

Staff Report
Board Meeting Date: June 27, 2024

DATE: June 20, 2024

TO: District Board of Health

FROM: Robert Fyda, PE, REHS, Division Director
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SUBJECT: Presentation, discussion and possible action to affirm the recommendation of the Food Protection Hearing Advisory Board, Case #1-24FP, to revoke the permit from the facility Bab Café (H17-0237FOOD) located at 303 3rd Street Reno Nevada 89501, per Section 240.080 of the Regulations of the Washoe County District Board of Health Regulations Governing Food Establishments.

SUMMARY

This staff report summarizes the recommendation of the Food Protection Hearing and Advisory Board (FPHAB) for Appeal Case #1-24FP as heard on June 10, 2024. The facility in question is Bab Café represented by the owner, Mr. Jihoon Ryu (Appellant). The appeal is for the following NNPH action: permit revocation of a Health Permit to Operate for continued and repeat critical and non-critical food safety violations. The permit is currently suspended pending revocation.

District Health Strategic Priority supported by this item:

1. **Healthy Environment:** Create a healthier environment that allows people to safely enjoy everything Washoe County has to offer.

PREVIOUS ACTION

The Board has not taken any action with regards to this item.

BACKGROUND

NNPH has a philosophy of educating and providing guidance prior to enforcement. Ultimately, NNPH strives for voluntary compliance with regards to changing food handling practices. NNPH regulations are the basic standard which all facilities are evaluated and inspected to. These regulations are often viewed as the minimum standard – they are achievable and, in most circumstances, can be exceeded by operators. In the case of Bab Café, NNPH went beyond standard practice to provide the facility and their staff with the education, tools, and resources needed to be successful. This included providing on-site staff training by NNPH at their facility, assisting with the writing and review of operational plans and policies, providing food safety guidance, logs and forms.

The NNPH Food Establishment Regulations are based on the safety standards of the FDA Food Code which are founded on best practices and sound science in order to ensure that food served to the public meets safety standards and help reduce outbreaks of foodborne illness and injury.

The following timeline shows the actions taken by NNPH Environmental Health Services (EHS) staff and the Appellant prior to reaching the appeal:

- On February 10, 2017, NNPH received a food establishment application for a new restaurant, EK Foods, Inc. (Bab Café) located at 303 3rd Street Reno Nevada 89501, the application stated “N/A” for cooling of food products. The Health Permit to Operate was issued on February 24, 2017.
- From October 20, 2017, to April 13, 2022, 10 routine inspections were conducted at the facility resulting in six (6) reinspections. Multiple critical and non-critical violations were found during these inspections, including but not limited to the following:
 - Lack of active managerial control for food safety;
 - No Certified Food Protection Manager (CFPM) onsite or with adequate knowledge of food safety;
 - Raw animal foods stored over ready to eat foods;
 - Improper cooling of cooked foods;
 - Improper holding times for temperature control for food safety;
 - Improper use of Time as a Public Health Control (TPHC);
 - Improper cold holding temperatures;
 - Improper washing/sanitizing of food contact surfaces;
 - Inaccessible handwashing sink;
 - Lack of handwashing between various food service tasks;
 - Food stored on the ground;
 - Improper dishwashing sanitizing (no sanitizer detected in the dishwashing machine); and
 - Improper storage of food service utensils;

During this time, NNPH staff tried various methods to assist the operator in coming into compliance including but not limited to:

- Providing Bab Café staff and managers with educational resources and ready to use templates including: cooling log templates, refrigerated storage log templates, and other educational handouts;
- NNPH staff lead in depth employee food safety training conducted on site at Bab Café;
- On March 18, 2024, NNPH staff conducted the first routine inspection of this facility for the 2024 calendar year. At this inspection, staff documented 11 food safety violations: four (4) were repeat violations from the prior routine inspection on April 13, 2022 (see Attachment S from the FPHAB packet). The following critical violations were observed:
 - Bare hand contact with ready-to-eat (RTE) foods,
 - Lack of proper cooling time and temperatures,
 - Lack of proper hot holding temperatures,
 - No proper date marking and disposition, and
 - Misuse of time as a public health control (TPHC).

EHS staff determined that there was a clear lack of managerial oversight of the facility and as part of the requirements of the conditional pass, the facility was mandated to attend the Active Managerial Control (AMC) Course, an educational resource designed to improve managerial control in food facilities.

- On March 20, 2024, Bab Café Owner, Jihoon Ryu, and kitchen manager, Kyung Lying Jan, attended the course as required by NNPH staff.

- On April 3, 2024, a reinspection was conducted where eight (8) violations were observed:
 - five (5) were critical; and
 - six (6) were repeat violations.

At the inspection, NNPH staff found continued misuse of TPHC, and NNPH staff directed Bab Café staff to cease using TPHC in their kitchen operations since the process could not be conducted in a safe manner.

- On April 8, 2024, a second (2nd) reinspection was conducted and NNPH staff brought an in-person translator to assist with Spanish translation. NNPH staff identified the reoccurring critical violation for proper cooling and temperatures. The staff member in consultation with the Food Safety Program Senior Environmental Health Specialist (EHS) allowed the facility to continue to operate while awaiting their office hearing.
- On April 11, 2024, an office hearing was held with the kitchen manager, the owner did not attend. At the meeting, the following was discussed:
 - If compliance could not be reached and maintained, strict menu and operational conditions would be required of the establishment to ensure safe food handling practices.
 - Potential permit suspension would be initiated per the Division's compliance and enforcement procedures if the facility was not able to correct the repeated violations.
 - The operator presented an AMC policy for cooling of food products which was reviewed and edited by NNPH staff. Bab Café kitchen manager agreed to implement the policy in their facility following the meeting.
 - Ongoing and historical lack of managerial control of the facility for food safety, lack of basic food safety knowledge, and lack of knowledge regarding using of TPHC.
 - The seriousness of the historical violations observed at the facility was stressed along with the need for more oversight from the CFPMs.

The facility was notified that another reinspection would be required to confirm the proposed changes and verify changes in the food handling practices.

- On April 17, 2024, a 3rd reinspection of the facility was conducted. During the inspection, NNPH staff once again found cooling violations (4th occurrence in 2024 alone). The health permit to operate was suspended pending another office hearing due to no progress on addressing the issue. The owner was confrontational during the inspection and NNPH staff required the owner to attend the office hearing. The owner was asked to bring the following items to the office hearing:
 - a limited menu where cooling would not be done; and
 - a plan to have more staff trained in food safety which would be satisfied by the presence of a CFPM on-site
- On April 23, 2024, the 2nd office hearing was held with both the facility owner and the kitchen manager, the following topics were discussed:
 - A new limited menu was proposed without the need for cooling. NNPH staff and Bab Café agreed to the following cooking procedures: requiring all food to be cooked and hot held until served.
 - The facility owner also had signed up for the CFPM course along with another staff member to demonstrate food safety knowledge.
 - Discussions were held regarding the lack of managerial control and the ongoing critical and non-critical violations found at the facility.

- NNPH staff stressed the gravity of the situation, the need for changes in their food handling practices, and for honesty so that NNPH staff can work with the facility to correct underlying issues. Continued non-compliance would result in further enforcement actions including permit revocation.
 - The facility owner, kitchen manager, and NNPH staff agreed no food prep was to occur prior to the reopening inspection. Everything discussed in the hearing would have to be in place and a reinspection would be held the following day.
- On April 24, 2024, the reopening (4th) inspection was conducted. At the time of the inspection, the agreed upon equipment was in place. Yet, staff found cooked and cooled sauces (the office hearing agreement stated that there was to be no cooling) and prepped Kimchi (also a potential violation of the office hearing agreement). The owner was unsure regarding when the kimchi was prepped - ultimately stating it was done prior to the permit suspension but had the wrong date on it. NNPH staff discarded the unsafe product. After discussing the process for making sauces, NNPH staff allowed sauces to be the only products to be cooked and cooled at the facility. After stressing the need for honesty and managerial control of the facility, NNPH ultimately reinstated the permit with the requirement that NNPH staff are provided with copies of hot holding temperature logs for the new food service preparation processes. Staff received temperature logs which had the same temperatures on them. When this was brought to the attention of the owner, he stated it was accurate.
- On May 14, 2024, NNPH conducted the 5th reinspection of the facility with the owner was present, and observed the following:
 - The owner presented cooling logs which had out of compliance temperatures overwritten on them. Additionally, sauces were found in the facility which were not listed on the logs.
 - Staff found cooked and cooled chicken from three days prior, the owner stated this was not for the facility but for staff use. However, when staff were asked, they stated it was their gluten-free chicken and was reheated to order. Gluten-free chicken was forgotten about on the facility's modified menu per the 2nd office hearing and the change was not communicated to line staff.
 - Lack of proper hot holding, food products were found out of compliance with temperatures in the 109–110°F range, and these products had to be held at a minimum temperature of 135°F or higher. When the owner was questioned on the temperatures, he stated it was the first time they were outside the allowable temperature.
 - Based on the findings of the inspection and ongoing lack of managerial control the health permit was suspended pending revocation.
 - Staff explained to the owner his options for appeal, but NNPH would be moving forward with permit revocation.
- On May 15, 2024, at the request of the Division Director, NNPH staff met with the operator to explain the rationale for the permit suspension, the owner's right to due process, and how to apply for an appeal. This included providing the operator with a copy of the appeal process from the regulations. (see Attachment BB from the FPHAB packet). A follow up email was also sent to the owner with the signed document from the meeting and who to contact for the appeal request.
- On May 16, 2024, Bab Café owner, Jihoon Ryu filed his request for an appeal (see Attachment DD).

- On June 10, 2024, the case was heard at the FPHAB meeting where the FPHAB unanimously voted to recommend the District Board of Health uphold the decision to revoke the operator's permit due to repeat violations per Section 240.080 of the Regulations of the Washoe County District Board of Health Governing Food Establishments.

The board will find the following attached to this staff report:

- The staff report for the FPHAB with supporting attachments
- FPHAB meeting minutes from the hearing conducted on June 10, 2024

In the approximately six years this facility has been in operation, there have been 12 inspections which resulted in 11 reinspections. Since March of 2024, in two months, NNPH staff have conducted 1 routine inspection which resulted in five reinspections, one permit suspension, one reopening inspection, two office hearings and a final permit suspension on May 14, 2024. The final reinspection resulted in one last office meeting and ultimately the FPHAB meeting on June 10, 2024.

The facility permit suspension and revocation pertains to repeat critical violations of which included:

- Lack of active managerial control and food safety knowledge by the person in charge (PIC)
- Improper cooling, cold holding and hot holding temperature violations
- Improper use of time as a public health control (TPHC)
- Improper food handling procedures in general
- Raw over ready-to-eat (RTE) foods, and
- Improper sanitization procedures and handwashing facility violations.

NNPH's decision to suspend the permit was based on documented evidence and repeated non-compliance with the essential safety standards documented in adopted regulations. These violations independently and collectively pose a significant and continued risk to public health and therefore our residents and tourists of Washoe County.

FISCAL IMPACT

There is no fiscal impact should the Board affirm, modify, or rescind the recommendation of the FPHAB to uphold NNPH's decision to revoke the permit from the facility Bab Café (H17-0237FOOD).

RECOMMENDATION

Staff recommends the Board affirm the recommendation of the Food Protection Hearing Advisory Board (FPHAB) Case #1-24FP to revoke the permit to operate for Bab Café (H17-0237FOOD) due to repeat violations per Section 240.080 of the Regulations of the Washoe County District Board of Health Governing Food Establishments.

POSSIBLE MOTIONS

Should the Board agree with Staff's recommendation, the motion would be:

1. "Move to affirm the recommendation of the FPHAB to uphold staff's decision to revoke the permit to operate for Bab Café (H17-0237FOOD) due to repeat violations per Section 240.080 of the Regulations of the Washoe County District Board of Health Governing Food Establishments."

Or, should the Board consider an alternative, the possible motions may be:

2. "Move to modify the recommendation of the FPHAB to uphold staff's decision to revoke the permit to operate for Bab Café (H17-0237FOOD) due to repeat violations per Section 240.080 of the Regulations of the Washoe County District Board of Health Governing Food Establishments with the following conditions:...."

Or

3. "Move to rescind the recommendation of the FPHAB to uphold staff's decision to revoke the permit to operate for Bab Café (H17-0237FOOD) due to repeat violations per Section 240.080 of the Regulations of the Washoe County District Board of Health Governing Food Establishments."