

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

October 2, 2018

VIA INTER-OFFICE MAIL AND EMAIL

Max Slater, Esquire
Administrative Hearing Officer
Allegheny Co. Health Dept.
542 Fourth Avenue
Pittsburgh, PA 15219

RE: Howl at the Moon Appeal (Client No.: 201504020002).

Dear Mr. Slater:

On August 17, 2018, the Allegheny County Health Department (“ACHD”) issued a notice of violation (“NOV”) for violations of ACHD Rules and Regulations Article III, Food Safety (“Article III”), committed by Howl Pittsburgh, LLC’s facility at 125 7th St, Pittsburgh, PA 15222 (“Facility”). The ACHD observed the Facility operating dishwashing machines that do not sanitize properly and lack of three-compartment sinks at each bar. On September 20, 2018, counsel for Howl Pittsburgh, LLC filed an appeal challenging the ACHD’s determination that it must install three-compartment sinks at each bar in the Facility.

Pursuant to ACHD Rules and Regulations, Article XI, Hearings and Appeals, §§ 1104(A) and (D), the appeal is untimely because it was filed more than thirty days after the August 17, 2018 NOV was issued and when the ACHD’s actions had already become final. Thirty days after August 17th places the appeal deadline on Monday, September 17, 2018, rather than Sunday, September 16, 2018. Article XI § 1112.1. If this tribunal determines that the appeal period began when the notice of violation was received, Howl Pittsburgh, LLC’s appeal remains untimely. The appeal states that Howl Pittsburgh, LLC received the August 17, 2018 NOV on August 20, 2018. Therefore, the appeal period ended on Wednesday, September 19, 2018. The ACHD’s action was final and unappealable when Howl Pittsburgh, LLC’s appeal was filed with the ACHD. Thus, the ACHD moves to dismiss this appeal on grounds that it is moot. If you have any questions, I can be reached at 412-578-2653.



KAREN HACKER, MD, MPH, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT
542 FOURTH AVENUE • PITTSBURGH, PA 15219
PHONE (412) 687-ACHD (2243) • FAX (412) 578-8325 • WWW.ACHD.NET

Letter to Max Slater, Esquire
Re: Howl at the Moon Appeal
October 2, 2018
Page 2 of 2

Sincerely,

A handwritten signature in black ink, appearing to read "Vijyalakshmi Patel". The signature is fluid and cursive, with the first name being the most prominent.

Vijyalakshmi Patel
ACHD Assistant Solicitor

Enclosures

cc: Donna Scharding, Food Safety Program Manager (via email)
Ken Foltz, Esq., counsel for Appellant (via email)

SEP 20 2018

LEECH TISHMAN

LEECH TISHMAN FUSCALDO & LAMPL

September 19, 2018

Ken Foltz
kfoltz@leechtishman.com

HAND DELIVERY

Allegheny Department of Health
3901 Penn Avenue
Building 1
Pittsburgh, PA 15224

Reference: Howl at the Moon

Dear Sir or Madam:

Enclosed please find the Notice of Appeal for Facility Name: Howl at the Moon.

If you have any questions, do not hesitate to call or email me.

Very truly yours,

LEECH TISHMAN FUSCALDO & LAMPL, LLC



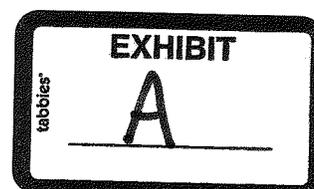
Ken Foltz

Enclosure

LEECH TISHMAN FUSCALDO & LAMPL, LLC

525 William Penn Place, 28th Floor | Pittsburgh, PA 15219 | T: 412.261.1600 F: 412.227.5551

LEECHTISHMAN.COM





Notice of Appeal

This form is used to file an appeal of an order, notice, decision, determination, or ruling by the Allegheny County Health Department. Please complete this form (use additional pages as necessary). If more than one person or entity is filing this appeal, please attach a separate form for each additional appellant. **A copy of the order, notice, decision, determination, or ruling must be attached to the Notice of Appeal.**

Name Howl Pittsburgh LLC

Mailing Address 125 7th Ave

City Pittsburgh State PA Zip 15222 Email pholian@verizon.net

Phone (617) 470-0662 Fax (optional) _____

If you are represented by an attorney, please provide contact information for your attorney:

Name Ken Foltz, Esquire

Mailing Address 525 William Penn Place, 28th Floor

City Pittsburgh State PA Zip 15219 Email kfoltz@leechtishman.com

Phone 412-261-1600 Fax (optional) _____

Describe your objections to the Department's actions and a statement describing the relief you want the Hearing Officer to grant. (*The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Use additional pages if necessary.*)

Howl Pittsburgh LLC ("Howl") received the Department's notice on August 20, 2018, requiring the installation of three compartment sinks at each bar at Howl's facility located at 125 7th St., Pittsburgh, PA 15222 ("Facility"). As owner of the Facility, Howl has a direct interest in this action and appeal. Howl objects to this notice for the following reasons. First, since the Facility's opening, the Department consistently approved of the Facility. Howl's initial permit and each subsequent permit, Permit Numbers 201504020003, 20160429005, 201704260032, 201805310030, ratified the existence of only two compartment sinks at each bar within the Facility. Further, none of the previous inspections cited a violation for the lack of three compartment sinks at the Facility's bars. Installation of three compartment sinks would require, at the minimum, complete re-design of Howl's bars, which would impede its business operations. As such, Howl would incur extreme and unnecessary costs to remedy this, when in the past the Facility has been consistently approved by the Department. (See next page).

By filing this Notice of Appeal with the Allegheny County Health Department, I hereby certify that the information submitted is true and correct to the best of my information and belief.

Signature  Date September 19, 2018

Appeals should be submitted in person or by mail to:
**Allegheny County Health Department
Attention: Hearing Officer
542 4th Avenue
Pittsburgh, PA 15219**

Howl detrimentally relied on the Department's initial approval it received and all subsequent approvals. Therefore, the burden placed on Howl and its business by the Department is arbitrary, unreasonable and unfair. For the foregoing reasons, Howl objects to such notice and the related requirements provided therein. Howl requests that the Department's previous approval of Howl's two compartment sink be carried through at this time.



Allegheny County Health Department
Food Safety Program
 3901 Penn Avenue
 Pittsburgh, PA 15224-1318
 Phone: 412-578-8044 ♦ Fax: 412-578-8190

**Food Safety
 Assessment Report**

Facility Name: Howl at the Moon
 Address: 125 7th St, Pittsburgh, PA 15222

Client: 2015 0402 0002
 Date: 17 Aug 2018
 Municipality: 2nd

The observations and conditions identified below provide the current food safety status of your facility. All violations of the Food Safety Regulations, Article III, must be corrected by the re-inspection date. Article XI - "Hearings and Appeals" provides for your right to a hearing if aggrieved by this notice. A request for hearing must be made in writing and filed with the Allegheny County Health Department within 30 days upon receipt of this notice.

Cat #	Risk	Observations:
		- Letter provided to the person in charge ordering the installation of 3 compartment sinks at each bar no later than 16 November 2018.
17		- section 315 violation, Article XV section 403: lack of 3 compartment sinks at each bar.
		- Dish washing machines found operational
		Ensure that beverage mix containers are not stored in ice that is intended for consumption
		Email: <u>dana.salmon@howlatthemoon.com</u>

(Please sign and print name below)

Received by: [Signature] Steven Marone
 Inspector: Aaron Burden E.H. Supervisor [Signature]

Title: AGM
 Phone: (412) 578-7982

005-FS-0118

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

August 17, 2018

Howl Pittsburgh LLC
C/O Paul Holian
125 7th Ave
Pittsburgh, PA 15222

Re: Plumbing Requirement

Owner / Representative,

The 16 August 2018 inspection of your facility found dish washing machines in use that were not providing an adequate amount of sanitizer and no ware washing sinks available at any bar. The inability to properly wash, rinse, and sanitize utensils poses a significant health hazard and is classified as a High-Risk violation. This condition has been cited during previous initial inspections.

Further investigation found that your facility was erroneously permitted without the benefit of an inspection and approval from the ACHD Plumbing Program. The investigation also found that there is not an approved variance for your facility to operate without 3 compartment sinks at each bar.

Your facility is hereby ordered to install 3 compartment bar sinks at each bar no later than **16 November 2018** in accordance with Article XV, section 403. All plumbing work must be conducted by an Allegheny County Master Registered Plumber, with plans submitted to the ACHD Plumbing Program. Failure to install the required sinks by the date provided will result in the scheduling of a Pre-Suspension hearing which may result in the suspension of your health permit.

If an inspection finds your facility operating with dish washing machines that are not sanitizing correctly and the facility has not taken adequate corrective measures (use of single-use-only utensils) a Consumer Alert will be posted in accordance with Article III – "Food Safety", section 335.

Article XI-"Hearings and Appeals" provides for your right for a hearing if aggrieved by this notice. Requests for a hearing must be made in writing and filed with the Director with in thirty (30) days upon receipt of this notice.



KAREN HACKER, MD, MPH, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

3901 PENN AVENUE • BUILDING 1 • PITTSBURGH, PA 15224-1318
PHONE: 412.578.8044 • FAX: 412.578.8190 • WWW.ACHD.NET

Howl at the Moon LLC

17 August 2018

Page Two

Feel free to contact me at 412 587-8044 if you have any questions.

Respectfully,



Aaron Burden, M.S., REHS/RS

Supervisor

Food Safety Program

C. Donna Scharding, Program Manager

Barb Murray, Program Administrator

John Matticks, Environmental Health Specialist II