

ADMINISTRATIVE HEARINGS DIVISION

October 19, 2022

STIPULATED SETTLEMENT AGREEMENT - LIQUOR VIOLATION CASE

1. Roy's Pioneer Club, LLC
Jacqueline Foley, Managing Member
dba **ROY'S PIONEER CLUB (F-COM)**
217A E Pine St
Central Point, OR 97502

ORS 471.168(1) and OAR 845-005-0400(1) –
From about February 20, 2022 to about May
18, 2022, Licensee failed to maintain liquor
liability insurance or a bond with a corporate
surety authorized to transact business in this
state in an amount of not less than \$300,000
for Roy's Pioneer Club.

(Category 1)

Note: Licensee was charged with this violation by Notice dated July 12, 2022. The standard sanction for this violation is a 90-day license suspension, a civil penalty of \$4,950.00, and required proof of a premium payment for at least 12 months for the statutory minimum liquor liability insurance. Licensee requested a hearing and now wishes to enter into this settlement agreement.

SYNOPSIS: Staff recommends an exception to the usual strict enforcement of rules against lapse of Liquor Liability Insurance. The reduced penalty, while still significant, is recommended because Licensee has been hospitalized with serious illness, and also because she obtained coverage within a day of the first direct communication between herself and OLCC's inspector.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violation as set out in the Notice. This was Licensee's first violation of this type within two years. Any subsequent violation of this type within the same two years will be charged at the second level. This violation will become a permanent part of each licensee's Commission file and may be considered in any future application for any license or permit by that licensee.
2. The standard sanction for this violation is a 90-day license suspension, a civil penalty of \$4,950.00, and required proof of a premium payment for at least 12 months for the statutory minimum liquor liability insurance or bond limits set forth in ORS 471.168 (\$300,000).
3. Due to special mitigating circumstances, the Commission will reduce the sanction for this violation by 58 days and allow payment in lieu of suspension for 30 days.
4. Licensee will either pay a \$4,950.00 civil penalty before 5:00 PM on November 15, 2022 and serve a two-day suspension beginning at 7:00 AM on November 22, 2022 and ending at 7:00 AM on November 24, 2022 **OR** serve a 32-day suspension beginning at 7:00 AM on November 22, 2022 and ending at 7:00 AM on December 24, 2022.
5. In addition, Licensee must submit to the Commission proof of a premium payment for at least 12 months prospectively from November 15, 2022, for liquor liability insurance or a bond in an amount of not less than \$300,000 for Roy's Pioneer Club.
6. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on this allegation, the licensee agrees to accept a Letter of Reprimand. This reprimand will become a permanent part of the licensee's Commission file and may be considered in any future application for any license or permit by the licensee.

(ROY'S PIONEER CLUB -F-COM)

7. Licensee withdraws the request for a hearing.
8. This agreement is conditioned upon final approval of the Commission and will be reviewed by the Commissioners at their October 2022 Commission Meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Licensee's hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Licensee 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.

2. Bayway Tavern, Inc.
Suzie Gruver, Pres/Sec/Dir/Stkhldr
dba **BAYWAY TAVERN (F-COM)**
35895 7th St
Nehalem, OR 97131

ORS 471.412(1), (2) – On or about January 20, 2022, Licensee’s employee, agent, or representative Angela Hanke allowed a patron, S. Siglin, to consume or continue to consume an alcoholic beverage on the licensed premises after observing that the patron was visibly intoxicated, without making a good faith effort to remove any unconsumed alcoholic beverage from the patron.

OAR 845-006-0347(1)(c), (2)(a) - On or about January 20, 2022, Licensee’s employee, agent, or representative Angela Hanke permitted disorderly activities on the licensed premises or in areas Licensee controls that are adjacent to or outside the licensed premises, when an intoxicated patron, S. Siglin, assaulted her mother as she was being escorted out of the premises by her mother and continued to be belligerent in the parking lot and areas adjacent to the premises, and Hanke failed to take reasonable steps to prevent or minimize the disorder and failed to call police, and patrons became involved to help restrain and remove the intoxicated patron safely.

(1st Level Category III)

OAR 845-006-0480(4) - On or before about March 18, 2022, Licensee failed to notify the Commission in writing of changes Licensee made to the licensed premises or the business operation that could reasonably affect the minor posting assigned to the licensed premises or any room or area of the premises, when Licensee closed the restaurant portion of the premises, leaving only the bar portion of the premises open.

(1st Level Category V)

ORS 471.360(1)(a) and (b) - On the dates stated below, Licensee permitted the listed employees, agents or representatives to mix, sell, or serve alcoholic beverages, or supervise those who do,

Note: Licensee was charged with these violations by Notice dated July 26, 2022. The total proposed penalty was a 27-day license suspension or a \$4,455.00 civil penalty. Licensee requested a hearing and now wishes to enter into this settlement agreement.

AGGRAVATION

Staff added four days of aggravation because Violations Number Two and Number Four involved multiple patrons or employees.

(continue **BAYWAY TAVERN**)

without a valid service permit issued by the Commission: Hailey Fields, from about February 4, 2022 to about March 17, 2022 and Samuel Williams from about February 4, 2022 to about March 18, 2022.

(1st Level Category III)

SYNOPSIS: Premises was licensed with separate bar and restaurant areas. Licensee closed the restaurant portion without notifying OLCC, and only the bar area of the premises remained open, which could reasonably affect the minor posting for the premises. While investigating the restaurant closure, Staff discovered two newly hired bartenders' services permits were expired: one permit expired over two years earlier, the other expired just under one year earlier. In a separate incident, Tillamook County Sheriff's Office sent OLCC an incident report of a physical altercation at the premises. The bartender on duty permitted a visibly intoxicated person to continue to consume alcoholic beverages and that intoxicated person went on to engage in a physical altercation with her mother, who came to give her a ride home. Patrons removed the visibly intoxicated person; the bartender did not intervene nor call police. OLCC also charged the bartender/permittee in connection with this incident.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice. Violation Number One was Licensee's first violation of ORS 471.412 in two years. Violations Number Two and Number Four were Licensee's first and second Category III violations within two years. Violation Number Three was Licensee's first Category V violation within two years. Any subsequent violation of ORS 471.412, Category III violation, and/or Category V violation, within the same two years will be charged at the second level. These violations will become a permanent part of each licensee's Commission file and may be considered in any future application for any license or permit by that licensee.
2. Commission staff originally proposed the standard sanction of a Letter of Reprimand for Violation Number One, and a 23-day license suspension or \$3,795.00 civil penalty. Staff added four days of aggravation to the penalty because Violations Number Two and Number Four involved multiple patrons or employees. Commission staff recommended a 27-day license suspension or a \$4,455.00 civil penalty for these violations.
3. The Commission will reduce the sanction by seven days.
4. Licensee will accept a Letter of Reprimand for Violation Number One, and either pay a \$3,300.00 civil penalty before 5:00 PM on November 15, 2022, **OR** serve a 20-day suspension beginning at 7:00 AM on November 22, 2022 and ending at 7:00 AM on December 12, 2022.
5. Licensee withdraws the request for hearing.
6. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on this incident, the licensee agrees to accept a Letter of Reprimand for the violations. This reprimand will become a permanent part of the licensee's Commission file and may be considered in any future application for any license by the licensee.
7. This agreement is conditional upon final approval of the Commission and will be reviewed by the Commissioners at their October 2022 Commission Meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Licensee's hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Licensee 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.

3. Tiki Sports Lounge and Grill, LLC
Naomi Henson, Managing Member
Maria Arevalo, Member
dba **TIKI LOUNGE (F-COM)**
165 Lancaster Dr SE
Salem, OR 97317

ORS 471.315(1)(c). – There is a history of serious and persistent problems involving disturbances, unlawful activities or noise either in the licensed premises at 165 Lancaster Drive SE, Salem, Oregon, or involving patrons of the establishment in the immediate vicinity of the premises.

Note: Licensee was charged with these violations by Third Amended Notice dated August 16, 2022. Staff proposed the standard sanction of license cancellation. Licensee requested a hearing and now wishes to enter into this settlement agreement.

(Category 1)

OAR 845-006-0347(1)(c), (2)(a) - On or about February 26, 2021, Licensee permitted disorderly activities on the licensed premises or in areas the Licensee controls that are adjacent to or outside the premises, when Licensee's employees, agents, or representatives observed disorder involving patron Maria Avila, who was involved in a fight on the premises patio with patron Rigoberto Hernandez at approximately 10:20 pm, and who repeatedly attempted to climb the fence to the patio and stand on cars by the patio, and who struck security professional Tyekla Viars in the face at approximately 10:23 pm, but Licensee's employees, agents, or representatives did not promptly call the police or take other reasonable steps to prevent the disorder.

(2nd Level Category III)

OAR 845-006-0347(4) - On or about Sunday, July 25, 2021, at 12:44am, Licensee failed to evict a patron from the premises for at least 24 hours who was known to have engaged in noisy, disorderly or unlawful activities, when Licensee's employees, agents, or representatives observed disorderly activities between a male patron in a white shirt and a male patron in a light blue shirt, and they permitted the male patron in the light blue shirt to re-enter the premises after he had been removed by security.

(1st Level Category IV)

AGGRAVATION

Staff aggravated the penalty because Violations Number One and Number Two involved injury; Violations Number Two and Number Five involved more than one patron or employee; and Violation Number Four was repeated and was personally committed by Licensee Naomi Henson.

(continue **TIKI LOUNGE**)

OAR 845-006-0345(4)(a)(A)(B) - From about July 27, 2021, August 17, 2021, August 20, 2021, and August 25, 2021, to about October 6, 2021, Licensee and/or Licensee's employees, agents or representatives altered, removed, or concealed potential evidence, or attempted to do so, and/or refused to give an OLCC regulatory specialist evidence when requested, when all security video of the premises for the times listed below was lawfully requested by OLCC regulatory specialist S. Boyd, and major portions of the requested video was not produced as specified below:

REQUESTED	NOT PRODUCED
July 10-11, 2021	Main Camera 1 & 2 Front parking lot Outdoor patio
July 15-16, 2021	Main Camera 1 & 2 Pool table area
July 22-23, 2021, July 24-25, 2021,	Main Camera 1 & 2 Main Camera
Aug 12-13, 2021	Pool table area

Proof of any single instance alleged herein is sufficient to constitute a violation of this rule.

(2nd Level Category III)

OAR 845-006-0345(13) - On or about Saturday, October 2, 2021, at 11:47pm, Licensee and/or Licensee's employees, agents, or representatives permitted the use, consumption, ingestion, or inhalation of marijuana items as defined in OAR 845-025-1015 on a premises licensed to sell or serve alcoholic beverages, when OLCC inspectors at the premises observed a male patron roll and smoke part of a marijuana joint, and a female patron take two hits off a pipe apparently containing marijuana based on the smell, within approximately six feet of a bartender in the outdoor tented area who took no action regarding the smoking of marijuana.

(2nd Level Category III)

(continue **TIKI LOUNGE**)

SYNOPSIS: This premises experienced a number of serious problems during 2021 and continuing up until April 2022, including fighting and failing to evict patrons engaged in noisy, disorderly or unlawful activities. Licensee voluntarily made changes to the atmosphere of the premises, adopted reduced hours and other measures to control the premises and requested and received OLCC training for its staff, including training on signs of intoxication, prohibited conduct, and the process for evicting patrons. OLCC public safety staff believes that Licensee is sincerely working towards controlling disorder. The settlement proposes license restrictions regarding DPSST security required at the premises, limitations on the hours of service, and requirements for storage and provision of surveillance footage. The objective is that with implementation of the restrictions provided for in this settlement, this business can be both safe and successful.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice. Violation Number One was Licensee's second Category I violation. The first was for a lapse of LLI insurance (less than 90 days, not cancellable). Violations Number Two, Number Four and Number Five were Licensee's third, fourth, and fifth Category III violations within two years, settled at the second level. Any subsequent Category III violation within the same two years will be charged at the third level. Violation Number Three was Licensee's first Category IV violation within two years. Any subsequent Category IV violation within the same two years will be charged at the second level. These violations will become a permanent part of each licensee's Commission file and may be considered in any future application for any license or permit by that licensee.
2. The standard sanction for the Category I violation is license cancellation. The standard sanction for each second-level Category III violation is a 30-day license suspension or \$4,950.00 civil penalty. The standard sanction for the Category IV violation is a seven-day license suspension or \$1,155.00 civil penalty. Commission staff proposed aggravating the penalty because Violations Number One and Number Two involved injury; Violations Number Two and Number Five involved more than one patron or employee; and Violation Number Four was repeated and was personally committed by Licensee Naomi Henson.
3. Commission staff originally proposed for these violations the standard sanction of license cancellation.
4. The Commission will reduce the sanction for Violation Number One to a 32-day license suspension, with the option to pay a \$4,950.00 civil penalty in lieu of 30 days, and the remaining two days mandatory; plus the imposition of restrictions on this license as stated in paragraph 7 below.
5. The Commission will reduce the sanction for Violations Number Two, Number Four, and Number Five, by nine days each. The Commission will reduce the sanction for Violation Number Three by two days.
6. Licensee will either pay a \$17,820.00 civil penalty before 5:00 PM on November 15, 2022 and serve a two-day license suspension from 7:00 AM on November 22, 2022 to 7:00 AM on November 24, 2022 **OR** serve a 110-day license suspension beginning at 7:00 AM on November 22, 2022 and ending at 7:00 AM on March 12, 2023.

(continue **TIKI LOUNGE**)

7. The Commission will impose restrictions on the license. Licensee accepts the imposition of the following license restrictions without conditions or reservations:
 - (1) From 9:00 pm to closing on Friday and Saturday nights, Licensee will maintain at least two DPSST-certified security guards working solely in the role of security to verify identification, monitor patron entrances and exits, and control disorder inside and in the immediate vicinity of the premises. All on-duty DPSST-certified staff members must wear an outer garment that clearly displays the word "security" or "staff" in a readable size font on the person's chest and back. The persons in this role will not be allowed to mix, sell, or serve alcohol while on-duty as DPSST-certified staff. Security will evaluate each individual entering the premises for signs of intoxication and refuse entry to any person who is visibly intoxicated or disorderly. (Note: each night includes the following morning after 12:00 am until closing.)
 - (2) From 9:00 pm to closing on Friday and Saturday nights, at least one DPSST-certified security person will patrol the areas adjacent to or outside the premises, including the front and back parking areas, at least every 20 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 1.
 - (3) From 9:00 pm to closing on Thursday and Sunday nights, Licensee will maintain at least one DPSST-certified security guard working solely in the role of security to verify identification, monitor patron entrances and exits, and control disorder inside and in the immediate vicinity of the premises. All on-duty DPSST-certified staff members must wear an outer garment that clearly displays the word "security" or "staff" in a readable size font on the person's chest and back. The persons in this role will not be allowed to mix, sell, or serve alcohol while on-duty as DPSST-certified staff. Security will evaluate each individual entering the premises for signs of intoxication and refuse entry to any person who is visibly intoxicated or disorderly. (Note: each night includes the following morning after 12:00 am until closing.)
 - (4) Licensee's employees or agents (including without limitation Adam Arevalo) shall not interfere with or overrule any DPSST-certified security staff member's reasonable actions and decisions regarding controlling disorder, eviction of disorderly patrons, or refusal of entry to the premises to a visibly intoxicated or disorderly person.
 - (5) The sale and service of alcohol is prohibited from 1:00 am to 7:00 am.
 - (6) Licensee will not allow any person to possess or consume alcohol at the premises from 1:30 am to 7:00 am. Security shall ensure that the parking lots are cleared of patrons within 15 minutes after closing. Patrons may leave their vehicles in the parking lots.
 - (7) Patron entry and reentry is prohibited from 12:30 am to 7:00 am.
 - (8) Staff shall not sell or serve to a patron, and a patron may not possess, more than one container of alcohol at one time, and each container of alcohol will contain no more than 16 ounces of malt beverage, 16 ounces of cider, six ounces of wine, or two ounces of distilled spirits.

(continue **TIKI LOUNGE**)

- (9) Licensee's alcohol servers will use a one-ounce jigger or one-ounce measured liquor bottle pourer to measure pours of distilled spirits.
 - (10) Licensee's employees, agents, or representatives will immediately report any violent or illegal activity observed within or outside the premises to law enforcement.
 - (11) 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 lots. The licensee must keep all recordings for a minimum of 30 calendar days, with the date and time embedded on all surveillance recordings without significantly obscuring the picture. Licensee must make complete unaltered video surveillance footage available within 72 hours of any request, to an OLCC inspector or law enforcement officer.
8. Licensee withdraws the request for a hearing.
9. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on these charges, the licensee agrees to accept a Letter of Reprimand for the violations charged in the Notice. This reprimand will become a permanent part of the licensee's Commission file and may be considered in any future application for any license by the licensee.
10. This agreement is conditioned upon final approval of the Commission and will be reviewed by the Commissioners at their October 2022 Commission Meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Licensee's hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Licensee 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.