

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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GORDON J. MACDONALD
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

October 19, 2020

Fat Katz Food & Drink, LLC
c/o Tom Vaughan
76 Derry Road
Hudson, NH 03051

**Re: Violations of New Hampshire's Emergency Order 52, as extended, and the
Restaurant/Food Service Guidance**

Dear Mr. Vaughan:

Fat Katz Food & Drink in Hudson is operating in violation of the Governor's Emergency Order 52, as extended by Emergency Order 70. This Emergency Order was issued pursuant to section 18 of Executive Order 2020-04, as extended by Executive Order 2020-20. Exhibit A to Emergency Order 52 establishes Universal Guidelines that apply to all businesses, organizations, and individual business operators in the State. Exhibit B to Emergency Order 52 establishes industry-specific guidance, including guidance for Restaurants/Food Service operators. And, despite the use of the terms "guidelines" and "guidance" in the titles of these documents, your business is required to comply with the mandatory provisions of these documents if you want to continue to operate. *See* Emergency Order 52, Paragraph 1, "[a]ll businesses and other organizations operating within this State shall comply with the ... Universal Guidelines and any other industry-specific guidelines ... issued subsequent to this Order."

Emergency Order 52 and its Applicable Guidance

As has been explained to you directly, your business must comply with both the Universal Guidelines and the Restaurant/Food Service Industry Guidance. On September 4, 2020, Bianca Monroe from this Office sent you an email, after having a conversation with you, confirming that Fat Katz was allowed to hold karaoke outside of the restaurant if the performers brought their own microphones and equipment. *See* attached email. Ms. Monroe's directions to Fat Katz were based on the Restaurant/Food Service Industry Guidance, under Consumer Protection, Paragraph 9 (which was in effect on September 4, 2020) which provided that no indoor performances were allowed. That Guidance has now been modified, effective October 8,

2020, to allow disc jockeys and solo artists who maintain a physical distance of 8 feet from each other and any table to be allowed inside. Consumer Protection, Paragraph 8. During a conversation with Ms. Monroe on October 16, 2020, you informed her that you had moved karaoke inside 2 to 3 weeks prior without approval from our Office or modification to the Guidance. You stated that you moved karaoke inside due to the neighbors complaining about the noise, resulting in calls from the police department, and because the weather was turning cold. You said that the performers were required to bring their own microphones. However, in a discussion with one of the DJs, he informed the State that he had to purchase 6 or 7 additional microphones as most people did not bring their own.

While Fat Katz was given specific permission to hold karaoke outside, once you decided to move karaoke inside in late September and allow individuals to participate without bringing their own equipment, you did not contact our Office to ask us whether that decision was allowed under Emergency Order 52, even though you were well aware of the process for asking our Office for information.

Emergency Order 63

Additionally, Emergency Order 63, requiring face coverings to be worn when at an event with more than 100 people present, also applies to restaurants if they are operating an event. *See* Paragraph 1. While individuals can remove their face coverings while seated at a distance of at least 6 feet from other household groups or individuals, face coverings must be worn when moving inside the facility or at the event. *See* Paragraph 2(a). As a result, whenever Fat Katz has an event occur at its restaurant, you need to enforce compliance with Emergency Order 63.

Violations

Moving karaoke inside Fat Katz after being specifically instructed that it was not allowed to be performed indoors and allowing individuals to participate without bringing their own equipment are violations of the Governor's Emergency Order 52 and are, at the very least, reckless.

Violations of the Governor's Emergency Order 52, as extended, and its applicable Guidance are taken very seriously. These orders have been instituted so New Hampshire businesses and organizations can operate as safely as possible during the COVID-19 pandemic. By not complying with the Emergency Orders, organizations risk endangering the health of all individuals involved in an event as well as everyone else who those individuals come into contact with after the event ends. Businesses also risk further legal enforcement actions to achieve compliance.

In addition to jeopardizing the health and safety of both the public and your employees, your failure to follow Emergency Order 52, as extended, is a violation of state law. Pursuant to RSA 21-P:47, the violation of an emergency order, rule, or regulation issued by the Governor can lead to misdemeanor criminal charges. Further, violations of any Emergency Order are subject to civil penalties of up to \$1,000 per violation or up to \$2,000 per day under Emergency

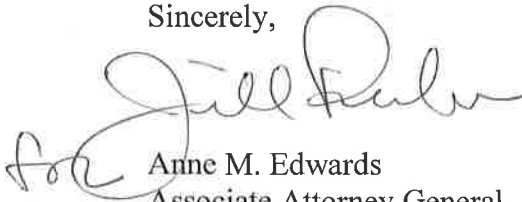
Order 65, depending on the nature of the violation. Fat Katz continued violation of the Emergency Orders place both you and your business at risk of these civil and criminal penalties.

In accordance with Emergency Order 65, Paragraph 4, and based on all of the relevant facts and circumstances, specifically including that Fat Katz was made aware in writing that karaoke had to remain outdoors and that performers had to have their own equipment to participate, **a civil penalty of \$2,000 is being assessed for violating Emergency Order 52.**

This civil penalty is required to be paid by October 30, 2020. If Fat Katz wants to challenge this civil penalty, it can raise that issue with the Attorney General's Office, under Paragraph 4 of Emergency Order 65, and negotiate a settlement or request a hearing.

Please ensure that Fat Katz complies with the Emergency Orders and does not otherwise put the public or your employees at risk.

Sincerely,



for Anne M. Edwards
Associate Attorney General

Enclosure