 1:00 pm**, acting on behalf of the Harwich Board of Selectmen as local licensing authority, I will conduct a Show Cause Hearing, in accordance with Massachusetts General Laws, Chapter 138, Sections 23 and 64, to determine whether you have violated the terms of the Alcoholic Beverages License for Ember Pizza Inc.

The specific charges are as follows: Violation of 204 CMR 2.05 (2): Permitting a disorder, disturbance or illegality to take place on the licensed premises. The facts underlying this charge arise from incidents occurring on or about May 22 and 24, 2020, as described in detail in the Harwich Police Incident Report attached hereto.

As you are aware, I attempted to begin this hearing on August 12, 2020, using a remote video platform to accommodate your Attorney's request to not have to appear in person due to concerns relating to COVID-19. However, after commencement of the hearing, and despite numerous efforts cure the alleged deficiencies, your attorney claimed that technical difficulties prevented him from participating. Although these difficulties did not appear to effect other remote participants, I decided to suspend the hearing. On January 12, 2021, I will start the hearing anew, using the following arrangements to ensure that all interested parties can participate in the hearing, while also ensuring that they can properly distance so as to avoid any risks that may be associated with COVID-19.

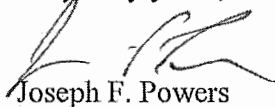
Specifically, the hearing will be conducted in separate locations within the Harwich Town Hall, 732 Main Street, Harwich, MA, which will be connected by closed-circuit, two-way video broadcast. The licensee and its counsel, should they choose to attend, will be located in the small hearing room, while me, Town Counsel and Ms. Delaney will be located in the Griffin Room. The two locations will be equipped with cameras and monitors to enable two-way communication. This system has been tested and proven effective. Members of the Town's Police Department and the ABCC will be permitted to participate via GoToMeeting, and both Town Hall locations will have the ability to interact with them.

These measures have been tested and approved by the Town's Health Director, and it is my opinion that they represent a reasonable accommodation to guard against the risks associated with indoor gatherings, while also providing the licensee and its attorney with a reasonable opportunity to participate in the hearing. Therefore, I will not agree to further suspend or delay the hearing for anyone who chooses not to participate under these circumstances.

You are invited to participate in the hearing and be represented by counsel at your own expense if you wish. At that time you may produce any documentation and/or witnesses which show that you did not commit the violations described herein. Please provide copies of any documents and a list of participants to Danielle Delaney at ddelaney@town.harwich.ma.us by the close of business January 8, 2021.

The allegations, if proven, may result in a recommendation to the Board of Selectmen for disciplinary action, including warning, suspension, revocation or modification of the above-referenced license.

Very truly yours,



Joseph F. Powers
Interim Town Administrator

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Interim Town Administrator*

732 MAIN STREET, HARWICH, MA



January 7, 2021

Raymond H. Tomlinson, Jr.
Tomlinson Law
1170 Main Street, Suite #1
West Barnstable, MA 02668

Dear Attorney Tomlinson:

I am writing in response to your request to postpone the disciplinary hearings for the above-referenced establishments. With all due sympathy to your medical condition, I find your request to postpone the hearings to mid-March to be wholly unreasonable. The incidents which are the subject of these hearings occurred in May, 2020. When I originally attempted to schedule the hearings in July of 2020 you objected and suggested that they be postponed to September or October because you believed that it was not safe for you to attend an in-person hearing. I attempted to accommodate your request by making arrangements for the hearing to be conducted by remote video platform, at significant expense to the Town. However, when I attempted to conduct the hearings remotely, they had to be stopped due to technical difficulties on your end. Notably, you were the only participant to have such difficulties.

After much deliberation as to how to proceed with these hearings in a manner that would allow you to safely participate, I arranged for you to participate on January 12, 2020 from a separate location within Town Hall linked to the other participants via closed-circuit video feed, again at significant expense to the Town. Despite my efforts, you again objected, first stating that you are not available any day prior to 1:00 pm, and then stating that you are not available at all due to a medical procedure.

I have gone to great lengths to provide you with a reasonable opportunity to participate in these hearings, only to have you obstruct the process at every turn. Therefore, I plan to proceed with the hearings as originally scheduled on January 12, 2020. Although I have made arrangements for you and your client to participate from a location within Town Hall, I will allow Mr. Bracket to participate remotely, at his own risk. Please be advised, however, that I will not stop or reschedule the hearings if he experiences technical difficulties.

If you are unable to attend, I will accept any written material you wish to submit on your clients' behalf.

Thank you for your attention to this matter.

Sincerely,

Joseph F. Powers
Interim Town Administrator

For Date: 05/22/2020 - Friday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
20-5519	1908	GENERAL SERVICES	Services Rendered
Call Taker:	1608 - PSD Telecommunicator DIANE NICHOLSON		
Location/Address:	[HAR 2082] EMBER PIZZA - 600 RT 28		
Initiated By:	181 - Patrol Supervisor Keith T Kannally		
ID:	123 - Patrol Supervisor Neil A Nolan		
			Arvd-19:09:44 Cld-19:09:49

Narrative: 05/22/2020 2342 Patrol Supervisor Neil A Nolan
After receiving complaint of improper alcohol sales at The Port I observed the exact same violation taking place at Ember Pizza as I drove by. Ember had the outside bar set up, with a staff member serving. My initial observations were of subjects standing around the outside fire pit consuming what appeared to be alcoholic beverages. Outward appearances were that the patio was open for full service. Contact made with on sight manager who told me that they were only making "sealed to go" sales and that customers decided to open beverages while waiting for take out order. Manager advised that this action was a violation of the temporary modification allowing to go alcohol sales. Manager advised to go alcohol could only be provided to customer at time of to go order food pick up and needed to be removed from the premises.



Harwich Police Department
Incident Report

Page: 1
05/29/2020

Incident #: 20-5519-OF
Call #: 20-5519

Date/Time Reported: 05/22/2020 1908
Report Date/Time: 05/28/2020 1929
Status: No Crime Involved

Reporting Officer: Patrol Supervisor Neil Nolan

Signature: _____

EVENTS(S)

LOCATION TYPE: Restaurant/Cafeteria Zone: HARWICHPORT
EMBER PIZZA
600 RT 28
HARWICH MA 02645

1 LIQUOR LAW VIOLATIONS

PERSON(S) PERSON TYPE SEX RACE AGE SSN PHONE

1 EMBER PIZZA BUSINESS
600 RT 28
HARWICH MA 02645

*****This report is being submitted by Officer Nolan.*****

On 5-22-20 I was assigned to uniformed patrol as the Officer-in-Charge (OIC) of the 4-12 shift. As I was driving east on Rt. 28 I approached Ember Pizza located on the corner of Rt. 28 and Bank St. Ember has an outside patio that is located along Rt. 28. Due to Covid 19 restrictions restaurants are limited to take out food service. Temporary modifications have been made by the Commonwealth to liquor licensing allowing restaurants to serve "to-go" beer and wine with take out food service. Earlier during my shift I had dealt with a violation of these new "to-go" allowances at a restaurant just up the road. As I got closer to Ember's patio I observed two males standing around the fire pit on location. They each had canned beverage containers in their hands. I then observed a few people standing around the outside bar area on the patio. This bar area had several canned and bottled containers on display along with some bottles of wine. To the casual observer it would appear that the restaurant was open for business as usual.

I parked across the street to continue observations. The two males I had observed initially were continuing in a what appeared to be a very lively and entertaining conversation actively drinking from the containers that they held. I also observed what appeared to be a staff member standing behind the bar area actively serving beverages. There were approximately 8-12 people on the patio area, with some people leaving with take out orders and others arriving.

I went to Ember to speak to a manager and to try and clarify just what was being served and consumed on premises. As I walked onto the patio area I observed a few other canned beverages in the possession of customers along with a few clear plastic bottles with a red top and bottom. I was met by the manager on duty. I explained my observations and concerns to him. He confirmed to me that the container one of the males by the fire pit was drinking from was a Bud Light Seltzer. His claim that he was only serving sealed containers of alcohol per the temporary allowance and what the customer did with it was up to them. He and I had a bit of a back and forth about what was allowed. He was informed that the "to-go" alcohol was in fact meant to leave and was not to be consumed on premises. He was informed that any purchases of alcohol needed to be served along with the customer's take out food order and be removed by the customer.

For Date: 05/24/2020 - Sunday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
20-5566	1714	GENERAL SERVICES	Investigated
Call Taker:	135	- Patrol Supervisor Derek J Dutra	
Primary Id:	135	- Patrol Supervisor Derek J Dutra	
Location/Address:	[HAR 2082] EMBER PIZZA - 600 RT 28		
Initiated By:	135	- Patrol Supervisor Derek J Dutra	
ID:	135	- Patrol Supervisor Derek J Dutra	
			Arvd-17:19:23 Cld-17:21:28
Narrative:	05/24/2020 1719 Patrol Supervisor Derek J Dutra		
Modified By:	Patrol Supervisor Derek J Dutra		
	Checked on a complaint about patrons possibly drinking in the front patio area. Sgt. Boorack and I checked the area, Sgt Boorack saw a male patron drinking near the fire pit. (COVID-19 Guidance - not following).		

Refer To Incident: 20-5566-0F



Harwich Police Department
Incident Report

Page: 1
06/15/2020

Incident #: 20-5566-OF
Call #: 20-5566

Date/Time Reported: 05/24/2020 1714
Report Date/Time: 05/24/2020 2011
Status: No Crime Involved

Reporting Officer: Patrol Supervisor Derek Dutra
Approving Officer: Sergeant Paul Boorack

Signature: _____

Signature: _____

EVENTS(S)

LOCATION TYPE: Restaurant/Cafeteria Zone: HARWICHPORT
EMBER PIZZA
600 RT 28
HARWICH MA 02645

1 COVID-19 GUIDANCE VIOL

PERSON(S) PERSON TYPE SEX RACE AGE SSN PHONE

1 EMBER PIZZA BUSINESS
600 RT 28
HARWICH MA 02645

This report is submitted by Officer Dutra regarding a possible non-compliance issue at Ember Pizza on May 24, 2020 at approximately 5:14 pm.

While assigned to the 4-12 shift our department was notified about a possible non-compliance act, patrons drinking on the front patio/bar area of the establishment. The non-compliance issue would have to do with the current guidelines set forth by the Governor pertaining to the Covid-19 pandemic. Sgt. Boorack and I checked the area to see if in fact such an act was taking place. I could not see from my angle but Sgt. Boorack saw a male party sitting by the fire pit with what appeared to be a canned beverage. There were several other patrons on the patio area but it was unclear from our angle if they were drinking or waiting for their food orders.


SUPPLEMENTAL NARRATIVE FOR SERGEANT PAUL P BOORACK

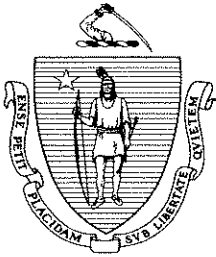
Ref: 20-5566-OF

The following is the supplemental report of Sergeant Boorack regarding the possible violation of the Governor's Order regarding alcohol being served at Ember's Pizza.

On 05/24/20, at approximately 17:15 hours. Officer Dutra and I received word that Ember Pizza was serving alcohol on their patio, in violation of the Governor's Order that alcohol could be served to go but not consumed on the property.

As I drove by Ember, I noticed approximately 6-8 people sitting in the patio area. I did not notice anyone with a drink in their hand. I did observe a white male sitting on a bench, next to the fire pit. I noticed what appeared to be either a 16 or 24 ounce aluminum beside this individual. From my vantage point, I did not see this individual take a drink from the can. Also, I was unable to tell if the beverage was an alcoholic beverage nor could I tell if the can was even opened.

This supplemental report is being submitted by Sergeant  #130.
Sgt Paul Boorack



OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

**ORDER ASSURING CONTINUED OPERATION OF ESSENTIAL SERVICES
IN THE COMMONWEALTH, CLOSING CERTAIN WORKPLACES,
AND PROHIBITING GATHERINGS OF MORE THAN 10 PEOPLE**

COVID-19 Order No. 13

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”);

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the number of presumptive positive and confirmed cases of COVID-19 continues to rise exponentially in the Commonwealth. As of March 22, 2020, the Department of Public Health had reported 646 cases of COVID-19, including 5 deaths, with 13 of the 14 counties in the Commonwealth impacted;

WHEREAS, the Department of Public Health is urging all residents of the Commonwealth to limit activities outside of the home and to practice social distancing at all times, both inside and outside of the home to limit the spread of this highly contagious and potentially deadly virus;

WHEREAS, on March 19, 2020, the Federal Cybersecurity and Infrastructure Security Agency issued guidance to assist States that identifies 14 critical infrastructure sectors whose workers provide services and functions that are essential to maintain in order to support a strong response to the COVID-19 pandemic;

WHEREAS, as Governor, I have identified additional services and functions that likewise are essential to promote the public health and welfare of the Commonwealth, and

therefore it is imperative to ensure that workers providing critical services and functions in these State and Federally designated sectors may continue to work to ensure community resilience and continuity of response efforts; and

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to authority over public assemblages in order to protect the health and safety of persons, regulating the sale of articles of food and household articles, and policing, protection, and preservation of public and private property;

NOW, THEREFORE, in order to minimize all unnecessary activities outside of the home during the state of emergency, I hereby order the following:

1. Maintaining Operation of COVID-19 Essential Services and Workforces

The production and service sectors identified in Exhibit A are hereby designated as “COVID-19 Essential Services.” The workforces engaged and working in these production and service sectors are hereby designated as “COVID-19 Essential Workforces.” I shall amend and publish updates to Exhibit A as I determine necessary in response to conditions as they develop.

Businesses and other organizations that provide the services and functions identified as COVID-19 Essential Services in Exhibit A are urged to continue operations during the state of emergency, but to do so with allowance for social distancing protocols consistent with guidance provided by the Department of Public Health.

Restaurants, bars, and other retail establishments that sell food and beverage products to the public provide COVID-19 Essential Services and are designated as such in Exhibit A. These establishments are therefore encouraged to continue to offer food and beverages for take-out and by delivery provided that they follow the social distancing protocols set forth in Department of Public Health guidance. Restaurants, bars, or other establishments that offer food or beverages to the public shall not permit on-premises consumption of food or beverages.

2. Temporary Closing of Other Businesses and Organizations

All businesses and other organizations that do not provide COVID-19 Essential Services shall close their physical workplaces and facilities (“brick-and-mortar premises”) to workers, customers, and the public as of 12:00 noon on March 24, 2020 and shall not re-open to workers, customers, or the public before 12:00 noon on April 7, 2020. Churches, temples, mosques, and other places of worship shall not be required to close their brick and mortar premises to workers or the public; provided, however, that such institutions shall be required to comply with all limitations on gatherings established in section 3 below.

Businesses and other organizations that do not provide COVID-19 Essential Services are encouraged to continue operations where they are able to operate through remote means that do not require workers, customers, or the public to enter or appear at the brick-and-mortar premises closed by this Order.

3. Limitations on Gatherings

Gatherings of more than 10 people are prohibited throughout the Commonwealth. Gatherings subject to this Order include, without limitation, community, civic, public, leisure, faith-based, or sporting events, concerts, conferences, conventions, fundraisers, parades, fairs, festivals, weddings, funerals, and any similar event or activity that brings together more than 10 persons in any confined indoor or outdoor space. This limitation shall not apply to the operations or activities of any business or organization in its provision or delivery of COVID-19 Essential Services.

This Order does not prohibit gatherings of more than 10 people in an unenclosed, outdoor space such as a park, athletic field, or parking lot.

Athletic and recreational activities that bring participants into close, physical contact are prohibited even when involving 10 or fewer people and regardless of where conducted.

4. Exceptions

(a) This Order shall not apply to any municipal legislative body or to the General Court or to the Judiciary.

(b) This Order shall not apply to residential schools for special needs students. This Order also does not apply to public and private elementary and secondary (K-12) schools in the Commonwealth, which are subject to the March 15, 2020 Order Temporarily Closing All Public and Private Elementary and Secondary Schools, as may be subsequently amended, which suspended all normal, in-person instruction.

(c) This Order does not apply to the operation of child care programs in the Commonwealth, which are subject to the March 18, 2020 Order Temporarily Closing All Child Care Programs and Authorizing the Temporary Creation and Operation of Emergency Child Care Programs, as may be subsequently amended.

5. Implementing Guidance and Enforcement

The Commissioner of Public Health is directed to issue guidance (“DPH Guidance”), subject to my approval, to implement the terms of this Order. The DPH Guidance shall include a requirement that grocery stores and other retailers with substantial retail grocery sales establish special limited access hours during which elderly and other vulnerable populations may have exclusive access to make grocery purchases.

The Department of Public Health, along with any board of health or authorized agent pursuant to G. L. c. 111, § 30, shall enforce this Order and if necessary may do so with the assistance of State or municipal police. Violation of the terms of this Order or the DPH Guidance may result in a criminal penalty pursuant to Section 8 of Chapter 639 of the Acts of 1950 or a civil fine of up to \$300 per violation, in the manner provided for non-criminal disposition of violations of municipal by-law, ordinance, rule, or regulation pursuant to G. L. c. 40, § 21D. A criminal complaint for violation of or a motion for an injunction to enforce this Order or the DPH Guidance shall be filed in the district court with jurisdiction for the municipality in which the violation has been charged.

In addition, I hereby direct the Commissioner of Public Health to act under the authority of G. L. c. 17, § 2A and G. L. c. 111, § 6 or any other appropriate authority to supplement the terms of this Order in the event she determines additional measures are required to ensure that the terms of this Order are observed.

This Order supersedes and makes inoperative any order or rule issued by a municipality that will or might in any way impede or interfere with the achievement of the objectives of this Order. With respect to work and travel in particular, any order or rule issued by a municipality is hereby made inoperative to the extent: (1) such municipal order or rule will or might interfere with provisions of this Order ensuring the continued operation of COVID-19 Essential Services; or (2) such municipal order or rule will or might interfere with the free travel anywhere within the Commonwealth of any person who is a member of any COVID-19 Essential Workforce where such travel is made in connection with the ongoing operation of COVID-19 Essential Services.

This Order rescinds and revokes the Order Prohibiting Gatherings of More than 25 People and On-Premises Consumption of Food or Drink, issued March 15, 2020.

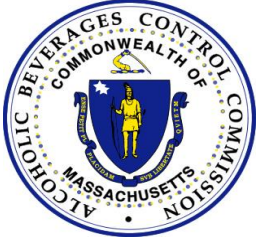
If any provision of this Order or the application thereof to any person or entity or circumstance is determined to be invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Order or the application thereof to other persons, entities, and circumstances.

This Order shall be effective at 12:00 noon March 24, 2020 and shall remain in effect through 12:00 noon on April 7, 2020 unless further extended.

Given in Boston at 9:15 AM this 23rd day
of March, two thousand and twenty

A handwritten signature in black ink, appearing to read "Charles D. Baker", written over a horizontal line.

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150*

Jean M. Lorizio, Esq.
Chairman

**ALCOHOLIC BEVERAGES CONTROL COMMISSION ADVISORY REGARDING
ON-PREMISES LICENSEES SELLING FOR OFF-PREMISES CONSUMPTION**

Today, April 3, 2020, Governor Charlie Baker signed a bill authorizing on-premises licensees to sell malt beverages and wine for off-premises consumption for the duration of the Governor's declared state of emergency, issued March 10, 2020.¹

Effective immediately and until the end of the state of emergency, all on-premises licensees (M.G.L. c. 138, § 12 bars, restaurants, general on premises, hotels, taverns, clubs, war veterans' clubs, and continuing care retirement communities) may sell up to 192 ounces of malt beverages and 1.5 liters of wine for off-premises consumption only as part of a transaction for the purchase of food.

The sale of malt beverages and wine by § 12 licensees may only be done from opening until 12:00 am midnight, or the licensee's closing time previously approved by the Local Licensing Authority, whichever is earlier. All wine must be in its original sealed container and all malt beverages must be in sealed containers. All licensees must verify that both the purchaser and recipient of alcohol are at least 21 years old.

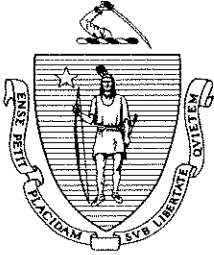
Sales must be made as part of a takeout order by way of pickup, including curbside pickup, or delivery. Licensees do not need to obtain a separate transportation permit under M.G.L. c. 138, § 22, in order to make deliveries. Licensees are advised to check with their Local Licensing Authority on any additional requirements in order to sell alcohol for curbside pickup.

All sales must be accompanied by a receipt reflecting the purchase of food along with alcohol, and licensees must keep copies of all receipts for inspection by licensing authorities.

As always, all licensees must ensure that they comply with the laws of the Commonwealth of Massachusetts, and that sales of alcoholic beverages take place only as authorized by federal, state, and local law. All questions should be directed to the ABCC Executive Director Ralph Sacramone at rsacramone@tre.state.ma.us or (617) 727-3040 x 731.

(Issued April 3, 2020)

¹ The Governor's March 10, 2020, declaration of a state of emergency can be found [HERE](#).



OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

**ORDER CLARIFYING THE PROGRESSION OF THE COMMONWEALTH'S
PHASED WORKPLACE RE-OPENING PLAN AND AUTHORIZING
CERTAIN RE-OPENING PREPARATIONS AT PHASE II WORKPLACES**

COVID-19 Order No. 35

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus ("COVID-19");

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the Federal Centers for Disease Control have advised that COVID-19 is spread mainly by person to person contact and that the best means of slowing the spread of the virus is through practicing social distancing and protecting oneself and others by minimizing personal contact with environments where this potentially deadly virus may be transmitted;

WHEREAS, on March 23, 2020, in order to restrict all non-essential person-to-person contact and non-essential movement outside the home as a means of combatting the spread of COVID-19 within the Commonwealth, I issued COVID-19 Order No. 13, which designated certain COVID-19 Essential Services, as defined in the Order, temporarily closed the brick-and-mortar premises of businesses and organizations that do not provide COVID-19 Essential Services, and prohibited gatherings of more than 10 people;

WHEREAS, on March 31, 2020, April 28, 2020, and May 15, 2020, I issued COVID-19 Orders No. 21, 30, and 32, respectively, which extended the period in which COVID-19 Order No. 13 would continue to restrict the operation of businesses and organizations that do not provide COVID-19 Essential Services;

WHEREAS, recent public health data indicate continued improvement in key areas of measurement as a result of the extraordinary efforts of health care providers in the Commonwealth and the public's unselfish compliance with the restrictions imposed in COVID-19 Order No. 13 and other measures implemented in response to the COVID-19 health crisis;

WHEREAS, on May 18, 2020, I issued COVID-19 Order No. 33, which authorized the re-opening of certain brick-and-mortar premises designated as "Phase I" workplaces ("Phase I enterprises"), subject to the requirement that all such workplaces comply with workplace safety rules and standards implemented to protect against the risk of the COVID-19 virus and which otherwise further extended the period in which COVID-19 Order No. 13 will continue to restrict the operations of businesses and organizations that do not provide Essential Services or that have not been designated as Phase I workplaces;

WHEREAS, a sustained trend of improvement in public health data will permit a continuing, carefully phased relaxation of certain restrictions that COVID-19 Order No. 13 has placed on businesses and other organizations, provided that any adjustment can only be maintained or expanded on the basis of continuing improvements in the public health data, and further provided that any adjustment must reflect the reality that the Commonwealth remains in the midst of a public health emergency, as demonstrated by reporting from the Department of Public Health that as of May 31, 2020, 1,824 persons remain hospitalized in the Commonwealth as a result of COVID-19 and 436 of these patients are receiving treatment in intensive care units;

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to authority over assemblages in order to protect the health and safety of persons, transportation and travel by any means or mode, regulating the sale of articles of food and household articles, variance of the terms and conditions of licenses and permits issued by the Commonwealth or any of its agencies or political subdivisions, and policing, protection, and preservation of public and private property;

NOW, THEREFORE, I hereby order the following:

1. Advance Preparations by Phase II Enterprises

Beginning immediately, businesses and other organizations that are included within Phase II of the re-opening plan, as defined in Section 2 below, may open their physical workplaces and facilities ("brick-and-mortar premises") to workers for the purpose of preparing for a Phase II re-opening when authorized. In preparing their premises for re-opening, Phase II businesses and other organizations ("Phase II enterprises") must at all times comply with all generally applicable COVID-19 workplace safety rules and any relevant sector-specific COVID-

19 workplace safety rules issued pursuant to Section 2 of COVID-19 Order No. 33 or otherwise by the Department of Labor Standards (“DLS”), the Department of Public Health (“DPH”), or any other agency authorized to issue similar health and safety rules.

Phase II enterprises may not open their premises to customers and the public generally until authorized to do so by subsequent Order.

2. Designation of Phase II Enterprises

Phase II enterprises are businesses or other organizations that meet each of the following conditions:

They are

- not currently permitted to open their premises as an Essential Service or Phase I enterprise pursuant to Section 1 of COVID-19 Order No. 33;
- not closed by any COVID-19 Order separate from or in addition to COVID-19 Order No. 13;
- not excluded or excepted from the terms of this Order in Section 4; and
- not designated on the chart below as a Phase III or Phase IV enterprise.

	All Phase II, III, and IV enterprises will be required to comply with general and, where applicable, sector-specific COVID-19 workplace safety rules administered by DPL, DPH, and local boards of health. Workplace safety rules will include a variety of mandatory context-specific COVID-19 safety measures such as occupancy limitations, operational modifications, social distancing rules, and specialized cleaning requirements.
Phase II	<p>Enterprises that meet all of the conditions specified above and including</p> <ul style="list-style-type: none"> • Retail Stores including stores in enclosed shopping malls • Restaurants providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000, including beer gardens/wineries/distilleries meeting these criteria • Hotels, motels, inns, and other short-term lodgings (no events, functions, or meetings) • Limited organized youth and adult amateur sports activities and programs—no contact and no games or scrimmages, and indoor facilities limited to youth programs • Professional sports practice and training programs--no inter-team games and no admission for the public • Personal Services provided at a fixed place of business or at a client location <ul style="list-style-type: none"> ○ Step 1: Services involving no close personal contact (photography, window washers, individual tutoring, home cleaning, etc.) ○ Step 2: Services involving close personal contact (massage, nail salons, personal training for individuals or no more than 2 persons from same household, etc.) • Non-athletic instructional classes in arts/education/life skills for youths under 18 years of age in groups of fewer than 10 • Driving schools and flight schools • Outdoor historical spaces—no functions or gatherings and no guided tours • Funeral homes—increased capacity to permit 40% occupancy for one service at a time within the facility

	<ul style="list-style-type: none"> • Warehouses and distribution centers • Golf facilities including outdoor driving ranges • Other outdoor recreational facilities <ul style="list-style-type: none"> ○ pools, playgrounds and spray decks ○ mini golf, go karts, batting cages, climbing walls, ropes courses • Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools <ul style="list-style-type: none"> ○ for the limited purposes of permitting students to complete a degree, program, or prerequisite for employment, or other similar requirement for completion, for summer youth programming including athletic facilities, and any necessary supporting services • Day Camps including sports and arts camps • Public libraries
Phase III	<ul style="list-style-type: none"> • Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools—general operations • Casino gaming floors • Horse racing simulcast facilities (no spectators) • Indoor recreational and athletic facilities for general use (not limited to youth programs) • Fitness centers and health clubs including <ul style="list-style-type: none"> ○ cardio/weight rooms/locker rooms/inside facilities ○ fitness studios (yoga, barre, cross-fit, spin classes, general fitness studios) ○ indoor common areas ○ indoor swimming pools ○ indoor racquet courts and gymnasiums ○ locker rooms/shower rooms ○ excluding saunas, hot-tubs, steam rooms • Museums • Indoor historic spaces/sites • Aquariums • Outdoor theatres and performance venues of moderate capacity • Indoor theatres, concert halls, and other performance venues of moderate capacity • Sightseeing and other organized tours (bus tours, duck tours, harbor cruises, whale watching) • Fishing and hunting tournaments and other amateur or professional derbies • Weddings/events/gatherings in parks, reservations, and open spaces with allowance for moderate capacity • Overnight camps • Indoor non-athletic instructional classes in arts/education/life skills for persons 18 years or older • Indoor recreational businesses: batting cages, driving ranges, go karts, bowling alleys, arcades, laser tag, roller skating rinks, trampolines, rock-climbing <p>This listing is subject to amendment.</p>
Phase IV	<ul style="list-style-type: none"> • Amusement parks, theme parks, indoor or outdoor water parks • Saunas, hot-tubs, steam rooms at fitness centers, health clubs, and other facilities • Bars, dance clubs, and nightclubs—venues offering entertainment, beverages, or dancing and not providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000 • Beer gardens/breweries/wineries/distilleries not providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000 • Large capacity venues used for group or spectator sports, entertainment, business, and cultural events including

	<ul style="list-style-type: none"> ○ Theaters and concert halls ○ Ballrooms ○ Stadiums, arenas, and ballparks ○ Dance floors ○ Exhibition and convention halls ● Private party rooms ● Street festivals and parades and agricultural festivals ● Road races and other large, outdoor organized amateur or professional group athletic events <p>This listing is subject to amendment.</p>
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3. Rules for Phase II Limited Organized Sports Activities and Programs

Amateur Sports: Effective immediately, organizers of sports activities and programs for youths and adults and facilities that host such programs or activities may open their premises to employees to begin preparations, consistent with the provisions of Section 1, for authorized Phase II activities. In addition to complying with generally applicable COVID-19 workplace safety rules, organizers of sports activities and programs for youths and adults and facilities that host such programs or activities shall be subject to the following directives during Phase II:

- a. Programs for contact sports must limit activities exclusively to no-contact drills and practices. Programs for no contact sports where ordinary play allows for social distancing may include ordinary play.
- b. Games, scrimmages, and tournaments shall not be permitted for any organized sports activities.
- c. Programs must separate participants into groups of no more than 10 participants, including coaches and staff.
- d. Indoor athletic facilities shall be open and available exclusively for the use of supervised sports programs, including sports camps, for youths under the age of 18.

The Secretary of the Executive Office of Energy and Environmental Affairs (“EEA”) shall issue guidance to implement these directives and all generally applicable COVID-19 workplace standards for organizers of youth and adult sports programs and operators of facilities that host those programs. Organizers of youth and adult sports programs shall follow the EEA guidance; provided, however, that when the program is governed by formal league rules or other binding agreements or affiliations, the organizer shall comply with any COVID-19 and other health and safety rules applicable under those authorities. The requirements of items (a) – (d) above shall apply in all circumstances.

Professional Sports: Effective immediately, professional sports organizations may open their premises to employees and other workers for the activities provided for in Section 1 and may also open their premises to employees for on-premises athletic practices and training,

subject to adoption of COVID-19 health and safety rules implemented under the authority of formal league rules or other binding agreements or affiliations.

Professional sports organizations may not engage in inter-team games within the Commonwealth and may not open any facilities within the Commonwealth to the public until further Order.

4. Preparations and Accommodation for Outdoor Restaurant Dining Service

Restaurants will be authorized to provide outdoor table service at the commencement of Phase II of the Commonwealth's phased re-opening of workplaces. If the public health data reflects continued positive progression, restaurants will be authorized at a later date and by a subsequent Phase II Order to commence indoor table service. In each case, restaurants will be required to comply with sector-specific COVID-19 workplace safety rules for restaurants.

"Outdoor table service" shall mean service that is provided outside the restaurant building envelope, whether on a sidewalk, patio, deck, lawn, parking area, or other outdoor space. Outdoor table service may be provided under awnings or table umbrellas or other cover from the elements, provided, however, that at least 50 percent of the perimeter of any covered dining space must remain open and unobstructed by any form of siding or barriers at all times.

Notwithstanding the provisions of chapter 40A of the general laws, or any special permit, variance or other approval thereunder, or any other general or special law to the contrary, a city or town may approve requests for expansion of outdoor table service, including in the description of licensed premises as described below. Prior to such approval, the mayor, select board, or chief executive as established by charter or special act, shall establish the process for approving such requests. Such process need not comply with the notice and publication provisions of section 11 of chapter 40A.

Any such approval may be exercised immediately upon filing of notice thereof with the city or town clerk, without complying with any otherwise applicable recording or certification requirements.

In order to provide improved opportunities for outdoor table service, for any type of license that permits the sale of alcoholic beverages for on-premises consumption, a local licensing authority ("LLA") may grant approval for a change in the description of the licensed premises for the purpose of permitting outdoor alcohol service as the LLA may deem reasonable and proper, and issue an amended license to existing license holders, without further review or approval by the Alcoholic Beverages Control Commission ("ABCC") prior to issuance. Upon approval of an amended license, the LLA shall provide notice of the amended license to the ABCC. Nothing in this Order shall prevent the ABCC from exercising its statutory or regulatory enforcement authority over any such amended license issued.

On November 1, 2020 or the date this Order is rescinded, whichever is sooner, any approval issued under this Section, including any amended license issued by an LLA as a result of this Order, shall automatically revert back to its status prior to the approval of the change for expansion of outdoor table service or in the description of a licensed premises.

5. Sector-Specific Rules

The Director of Labor Standards and the Commissioner of Public Health shall issue, subject to my approval, COVID-19 workplace safety rules for certain, specific Phase II enterprise workplace sectors (“Sector-Specific Rules”) to address the particular circumstances and operational needs of those specific workplace sectors. These Phase II Sector-Specific Rules shall supplement the generally applicable COVID-19 safety rules applicable to all workplaces in the Commonwealth. Phase II enterprises shall adopt and comply with all Sector-Specific Rules applicable to their workplaces.

6. Limitations on Gatherings

A Phase II enterprise that is authorized to open its brick-and-mortar premises to workers under the terms of this Order shall not be subject to the 10-person limitation on gatherings established in Section 3 of COVID-19 Order No. 13 in its normal operations of those premises; provided, however, that Phase II enterprises must comply with the social distancing requirements in the Commonwealth’s generally applicable COVID-19 workplace safety rules, any more specific limitations on gatherings and meeting sizes included in any applicable Sector-Specific Rules, and any other similar restrictions specified in this Order.

Section 3 of COVID-19 Order No. 13 shall otherwise remain in effect for businesses or organizations not permitted to open their brick-and-mortar premises as COVID-19 Essential Services, or Phase I or Phase II enterprises.

4. Exceptions

This Order shall have no application to any of the following businesses, organizations, workplaces, or facilities:

- a. Any municipal legislative body, the General Court, or the Judiciary
- b. Federal governmental entities
- c. Any health care facility or provider licensed by the Department of Public Health or the Board of Registration in Medicine
- d. Any of the following workplaces or facilities with specialized functions and populations:
 - Public and private elementary and secondary (K-12) schools
 - Residential and day schools for special needs students

- Licensed, approved, or exempt child care programs and any emergency child care centers and emergency residential programs operating under emergency authorization
- Facilities operated by the Department of Correction or any Sheriff
- Facilities operated or licensed by the Department of Mental Health or the Department of Developmental Services
- And any other facilities or workplaces that the Commissioner of Public Health may in writing exempt from the terms of this Order

This Order is effective immediately and shall remain in effect until rescinded or until the state of emergency is ended, whichever occurs first.

Given in Boston at 2:20 PM this 1st day
of June, two thousand and twenty



CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts



OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

ORDER AUTHORIZING THE RE-OPENING OF PHASE II ENTERPRISES

COVID-19 Order No. 37

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”);

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the Federal Centers for Disease Control and Prevention have advised that COVID-19 is spread mainly by person to person contact and that the best means of slowing the spread of the virus is through practicing social distancing and protecting oneself and others by minimizing in-person contact with others and with environments where this potentially deadly virus may be transmitted including, in particular, spaces that present enhanced risks because of limited ventilation or numbers of persons present or passing through who may spread the virus through respiratory activity or surface contacts;

WHEREAS, on March 23, 2020, in order to restrict all non-essential person-to-person contact and non-essential movement outside the home as a means of combatting the spread of COVID-19 within the Commonwealth, I issued COVID-19 Order No. 13, which designated certain COVID-19 Essential Services, as defined in the Order, temporarily closed the brick-and-mortar premises of businesses and organizations that do not provide COVID-19 Essential Services, and prohibited gatherings of more than 10 people;

WHEREAS, on March 31, 2020, April 28, 2020, and May 15, 2020, I issued COVID-19 Orders No. 21, 30, and 32, respectively, which extended the period in which COVID-19 Order No. 13 would continue to restrict the operation of businesses and organizations that do not provide COVID-19 Essential Services;

WHEREAS, recent public health data indicate continued improvement in key areas of measurement as a result of the extraordinary efforts of health care providers in the Commonwealth and the public’s unselfish compliance with the restrictions imposed in COVID-19 Order No. 13 and other measures implemented in response to the COVID-19 health crisis;

WHEREAS, on May 18, 2020, I issued COVID-19 Order No. 33, which authorized the re-opening of certain brick-and-mortar premises designated as “Phase I” workplaces (“Phase I enterprises”), subject to the requirement that all such workplaces comply with workplace safety rules and standards designed to protect against the risk of the COVID-19 virus and which otherwise further extended the period in which COVID-19 Order No. 13 would continue to restrict the operations of businesses and organizations that do not provide Essential Services or that were not designated as Phase I workplaces;

WHEREAS, a sustained trend of improvement in public health data permits a continued, carefully phased relaxation of certain restrictions on businesses and other organizations, provided that any adjustment can only be maintained or expanded on the basis of continuing improvements in the public health data, and at present the Commonwealth remains in the midst of a public health emergency, as demonstrated by reporting from the Department of Public Health on June 5, 2020 that 1,533 persons remain hospitalized in the Commonwealth as a result of COVID-19 and 350 of these patients are receiving treatment in intensive care units;

WHEREAS, according to the Centers for Disease Control and Prevention, a precipitous removal of targeted restrictions that have proven effective in combatting the spread of COVID-19 could result in a recurrence of the virus spread, as has been the experience in certain States and countries; and

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to authority over assemblages in order to protect the health and safety of persons, transportation and travel by any means or mode, regulating the sale of articles of food and household articles, variance of the terms and conditions of licenses and permits issued by the Commonwealth or any of its agencies or political subdivisions, and policing, protection, and preservation of public and private property;

NOW, THEREFORE, I hereby order the following:

1. Opening of Phase II Enterprises Generally

Businesses and other organizations that are Phase II enterprises, as defined below, are permitted to open and operate from their physical workplaces and facilities (“brick-and-mortar premises”) according to the progressive, two-step schedule specified in Section 2. Phase II

enterprises may open those premises to workers, customers, and the public when authorized under the two-step schedule in Section 2 provided they comply with all workplace safety rules and standards issued or maintained pursuant to Section 3 and all other terms of this Order.

Phase II enterprises are businesses or other organizations that are designated as such on the chart attached as Schedule A or businesses and other organizations that meet each of the following conditions:

- a. not previously permitted to open their premises as an Essential Service or Phase I enterprise pursuant to Section 1 of COVID-19 Order No. 33;
- b. not closed by any COVID-19 Order separate from or in addition to COVID-19 Order No. 13;
- c. not excluded or excepted from the terms of this Order in Section 5; and
- d. not designated as a Phase III or Phase IV enterprise on the chart attached as Schedule A.

Businesses and other organizations that are designated as Phase III and Phase IV enterprises on the chart attached as Schedule A must keep their brick-and-mortar premises closed to workers, customers, and the public and may not conduct Phase III and IV activities except as remote means permit. Phase III and IV enterprises shall not re-open their brick-and-mortar premises until specifically authorized to do so by subsequent Order. Phase III and IV enterprises may, however, open their premises to workers to the degree reasonably necessary to perform critical tasks that cannot be conducted remotely, such as ensuring on-going maintenance of the premises, preservation of inventory and equipment, and compliance with legal obligations.

2. Two-Step Progression of Phase II Openings

Step 1: On June 8, 2020, Phase II enterprises that are not designated as Step 2 enterprises may open their brick-and-mortar premises to workers, customers, and the public.

Restaurants are authorized to provide outdoor table service beginning with the June 8 commencement of Step 1. For the purposes of this Order, the term “restaurant” shall mean an establishment that provides seated food service that is prepared on-site and under a retail food permit issued by a municipal authority pursuant to 105 CMR 590.000.

“Outdoor table service” shall mean service that is provided outside the restaurant building envelope, whether on a sidewalk, patio, deck, lawn, parking area, or other outdoor space. Outdoor table service may be provided under awnings or table umbrellas or other cover from the elements, provided, however, that at least 50 percent of the perimeter of any covered dining space must remain open and unobstructed by any form of siding or barriers at all times.

Step 2: If the public health data reflects continued positive progression, Step 2 will be announced by a subsequent Phase II Order. Effective upon the commencement of Step 2

- a. close contact personal services, as defined below, may open their brick-and-mortar premises to workers, customers, and the public; and
- b. Restaurants may commence indoor table service.

“Close contact personal services” shall mean any personal service typically delivered through close physical contact with a client including, without limitation, nail care services, massage therapy, personal training services, and tattoo, piercing, and body art services. The Director of Labor Standards shall issue guidance to define such services more completely.

3. Sector-Specific Rules and Self-Certification

The Director of Labor Standards and the Commissioner of Public Health shall issue, subject to my approval, COVID-19 workplace safety rules for certain, specific Phase II enterprise sectors (“Sector-Specific Rules”) to address the particular circumstances and operational needs of those specific sectors.

The Secretary of the Executive Office of Energy and Environmental Affairs (“EEA”), subject to my approval, shall issue Sector-Specific Rules to implement COVID-19 safety measures for organized youth and adult amateur sports activities and shall continue to issue COVID-19 workplace safety standards for operators of and participants in outdoor recreational activities as provided for in COVID-19 Order No. 34. In issuing such standards, the Secretary may from time to time, following consultation with the Commissioner of the Department of Public Health, adjust the capacity restrictions in Section 3(c) of COVID-19 Order No. 35 and the capacity and other limitations applicable to the recreational activities and facilities specified in Attachment 1 to COVID-19 Order No. 33.

Phase II Sector-Specific Rules shall supplement the generally applicable COVID-19 safety rules applicable to all workplaces in the Commonwealth adopted in COVID-19 Order No. 33. Phase II enterprises shall adopt and comply with all Sector-Specific Rules applicable to their workplaces.

Newly Opened Premises: Phase II enterprises that are authorized under the terms of this Order to open their brick-and-mortar premises to workers, customers, and the public shall be required to self-certify that they are in compliance with all generally applicable COVID-19 workplace safety rules and any applicable Sector-Specific rules. Before opening a brick-and-mortar premises under the terms of this Order, a Phase II enterprise not previously authorized to operate as a COVID-19 Essential Service pursuant to COVID-19 Order No. 13 shall be required to implement the following measures:

- a. Bring the workplace into full compliance with all generally applicable COVID-19 workplace safety rules and all Sector-Specific Rules that are applicable to the individual workplace

- b. Complete the required self-certification to verify compliance with all general and any applicable Sector-Specific Rules and make the self-certification available for inspection upon a request by State or Local authorities
- c. Post on the premises all public notices and advisories that are required to be displayed under the terms of this Order

A Phase II enterprise that has prior to the issuance of this Order been authorized to remain open to workers, customers, and the public as a “COVID-19 Essential Service” shall have until June 15, 2020 to certify its compliance with any COVID-19 workplace safety rule issued pursuant to this Order and with the public notice provisions specified above.

All such businesses and other organizations shall, in any event, immediately undertake best efforts to comply with all generally applicable COVID-19 workplace safety rules applicable to all businesses and other organizations operating within the Commonwealth.

4. Enforcement and Authority

The Department of Labor Standards, in consultation with the Department of Public Health (“DPH”), shall have general authority to promulgate directives, regulations, and guidance to implement and enforce the COVID-19 workplace safety rules authorized under this Order.

DPH shall have specific authority to promulgate directives, regulations, and guidance to implement and enforce the terms of this Order as it applies to businesses, organizations, and workplaces subject to the sanitary code established pursuant to section 127A of chapter 111 of the General Laws and where DPH otherwise has existing regulatory authority.

A municipal board of health or authorized agent pursuant to G. L. c. 111, § 30 shall have concurrent authority with DLS and DPH to enforce the terms of this Order and any directives, regulations, or guidance issued by DLS, DPH, and EEA under the authority of this Order.

This Order is intended to establish a uniform set of COVID-19 workplace safety rules for all businesses and other organizations operating brick-and-mortar premises across the Commonwealth. No municipal or other local authority should adopt or enforce any workplace health or safety rule to address COVID-19 that is in addition to, stricter than, or otherwise in conflict with any COVID-19 workplace safety rule adopted in this Order or under the implementing directives, regulations, and guidance issued by DLS, DPH, or EEA under the authority granted by this Order. DLS, DPH, EEA, and each municipal or local authority shall uniformly apply any enforceable COVID-19 workplace safety rule.

Violation of the terms of this Order or any directives, regulations, or guidance issued pursuant to this Order may result in a civil fine of up to \$300 per violation, in the manner provided for in G. L. c. 277, § 70C. This Order may also be enforced by injunction. A motion for an injunction to enforce this Order or any directives, regulations, or guidance issued on its

authority may be filed in the district court or other any court of competent jurisdiction for the municipality in which the violation has been charged.

In issuing directives, regulations, or guidance under the terms of this Order, (a) the Director of Labor Standards shall act under the authority G. L. c. 149, §§ 6 & 6½; and (b) the Commissioner of Public Health shall act under the authority of G. L. c. 17, § 2A and G. L. c. 111, §§ 6 & 127A, insofar as those statutes are consistent with the provisions of this Order and authority is available thereunder. In addition, I hereby direct the Commissioner of Public Health to act under the authority of G. L. c. 17, § 2A and G. L. 111, § 6 or any other appropriate authority to supplement the terms of this Order in the event she determines that additional measures are required to ensure that the terms of this Order are observed. The Director of Labor Standards and the Commissioner of Public Health may issue regulations implementing the terms of this Order pursuant to the processes generally provided in G. L. c. 30A, §§ 2-6.

If any provision of this Order or the application thereof to any person or entity or circumstance is determined to be invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Order or its application to other persons, entities, and circumstances.

5. Exceptions

This Order shall have no application to any of the following businesses, organizations, workplaces, or facilities:

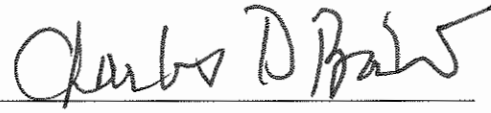
- a. Any municipal legislative body, the General Court, or the Judiciary
- b. Federal governmental entities
- c. Any health care facility or licensed health care provider
- d. Any of the following workplaces or facilities with specialized functions and populations, provided that DPH shall in each case consult with the responsible authority and provide COVID-19 health and safety guidance as needed:
 - Public and private elementary and secondary (K-12) schools
 - Residential and day schools for special needs students
 - Licensed, approved, or exempt child care programs and any emergency child care centers and emergency residential programs operating under emergency authorization
 - Facilities operated by the Department of Correction or any Sheriff
 - Facilities operated, contracted, or licensed by the Department of Youth Services, Department of Mental Health, Department of Public Health, or the Department of Developmental Services
 - Facilities that provide safe spaces for the unstably housed such as homeless and domestic violence shelters

- and any other facilities or workplaces that the Commissioner of Public Health may in writing exempt from the terms of this Order

COVID-19 Order No. 13 is rescinded effective at 12:01 am on June 8, 2020.

This Order is effective immediately and shall remain in effect until rescinded or until the state of emergency is ended, whichever occurs first.

Given in Boston at 12:45 PM this 6th day
of June, two thousand and twenty



CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts

Schedule A to COVID-19 Order No. 37

	<p>All Phase I, II, III, and IV enterprises are required to comply with general and, where applicable, sector-specific COVID-19 workplace safety rules administered by DPL, DPH, and local boards of health. Workplace safety rules include a variety of mandatory context-specific COVID-19 safety measures such as occupancy limitations, operational modifications, social distancing rules, and specialized cleaning requirements.</p>
<p>Phase I</p>	<p>As specified in COVID-19 Order No. 33:</p> <ul style="list-style-type: none"> • Businesses and other organizations providing products and services identified as “COVID-19 Essential Services” in COVID-19 Order No. 13 • Manufacturing • Construction • Places of Worship • Firearms retailers and shooting ranges • General Use Offices • Car Washes • Hair Salons and Barber Shops • Pet Groomers • Drive-In Movie Theaters • Laboratories • Certain Outdoor Recreational Facilities and Activities as specified in <u>Exhibit 1</u> to COVID-19 Order No. 33
<p>Phase II</p>	<ul style="list-style-type: none"> • Retail Stores including stores in enclosed shopping malls • Restaurants providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000, including beer gardens/wineries/distilleries meeting these criteria <ul style="list-style-type: none"> ○ Step 1: outdoor table service ○ Step 2: indoor table service • Hotels, motels, inns, and other short-term lodgings (no events, functions, or meetings) • Limited organized youth and adult amateur sports activities and programs—no contact and no games or scrimmages, and indoor facilities limited to youth programs • Professional sports practice and training programs--no inter-team games and no admission for the public • Personal Services provided at a fixed place of business or at a client location <ul style="list-style-type: none"> ○ Step 1: Services involving no close personal contact (photography, window washers, individual tutoring, home cleaning, etc.) ○ Step 2: Services involving close personal contact (massage, nail salons, personal training for individuals or no more than 2 persons from same household, etc.) • Non-athletic instructional classes in arts/education/life skills for youths under 18 years of age in groups of fewer than 10 • Driving schools and flight schools • Outdoor historical spaces—no functions or gatherings and no guided tours • Funeral homes—increased capacity to permit 40% occupancy for one service at a time within the facility • Warehouses and distribution centers • Golf facilities including outdoor driving ranges • Other outdoor recreational facilities <ul style="list-style-type: none"> ○ pools, playgrounds and spray decks ○ mini golf, go karts, batting cages, climbing walls, ropes courses • Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools

	<ul style="list-style-type: none"> ○ for the limited purposes of permitting students to complete a degree, program, or prerequisite for employment, or other similar requirement for completion, for summer youth programming including athletic facilities, and any necessary supporting services ● Day Camps including sports and arts camps ● Public libraries
Phase III	<ul style="list-style-type: none"> ● Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools—general operations ● Casino gaming floors ● Horse racing tracks and simulcast facilities (no spectators) ● Indoor recreational and athletic facilities for general use (not limited to youth programs) ● Fitness centers and health clubs including <ul style="list-style-type: none"> ○ cardio/weight rooms/locker rooms/inside facilities ○ fitness studios (yoga, barre, cross-fit, spin classes, general fitness studios) ○ indoor common areas ○ indoor swimming pools ○ indoor racquet courts and gymnasiums ○ locker rooms/shower rooms ○ excluding saunas, hot-tubs, steam rooms ● Museums ● Indoor historic spaces/sites ● Aquariums ● Outdoor theatres and performance venues of moderate capacity ● Indoor theatres, concert halls, and other performance venues of moderate capacity ● Sightseeing and other organized tours (bus tours, duck tours, harbor cruises, whale watching) ● Motion picture, television, and video streaming production, except for activities specifically permitted in Phases I and II ● Fishing and hunting tournaments and other amateur or professional derbies ● Weddings/events/gatherings in parks, reservations, and open spaces with allowance for moderate capacity ● Overnight camps ● Indoor non-athletic instructional classes in arts/education/life skills for persons 18 years or older ● Indoor recreational businesses: batting cages, driving ranges, go karts, bowling alleys, arcades, laser tag, roller skating rinks, trampolines, rock-climbing <p>This listing is subject to amendment.</p>
Phase IV	<ul style="list-style-type: none"> ● Amusement parks, theme parks, indoor or outdoor water parks ● Saunas, hot-tubs, steam rooms at fitness centers, health clubs, and other facilities ● Bars, dance clubs, and nightclubs—venues offering entertainment, beverages, or dancing and not providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000 ● Beer gardens/breweries/wineries/distilleries not providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000 ● Large capacity venues used for group or spectator sports, entertainment, business, and cultural events including <ul style="list-style-type: none"> ○ Theaters and concert halls ○ Ballrooms ○ Stadiums, arenas, and ballparks ○ Dance floors ○ Exhibition and convention halls

	<ul style="list-style-type: none">• Private party rooms• Street festivals and parades and agricultural festivals• Road races and other large, outdoor organized amateur or professional group athletic events <p>This listing is subject to amendment.</p>
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SUMMARY OF
PAST
DISCIPLINARY
ACTIONS

Ember Pizza

Summary of Past disciplinary action

Board of Selectmen Meeting: February 8, 2021

Outcome: Board of Selectmen voted to hold a public hearing to discuss disciplinary action from January 12, 2021 hearing pertaining to violations on May 22, 2020 and May 24, 2020

Board of Selectmen Meeting: August 3, 2020

Outcome: Board of Selectmen voted the following discipline from August 3, 2020 public hearing on violations from July 28, 2019, July 31, 2019 and October 5, 2019; Entertainment license suspended seven (7) consecutive days, both indoors and outdoors, on successive days, during a period to be chosen by the licensee prior to September 14, 2020.

Board of Selectmen Meeting: October 23, 2019

Outcome: Board of Selectmen voted the following discipline from September 9, 2019 public hearing from violations on June 30, 2019, July 7, 2019, July 14, 2019 and police warning on June 28, 2019; Entertainment license suspended June 28, 2020 and July 12, 2020 and five (5) Sundays in August specifically limited to acoustic music only with no amplification.

Board of Selectmen Meeting: November 13, 2018

Outcome: Board of Selectmen issued warning notice related to disciplinary hearing on October 31, 2018 for violations on June 19, 2018, September 7, 2018, September 13, 2018, and September 14, 2018.

OFFICE OF THE TOWN ADMINISTRATOR

Joseph F. Powers, *Interim Town Administrator*

Phone (508) 430-7513

Fax (508) 432-5039

732 MAIN STREET, HARWICH, MA



August 13, 2020

Mr. Justin Brackett, Manager
Ember Pizza, Inc.
600 Route 28
Harwich Port, MA 02646

EMAILED & HAND DELIVERED

Subject: Letter confirming discipline – Violations of Entertainment License

Dear Mr. Brackett:

At a meeting of the Board of Selectmen held on August 3, 2020, the Board of Selectmen voted following discipline per the recommendation of the Interim Town Administrator relating to noise violations of Ember's Entertainment License on July 28, 2019, July 31, 2019 and October 5, 2019,:

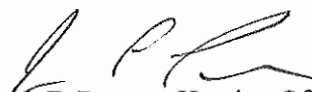
The license suspension for Sunday, July 12, 2020, not having been served, is vacated and further that restrictions on outside entertainment being specifically limited to acoustical performances only on the remaining Sundays in August, 2020 is rescinded and that the following penalty is instituted in lieu of the above; namely that:

The licensee will serve a seven (7) day suspension of all entertainment, both indoors and outdoors, on successive days, during a period to be chosen by the licensee prior to Monday, September 14, 2020.

A copy of the Interim Town Administrator's Report and Recommendation is enclosed herewith for your reference.

The Licensee or their Counsel shall notify the Board of Selectmen and Interim Town Administrator in writing prior to their choice of the seven day entertainment suspension.

Sincerely,


Joseph F. Powers, Hearing Officer
Interim Town Administrator

cc: Chief David Guillemette
Attorney Ray Tomlinson
Attorney Gregg Corbo



OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Christopher Clark, *Town Administrator*
Joseph F. Powers, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645



MEMO

To: Board of Selectmen

From: Christopher Clark, Town Administrator

cc: David Guillemette, Chief of Police

Re: Decision regarding Violation of Noise/Entertainment Ember License September 9 Public Hearing

Date: October 23, 2019

On September 9, 2019, I conducted a public hearing in regards to noise violations from the Ember establishment located at 600 Route 28 in Harwich Port. Please find attached the summary of the hearing. Based upon the evidence presented and the testimony given, I have concluded that Ember did violate their license conditions on three separate occasions. It is also been reported that subsequent to the submission of these violations additional alleged violations have also occurred which will require a separate adjudicatory hearing.

I had indicated at the conclusion of the hearing that I wanted to view the site where a newly constructed stage had been erected and to also review my prior decision on a noise violation at another establishment in Harwich Port. I have completed both of these reviews.

I render the following decision regarding the violations deliberated at the September 9, 2019 public hearing. First, that Ember have its 2020 entertainment license for Sunday, June 28, 2020 and Sunday, July 12, 2020 suspended and not allow any outside entertainment on these two days. Furthermore, for the five Sundays in August 2020 consisting of August 2, 9, 16, 23 and 31 that entertainment on these days be specifically limited to acoustical performances only with no amplification allowed.

The Police Department has reported additional alleged violations for this past season that need to be further adjudicated which is disappointing to believe that the Ember ownership and management do not seem to be willing to become compliant with the board's existing conditions. I would recommend moving forward that stricter conditions be considered to be placed on Ember's 2020 license. Our liquor license regulations call for establishments to be in good order with other licenses in which to hold a liquor license. Continued violations of the entertainment license may lead to a suspension or revocation of the liquor license for this establishment. Hopefully, we can achieve compliance prior to any recommendation of this sort being made.



November 14, 2018

Mr. Justin Brackett, Manager
Ember Pizza, Inc.
600 Route 28
Harwich Port, MA 02646

Subject: Letter of Warning – Violations of Entertainment/Liquor License

Dear Mr. Brackett:

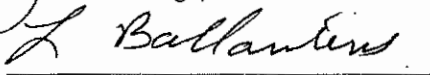
At a meeting of the Board of Selectmen held on Monday, November 13, 2018, the Board voted to issue you the following warning notice relating to the disciplinary hearing held on October 31, 2018 for violations of the conditions of Ember's Weekday Entertainment and Liquor License on June 19, 2018, September 7, 2018, September 13, 2018 and September 14, 2018, per the recommendation of the Town Administrator:

You are hereby notified that the Board intends to follow a progressive course of discipline, if needed, up to and including revocation of Entertainment License and/or Liquor License for any future violations.


The Board recognizes that this season was the first with significant complaints and has the highest expectation that in the future you will comply with the conditions of your license.

Sincerely,


Julie E. Kavanagh, Chair


Larry G. Ballantine

Edward J. McManus



Michael D. MacAskill



Donald F. Howell

cc: Chief David Guillemette
Attorney Matthew Kelley

POLICE DEPARTMENT
RECOMMENDATIONS



HARWICH Police

DEPARTMENT

183 Sisson Road, Harwich, MA 02645

Tel 508-430-7541 Fax 508-432-2530




DAVID J. GUILLEMETTE
Chief of Police

KEVIN M. CONSIDINE
Deputy Chief

Memorandum

TO: Joseph Powers
Town Administrator

Meggan Eldredge
Assistant Town Administrator

FROM: David J. Guillemette
Chief of Police 

DATE: February 25, 2021

SUBJECT: 2021 Seasonal Liquor License Renewals

In response to your memo dated February 23, 2021 regarding seasonal liquor license renewals, the Police Department has identified issues with the following establishments from the provided list.

Ember
500 route 28, Harwich Port

Perks
545 Route 28, Harwich Port

Port Restaurant and Bar
541 route 28, Harwich Port