

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

CITY OF LINCOLN, NEBRASKA,)
)
Plaintiff,)
)
vs.)
)
ELEVATING ASSETS, LLC and)
MADSEN BOWLING & BILLIARD)
CENTER CO.,)
)
Defendants.)

CASE NO. CI 20- 2706 col

COMPLAINT AND PRAECIPE

LANCASTER COUNTY
2020 AUG -3 PM 4:23
CLERK OF THE
DISTRICT COURT

COMES NOW Plaintiff City of Lincoln, Nebraska ("City") and for its cause of action against Defendants Elevating Assets, LLC and Madsen Bowling & Billiard Center Co., states and alleges as follows:

1. Plaintiff is a Nebraska political subdivision and municipal corporation organized and existing pursuant to the laws of the State of Nebraska.
2. Defendant Elevating Assets, LLC is a Nebraska limited liability company with one or more business locations in Lincoln, Lancaster County, Nebraska, including a business located at 4700 Dudley Street in Lincoln, Nebraska.
3. Defendant Madsen Bowling & Billiard Center Co. is a Nebraska corporation and is operating the Madsen Bowling and Billiard Center at 4700 Dudley Street in Lincoln, Nebraska.
4. City is currently under a declaration of emergency issued by the Mayor of Lincoln and Lincoln City Council on March 16, 2020 as a result of the outbreak and pandemic of the Novel Coronavirus (COVID-19), pursuant to Executive Order No. 94155 and Resolution No. A-92047 respectively. Copies of the declarations are attached hereto and marked as Exhibit 1.
5. Pursuant to Neb. Rev. Stat. § 71-501, the Director of the Lincoln-Lancaster County Health Department ("the Health Director") is authorized to promulgate rules and regulations to



individuals and business entities concerning contagious, infectious, and malignant diseases in the City of Lincoln and Lancaster County.

6. Pursuant to Lincoln Municipal Code § 8.18.140, the Health Director is authorized to order the closure of, or restrict access to, any business, office, manufacturing plant, or other commercial or nonprofit operation or facility.

7. On July 19, 2020, the Health Director issued Directed Health Measures 2020-07 (“the Health Order”), effective July 20, 2020, which sets forth restrictions for certain businesses and other for profit and nonprofit organizations, and government entities. Defendants and each of them are currently subject to the Health Order. A copy of the Health Order is attached as Exhibit 2.

8. From on or about July 20, 2020 to the present time, Defendants have negligently, recklessly, or intentionally failed to comply or obey the Health Order in a consistent manner and in the following specifics:

- a. Employees not wearing protective face coverings while working;
- b. Not requiring or maintaining six-foot separations between patrons or parties of patrons and other patrons or parties of patrons; and
- c. Individual patrons not wearing protective face coverings when less than six feet from other patrons not a household member or seated to eat or drink.

9. City has made efforts short of litigation to educate and have the Defendants gain compliance with the Health Order, but the Defendants and each of them have failed, refused, or neglected to comply with the Health Order.

10. Failure to obey or other non-compliance with the Health Order by Defendants creates a serious public health risk for the citizens of City by exposing the public to the COVID-19 virus.

11. Closing Defendants’ business protect the health, safety, and welfare of the citizens of City.

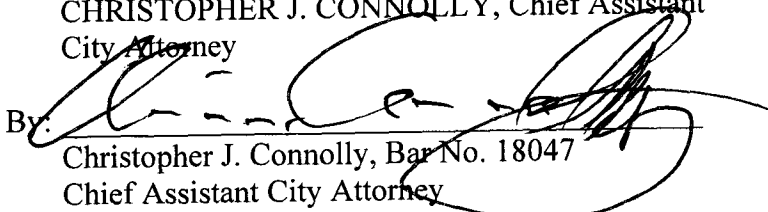
12. City has no adequate damages at law and injunctive relief is necessary to protect the welfare of the citizens of City.

WHEREFORE, Plaintiff City of Lincoln, Nebraska, prays for a decree of a temporary and permanent injunction against Defendants and each of them ordering Defendants to comply with the Health Order; that closure of Defendants' business be ordered until the Health Director approves a plan to reopen demonstrating the ability of both Defendants to operate the business in a manner compliant with the Health Order, to be submitted by each of the Defendants; that said injunction shall be dissolved upon the occurrence of one or more of the following: (1) the Health Order is dissolved or rescinded in its entirety, or (2) the declaration of emergency is dissolved or rescinded in its entirety; further, that City be permitted to use all reasonable means necessary to enforce the restrictions set forth in the Injunction, and that the cost of any such enforcement measures necessary be charged to Defendants, and include a lien on any real property owned by Defendants; and for such other and further relief as the Court may deem equitable and just.

DATED: August 3, 2020.

CITY OF LINCOLN, NEBRASKA, Plaintiff

YOHANCE L. CHRISTIE, City Attorney
CHRISTOPHER J. CONNOLLY, Chief Assistant
City Attorney

By: 

Christopher J. Connolly, Bar No. 18047
Chief Assistant City Attorney
555 South 10th Street, Suite 300
Lincoln, NE 68508
Phone: (402) 441-7281
E-mail: cconnolly@lincoln.ne.gov

PRAECIPE

TO THE CLERK OF THE COURT:

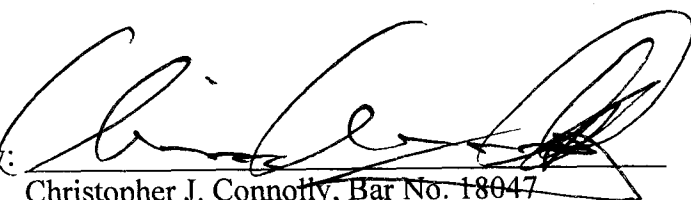
Please issue summons in the above-captioned action to be served by U.S. Postal Service
Priority Mail Express upon Defendant:

Elevating Assets, LLC
Camille R. Hawk, Registered Agent
11240 Davenport St.
Omaha, NE 68154

and by personal service by Lancaster County Sheriff upon Defendant:

Madsen Bowling & Billiard Center Co.
W. Scott Davis, Registered Agent
1248 O Street, Suite 600
Lincoln, NE 68508

By:



Christopher J. Connelly, Bar No. 18047



94155

smart #: 20030148
3/20/law/jw

CITY OF
LINCOLN
NEBRASKA
MAYOR LEIRION GAYLOR BAIRD

EXECUTIVE
ORDER

NO. 94155

BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City of Lincoln, Nebraska, and the provisions of Lincoln Municipal Code § 2.06.040 and the Emergency Management Act, Neb. Rev. Stat § 81.829.36, et. seq.:

It is necessary to declare an emergency to protect the residents of the City of Lincoln from the health threat arising out of the spread of Novel Coronavirus 2019 (COVID-19), a virus known to cause serious illness and death, for the reason that the threat of the COVID 19 virus endangers the health, safety, and welfare of the residents of the City of Lincoln.

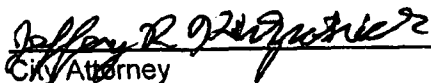
Therefore, I hereby declare a state of emergency as of the date stated below for a period not to exceed seventy-two hours as authorized under Lincoln Municipal Code §§ 2.06.040 and 2.06.070 and Neb. Rev. Stat. § 81-829-36, et seq. on behalf of the City of Lincoln and will execute for and on behalf of the City such orders as may be necessary due to the emergency including the expenditure of funds from all available sources; the invoking of mutual aid agreements; applications to the State of Nebraska and the Federal government for emergency assistance, and any other emergency actions deemed necessary in the fulfillment of my duties. I reserve the right to exercise any emergency powers as may be needed to protect the residents of Lincoln during this emergency pursuant to Lincoln Municipal Code § 2.06.050 and other applicable laws.

The City Clerk is directed to file a copy of this Executive Order with the Operations Center through the City of Lincoln-Lancaster County Health Department.

Dated this 16 day of March, 2020.


Leirion Gaylor Baird, Mayor

Approved as to Form & Legality:


City Attorney





A92047

20R-122

Introduce: 3-16-20

RESOLUTION NO. A- 92047

1 WHEREAS, the Mayor of the City of Lincoln declared a state of emergency on March 16,
 2 2020 to protect the residents of the City of Lincoln from the potential spread and impact of the
 3 Novel Coronavirus 2019 (COVID 19) resulting from the rapidly evolving outbreak; and

4 WHEREAS, the City Council wishes to approve and affirm the actions of the Mayor
 5 pursuant to the declaration of a state of emergency in Executive Order 94155; and

6 WHEREAS, the City Council intends to extend the state of emergency for such time as is
 7 necessary to respond to the spread of COVID 19.

8 NOW, THEREFORE, BE IT RESOLVED by the City Council of Lincoln, Nebraska that
 9 the declaration of a state of emergency issued by the Mayor on March 16, 2020 and found at
 10 Executive Order 94155 is hereby approved and extended beyond seventy-two hours pursuant to
 11 Lincoln Municipal Code §2.06.070. The Mayor is authorized to use such emergency powers as
 12 may be found in Lincoln Municipal Code §2.06.050 for the duration of the state of emergency.
 13 The state of emergency shall remain in full force and effect until terminated by the Mayor or the
 14 City Council.

**See further Council
 Proceedings on next page.**

Introduced by:

AYES: Bowers, Christensen, Meginnis,
 Raybould, Shobe, Ward, Washington; NAYS:
 None.

Approved as to Form & Legality:

City Attorney

ADOPTED**MAR 16 2020****BY CITY COUNCIL**Approved this 19 day of March, 2020:

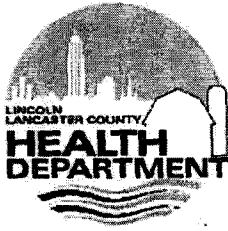
Mayor

20R-122

3/16/20 Council Proceedings:

WASHINGTON Moved to suspend the Council's rules to place Bill 20R-122 on the Agenda for Public Hearing & Action on this date.

Seconded by Christensen & carried by the following vote: AYES: Bowers, Christensen, Meginnis, Raybould, Shobe, Ward, Washington; NAYS: None.



LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
Directed Health Measures 2020-07

WHEREAS, pursuant to NEB. REV. STAT. § 71-501, NEB. REV. STAT. § 71-1630(4)(d)(iii), and Chapter 8.18 of the Lincoln Municipal Code, and Lancaster County Resolution No. R-07-0035, the Director of the Lincoln-Lancaster County Health Department ("Director") may exercise her authority to order Directed Health Measures necessary to prevent or minimize the spread of communicable disease. The objectives of this order are to reduce morbidity and mortality; minimize disease transmission; protect health care personnel, and preserve health care system functioning; and

WHEREAS, The Novel Coronavirus (COVID-19) has impacted and continues to dramatically impact the citizens of Lincoln and Lancaster County, Nebraska; and,

WHEREAS, Patricia D. Lopez has been appointed the Interim Health Director of the Lincoln-Lancaster County Health Department; and,

WHEREAS, Pursuant to NEB. REV. STAT. § 71-501, the Lincoln-Lancaster County Health Department ("LLCHD") is authorized to promulgate rules and regulations concerning contagious, infectious, and malignant diseases in Lancaster County; and,

WHEREAS, Pursuant to NEB. REV. STAT. § 71-1630(4)(d)(iii) the Health Director of the LLCHD is authorized to investigate the existence of any contagious or infectious disease and adopt measures to arrest the progress of the disease; and,

WHEREAS, Pursuant to Lincoln Municipal Code §8.18.140 and Lancaster County Resolution No. R-07-0035, the Health Director may order the closure of, or restrict access to, any business, office, healthcare facility, school, or government agency or department for the purpose of controlling the spread of disease or for any activity related to controlling the spread of disease, and the Health Director may adopt any other control measures which are consistent with applicable guidelines of a public sector partner, emergency management agency, and any other applicable laws and regulations; and,

WHEREAS, having reviewed information from the U.S. Department of Health and Human Services Centers for Disease Control and Prevention ("CDC"), local public health departments, treating health care providers and health care facilities, and other public health, security, and law enforcement authorities; having consulted with medical and communicable disease control personnel of the Department; and having considered directives and guidelines issued by the CDC and other public health authorities, the LLCHD Health Director finds as follows:



1. Information from the World Health Organization, the CDC, the LLCHD, local public health departments throughout Nebraska, and members of the Lincoln and Lancaster County medical community indicates that citizens of Lincoln and Lancaster County have been and will continue to be exposed due to community transmission of COVID-19.
2. That exposure to COVID-19 presents a risk of death or serious long-term disabilities; the exposure is wide-spread and poses a significant risk of harm (including death) to people in the general population; there is a particular subset of the population that is more vulnerable to the threat and thus at increased risk; and the threat is from a novel infectious disease.
3. Directed Health Measures exist to effectively prevent, limit, and slow the spread of COVID-19 amongst the citizens of Lincoln and Lancaster County and implementation will continue to curtail unnecessary in-person interaction, which is the main means of transmission of COVID-19.
4. That the continued enforcement of Directed Health Measures is necessary due to the threat posed to members of the public if people gather in large numbers, in close proximity to each other, and in enclosed spaces, thereby increasing the danger to public health.
5. The manner in which the spread of COVID-19 cases in Lancaster County has occurred poses unacceptable risks to the health and welfare of the citizens of Lincoln and Lancaster County and continued Directed Health Measures are necessary to continue to prevent or limit the transmission of COVID-19.
6. That not having effective Directed Health Measures targeted at current circumstances would significantly jeopardize the ability to prevent or limit the transmission of COVID-19 or pose unacceptable risks to members of the community.
7. That maintaining practices to mitigate the spread of COVID-19 including, but not limited to, maintaining six (6) feet of physical distancing between individuals and/or parties of eight (8) or fewer, and wearing face covering which cover the mouth and nose, are necessary to continue slowing the spread of COVID-19.
8. Director Dr. Robert R. Redfield of the CDC, as well as the Lancaster County Medical Society Board have concluded the wearing of face coverings by every individual while in public is one of the best methods to slow and stop the spread of COVID-19.

9. That the following Directed Health Measures have been identified as effective against public health threats by the CDC and other similar public health authorities to effectively prevent, limit, or slow the spread of COVID-19.

THEREFORE, the following Directed Health Measures (DHM) supersedes previous Lincoln-Lancaster County Health Department Directed Health Measures 2020-06, and are hereby ordered for the City of Lincoln and Lancaster County effective on July 20, 2020, at 12:01a.m. and continuing until August 31, 2020, at 11:59 pm unless renewed, extended, or terminated by subsequent order; however, this Order will remain in effect no longer than necessary to ensure that COVID-19 no longer poses a public health threat, and all persons are ordered to comply:

- 1) Gatherings are hereby prohibited.

A Gathering is defined as any event or convening that brings together the greater of: more than fifty (50) patrons, customers, or other invitees ("Patrons"), excluding staff; or, more individuals than 50% of the rated occupancy allowed (not to exceed 10,000 people), as determined by the City of Lincoln Building and Safety Department, in a single room or single space at the same time, including but not limited to, a school, auditorium, stadium, arena, large event conference room, meeting hall, theater, library, or any other confined indoor space; or 75% of the rated occupancy allowed (not to exceed 10,000 people) by the City of Lincoln Building and Safety Department in any confined outdoor space.

For any indoor or outdoor venue which holds 500 or more individuals plans shall be submitted to and approved by the Lincoln Lancaster County Health Department for all events with 500 or more individual participants before gatherings will be permitted in the venue. The reopening plan shall contain planned number of guests, how the location will meet physical distancing guidelines, and sanitation guidelines.

Gatherings include any event or convening with fewer individuals than 50 people or 50% of the rated occupancy of an indoor setting or 75% occupancy of a confined outdoor setting where a minimum distance of six (6) feet between all individuals (or groups of eight (8) or fewer individuals) is not maintained in the venue, however in no case shall there be any group larger than eight (8) individuals allowed at any time.

- 2) Food and beverage sales at restaurants, bars, taverns, private clubs, or other type of business regardless of name or characterization ("Establishments") are allowed but are restricted to no more Patrons than the rated maximum occupancy as established by the City of Lincoln Building and Safety Department while maintaining six (6) feet of separation between groups of Patrons. In addition, if the Establishment has outdoor

dining, the outdoor space shall be restricted to no more Patrons than the rated maximum occupancy for the outdoor dining area while maintaining six (6) feet of separation between groups of patrons. Outdoor dining shall be in addition to indoor dining. In lieu of six (6) feet of separation, a solid barrier that will sufficiently prevent droplet spread between groups of Patrons may be utilized.

Owners of Establishments shall ensure:

- a. Patrons/parties are seated at individual tables or the bar if so equipped; and, that patrons/parties are a minimum of six (6) feet apart from other dining patrons/parties, with no more than eight (8) individuals per party; and,
- b. Patrons remain seated in their seats unless ordering food and/or beverages, are engaged in the play of arcade games, billiards, or other entertainment devices, or are utilizing restrooms; and,
- c. Any Establishment with arcade games, billiards, or other entertainment devices ("Game") shall ensure there will be no more than eight (8) Patrons congregating at any one time around a single Game, and shall perform heightened cleaning and disinfection of the high touch surfaces, such as: controllers; buttons; pool sticks, cues, and balls, at regular intervals.
- d. Establishment Employees shall wear face protection that covers the mouth and nose and shall abide by all other Requirements contained in Appendix 1 - Requirements and Guidance for Restaurant In-Room Dining.

Carry-out, drive-through, and delivery are permitted. Lines for drive-through and carry out in the above-referenced Establishments shall have an environment where Patrons and staff can maintain six (6) feet of separation between all individuals.

This does not apply to and/or exempt food service in health care facilities.

- 3) Barber Shops, Barbers, Cosmetology Establishments, Cosmetologists and Estheticians, Body Art Facilities, and Massage Therapists shall abide by the restriction against gatherings and ensure a minimum distance of six (6) feet shall be maintained between all workstations or areas occupied by Patrons. Employees and Patrons shall wear face protection that covers the mouth and nose at any time when Patrons are present in the establishment and shall abide by all other Requirements contained in Appendix 2 - Requirements and Guidance for Barber Shops, Cosmetology Establishments, Body Art Facilities, and Massage Therapists.
- 4) Daycare and childcare (whether in-home or facilities) shall operate under the following conditions:

A. Childcare shall be carried out in groups of:

- i) fifteen (15) or fewer children age 2 and under;
- ii) twenty (20) or fewer children age 3;
- iii) twenty-four (24) or fewer children between ages 4-5;
- iv) thirty (30) or fewer children ages 6 and above;

per room / space. To the extent possible, providers shall maintain the same groups of children daily.

B. If more than one group of children is cared for at one facility, each group shall be in a separate room which is separated by either physical walls or sufficient airspace. Each subdivided area may contain a group of children. To the extent possible, groups shall not mix with each other.

C. To the extent possible, childcare providers shall remain solely with same group of children daily. If childcare providers always wear facial coverings, they may work with different groups of children.

D. Daycare and Childcare Facilities shall abide by all other Requirements contained in Appendix 3 - Requirements and Guidance for Child Care Facilities.

- 6) Gyms, fitness centers/clubs, health clubs, health spas, martial arts studios, and gymnastics gyms will be limited to the greater of fifty (50) people (excluding staff) or 75% of rated occupancy as established by the City of Lincoln Building and Safety Department. Businesses and organizations that provide any sports training and that sell memberships to provide such training are allowed to offer sports training as long as they follow the guideline contained in this paragraph. Any facility or business referred to in this paragraph shall ensure a minimum distance of six (6) feet be maintained between all patrons at all times.
- 7) Door-to-door sales activities are prohibited within the City of Lincoln. Further, the City shall suspend accepting and processing any peddler permits, as described in Lincoln Municipal Code Chapter 5.36.
- 8) This Order acknowledges and does not supersede or take the place of State of Nebraska Department of Health and Human Services Directed Health Measure 2020-LLHD-004, dated June 19, 2020, as it relates to exempting religious services, including weddings and funerals, from the requirements otherwise in place for gatherings of more than fifty (50) people. Therefore, religious services, including weddings or funerals, are governed by paragraph 4 of the Nebraska Department of Health and Human Services Directed Health Measure Order 2020-LLHD-004 dated June 19, 2020.

- 9) All individuals shall wear face coverings of the mouth and nose while present in any areas open to the public while in the Hall of Justice located at 575 South 10th Street, Lincoln, Nebraska, except nothing in this Order shall require the use of a face covering by any person for whom doing so would be contrary to their health because of a medical condition.
- 10) Any individual or entity which maintains premises open to the general public, including but not limited to educational institutions, shall require all individuals age (five) 5 and older to wear a face covering over their mouth and nose while indoors unless the individual maintains at least 6 feet of separation at all times from anyone who is not their household member, except face coverings will not be required if the individual:
- Is seeking federal, state, or county government services;
 - Is seated at a bar or restaurant to eat or drink, or while immediately consuming food or beverages;
 - Is engaged in exercise;
 - Is engaged in an occupation preventing the wearing of a face covering;
 - Is obtaining a service or purchasing goods or services that requires the temporary removal of the face covering;
 - Is providing a speech, lecture, or broadcast to an audience so long as 6 feet of distancing from other individuals is maintained; or,
 - Cannot otherwise wear a face covering because of a medical condition, a mental health condition, or a disability that prevents the wearing of a face covering.
- 11) This Order shall not apply to courts of law, meetings or sessions of the Nebraska Legislature; medical providers, facilities, or pharmacies; public utilities or essential federal, state, county, and city operations; continuity of business operations; logistics/distribution centers; congregate living settings; group homes and residential drug and/or mental health treatment facilities; shelters; public transportation; airport travel; election offices; polling places on an election day; or to dwelling units. However, these excepted settings shall, to the extent possible, observe physical distancing practices by providing for the maintaining of at least six (6) feet of separation between individuals and all other applicable local, state, and federal guidelines for disease prevention and disinfection of surfaces.

In the event of noncompliance with the terms of these Directed Health Measures, staff from the LLCHD will aid the Health Director in inspection and enforcement. If compliance cannot be had in this manner, law enforcement will aid the Health Director in enforcement.

Failure to comply with this Order will result in legal action for enforcement by civil and/or criminal remedies.

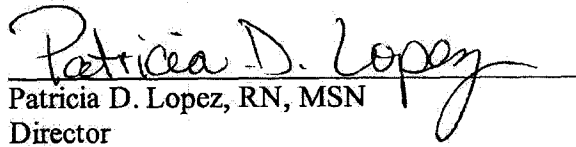
Pursuant to LMC § 8.18.170, any person who is found to have violated any provision of this Order within the City of Lincoln shall be guilty of a City Misdemeanor and subjected to a fine of no more than \$500.00, or imprisonment in the county jail for a period not to exceed six (6) months, or both

such fine and imprisonment. Each day that a violation of this Order continues is punishable as a separate and distinct offense.

Pursuant to NEB. REV. STAT. § 23-174, any person who is found to have violated any provision of this Order outside the City of Lincoln shall be guilty of a Class III misdemeanor and subjected to three (3) months imprisonment or \$500.00 fine, or both. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense.

In addition to any penalty sought or obtained under this Order or other applicable law, the City or County Attorney may institute injunctive or other appropriate civil proceedings necessary to obtain compliance or to abate any nuisance resulting from violations of this Order.

For the Lincoln-Lancaster County Health Department:


Patricia D. Lopez, RN, MSN
Director

7-19-2020
Date