

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF FREEBORN

THIRD JUDICIAL DISTRICT
CRIMINAL DIVISION

STATE OF MINNESOTA,

Court File No.: 24-CR-21-137; 24-CR-21-188
Honorable Joseph A. Bueltel

Plaintiff,

v.

MELISSA LYNN HANSON,

Defendant.

**ORDER DENYING DEFENDANT'S
PRETRIAL MOTIONS TO DISMISS;
ORDER DENYING REQUEST FOR
AUDIO-VISUAL COVERAGE**

This matter came on for a pretrial hearing on November 24, 2021, before the Honorable Joseph A. Bueltel at the Freeborn county courthouse in Albert Lea, Minnesota. The State of Minnesota was represented by Albert Lea city attorney Kelly Martinez. The Defendant Melissa Hanson was present and self-represented. At the hearing, the parties agreed the Court would receive Exhibit 1 consisting of police reports, images, and video of the alleged offenses in the two case files on or before 9 a.m. on December 2, 2021. The Court has received and reviewed the same. Based on the exhibit and evidence submitted, the files and records of the proceedings, and the arguments of counsel, the Court, being fully advised, makes the following:

ORDER

1. Defendant's motions to dismiss counts 1–6 in case file no. 24-CR-21-137 are each respectively DENIED.
2. Defendant's motions to dismiss counts 1–3 in case file no. 24-CR-21-188 are each respectively DENIED.
3. All other claims for relief are DENIED.
4. Under Minn. R. Gen Prac. 4, the Court may authorize video or audio coverage of court proceedings if both parties consent in writing, or else consent on record, prior to the commencement of trial. Because the State did not consent to video or audio coverage of

court proceedings in the above-entitled cases, the November 23, 2021, request by ABC 6 News KAAL for trial coverage beginning December 6, 2021, is DENIED.

5. The State's motions in limine filed November 22, 2021, will be addressed on December 6, 2021, at 8:30 a.m.
6. The attached memorandum of law is incorporated herein by reference.

BY THE COURT:

Joseph A. Bueltel
Judge of District Court

FACTS

1. In early 2020, the COVID-19 pandemic reached the United States, causing a grave public health crisis that continues to the present. *See* Minn. Exec. Order 20-01 (2020).
2. Responding to the pandemic, federal and state leaders declared states of emergency in early 2020.
3. In Minnesota, Governor Tim Walz declared a peacetime emergency on March 13, 2020, which was extended every 30 days until it ended on or about July 1, 2021, by vote of the Minnesota House and Senate. 2021 Minn. Laws 1st Spec. Sess. ch. 12, art. 2, § 23.
4. Exercising his emergency powers under the Minnesota Emergency Management Act of 1996, Minn. Stat. §§ 12.01–.61, Governor Walz issued emergency executive orders covering a range of measures intended to curb the spread of the pandemic, including closing schools, imposing limits on elective surgeries and high-capacity venues, and restricting in-person gatherings and unmasked activities. *See* Minn. Exec. Order Nos. 20-04 (closing bars, restaurants, and public accommodation venues), 20-09 (elective surgeries), 20-20 (stay-at-home), 20-81 (face coverings). By the end of 2020, the governor had issued over 60 such peacetime emergency executive orders.
5. Minnesota bars and restaurants were among the businesses and industries directly bound by the terms of these executive orders.
6. Some of these early-pandemic restrictions were lifted in the summer of 2020. *See* Minn. Exec. Order 20-96.
7. In late 2020, Minnesota experienced a surge of new COVID-19 infections and deaths, and Governor Walz re-imposed certain restrictions by executive order 20-99 (“EO 20-99”) on or about November 18, 2020.

8. EO 20-99 prohibited restaurants, bars, and other businesses that offer food, beverages, or tobacco products for on-premises consumption from serving the public, unless service was made by delivery, take-out, or drive-through means. The order was effective from November 20, 2020, to December 18, 2020. The order was approved by the Executive Council and filed with the Secretary of State on November 19, 2020.
9. The governor subsequently issued Executive Order 20-103 (“EO 20-103”), which extended the prohibition on offering food or beverages to the public for on-premises consumption effective from December 18, 2020, to January 10, 2021. The order was approved by the Executive Council and filed with the Secretary of State on December 14, 2020.

The Interchange Opens to the Public in Mid-December 2020

10. The Defendant Melissa Lynn Hanson is a Minnesota resident and the owner of MLH Enterprises, LLC, doing business as The Interchange Wine and Coffee Bistro located at 211 South Broadway in the city of Albert Lea, Freeborn County, Minnesota.
11. On December 15, 2020, the Minnesota Alcohol and Gambling Enforcement Division received information in a social media post that The Interchange would be open to the public for indoor dining beginning on December 16, in defiance of the governor’s emergency executive orders.
12. On December 16, 2020, at approximately 10:54 am, Inspector DeMars went to The Interchange and found it open to the public for indoor consumption of food and beverages. Patrons were observed sitting at tables inside the restaurant consuming food and beverages. The inspector spoke with the Defendant, where she stated her intent to continue to offer indoor dine-in services in violation of the executive orders.
13. On or about December 17, 2020, Detective Mortenson recorded videos of local news coverage concerning The Interchange’s opening for indoor dining on December 16. The video showed

patrons sitting at tables and a bar inside the restaurant consuming food and beverages. The Defendant is visible inside with patrons sitting at tables consuming food and beverages behind her. The Defendant stated The Interchange was fully open and would remain so for indoor dining.

14. Later on December 17, 2020, a social media post from The Interchange stated the venue would be hosting live music on Friday, December 18, with the doors opening at 5 p.m. and live music from 5:30–8 p.m. or later. The post stated “Come in and enjoy your favorite Flatbread, Taps are open, and the wine will be flowing!”
15. On or about December 18, 2020, at 4:45 p.m., special agents Rezny and Biagini went to The Interchange for an executive order compliance check. They entered and purchased a coffee at the front counter. They saw multiple people inside the business, including at least one occupied table. They saw what appeared to be alcoholic beverages in wine glasses at the occupied table, and one glass at a bar area near a wall. Live music was being performed.
16. On or about December 19, 2020, at 11:15 a.m., Inspector Finkenbinder went to the Interchange for an executive order compliance check. He walked by on the sidewalk while observing the interior of the restaurant. He observed patrons entering the building, sitting at tables inside, and consuming beverages.
17. On or about December 23, 2020, at 9 a.m., the Defendant stated on local news video coverage that “We are still open for business. We are continuing to operate as normal.” The video shows the Defendant inside The Interchange. It also shows patrons sitting at tables inside that appear to be consuming food and beverages.
18. On or about December 30, 2020, at 9:54 a.m., Special Agents Biagini and Kelley went to The Interchange for a compliance check. There was an “open” sign at the front of the building and

another hanging sign on scaffolding stating “The Interchange is OPEN Please Come In.” The special agents entered the building and ordered two coffees at the front counter. The agents were then seated at a table and served. The agents drank their coffees inside for approximately 20 minutes. During that time, they observed patrons with beverages inside the building.

19. On or about January 3, 2021, The Interchange began livestreaming from the interior of the business via Facebook. Agent Cincotta watched the video and observed that it documented patrons sitting at tables inside the building and consuming food and beverages. The video also shows a live music performance occurring inside.

The Interchange Continues to Offer In-Person Dining on January 29, 2021

20. On January 6, 2021, Governor Walz signed Executive Order 21-01 (“EO 21-01”), which was approved by the Executive Council and filed with the Secretary of State on January 7, 2021. The order permitted restaurants and other similar businesses to offer in-person services so long as certain requirements were met. These requirements included indoor occupancy at or under 50% of normal occupant capacity and a maximum occupancy of 150 persons, distance of 6 feet between parties at different tables, no more than 6 customers seated at any 1 table, and closure between the hours of 10:00 p.m. and 4:00 a.m.
21. EO 21-01 also applied to venues providing indoor events and entertainment, requiring 6 feet distance between parties from different households, reduction of indoor capacity to 25% of normal occupancy, wearing of facemasks, and prohibits on-premises food and beverage consumption between 10 p.m. and 4 a.m.
22. On January 26, 2021, Defendant posted an event announcement on The Interchange’s Facebook site for a “Nail it to the Walz ReOpen MN Party.” Defendant posted additional announcements on January 27 and 28.

23. On January 29, 2021, at 9:58 p.m., Officer Ahart drove by The Interchange and saw the exterior glass of the building had been covered except for a small cutout at eye level so only a small area of the interior could be seen. There were persons with a TV camera outside of the entrance.
24. The officer returned at 10:22 p.m. and recorded video of the front entrance, where she saw 2 presumptive employees of The Interchange let 4 patrons inside. None of the patrons or the employees wore facemasks.
25. At 10:24 p.m., Ofc. Ahart entered the bar and saw multiple patrons inside. She saw some employees present, including 1 in the kitchen, and band members playing music in the rear of the bar. Approaching the rear of the bar, she saw 8 small tables with approximately 3–4 customers each. Ofc. Ahart estimated there were roughly 45 patrons inside The Interchange, in addition to employees and band members. Throughout the bar, Ofc. Ahart saw what appeared to be alcoholic and non-alcoholic beverages on several tables and countertops, and a white to-go container with food inside it. Ofc. Ahart left the bar at approximately 10:27 p.m. She observed no social distancing of 6 feet occurring in the bar except near the front entrance. She did not observe anyone inside wearing a facemask.
26. Earlier on January 29, 2021, the Albert Lea police department received an email from a confidential reliable source (“CRI”) at approximately 10:34 p.m. stating they had photos and videos from inside The Interchange that evening. The CRI entered The Interchange and ordered food. The CRI’s video showed multiple people at the tables and bar eating food and drinking beverages. There is a live music performance in the back corner. No one on the video is wearing a facemask, and no social distancing is observed. The Defendant is seen on the video walking among the patrons.

27. On February 1, 2021, Detective Mortensen downloaded a video from a Facebook page. He took a scan of the post that provided the time of the video was January 29, 2021, at 10:14 p.m. The video shows the interior of The Interchange, where the Defendant and an employee can be seen preparing food behind a counter. Multiple patrons are visible consuming food and beverages. Live music was being performed. No one is wearing facemasks, and no social distancing is observed.

LEGAL ANALYSIS

The Defendant filed several pretrial motions, which were argued in aggregate at the pretrial hearing on November 24, 2021, based off the Defendant's most recent filing on November 22, 2021. Due to the volume of Defendant's pretrial filings and claims, the Court deems it appropriate to address each in sequential order.

Title: Objection, Non-Consent, and Jurisdictional Challenge
Court File No. 24-CR-21-137 (Docket No. 7)
Filed: February 2, 2021

Personal Jurisdiction Exists because Defendant is Alleged to have Committed Misdemeanor Offenses Within the City of Albert Lea, Freeborn County, Minnesota

Defendant moves to dismiss for lack of personal jurisdiction. Ct. Docket 7, pg. 1 and 5, §§ 21–24. “A person may be convicted and sentenced under the law of this state if the person: (1) commits an offense in whole or in part within this state.” Minn. Stat. § 609.025. The complaint alleges the Defendant is a Minnesota resident who operated a restaurant business located at 211 South Broadway, Albert Lea, Freeborn County, Minnesota.

The governor declared a peacetime emergency for an act of nature, specifically the COVID-19 pandemic, in March 2020, and renewed it approximately every 30 days until the legislature terminated the peacetime emergency in July 2021. The governor issued EO 20-99 on Nov. 18, 2020. The order was approved by the Executive Council and filed by the Secretary of

State on November 19, 2020. “Orders and rules promulgated by the governor under authority of section 12.21, subdivision 3, clause (1), when approved by the Executive Council and filed in the Office of the Secretary of State, have, during a national security emergency, peacetime emergency, or energy supply emergency, the full force and effect of law.” Minn. Stat. § 12.32. Absent a specifically prescribed penalty, a willful violation of the terms of a properly approved and filed emergency orders or rules issued during a peacetime emergency constitutes a misdemeanor offense. Minn. Stat. § 12.45.

The provision the Defendant allegedly violated in case file no. 21-137 is found at EO 20-99, pg. 11, para. 7(c)(iii)(A), limiting restaurants and other businesses providing food, beverages, or tobacco products for on-premises consumption from serving the public except by take-out, drive-through, or delivery. The State alleges the Defendant willfully violated this order by continuing to offer in-person food and beverage services at her business while EO 20-99 and 20-106 were in force. These alleged offenses are misdemeanors. Minn. Stat. § 12.45. In short, the record demonstrates the Defendant’s alleged misdemeanor offenses occurring within Minnesota, Freeborn County, and this Minnesota district court has personal jurisdiction.

The District Court Has Subject Matter Jurisdiction

Defendant moves to dismiss for lack of subject matter jurisdiction. pg. 15. Minnesota district courts are general jurisdiction courts, holding original jurisdiction in all civil actions and all cases of crime committed or triable within their respective districts. Minn. Stat. § 484.01, subd. 1(2); *State ex rel. Koalska v. Swenson*, 241 Minn. 278, 282, 62 N.W.2d 842, 844–45 (1954). This is a case at law, specifically a criminal case, involving conduct by a Minnesota resident constituting alleged misdemeanor offenses occurring in the city of Albert Lea, Freeborn County, Minnesota. This Minnesota district court therefore has subject matter jurisdiction over the case.

Probable Cause Exists the Defendant's Conduct was Criminal

Defendant moves to dismiss for lack of probable cause that the alleged conduct was criminal. Ct. Docket 7, pg. 5 §§ 25–27. “In the ordinary case, a defendant will be protected from the burdens of an unjustified trial by the trial judge’s assessment of probable cause based on the entire record including reliable hearsay in whole or in part.” *State v. Florence*, 239 N.W.2d 892, 895 (Minn. 1976). If the facts within the record would preclude the granting of a motion for a directed verdict of acquittal if proved at trial, the defendant’s motion will be denied. *Id.* at 903. A showing of probable cause does not require the same quantum of evidence as is required to convict. *State v. Clark*, 134 N.W.2d 857, 870-871 (Minn. 1965).

Following essentially the same analysis supporting personal jurisdiction, probable cause exists the Defendant committed misdemeanor offenses under Minn. Stat. § 12.45 when she opened her business to the public for in-person consumption of food and beverages in willful violation of the terms of EO 20-99. This record, if proved at trial, would preclude a directed verdict of acquittal, and probable cause exists for Counts 1–6.

Service was Effective and the Complaints will not be Dismissed

Defendant moves to dismiss on the basis she was ineffectively served. Pg. 5 §§ 25. The motion is denied. The transcript shows the Defendant was personally served with a copy of the Summons and Complaint in 24-CR-21-137 at the hearing on January 28, 2021. The Defendant was personally served with a copy of the Complaint and Summons in 24-CR-21-188 on Feb. 3, 2021, at 5:18 p.m. by Sgt. Adam Hamberg. At the pretrial hearing, the Defendant also acknowledged receiving the Summons and Complaint for both case files. Therefore, the motion to dismiss for ineffective service is denied.

Defendant was Subject to the Terms of the Emergency Executive Orders

Defendant moves to dismiss on the basis that there is no evidence of any consent, contract, or license requirement between Defendant and Minnesota that would submit Defendant or her business to State authority. Ct. Docket 7, pg. 4 §§ 13–14; pg. 6–7 §§ 29–41; pg. 14 § 71. Defendant’s motion is denied as factually and legally unsupported, and it is not a basis to dismiss the charges.

Defendant further moves for dismissal on the basis she is not a “person” the charged statutes apply to. Ct. Docket 7, pg. 8–10 §§ 46–56. “Person” is defined as including an “individual, firm, corporation, association, limited liability company, partnership, limited liability partnership, and other business organizations.” Minn. Stat. § 12.03, subd. 7a. While “individual” is not specifically defined, its ordinary meaning encompasses particular human persons, such as the Defendant, as distinguished from a group. *See* Individual, Blacks Law Dictionary 777 (7th ed. 1999). The emergency management chapter has also previously been used to regulate the conduct of particular persons at a local level, as found in the unpublished case *State v. Aschenbrener*, C0-99-691, 2000 WL 228420, at *2–3 (Minn. Ct. App. Feb. 29, 2000), where the Court of Appeals affirmed the reasonableness of a checkpoint stop of the individual defendant after a mayor’s declaration of a local emergency following a tornado. During that time, the police restricted access to the damaged area, set a curfew, and established traffic checkpoints to check identification and warn nonresidents to stay out of the area. The Defendant has not met her burden to show the charged statutes do not apply to her as a “person” or “individual.”

An Official Request for Cooperation is not a Prerequisite for Regulating the Conduct of Persons under the Emergency Management Act

Defendant moves to dismiss on the basis the peacetime emergency was never validly declared because there was no official request for cooperation from the president or other United

States government agency. Ct. Docket 7, pg. 8 §§ 42–45. The Defendant’s motion is denied. In the Court’s reading, the cited statute does not make a request for cooperation a prerequisite for declaring a peacetime emergency or regulating the conduct of persons; rather, it provides that the governor may perform several permissible functions, including cooperating with external authorities in directing and controlling conduct of persons in Minnesota. Minn. Stat. § 12.21, subd. 3(7)(iv). The Defendant has not met her burden to show the peacetime emergency was not validly declared because of the absence of an official request for cooperation.

A Demand for an Oath of Office from Public Officers is Not a Basis to Dismiss Criminal Charges

Defendant moves to dismiss on the basis the public officers involved in the case failed to take sufficient Oaths of Office on her demand and failed to conform with the requirements of U.S. Const. Art 6 para 3 and Minn. Const. Art. V. § 6. Ct. Docket 7, pg. 11–14, §§ 59–70. The Defendant’s motion is denied as legally unsupported. *See Duwenhoegger v. Schnell*, A20-0180, 2020 WL 4280073, at *7 (Minn. Ct. App. July 27, 2020) (“Appellant cites no authority for the notion that judges and attorneys must file oaths and licenses in each district court case in which they become involved. And we can find none.”).

Defendant’s Business is Located Within Minnesota Jurisdiction

Defendant moves to dismiss on the basis her business is located on territory outside of the jurisdictional bounds of the State of Minnesota. Ct. Docket 7, pg. 14 § 71. Her motion is denied as factually unsupported. The Interchange is located at 211 South Broadway in the city of Albert Lea, Freeborn County, Minnesota. In short, the business operated within Minnesota jurisdiction.

Title: Objection & Exception to Void Order, Motion for Recusal of Judge Schwab (Verified)
Court File Nos. 24-CR-21-137 (Docket No. 10) & 24-CR-21-188 (Docket No. 8)
Filed: February 8, 2021

Defendant demands written findings supporting Personal and Subject Matter Jurisdiction, and claims proceeding without jurisdictional findings is a denial of Due Process under the 5th and 14th Amendment. Ct. Dockets no. 10 (21-137) & 8 (21-188), pg. 3 § 9 and pg. 5–8. The Court has already made personal and subject matter jurisdictional findings, and this is not a sufficient basis for dismissal of the charges. So far as this demand might be construed as a motion to dismiss, it is denied.

The Defendant’s renewed claims are denied. Ct. Dockets no. 10 (21-137) & 8 (21-188) at pg. 2 § 3 (Personal & Subject Matter Jurisdiction); pg. 2§ 2 (Challenge to public officer oaths).

Title: Objection, Non-consent, And Jurisdictional Challenge (Verified)
Court File No. 24-CR-21-188 (Docket No. 7)
Filed: February 8, 2021

Common Law Crimes are Abolished in Minnesota, and the Complaint did not need to Allege Facts Establishing a Common Law Crime

Defendant moves to dismiss Counts 1–3 in case file no. 24-CR-21-188 on the basis the Complaint did not allege facts establishing a crime at common law. Ct. Docket 7 at pg. 5 § 23. The motion is denied. Common law crimes are abolished by statute, and “no act or omission is a crime unless made so by [Minn. Stat. Ch. 609] or by other applicable statute . . .” Minn. Stat. § 609.015. The Defendant is charged with misdemeanor offenses under the enacted statute § 12.45, alleging willful violations of an order or rule having the force and effect of law issued under authority of the emergency management chapter. The Defendant is also charged with maintaining a public nuisance under Minn. Stat. § 609.74, subd. 1. The conduct at issue need not be shown to be crimes at common law to be crimes under Minnesota law.

Defendant has Not Met Her Burden to Show the Governor Lacked Authority to Issue the Executive Orders

The Defendant moves to dismiss Counts 2–3 in case file no. 24-CR-21-188 on the basis the governor lacked authority to issue EO 21-01 because there was no official request for cooperation and no enacted statute granting him such authority. Ct. Docket 7, pg. 6–7, §§ 35–42. As recognized with respect to counts 1–6 in case file no. 21-137, a request for cooperation is not a prerequisite to the governor regulating the conduct of persons within Minnesota under the Emergency Management Act. The prerequisites for the governor’s orders having the effect of enacted public laws are first the declaration of a national security, peacetime, or energy supply emergency, followed by approval of the order or rule by the Executive Council, and finally filing of the order or rule in the Office of the Secretary of State. Minn. Stat. § 12.32. These prerequisites were met by EO 21-01. The Emergency Management Act of 1996 was also adopted with an enacting clause present, as were its predecessors.

Appellate caselaw addressing challenges to the governor’s emergency executive orders have generally affirmed their legal effect, or else declined to reach the merits. *See Buzzell v. Tim Walz Governor of Minnesota*, 962 N.W.2d 894, 902 (Minn. Ct. App. 2021), review granted (Sept. 21, 2021) (holding State did not “commandeer” property by issuing peacetime emergency executive orders which placed operating restrictions on businesses); *Fairmont Hous. & Redevelopment Auth. v. Winter*, A21-0244, 2021 WL 5441936, at *7 (Minn. Ct. App. Nov. 22, 2021) (“rights accrued under executive order 20-79 were not extinguished by the [eviction] moratorium phaseout”); *Free Minnesota Small Bus. Coal. v. Walz*, A20-1161, 2021 WL 1605123, at *5 (Minn. Ct. App. Apr. 26, 2021), review denied (July 20, 2021) (declining to reach merits of arguments challenging governor’s declaration of peacetime emergency and issuance of executive orders); *see also Let Them Play MN v. Walz*, 21-CV-79 (ECT/DTS), 2021 WL 3741486, at *7–8

(D. Minn. Aug. 24, 2021) (illustrating why plaintiffs' equal protection and rational basis review challenges to emergency executive order restrictions on youth sports would not prevail on the merits). The Defendant has not met her burden to show the governor lacked authority to issue the emergency executive orders.

Probable Cause Exists the Defendant Maintained a Public Nuisance

The Defendant moves to dismiss Count 1 in case file 24-CR-21-188 on the basis that probable cause does not exist she failed to perform a legal duty that would sustain a public nuisance conviction. Under Minnesota law, whoever by an act or a failure to perform a legal duty intentionally maintains or permits a condition that unreasonably annoys, injures, or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public is guilty of a crime. Minn. Stat. § 609.74, subd. 1; *see also* Public Nuisance—Defined, 10 Minn. Prac., CRIMJIG 13.122 (6th ed.). The State has established by EO 21-01 that Defendant had a legal duty to operate her restaurant in conformance with several restrictions, including no on-site food or beverage service between 10 p.m. and 4 a.m., maintenance of six feet between parties at different tables, and wearing of facemasks. Exec. Order 21-01, pg. 3 § 3 and pg. 10–13, §§ 7(c)(iv). Because the restaurant was hosting temporary indoor entertainment in the form of live music on January 29, the State may also be able to show the Defendant had additional legal duties including maintenance of 6 feet distance between participants from different households and reduction of indoor capacity to 25%. *Id.* at § 7(c)(ix).

The State alleges that by failing to operate her restaurant in conformance with those legal duties, the Defendant intentionally maintained or permitted a condition that unreasonably endangered the safety and health of members of the public. This is because the refusal to comply with these restrictions unreasonably heightened the threat of viral transmission of COVID-19 to

members of the public, including but not limited to the patrons and employees present on January 29.

The State may also be able to prove the Defendant's failure to operate her business on January 29, 2021, in conformance with EO 21-01's requirements injured or endangered the comfort or repose of members of the public simply by openly and repeatedly violating orders with the full effect of law. A somewhat similar fact pattern involving the operation of a business as a public nuisance is found in *State v. Sportsmen's Country Club*, 214 Minn. 151, 157, 7 N.W.2d 495, 498 (1943) (interpreting former public nuisance statute § 616.01). There, the Minnesota Supreme Court held that where a public tavern continuously and repeatedly violated liquor and gambling statutes under the guise of operating a private club, the business was a public nuisance subject to both criminal prosecution and injunctions. The court recognizing a general rule that "[e]very place where a public statute is openly, publicly, repeatedly, continuously, persistently and intentionally violated, is a public nuisance." *Id.* at 497. Similarly, when a peacetime emergency is in force due to a threat to life or property, and orders or rules are issued under emergency management authority with the force and effect of law, continuous and repeated violations of those rules or orders may constitute a public nuisance even without a showing of injury or danger to the health or safety of members of the public.

Regardless, the State has sufficiently shown that the Defendant had a legal duty to operate her business in compliance with the restrictions in EO 21-01. The record shows that the Defendant intentionally maintained a condition that unreasonably endangered the safety and health of members of the public by operating her business without complying with those restrictions. The failure to perform her legal duty heightened the threat of viral transmission of COVID-19 to members of the public, including her patrons and employees present on January 29, 2021. This

record, if proved at trial, would preclude a directed verdict of acquittal, and probable cause exists for Count 1.

Defendant's Claim the Record Does Not Show the Nature and Capacity of the State of Minnesota or Interest in Prosecuting the Defendant is not a Basis for Dismissal

Finally, the Defendant claims the record does not establish the nature and capacity of the State of Minnesota to prosecute her for these alleged misdemeanors, and so the charges must be dismissed. Ct. Docket 7, pg. 3 § 12. This motion is denied as legally and factually unsupported.

The Defendant's renewed claims are denied. *See* Ct. Docket 7 pg. 4 §§ 13–14 and pg. 5–6 §§ 25–27 (no contract or duty to the State beyond business license requirements); pg. 4 §§ 17–20; pg. 8–10, §§ 43–50 (not a “person” or “individual” the charging statutes apply to); pg. 5–7, §§ 25–32; pg. 10, § 54 (executive orders exceed the scope of the governor's authority); pg. 11–14, §§ 57–68 (challenge to oaths of office); pg. 14 § 69 (no probable cause the business property is within territory subject to Minnesota jurisdiction).

Title: Motion to Dismiss (Verified)
Court File No. 24-CR-21-137 (Docket No. 17)
Filed: February 16, 2021

The State of Minnesota has Standing to Prosecute Violations of its State Laws

The Defendant moves to dismiss Counts 1–6 in case file no. 21-137 on the basis the State lacks standing—namely, she claims the State has not shown a particularized injury stemming from the operation of the Defendant's business. Ct. Docket 17, pg. 3 § 10. The motion is denied. Standing issues in criminal matters generally concern the standing of an individual defendant to challenge a particular statute or policy rather than the standing of the State to prosecute violations of its own laws. *See Riehm v. Comm'r of Pub. Safety*, 745 N.W.2d 869, 873 (Minn. Ct. App. 2008); *Glaze v. State*, 909 N.W.2d 322, 325–26 (Minn. 2018). This is because, conceptually, the injury-

in-fact to Minnesota is met simply by the violation of Minnesota’s laws by a particular defendant. *See* Minn. Stat. § 609.025; *United States v. Daniels*, 48 Fed. Appx. 409, 418 (3d Cir. 2002) (federal case rejecting defendant’s claim an indictment failed to meet standing requirements, recognizing “as sovereign, the United States has standing to prosecute violations of valid criminal statutes”); *see also Sessum v. United States*, 15 CR. 667-6 (KPF), 2020 WL 1243783, at *9 (S.D.N.Y. Mar. 16, 2020) (discussing government standing to bring criminal actions and recognizing “[s]tanding is no more than the litigable interest necessary to create a case, and when it comes to the government, wrongs to the public at large — generalized grievances — will do.”).

There are Minnesota cases holding that when a city prosecutes violations of municipal code in the name of the State of Minnesota, it is still the city that is the real party in interest because the offenses are against the city rather than the State. *State v. Sexton*, 42 Minn. 154, 154, 43 N.W. 845, 845 (1889); *State v. Sullivan*, 265 Minn. 161, 166, 121 N.W.2d 590, 594 (1963) (“While the action was brought under the city ordinance in the name of the state, the city of Minneapolis is the actual party.”) However, in this case, the State of Minnesota would still be the real party in interest because the city attorney is prosecuting an alleged misdemeanor violation of Minnesota law rather than municipal code. Minn. Stat. § 484.87, subd. 3. The Defendant’s motion to dismiss for lack of standing is denied.

The Defendant Fails to Show Minn. Stat. § 12.45 is Being Applied to Conduct Ex Post Facto

Defendant moves to dismiss counts 1–6 on the basis the laws are being applied to conduct in violation of the *ex post facto* provisions of the United States and Minnesota Constitutions. Ct. Docket 17, pg. 3 § 12; *see also* U.S. Const. art. I, § 10; Minn. Const. art. I § 11. A criminal law falls within the *ex post facto* prohibition if: (1) it applies to events occurring before its enactment; and (2) it disadvantages the offender affected by it. *State v. Burns*, 524 N.W.2d 516, 519 (Minn.

App. 1994) (citing *Miller v. Florida*, 482 U.S. 423, 430, 107 S.Ct. 2446, 2451, 96 L.Ed.2d 351 (1987)). The Defendant's motion is denied as factually unsupported. The Emergency Management Act of 1996 was enacted prior to the alleged criminal conduct first occurring on December 16, 2020, and the charged statute Minn. Stat. § 12.45 was most recently amended in 2004. The executive orders at issue were signed by the governor, approved by the Executive Council, and filed with the Secretary of State prior to the alleged criminal conduct. The Defendant has not met her burden to show a violation of the *ex post facto* provisions of the United States and Minnesota Constitutions.

Defendant's renewed claims are denied. Ct. Docket 17, pg. 1 and 2 §§ 1–2 (Personal and subject matter jurisdiction); pg. 2 § 3 (Ineffective service); pg. 2 § 7 (Oath of Office challenge); pg. 3 § 12 (record does not establish nature and capacity of the State to prosecute); pg. 3 §§ 13 and 16 (demand for findings of fact supporting court jurisdiction).

Title: Motion to Dismiss (Verified)
Court File No. 24-CR-21-188 (Docket No. 13)
Filed: February 16, 2021

The Defendant claims she was not notified she would be arraigned in case file no. 21-188 on her appearance for a continued arraignment hearing in case file no. 21-137. Ct. Docket 13, pg. This is not a basis to dismiss the charges. She also claims she was not notified that case file no. 21-137 and 21-188 would be tried together. At the pretrial hearing, the Defendant was given until December 2, 2021, to determine if they wanted these two cases tried together or separately. Regardless, the order and timing of cases is not a basis for dismissal.

The Defendant's renewed claims are denied. Ct. Docket 13, pg. 1 and pg. 4 §§ 15–18 (In person and subject matter jurisdiction); pg. 2 § 3 (Ineffective service); pg. 2 § 6 (No probable cause the Defendant is a "person" the charging statutes apply to); pg. 2 § 7 (No enacted statute imposing

a legal duty on Defendant); pg. 3 § 8 (No proof of an official request for cooperation); pg. 3 § 10 (Challenge to Oaths of Office of public officers); pg. 3 § 11 (No probable cause the alleged crime occurred within Minnesota jurisdiction); pg. 3 § 12 (Lack of Standing to Prosecute); pg. 3 § 13 (*Ex Post Facto* violation); pg. 3 § 14 (Record does not establish the nature and capacity of the State of Minnesota as an entity).

Title: Objection to State of Minnesota as the Real Party in Interest; Motion to Dismiss (Verified)
Court File No. 24-CR-21-137 (Docket No. 21)
Filed: February 27, 2021

The Defendant moves to dismiss counts 1–6 on the basis the State of Minnesota lacks standing and is not a Real Party of Interest, and so dismissal is required under the Minnesota Rules of Civil Procedure 17.01 at 21 days from filing. Docket 21, pg. 4 § 16– 11–12, §§ 44–47. The motion is denied because the rules of civil procedure cited by the Defendant are inapplicable to criminal proceedings. Standing considerations are generally inapplicable to criminal proceedings with respect to the State’s authority to prosecute violations of its statutes—the injury to the State is the violation of the State’s laws.

The Defendant further moves for dismissal because the “State of Minnesota” is a legal entity that is “unknown to the People by its Constitution,” distinguished with the lowercase “state of Minnesota.” Ct. Docket 21, pg. 3 §§ 7–15. The motion is denied as legally and factually unsupported. Minnesota law provides authority for the State of Minnesota, whether styled with an upper or lowercase “S”, to prosecute a person if that person “commits an offense in whole or in part within this state.” Minn. Stat. § 609.025. The State alleges facts constituting purported violations of Minn. Stat. § 12.45 that occurred within the city of Albert Lea, Freeborn County, Minnesota. The State of Minnesota has authority to prosecute these cases.

The Defendant's renewed claims are denied. Ct. Docket 21, pg. 3, §§ 7–15 (No Authorizing Statute permitting action on behalf of the State of Minnesota against Defendant); pg. 4–5, §§ 16 – 22 (Defendant is only subject to duties imposed at common law and by enacted statutes); pg. 5– 11 §§ 23–43 (Oath of Office demand).

Title: Objection to State of Minnesota as the Real Party in Interest; Motion to Dismiss (Verified)
Court File No. 24-CR-21-188 (Docket No. 17)
Filed: February 27, 2021

Defendant similarly moves for dismissal of Counts 1–3 in case file no. 21-188 on the basis the State of Minnesota lacks standing and is not a Real Party of Interest, and so dismissal is required under the Minnesota Rules of Civil Procedure 17.01 at 21 days from filing. Ct. Docket 17, pg. 11–12, §§ 44–47. The motion is similarly denied because the rules of civil procedure are inapplicable to criminal proceedings and the State of Minnesota has standing to prosecute violations of its laws.

Defendant's renewed claims are denied. Docket 17, Pg. 3–4, §§ 7–15 and pg. 11, §§ 42– 43. (State of Minnesota is “unknown to the People by its Constitution”); pg. 4–5, §§ 16 – 22 (Defendant is not subject to Minnesota authority beyond duties imposed by common law and enacted statutes); pg. 5–11 §§ 23–43 (Oath of Office challenge).

Title: Demand for a Bill of Particulars
Court File No. 24-CR-21-137 (Docket No. 22) & 24-CR-21-188 (Docket No. 18)
Filed: March 1, 2021

The Defendant demands a bill of particulars setting forth the nature and cause of these two criminal cases. The demand for a bill of particulars is denied. The bill of particulars has been long-since abolished in Minnesota, supplanted by discovery procedures found in the Minnesota Rules

of Criminal Procedure. *See State v. Serstock*, 402 N.W.2d 514, 519 (Minn. 1987); *see also State v. Beckman*, A19-0820, 2020 WL 1983213, at *4 (Minn. Ct. App. Apr. 27, 2020), review denied (July 23, 2020).

**Title: Motion to Vacate (Ex Parte) Scheduled Pretrial and Jury Trial and Motion to Strike the Case (Ex Parte) (Verified)
Court File No. 24-CR-21-137 (Docket No. 27) & 24-CR-21-188 (Docket No. 23)
Filed: March 16, 2021**

A Defendant's Refusal to Enter a Plea Permits the Court to Enter a Not Guilty Plea for Them

Defendant moves for dismissal of all Counts in both case files on the basis that she never made a knowing, voluntary, and intelligent plea to the charges. A defendant's refusal to enter a plea at arraignment allows a court to enter a not guilty plea on his or her behalf, which occurred in both files. *State v. Isenberg*, 393 N.W.2d 13, 14 (Minn. App. 1986) (pro se defendant refused to enter a plea at arraignment, and the court entered a plea of not guilty for him). The Defendant refused to enter a plea, and the court entered a not guilty plea for her. The Defendant also requested a jury trial in file no. 24-CR-21-137 at the hearing on January 28, 2021, which is in effect a not guilty plea. See Transcript, January 28, 2021 at 9:24–25.

The 2005 Amendment Removing "Public Health Emergency" From the Text of Minn. Stat. § 12.31, subd. 2 Subsumed Such Emergencies Under Existing Categories

Defendant moves to dismiss the charges under Minn. Stat. § 12.45 in both case files on the basis the legislature removed the governor's power to declare a peacetime emergency for a "public health emergency" by removing "public health emergency" from the text of Minn. Stat. § 12.31, subd. 2 in a 2005 amendment. Docket 27 (21-137) and 23 (21-188), pg. 3 §§ 11–12. Legislative history indicates the 2005 amendment was part of sunseting legislation applicable to specifically defined public health emergencies, along with sunseting legislation concerning bioterrorism, as

part of the adoption of an “all hazards” approach to emergency planning and response. *See* Minn. Stat. Ann. §§ 12.03, subd. 1c and 9a, 12.311, and 12.312 (2005); H.R. B. Summ., 2005 Minn. H.F. 1555, 84th Leg. (April 8, 2005). In the Court’s reading, the 2005 amendment subsumed public health emergencies within existing threat categories, such as acts of nature. Defendant fails to meet her burden to show the 2005 amendment precludes the governor from declaring a peacetime emergency for a “public health emergency.”

The Defendant’s renewed claims are denied. Ct. Docket 27 (21-137) and 23 (21-188), pg. 2 at § 2 and pg. 4–5 at §§ 19–22 (Personal and subject matter jurisdiction challenge); pg. 2, § 4 (Demand for a Bill of Particulars); pg. 2, § 10 (No proof of a request for cooperation); pg. 3, § 7 (Ineffective service); pg. 3, § 8 (Defendant is not a “person” the charging statutes embrace); pg. 3 § 9; pg. 4, § 17 (No enacted statute imposing a legal duty); pg. 3 § 14 (Demand for public officers to execute Oaths of Office); pg. 4, § 15 (No probable cause the crimes occurred in Minnesota jurisdiction); pg. 4 § 16 (Standing / no injury in fact); Pg. 4 § 17 (*Ex Post Facto* violation); Pg. 4 § 18 (Record does not establish the nature and capacity of the State of Minnesota to prosecute).

Title: Objection and Exception to Void Order in Maintenance of Arrest Warrant[;] Notice of Federal Felonies[;] Notice of Fee Schedule (Verified)
Court File No. 24-CR-21-137 (Docket No. 37)
Filed: March 23, 2021

Defendant claims this Court issued a bench warrant and thereby violated federal and state constitutional law and two federal statutes. Ct. Docket 37, pg. 4–5 §§ 18–22. So far as it this claim might be construed as a motion to dismiss the charges, it is denied. The bench warrant issued following the Defendant’s non-appearance at a hearing on March 10, 2021, to address alleged violations of pretrial release conditions. The non-appearance was itself a violation of the Defendant’s pretrial release condition to “Make all future court appearances.” *See* Order for

Conditional Release, filed Jan. 29, 2021, Docket No. 5; Order for Conditional Release, filed Feb. 4, 2021, Docket No. 8.

Defendant's renewed claims are denied. Docket 37, pg. 3–4 §§ 13–17 (No personal or subject matter jurisdiction, leading to a due process violation); pg. 2 § 3 (Ineffective Service); pg. 2 § 4 (Defendant is not a “person” the charging statutes apply to); pg. 2 § 5 (No enacted statute imposing a legal duty on Defendant); pg. 2 § 6 (No proof of an official request for cooperation); pg. 2 §§ 7–8 (demand for Oaths of Office); pg. 3 § 9 (No probable cause the alleged crime occurred in Minnesota jurisdiction); pg. 3 § 10 (Lack of standing / particularized injury in fact); pg. 3 § 11 (*Ex Post Facto* violation); pg. 3 § 12 (Record doesn't establish the nature and capacity of the “State of Minnesota” or authority to prosecute).

**Title: Objection and Exception to Void Order in Maintenance of Arrest Warrant[;] Notice of Federal Felonies[;] Notice of Fee Schedule (Verified)
Court File No. 24-CR-21-188 (Docket No. 34)
Filed: March 23, 2021**

Defendant similarly claims this Court issued a bench warrant and thereby violated federal and state constitutional law and two federal statutes. Ct. Docket 34, pg. 5–6 §§ 23–27. If this might be construed as a motion to dismiss, it is denied. The bench warrant issued following the Defendant's non-appearance at a hearing to address alleged violations of pretrial release conditions on March 10, 2021. The non-appearance was itself a violation of the Defendant's pretrial release condition to “Make all future court appearances.”

Defendant's renewed claims are denied. Ct. Docket 34, pg. 4–5, § 18–22 (Personal and subject matter jurisdiction); pg. 2 § 6 (Ineffective Service); pg. 2 § 7 (Arrest notice); pg. 2 § 8 (No notice of joinder of case files 21-137 and 21-188); pg. 2 § 9 (No probable cause Defendant is a “person” the charging statutes apply to); pg. 3 § 10 (No enacted statute imposing a legal duty on Defendant); pg. 3 § 11 (No proof of an official request for cooperation); pg. 3 § 12–13 (Oath of

Office demand); pg. 3 § 14 (No probable cause the alleged crimes occurred in Minnesota jurisdiction); pg. 3 § 15 (Lack of standing); pg. 3 § 16 (*Ex Post Facto* violation); pg. 4 § 17 (Record doesn't establish the nature and capacity of the "State of Minnesota" or authority to prosecute).

Title: Motion to Strike Complaint from the Record (Verified)
Court File No. 24-CR-21-137 (Docket No. 57)
Filed: May 11, 2021

Defendant moves for dismissal on the basis she was not arraigned in case file no. 21-137. An arraignment occurred on January 28, 2021, which was continued on February 4, 2021. The Defendant's acknowledged understanding of the nature and cause of the charges is not required, nor is its absence a basis to dismiss the charges. *State v. Isenberg*, 393 N.W.2d 13, 14 (Minn. App. 1986) (pro se defendant refused to enter a plea at arraignment, and the court entered a plea of not guilty for him).

A City Attorney has Authority to Prosecute Misdemeanor Violations of State Law Occurring in a City on Behalf of the State of Minnesota

Defendant moves for dismissal on the basis the prosecuting attorney has not established her authority to prosecute on behalf of the State of Minnesota. This motion is denied as legally unsupported. Minn. Stat. § 484.87 requires that misdemeanor violations of Minnesota law occurring within a city with a population greater than 600 must be prosecuted by the city attorney. Thus, Albert Lea City Attorney Kelly Martinez has the authority to prosecute alleged misdemeanor offenses occurring in the city of Albert Lea on behalf of the State of Minnesota.

Limited Liability Entities Do Not Shield Business Owners or Officers from Their Own Illegal Acts

Defendant moves to dismiss the charges on the basis she is an improper defendant, and the prosecution erred by criminally charging her instead of her business MLH Enterprises, LLC. Ct. Docket 54, pg. 3 § 12–13, pg. 6–7. The motion is denied. A business owner or corporate officer

cannot evade criminally liable for their own acts, even if the acts are done in an official capacity on behalf of a corporation, limited liability company, or other limited liability entity. *State v. Williams*, 324 N.W.2d 154, 157 (Minn. 1982). The named Defendant in this case was properly charged with these alleged offenses, rather than her business.

Defendant Does Not Support Her Claim She was Engaged in First Amendment Constitutionally Protected Conduct

The Defendant moves to dismiss on the basis she is being criminally charged for engaging in conduct protected by the First Amendment of the United States Constitution. Ct. Docket 57, pg. 3 § 14. The motion is denied. Defendant does not specify what conduct she claims is protected. She does not support her argument with facts or legal citation. The Court will not grant relief based on this conclusory statement, and the motion is denied as unsupported.

Defendant's renewed claims are denied. Ct. Docket 57, pg. 2, § 3 (No valid plea); pg. 3, § 7, pg. 8 (No Personal or Subject Matter Jurisdiction); pg. 3, § 7 (No findings supporting Jurisdiction); pg. 3, § 9 (Ineffective service); pg. 3, § 11 (No probable cause Defendant is a "person" the charging statutes embrace); pg. 4 § 15 (No enacted statute imposing a legal duty); pg. 4 § 16 (2005 Amendment Removing "Public Health Emergency"); pg. 4 § 18 (No proof of an official request for cooperation); pg. 4 § 19–20 (demand for Oaths of Office); pg. 5 § 22 (Lack of Standing); pg. 5 § 23 (*Ex Post Facto* violation); pg. 4 § 18 (Record does not establish the nature and capacity of the State of Minnesota to prosecute Defendant).

Title: Motion to Strike Complaint from the Record (Verified)
Court File No. 24-CR-21-188 (Docket No. 54)
Filed: May 11, 2021

Defendant raises essentially the same arguments in this motion as found in the companion Motion to Strike filed on May 11, 2021, in case file 21-137. The Defendant's motions with respect to the charges in court file no. 21-188 are denied. Ct. Docket 54, pg. 2 §§ 3–4 (No valid plea at

arraignment); pg. 3 § 8, pg. 8 at III, and pg. 9 – 10 §§ 28–34 (No findings to conclude court jurisdiction); pg. 3 § 9 (No acknowledged understanding of nature and cause of charges); pg. 3 § 11, pg. 6 at I (City attorney lacks authority to prosecute for the State); pg. 3 § 12 (No probable cause Defendant is a “person” the statutes apply to); pg. 3 § 13 (Complaint does not establish a duty supporting a public nuisance charge under Minn. Stat. § 609.71, subd. 1); pg. 3 § 14 (Lack of Standing); pg. 4 § 16; pg. 6–7 at II (Improper defendant, Defendant’s business should be charged instead); pg. 4 § 18 (No enacted statute imposing duty on Defendant); pg. 4 § 19 (2005 Amendment removed “public health emergencies” from Minn. Stat. § 12.31); pg.5 § 21 (No proof of an official request for cooperation); pg. 5 § 23 (Oaths of Office demand); pg. 5 § 24 (No probable cause crimes occurred in Minnesota jurisdiction); pg. 5 § 26 (*Ex Post Facto* violation); pg. 5 § 27 (Record does not establish nature and capacity of the “State of Minnesota” or authority to prosecute).

**Title: Objection to Proceedings And Notice of Legal Issues/Defenses (Verified)
Court File No. 24-CR-21-137 (Docket No. 82) & 24–CR-21-188 (Docket No. 77)
Filed: November 15, 2021**

The Defendant moved for dismissal of the charges in both case files on November 15, 2021. This motion was subsequently amended and re-filed on November 22, 2021, with additional argument. The Court will rule on the claims in the amended motion argued at the pretrial hearing instead of the original prior motion.

**Title: Amended Objection to Proceedings And Notice of Legal Issues/Defenses (Verified)
Court File No. 24-CR-21-137 (Docket No. 84) & 24–CR-21-188 (Docket No. 79)
Filed: November 22, 2021**

Defendant’s Demand for a Removal for Cause is Denied

Defendant claims this Court continuing to preside over these cases would violate the Judicial Code of Conduct. Ct. Docket 84 & 79, pg. 2–4 § I. Consistent with this Court’s prior order

denying Defendant's demand for a removal for cause on June 10, 2021, and so far as Defendant's claim might be construed as a motion to dismiss the charges, the claim is denied. Defendant was released on conditions by Judge Leuning on January 28, and by Judge Schwab on February 4, 2020, including the condition to "Make all future court appearances." This Court issued a bench warrant following the Defendant's failure to appear at a remote hearing on March 10, 2020, despite receiving notice stating "If you fail to appear a warrant may be issued for your arrest." The bench warrant was issued following Defendant's nonappearance. No second complaint and summons for this non-appearance was necessary for the bench warrant to issue, nor was a new complaint and summons required to compel the Defendant's appearance on March 10, 2021. The criminal procedure rules cited by the Defendant refer to Charging/Complaint warrants and are inapplicable in these circumstances.

The Albert Lea City Attorney is Not Subject to Oath Requirements

Defendant moves to dismiss both cases on the basis City Attorney Martinez lacks power to serve as the city attorney for Albert Lea absent her taking and filing an Oath of Public Office under Minn. Const. art. V, § 6 and Minn. Stat. § 358.05. Ct. Docket 84 & 79, pg. 14 §§ 41–44. It appears the city attorney serves as an employee, or else an appointed officer, under the general supervision of the city manager. Albert Lea, Minn., Code §§ 2.078 and 6.02, subd. 3. The city manager, in turn, is appointed by the elected members of the city council. Albert Lea, Minn., Code § 6.01. The Court doubts that the city attorney must take and file an oath before assuming that role. But even if the Court assumed an oath was required of the city attorney, and the city attorney never took one, the acts of a public official are presumed valid as to the public and third persons. *State v. Ekblad*, A03-1617, 2004 WL 2591246, at *4 (Minn. Ct. App. Nov. 16, 2004) (citing *Huff v.*

Sauer, 243 Minn. 425, 68 N.W.2d 252, 253 (1955)). The Defendant’s motion to dismiss is therefore denied.

The State of Minnesota is a Proper Party to these Proceedings

Defendant moves to dismiss the charges in both files on the basis the prosecution is representing a “FOREIGN STATE,” or otherwise a fictitious entity, in the guise of the Minnesota state government because it styles itself with a capital “S” in conflict with the Minnesota constitution and enabling act styled with a lowercase “s”. Ct. Docket 84 & 79, pg. 4 § 1A–C. The argument is unsupported. Whether styled “state of Minnesota,” “State of Minnesota,” or “STATE OF MINNESOTA,” it remains the same government entity. The city attorney is representing Minnesota’s state government and is prosecuting alleged misdemeanor violations of Minnesota law on its behalf. The Defendant’s motion to dismiss for misnomer of the plaintiff is denied.

Defendant Fails to Meet her Burden to Show the Legislature Improperly Delegated Legislative Authority

Defendant claims the legislature improperly delegated legislative authority to the Governor in violation of the separation of powers principle found at Minn. Const. art. III, § 1. Ct. Docket 84 & 79, pg. 6 §§ 6–9. The Minnesota legislature may delegate its authority to the governor “in order to facilitate the administration of laws as the complexity of economic and governmental conditions increase.” *Anderson v. Comm’r of Highways*, 126 N.W.2d 778, 780-81, 267 Minn. 308, 311-12 (1964). It did so appropriately here. When the legislature granted the governor authority to declare a peacetime emergency under the Minnesota Emergency Management Act, it required that (1) life and property must be endangered, and (2) local resources must be inadequate to handle the situation. Minn. Stat. § 12.31, subd. 2. The legislature also preserved its right to terminate a peacetime emergency by vote of both the Minnesota House and Senate. *Id.* at subd. 2(b). The Defendant has not met her burden to show this delegation was one of purely legislative power. *See*

Rukavina v. Pawlenty, 684 N.W.2d 525, 535 (Minn. Ct. App. 2004). The motion to dismiss for improper delegation of legislative authority is denied.

The Emergency Management Act Was Enacted with a Proper Enabling Clause

Defendant moves to dismiss the charges under Minn. Stat. § 12.45 for non-conformance of the enabling clause in the Emergency Management Act of 1996, and its predecessors, to Minn. Const. art. iv § 22. Ct. Docket 84 & 79, pg. 7 §§11–14; pg. 17 § 4. The motion is denied. All required words are present in the current and historic legislation’s clauses, and the Court has found no support for the argument the letter case of the enacting clauses affects the statute’s validity. In the Court’s determination, it is the words themselves that are of legal effect, not the letter case.

While the Penalty in Minn. Stat. § 12.45 Can Apply to Public Officials, the Penalty is Not Limited to Them

Defendant moves to dismiss the charges under § 12.45 on the basis the penalty provided for in Minn. Stat. § 12.45 only applies to public officials who violate their emergency management duties, and she is not a public official. Ct. Docket 84 & 79, pg. 10–11 §§ 25–26, pg. 12 § 34, and pg. 17 § 5. The motion is denied. Though Minn. Stat. § 12.45 can apply to public officials that willfully violate emergency management duties, as recognized in dicta within *Manteuffel v. City of North St. Paul*, 570 N.W.2d 807, 812 (Minn. App. 1997), there is nothing in the law that limits the penalty only to such public officials.

Defendant Fails to Show Minn. Stat. §§ 12.45 and 609.74(1) Are Void for Vagueness

Defendant moves to dismiss the claims in both cases on the basis Minn. Stat. §§ 12.45 and 609.74(1) are void for vagueness. Ct. Docket 84 & 79, pg. 10 § 25 and pg. 11 § 27. When a defendant claims a statute is unconstitutional, he or she bears the burden of showing that the statute is unconstitutional beyond a reasonable doubt. *State v. Benniefield*, 678 N.W.2d 42, 45 (Minn. 2004). The void for vagueness doctrine requires that laws defining criminal offenses are written

with sufficient definiteness that ordinary persons can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discretionary enforcement. *State v. Newstrom*, 371 N.W.2d 525, 528 (Minn. 1985). The nature of an offense may require, as a practical necessity, general statutory language to cover variations of conduct that can endanger the public. *See State v. Hipp*, 298 Minn. 81, 213 N.W.2d 610, 615 (Minn.1973) (holding unlawful assembly statute was not unconstitutionally vague).

Defendant's arguments are conclusory statements unsupported by facts or legal citation. As concerns Minn. Stat. § 12.45, the statute prohibits willful violations of the terms of an order or rule having the effect of law during the pendency of a national security, peacetime, or energy supply emergency. For a governor's emergency rule or orders to have the force and effect of law, there must be a properly declared emergency, and then the rule or order issued by the governor must be approved by the Executive Council and filed with the Secretary of State. Once the order or rule has the full effect of law, willful violations of such orders or rules become misdemeanor offenses. The statute is sufficiently definite that an ordinary person would understand that when an emergency order or rule is in effect, willfully violating its terms constitutes a crime. The Defendant has not met her burden to show Minn. Stat. § 12.45 is void for vagueness, and the Court would hold it is sufficiently definite.

The Defendant similarly fails to meet her burden to show Minn. Stat. § 609.74, subd. 1 is constitutionally void for vagueness. Pg. 11 § 27. That law proscribes conduct where an individual intentionally maintains or permits a condition that unreasonably annoys, injures, or endangers the safety, health, morals, comfort, or repose of any considerable members of the public. Minn. Stat. § 609.74, subd. 1. The legal duty was the duty to operate her business consistent with the Executive Orders' restrictions on bars and restaurants when those Orders had the effect of law. When

Defendant did not do so, the Defendant intentionally maintained a condition that endangered the health and safety of members of the public by heightening the risk of viral transmission of COVID-19 to patrons, employees, and other members of the public. Defendant has not met her burden to show the public nuisance statute is constitutionally void for vagueness, and the Court would hold it is sufficiently definite.

The City Attorney is the Proper Prosecuting Authority

Defendant moves to dismiss claiming the City of Albert Lea, and its city attorney, cannot enforce the terms of emergency executive orders because the City was not established for emergency management under Minn. Stat. § 12.28. Ct. Docket 84 & 79, pg. 13 §§ 36–39. The motion is denied. The cited statute requires an organization for emergency management formed under Chapter 12 to execute and enforce orders and rules made by the governor under Ch. 12 or Section 216C.16. The statute does not require that *only* such organizations may enforce the governor’s emergency orders and rules. Further, a city attorney is required to prosecute misdemeanor violations of Minnesota law occurring within their cities, which includes the enacted law found at Minn. Stat. § 12.45. Minn. Stat. § 484.87, subd. 3.

The Minnesota Rules of Criminal Procedure are Defined for Minnesota District Courts

Defendant moves for dismissal on the basis the Minnesota rules of criminal procedure were only defined for district courts in the unknown territory of a foreign state. Ct. Docket 84 & 79, pg. 11 § 29 and pg. 18 § 8. This motion is denied as frivolous and unsupported. The Minnesota Rules of Criminal Procedure were defined for and apply to criminal proceedings in Minnesota’s district courts.

Defendant’s Speculation About a Purported Racketeering Scheme is not a Basis to Dismiss Criminal Charges Against Her

Defendant claims she has evidence of a racketeering scheme involving public officials involved in these two criminal matters. Ct. Docket 84 & 79, pg. 14 §§ 47– 54 and pg. 17 § 10. Her claim of “undisclosed financial gain accruing to undisclosed persons and related to prosecution of these cases” is plainly unsubstantiated speculation. It is not properly before the Court, and it is not a basis to dismiss the charges against the Defendant.

Defendant’s renewed claims are denied. Ct. Docket 84 & 79, pg. 5 § 2–5 (Oath of Office challenge); pg. 8, § 15 and pg. 18 § 3 (2005 Amendment removed authority to declare a “public health emergency”); pg. 9–10 §§ 18–21 (Governor lacked or exceeded authority to issue executive orders); pg. 10 § 22–24 (Defendant is not a “person” the charged statutes apply to); pg. 14 § 46 (Defendant’s business MLH Enterprises should be the defendant); pg. 11–12 §§ 29–31 (Lack of Standing); pg. 12–13, §§ 32–35 (Lack of jurisdiction).

All other claims for relief not specifically addressed by this order are denied.

Bueltel, J.