

Macon County Board of Health Special Meeting/Hearing

**Macon County Health Department
WIC Conference Room
1221 E. Condit Street, Decatur IL 62521
Tuesday, July 14, 2020 at 1:00pm**

Candace Clevenger, Board of Health President, called the hearing to order at 1:09 pm.

Roll Call

Candace Clevenger, President – Present
Vivian Goodman, Vice President - Present
Paige Toth, Secretary – Present
Mary Jane Linton, Treasurer - Present
Jan Hack – Present
Dr. Bret Jerger - Absent
Dr. Venkat Minnaganti – Absent
Dr. Janet Patterson - Absent
Phil Tibbs - Present
Laura Zimmerman - Present

Health Department Staff in Attendance

Brandi Binkley, MPA, SHRM-CP, CPHA Public Health Administrator
Bethany Stapel, MPH, CPHA, Assistant Public Health Administrator
Kathy Wade, REHS, RS, LEHP, Director of Environmental Health & Emergency Preparedness
Brian Wood, LEHP, Assistant Director of Environmental Health & Emergency Preparedness
Jerry Brown, Environmental Health Specialist
Evan Trimby, Information Technology Support Specialist
Sandy DeDios, Administrative Assistant II

Hearing Participants in Attendance

Michael Baggett, Assistant State's Attorney – Board of Health Attorney
Christina Mullison, Assistant State's Attorney, MCHD Attorney
Brenda Zeitler, Court Reporter
Kathleen Wrigley, Appellate Attorney of HZ Ops Holdings, Inc.
Caroline Purk
Tasha Austin

Mamoon Fakira, Reg. Director of Ops & Sales, Popeyes Louisiana Kitchen – HZ Ops Holdings Inc.

Ms. Candace Clevenger, BOH President, turned the meeting over to Mr. Michael Baggett, Assistant State's Attorney who explained the reasoning for the hearing. The Special Meeting or Hearing refers to Section 91.25 and 91.26 of the Macon County Code for the hearing on the appeal by HZ Ops Holdings Inc, of the Public Health Administrator's June 26, 2020, revocation of permit to operate a food establishment in Macon County held by HZ Ops Holdings, Inc. d/b/a Popeyes Louisiana Kitchen located at 775 E. Pershing Road, Decatur, Macon County, Illinois.

Introductions:

State's Attorney, Michael Baggett explained that he is serving as the advisor and console to the Board of Health during deliberations and serving as the spokesperson for the Board of Health through the presentation of evidence and keeping adequate record of today's hearing.

The Macon County Health Department's (MCHD) (also referred to as Health Authority) attorney is Assistant State's Attorney, Ms. Christina Mullison.

Mr. Michael Baggett also stated that Assistant State's Attorney, Christina Mullison, and himself were screened since the notice of hearing, and sworn in order to avoid any conflict in their respected roles of Assistant State's Attorney.

Ms. Kathleen Wrigley, on behalf of HZ Ops Holdings Inc., the appellant. Mr. Baggett asked the appellant, Ms. Wrigley, for her acknowledgement of the legal adequacy of today's hearing. She confirmed.

Opening Statements:

Ms. Mullison (Health Authority Attorney) stated that in summary, the health department is asking that based on Popeyes having been closed three times in the last eighteen months, as well as the imminent health violations at the last health inspection, that the license of HZ Ops be revoked. The settlement offer does not substantially differ from the letter received last year.

Mr. Baggett announced his understanding that the settlement offer had been received by the Public Health Administrator of the Macon County Health Department but has not been received by the Board of Health. This would be an opportunity for the appellant, Ms. Wrigley to present the settlement offer to the Board of Health.

Ms. Wrigley (Appellant Attorney) presented the settlement offer that was sent the day before the hearing on 7/13/2020, to the Public Health Administrator. The BOH received copies of the settlement offer letter to review as Ms. Wrigley reviewed the letter which included:

To resolve the issue of its Permit to Operate amicably and without resort to the appeal hearing. Popeyes proposes to offer the following commitments to the Health Department in exchange for the rescission of the notice of revocation and the right to obtain its Permit to Operate:

- 1) \$250.00 reinstatement fee.
- 2) Increased and more frequent inspections that are required by the Illinois Department of Public Health guidelines and were required by the Macon County Health Department letter sent to HZ Ops Holdings, Inc. dated June 26, 2019.
- 3) Inspection fee of \$75.00 payable at the time of each inspection.
- 4) Fee of \$250.00 for each inspection resulting in a violation categorized as a "Priority Foundation Item Violation" or a "Priority Item Violation;"
- 5) Correction of any violations identified during subsequent inspections and maintain compliance with the FDA Food Code requirements;
- 6) The staff of the facility will attend training sessions on "best practices" conducted by the Health Department: (a) the first training session will be for the management team (CFPM) of the restaurant, and (b) there will be a second training session for all other employees (Food Handlers); and
- 7) A public statement issued by Popeyes emphasizing its commitment to public health and safety and its commitment to work as a partner with the Macon County Health Department to keep employees, guests, and the community safe and healthy.

On page two, Ms. Mullison stated there are all the repairs listed that Popeyes has completed. As noted in the letter to the Macon County Health Department dated July 9, 2020, following closure of Popeyes and revocation of its Permit to Operate, Popeyes corrected the following:

- 1) Repair walk-in cooler to restore to proper operation and ambient air temperature (38 degrees Fahrenheit) (completed on June 30, 2020).
- 2) Repair plumbing issues in bathrooms (completed on June 25, 2020).
- 3) Perform pest control inspection, resulting in no finding of pest activity (completed on June 24, 2020).

- 4) Repair plumbing issue in employee hand-sink, resulting in proper hand-washing temperature (completed on June 26, 2020).
- 5) Repair floor tiles throughout the kitchen (completed on July 3, 2020).
- 6) Obtain food service sanitation manager certification for district and store managers (completed on July 3, 2020); and
- 7) Repair gap between floor and door on walk-in cooler to prevent the escape of cool air from the cooler (completed on July 9, 2020); and
- 8) Otherwise repair and clean restaurant to comply with FDA Food Code standards.

Ms. Wrigley explained that this letter is not identical to the letter that the health authority received last year but believes this would be the next step. All the above repairs listed in the letter will be gone over in more detail later.

Mr. Baggett reminded from the court reporter to please remember to state your name when you begin speaking to help identify who is speaking.

Presentation by Health Authority:

Ms. Christina Mullison called the first witness, Ms. Katherine Wade, Director of Environmental Health and Emergency Preparedness. Exhibits 1-30 were presented by Ms. Mullison, all of which were admitted by the Board without objection.

Ms. Wade testified as to the inspection history of the establishment, focusing on complaints received and inspections conducted beginning in January 2019. She also testified as to remedial measures taken by the Appellant during 2019 as well as the agreement entered into in June 2019 between the Health Department and Popeyes wherein Popeyes was allowed to remain open despite having been closed twice within the preceding 12 months.

Mr. Jerry Brown was called by Ms. Mullison as the second witness. Mr. Brown is a Macon County Health Department employee whose job duties include inspecting food establishments for compliance with federal, state, and local laws and regulations. Mr. Brown testified that he conducted the inspection of Popeyes on June 23, 2020. He testified as to the various violations he observed during that inspection. Mr. Brian Wood, Assistant Director of Environmental Health and Emergency Preparedness, joined Mr. Brown at the inspection to confirm Mr. Brown's inspection findings. Mr. Wood would later testify and describe what he observed at the establishment.

Presentation by Appellant:

Ms. Kathleen Wrigley presented testimony of Tasha Austin, a district manager for HZ OPS Holdings, Inc., whose duties included overseeing five Popeyes locations. Including the one at issue in this cause.

Ms. Wrigley also presented the testimony of Mamoon Fakira, the regional director of operations for HZ OPS Holdings, Inc., whose duties included overseeing the various district managers.

The Appellant offered exhibits 1-7, all of which were admitted by the Board without objection.

Ms. Austin testified that, since the inspection of June 23, 2020, the establishment's assistant manager, Bruce Greene, had received his ServSafe certification (a certification required to be held by every food establishment's manager-on-duty). She also testified as to various public health protocols put in place by Popeyes regarding the COVID-19 pandemic. She testified as to various temperature logs for the date of June 17, 2020. She testified that both managers of the establishment had resigned a few days before the June 23, 2020, inspection.

Mr. Fakira testified as to all the remedial measures taken since the June 23, 2020, closure. He walked the board through various before and after pictures showing that the inspection violations that have been noted on June 23, 2020, had been resolved. He testified that the last time he had been in the store was approximately one month prior to the closure. He also testified that he would commit to making the Pershing Road Popeyes a personal priority going forward and that he would be on-site no less than two times per week. He testified that he would require pictures of the site to be sent to him at both the opening and closing of the store on a daily basis. Mr. Fakira testified that he was in the process of hiring a new general manager for the establishment and would reassign an existing general manager from another establishment to the Pershing Road location until then. He testified that the Pershing Road location generated approximately \$30,000 in revenue per week and that it employed approximately 22 employees in Decatur, Illinois. Finally, he testified that there had been no terminations as a result of the June 2020 closure but confirmed that they had done remedial training for Bruce Greene since then.

Closing Statements:

The evidence was then concluded, and the Board heard arguments from the parties. Ms. Mullison argued that the Health Department's order of revocation should be sustained. She argued that the remedial measures taken by the Appellant were insufficient and untimely. She noted that June 2020 closure was the third closure due to imminent health hazards since early 2019. She also noted that the June 2020 inspection showed egregious problems that were long-term in nature. She concluded by arguing that the Board could not afford to gamble with the public's health by giving the Appellant yet another chance.

The Appellant, Ms. Wrigley, argued that it had taken appropriate and necessary steps to be entitled to another chance since the June 2020 closure. She noted that it had new upper management that had not been involved during the 2019 violations. She referred to its letter to the Administrator of July 13, 2020, wherein it had offered to make certain payments and to commit to intensive oversight by the Health Department and additional training for a chance to continue operating. Ms. Wrigley asked for an opportunity to prove that it could meet the requirements made by the Health Department to continue operating.

Discussion by Board:

Upon the conclusion of the evidence, the Board discussed the evidence. Members of the Board noted that the June 2020 inspection revealed not just equipment failures, but human failures. It noted that it was incredibly fortunate that a random inspection was conducted on June 23, 2020, and that there was not telling what might have happened if no inspector had arrived and the restaurant had opened for business as usual. The Board members noted that it was not just that there were a large number of violations, but that so many of the violations were very serious in nature. Board members noted that they were cognizant of the financial impacts of sustaining the Administrator's order and were sympathetic to the loss of revenue for a local business and employment opportunities for Macon County citizens, but that the safety of the public is a far more important concern. The Board further noted that they appreciated that new leadership had been brought in for the company and the fact that COVID-19 may have had an impact on operations, but noted that those factors did not explain or justify the extent of the failures observed.

They noted that the violations had obviously built up over time and that it was not credible that all of the violations observed June 23, 2020, were the result of an equipment failure that occurred between June 22 and 23. They specifically noted that they had concerns that the temperature logs kept by the establishment showing that everything had been fine on June 17 were not accurate and questioned the accuracy of other records kept by the business if those temperature logs were not accurate. The Board also noted that this establishment had a long history of serious food code violations and that the risk to public health outweighed the economic benefits of allowing the establishment to continue operating.

Vote by Board Members:

After concluding their discussion, Board Member Laura Zimmerman moved to sustain the Administrator's order of revocation. Board Member Phil Tibbs seconded the motion. A roll call vote resulted in the order of revocation being sustained unanimously.

Wherefore, the Administrator's June 25, 2020, order revoking the food establishment permit held by HZ OPS Holdings, Inc., d/b/a Popeye's #821, located at 775 E. Pershing Road, Decatur, Macon County, Illinois, is SUSTAINED.

Public Comment:

Pursuant to Executive Order 2020-10, as extended by Executive Order 2020-39, and the Attorney General’s Public Access Bureau Opinion 2020 PAC 62329, an opportunity for public comment will be provided to all those persons who are physically present and wish to do so, subject to time parameters in the Macon County Board of Health By-Laws (maximum of 3 minutes per speaker; total of 15 minutes). Additionally, public comment will be accepted via email submissions. Comments received will be distributed to Board members at the meeting and made a part of the official records of the Board of Health. However, no public comments were submitted prior to the meeting.

Adjournment

Respectfully Submitted,

Sandy DeDios, Administrative Assistant II

President: _____

Secretary: _____

Date: _____