

BEFORE THE IOWA DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

<p>IN THE MATTER OF THE PETITION FOR WAIVER BY:</p> <p>M&M Taphouse, LLC d/b/a Beast & Bird 314 North K Avenue Vinton, Iowa 52349</p> <p>Retail Alcohol License LC0051631</p>	<p>W24-005</p> <p>RULING</p>
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Pursuant to Iowa Code section 17A.9A and Iowa Administrative Code chapter 185 — 19, the Iowa Department of Revenue (“Department”)¹ makes the following ruling on the Petition for Waiver submitted by Clayton McBride on behalf of M&M Taphouse, LLC d/b/a Beast & Bird (“Petitioner”):

I. COURSE OF PROCEEDINGS

The Petitioner is a limited liability company that holds a class “C” retail alcohol license for its business, M&M Taphouse LLC, located at 314 North K Avenue, Vinton, Iowa. Mr. McBride shares ownership of the Petitioner with Justin McBride and Logan Merchant. Mr. McBride now petitions the Department for a waiver of Iowa Administrative Code rule 185 — 4.41.

II. RELEVANT FACTS

The Petitioner desires to operate an iPourIt built-in wall remote dispensing system with 10 wall taps and 4 additional portable iPourIt “kiosk” taps on its premises. The self-serve system contains 14 possible total taps that are located within the Petitioner’s business and are intended to be accessed and used by the Petitioner’s patrons.

According to information provided by Mr. McBride in his waiver petition and supporting documentation, the iPourIt system allows the Petitioner’s employees to activate a RFID chip

¹ Effective July 1, 2023 and pursuant to 2023 Iowa Acts, Senate File 514, the Alcoholic Beverages Division became a part of the Iowa Department of Revenue

device to be used by event guests at any of the iPourIt taps to dispense beer and wine. The device is pre-programmed with technology that allows the Petitioner's employees the ability to view each transaction, including the amount of beer and wine dispensed in each transaction for each device.

Each guest consuming beer and wine from the iPourIt system is issued one RFID chipped device. The device is embedded with an RFID chip that, when placed in front of the RFID reader located next to the tap, will permit the tap to dispense the selected beer and wine without further assistance from the Petitioner's employees. The RFID chip collects data on the type and amount of beer and wine dispensed, and guest service is paused after the preselected amount (64 ounces) has been dispensed from the system, requiring the Petitioner's employee to deem the guest eligible for more servings.

The Petitioner's trained employees are allowed to issue, activate, and deactivate the RFID chipped device. The Petitioner's trained employees also have the ability to suspend the iPourIt system, which restricts the dispensing of beer and wine from all taps. The Petitioner keeps a tab on each business guest using the iPourIt system, with the guest making payment to the Petitioner prior to the end of the business day.

III. SUMMARY OF LAW

The Department's administrative rules prohibit alcoholic beverages from being dispensed from a vending machine. Specifically, Iowa Administrative Code rule 185 — 4.41 provides that:

A retail alcohol licensee shall not install or permit the installation of vending machines on the licensed premises for the purpose of selling, dispensing or serving alcoholic beverages. A vending machine is defined as a slug, coin, currency or credit card-operated mechanical device used for dispensing merchandise, including single cans of beer or other alcoholic beverages, and includes a mechanical device operated by remote control and used for dispensing single cans of beer or other alcoholic beverages. A

vending machine is not a unit installed in individual hotel or motel rooms used for the storage of alcoholic beverages and intended for the personal use of hotel or motel guests within the privacy of the guests' rooms.

Unless waived, this rule prohibits the Petitioner's use of the iPourIt dispensing system in its establishment. The purpose of this rule is to prevent underage consumption and over consumption of alcoholic beverages in unsupervised settings.

The Department may, in its sole discretion, issue an order waiving in whole or in part the requirements of a rule if it finds, based upon clear and convincing evidence, that all of the criteria set forth in Iowa Administrative Code rule 185 — 19.2(1) have been met. The criteria include:

- a. Application of the rule would result in hardship or injustice to the person for whom the waiver is requested.
- b. Waiver from the rule on the basis of the particular circumstances would not prejudice the substantial legal rights of any person.
- c. Provisions of the rule subject to the request for a waiver are not specifically mandated by statute or another provision of law.
- d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

If granted, a waiver "shall provide the narrowest exception possible to the provisions of a rule." See Iowa Admin. Code r. 185 — 19.2. The burden of persuasion rests with the Petitioner to demonstrate by clear and convincing evidence that the Department should exercise its discretion to grant a waiver from a rule. See Iowa Admin. Code r. 185 — 19.3(3).

IV. CRITERIA FOR WAIVER

A. The application of the rule would impose an undue hardship on the person for whom the waiver is requested:

The application of Iowa Administrative Code rule 185 — 4.41 would pose a financial burden to the Petitioner. The Petitioner's business relies upon the novelty of the iPourIt dispensing system to attract business for special events.

B. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person:

There is no prejudice in the substantial legal rights of any person by the granting of this waiver. Waivers have previously been submitted and granted concerning the rule in question. An evaluation of these criteria will be made on a case-by-case basis for future waiver requests and renewals.

C. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law:

No provisions of Iowa Code chapter 123 or other applicable statutes prohibit the waiver of Iowa Administrative Code rule 185 — 4.41.

D. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested:

So long as the Petitioner's employees, in the supervision and operation of the iPourIt dispensing system, take all necessary precautions to prevent underage consumption and the service of intoxicated patrons, the public health, safety, and welfare will not be compromised or otherwise placed at risk should the Department grant the requested waiver in this case.

IT IS THEREFORE ORDERED:

The requirements of Iowa Administrative Code rule 185 — 4.41 that prohibit the use of vending machines for the dispensing of alcoholic beverages are waived for the use of the iPourIt dispensing system, containing no more than **14 taps**, upon the class “C” retail alcohol licensed premises located at 314 North K Avenue, Vinton, Iowa, subject to the following conditions:

- Only an employee of M&M Taphouse LLC may authorize the iPourIt dispensing system and activate an RFID chipped device to dispense beer and wine. Individual guests shall not be authorized to independently purchase beer and wine through the iPourIt dispensing system without the involvement of an employee of M&M Taphouse LLC.
- The iPourIt dispensing system shall only dispense beer and wine as defined in Iowa Code sections 123.3(6), (22), and (53).
- M&M Taphouse LLC shall employ an adequate number of employees to ensure each guest consuming beer and wine is of legal drinking age and no person being served beer and wine is intoxicated.
- M&M Taphouse LLC employees shall exercise all necessary care to ensure that each purchase through the iPourIt dispensing system is made by a person of legal drinking age and that all beer and wine dispensed through the iPourIt dispensing system is only consumed by persons of legal drinking age.
- M&M Taphouse LLC employees shall exercise all necessary care to ensure that no person served beer and wine through the iPourIt dispensing system is intoxicated.
- The iPourIt dispensing system shall program each RFID chipped device to pause guest service after 64 ounces of beer and wine has been dispensed from the system, requiring the M&M Taphouse LLC employee to deem the

guest eligible for more servings prior to the guests' continued use of the device.

The RFID chipped device shall be programmed to pause guest service after the initial 64 ounces of beer and wine dispensed.

- The iPourIt dispensing system shall be operated in the manner detailed in the petition for waiver along with the supporting documentation prepared and submitted by Mr. McBride.
- M&M Taphouse LLC employees shall deactivate all RFID chipped devices at the end of each event.
- The iPourIt dispensing system shall not be operated under a catering privilege and shall only operate on the approved class "C" retail alcohol licensed premises.

Upon consideration of comments received from the city of Vinton, this waiver is granted, expiring on **August 30, 2025**, but will terminate upon the cancellation of the retail alcohol license covering the premises located at 314 North K Avenue, Vinton, Iowa. To request a continuance of the waiver, contact the Department by **July 30, 2025**.

This waiver is contingent upon the iPourIt dispensing system being operated in the manner described in the petition for waiver request along with the supporting documentation, in addition to the explanation outlined in this waiver, including the conditions set forth above. The approval of this waiver is conditioned upon the city of Vinton's authorization of the operating procedures as detailed in the petition for waiver along with the supporting documentation. Any modifications to the above-listed description or operating conditions are not approved. A new petition for waiver shall be submitted to the Department to seek approval to modify the above-listed description and/or operating conditions. Deviation from the above-listed description or operating conditions without Department approval shall render this waiver null and void and subject the Petitioner to the penalty provisions of Iowa Code section 123.39, including fine, license suspension, and/or license revocation.

The waiver granted through this ruling is location and license specific. **This waiver is not granted beyond the approved licensed premises for the use of a catering privilege.** A new waiver must be applied for and obtained from the Department after termination of this waiver if M&M Taphouse, LLC desires to use the iPourIt dispensing system at this location. The Department reserves the right to re-examine the grant of this waiver at any time as circumstances warrant.

DATED this 20th Day of September, 2024, in Ankeny, Iowa.

DEPARTMENT OF REVENUE

A handwritten signature in black ink, appearing to read 'S. Hoerr', written over a horizontal line.

Sam Hoerr
Division Administrator

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