

ADMINISTRATIVE HEARINGS DIVISION
September 21, 2023

STIPULATED SETTLEMENT AGREEMENTS FOR LIQUOR LICENSE APPLICANTS

1. KAS Properties, LLC
Dominique DeWeese, Member
dba **SHIMMERS (F-COM)**
8000 SE Foster Road
Portland, OR 97206

(Application for F-COM)

ORS 471.313 states, in pertinent part:

The Commission may refuse to license any applicant under the provisions of this chapter if the Commission has reasonable ground to believe that any of the following to be true:

*******(4)** That the applicant:

- (g) Applicant has a poor record of compliance with the alcoholic liquor laws of this State and the denial criteria is not overcome by intervening circumstances.

ORS 471.313 states, in pertinent part:

The Commission may refuse a license if it has reasonable ground to believe that there is a history of serious and persistent problems involving disturbances, lewd or unlawful activities or noise either in the premises proposed to be licensed or involving patrons of the establishment in the immediate vicinity of the premises if the activities in the immediate vicinity of the premises were related to the sale or service of alcohol under the exercise of the license privilege.

- (5)** Behavior which is grounds for refusal of a license under this section, where so related to the sale or services of alcohol, include, but not limited to obtrusive or excessive noise, music or sound vibrations; public drunkenness; fights; altercations; harassment; unlawful drug sales; alcohol or related litter; trespassing on private property; and public urination.

Staff proposed to refuse to issue the requested Full On-Premises Sales license

Note: Licensee was issued a Notice of Proposed License Refusal (Notice), dated February 1, 2023. Licensee wishes to dispose of this licensing matter by settlement agreement, including the imposition of the listed restriction.

SYNOPSIS: Applicant purchased Shimmers, a premises with a History of Serious and Persistent Problems under the former licensee consisting of seven serious incidents within 11 months. While operating the premises under a temporary authority to operate (ATO) with restrictions, Applicant failed to make video surveillance available to Portland Police Bureau (PPB) officers during the course of an investigation, in violation of one of the restrictions. From September 29, 2022, to October 31, 2022, despite PPB officers' multiple requests to receive and offers to assist in the retrieval of video surveillance related to a shooting that occurred nearby, Applicant failed to allow officers to view any surveillance footage until the day after the system wrote over the requested footage. The failure to make video surveillance available to law enforcement violated a restriction placed on the

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ATO, making this action a Category I violation as well as a Category III violation for concealing or refusing to give potential evidence to a police officer. These violations are the bases for the licensing denial that demonstrates a poor record of compliance. Besides this, the applicant did not have any other violations while operating under the ATO with restrictions. The proposed settlement and restrictions are the result of the Applicant's understanding of their responsibilities and a collaborative effort to address the issues with this premises.

TERMS OF AGREEMENT

1. The Commission will issue Applicant a Full On-Premises Sales license at the premises listed above, subject to restrictions set forth in paragraph (2) below, after this agreement is ratified and after staff determine that the application is complete.
2. Applicant accepts the imposition of the listed restrictions on the license identified in this agreement without any conditions or reservations.
 1. A patron may possess no more than two containers of alcoholic beverages at one time and each container of alcoholic beverages will contain no more than 16 ounces of malt beverage, 16 ounces of cider, 6 ounces of wine, or 2 ounces of distilled spirits.
 2. On all days, from 11:00 pm to 2:30 am on the succeeding calendar day, any drink containing distilled spirits shall not contain any malt beverage, wine, or cider and shall contain an amount of nonalcoholic beverage that is equal to or greater than the amount of distilled spirits.
 3. The sale and service of alcoholic beverages is prohibited from 1:00 am to 9:00 am every day. Patron possession and consumption of alcoholic beverages is prohibited from 1:30 am to 9:00 am every day.
 4. Licensee will have at least one DPSST-certified individual on-duty at each point of entry to the premises during all times the premises is open to the public. On Thursday, Friday and Saturday from 9:00 pm to the close of business licensee will have an additional DPSST-certified staff member on-duty and on the premises. A DPSST-certified individual will perform a search of all persons, including patrons, employees, and entertainers that enter the premises, as well as any bags and personal items. The search of a person must be performed by either a physical pat down or the use of a hand held metal detector. If a firearm, knife, or other weapon is found, security will refuse entry. Licensee will establish a written policy that directs no firearms, knives, or other weapons will be allowed inside the premises and will prominently post signage prohibiting these items in locations that are visible to patrons before they enter the premises. This requirement does not apply to emergency services personnel, law enforcement officers, other municipal or state agents acting in an official capacity, or on duty DPSST-certified individuals.
 5. From 9:00 pm to closing on Thursday, Friday and Saturday nights, at least one DPSST-certified security person will patrol the outside areas on and adjacent to the premises at least every 15 minutes to discourage loitering and illegal activity. This is an additional duty for DPSST-certified security and does not add to the number of DPSST-certified security required by paragraph 4.
 6. On-duty DPSST-certified individuals are not allowed to mix, sell, or serve alcoholic beverages and they must wear an outer garment that clearly displays the word "security" in a readable size and font on the individual's chest and back.

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7. Licensee's employees, agents, or representatives will immediately report any violent or illegal activity observed within or outside the premises to the Portland Police Bureau.
8. Licensee will maintain a security video surveillance system with digital video recording capabilities sufficient to capture clear and specific images of all areas controlled by the licensee, including the outdoor areas adjacent to the licensed building, the licensed patio, and the parking lot. The licensee must keep all recordings for a minimum of 90 calendar days, with the date and time embedded on all surveillance recordings without significantly obscuring the picture. Licensee must make unaltered video surveillance footage available, upon request, to any OLCC inspector or law enforcement officer within 72 hours.
3. Violation of a restriction is a Category I violation, subject to possible license cancellation. OAR 845-005-0355(5).
4. Applicant withdraws the request for a hearing.
5. This agreement is conditioned on the final approval of the Commission and will be reviewed by the Commissioners at their September 2023 Commission Meeting. If the Commission does not accept and approve this agreement in its entirety, it is deemed null and void, and Applicant's hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Applicant waives any and all rights to a contested case hearing under the Administrative Procedures Act (ORS Chapter 183) and to judicial review, or to otherwise challenge this agreement and the final order.