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March 20, 2020

Director Thomas E. Kelley
Lorain County Office of Emergency Management
322 Gateway Boulevard North
Elyria, Ohio 44035

Dear Director Kelley:

I am responding to your inquiry regarding the enforceability of the Ohio Department of Health Director's order *In Re: Amended Order to Limit and/or Prohibit Mass Gatherings and the Closure of Venues in the State of Ohio* and order *In Re: Order Limiting the Sale of Food and Beverages, Liquor, Beer and Wine to Carry-out and Delivery Only*.

Pursuant to *In Re: Order Limiting the Sale of Food and Beverages, Liquor, Beer and Wine to Carry-out and Delivery Only* all liquor, beer, and wine sales are restricted to carry-out and delivery only, to the extent permitted by law. Furthermore, pursuant to that order all food and beverage sales are restricted to carry-out and delivery only. No onsite consumption is permitted. The Director of Health's Order became effective on March 15, 2020.

Law enforcement should contact the Lorain County Health Department if they encounter a bar or restaurant allowing onsite consumption of liquor, beer, wine, food, or beverages. Permits and licenses can be pulled from businesses refusing to follow the Director of Health's order.

Pursuant to *In Re: Amended Order to Limit and/or Prohibit Mass Gatherings and the Closure of Venues in the State of Ohio* mass gatherings are prohibited in the State of Ohio. Mass gatherings are defined as any event or convening that brings together fifty or more persons in a single room or single space at the same time but does not apply to religious gatherings, gatherings for the purpose of the expression of the First Amendment speech, weddings, and funerals.

Law enforcement may utilize section 2917.04(A) of the Ohio Revised Code to order individuals to disperse from mass gatherings that are in violation of the order. Pursuant to R.C. 2917.04(A), "[w]here five or more persons are participating in a course of disorderly conduct in violation of section 2917.11 of the Revised Code, and there are other persons in the vicinity whose presence creates the likelihood of physical harm to persons or property or of serious public inconvenience, annoyance, or alarm, a law enforcement officer or other public official may order the participants and such other persons to disperse. No person shall knowingly fail to obey such order." R.C. 2917.04(A). Violating the Director of Health's order may constitute participating in a course of disorderly conduct under R.C. 2917.11(A)(5) which specifies that "[n]o person shall

recklessly cause inconvenience, annoyance, or alarm to another by . . . [c]reating a condition that is physically offensive to persons or that presents a risk of physical harm to persons or property, by any act that serves no lawful and reasonable purpose of the offender.” R.C. 2917.11(A)(5). Pursuant to R.C. 2917.04(C), “[f]ailure to disperse is a misdemeanor of the fourth degree if the failure to obey the order . . . creates the likelihood of physical harm to persons or is committed at the scene of a fire, accident, disaster, riot, or emergency of any kind.” R.C. 2917.04(C).

Law enforcement may also utilize section 3701.352 of the Ohio Revised Code to enforce the Director of the Ohio Department of Health’s order. R.C. 3701.56 specifies that quarantine and isolation orders and the rules that the department of health adopts are enforceable by “[b]oards of health of a general or city health district, health authorities and officials, officers of state institutions, *police officers, sheriffs, constables*, and other officers and employees of the state or any county, city, or township[.]” R.C. 3701.56. (Emphasis added). Pursuant to R.C. 3701.352, “[n]o person shall violate any rule the director of health . . . adopts or *any order the director . . . issues* under this chapter *to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event.*” R.C. 3701.352. (Emphasis added). R.C. 3701.99 specifies that “[w]hoever violates section 3701.352 . . . is guilty of a misdemeanor of the second degree.” R.C. 3701.99(C).

In conclusion, law enforcement should contact the Lorain County Health Department if they encounter a bar or restaurant allowing onsite consumption. Permits and licenses can be pulled from businesses refusing to follow the Director of Health’s order. Law enforcement may also utilize section 2917.04(A) of the Ohio Revised Code to order mass gatherings to disperse.

Sincerely,

A handwritten signature in black ink that reads "Dennis P. Will". The signature is written in a cursive style with a large, stylized "D" and "W".

Dennis P. Will

Lorain County Prosecuting Attorney