

# ADMINISTRATIVE HEARINGS DIVISION

February 18, 2021

## STIPULATED SETTLEMENT AGREEMENTS FOR LIQUOR VIOLATION CASES

1. Suzanne Culver  
Stephen Culver  
PO Box 541  
Cave Junction, OR 97523  
dba **MCGREW'S (F-COM)**  
33105 Redwood Hwy  
O'Brien, OR 97534

OAR 845-006-0345(1) – On or about October 30, 2020, Licensees' employee, agent, or representative Jenean Witherspoon was under the influence of intoxicants while on duty..

(1<sup>st</sup> Level Category II)

OAR 845-006-0345(13) – On or about October 30, 2020, Licensees and/or Licensees' employees, agents, or representatives permitted the use, consumption, ingestion, or inhalation of marijuana items as defined in ORS 475B.015 and OAR 845-025-1015 on a premises licensed to sell or serve alcoholic beverages, when Licensees and/or Licensees' employees, agents or representatives permitted multiple patrons and an employee to use, consume, ingest, or inhale a marijuana item or items in the patio area of the licensed premises.

(1<sup>st</sup> Level Category III)

Note: Licensee was charged with these violations by Notice dated January 6, 2021. The standard sanction for Violation Number One is a 30-day suspension. The standard sanction for Violation Number Two is a 10-day suspension or a \$1,650.00 civil penalty. Licensee now wishes to enter into this settlement agreement.

### AGGRAVATION

Staff added two days of aggravation to Violation Number Two because the violation involved more than one employee or patron.

**SYNOPSIS:** An inspector went to the premises to check for compliance with the Governor's COVID-related Executive Orders. While there, he observed multiple patrons on the patio smoking marijuana, and witnessed a premises employee smoking marijuana with one of the patrons. When the inspector spoke with the employee, he observed that she had glassy, bloodshot eyes, and noted that she was having a difficult time understanding what he was saying. Based on his observations, he concluded that she was under the influence of marijuana and intoxicated on duty.

### TERMS OF AGREEMENT

1. Licensees accept responsibility for the violations as set out in the Notice. These were Licensees' first Category II and Category III violations within two years. Any subsequent Category II or Category III 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.

(continue **MCGREW'S**)

2. The standard sanction for Violation Number One is a 30-day suspension. The standard sanction for Violation Number Two is a 10-day suspension or a \$1,650.00 civil penalty.
3. The Commission will reduce the sanction and impose a 21-day suspension for Violation Number One and a nine-day suspension for Violation Number Two. Licensees may pay a \$1,485.00 civil penalty in lieu of nine days, with the remaining 21 days mandatory.
4. Licensees will either pay a \$1,485.00 civil penalty before 5:00 PM on March 15, 2021, and serve a 21-day license suspension beginning at 7:00 AM on March 22, 2021 and ending at 7:00 AM on April 12, 2021 **OR** serve a 30-day license suspension beginning at 7:00 AM on March 22, 2021 and ending at 7:00 AM on April 21, 2021.
5. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on the allegation, the licensee agrees to accept a Letter of Reprimand for the violation. 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.
6. This agreement is conditional upon final approval of the Oregon Liquor Control Commission and will be reviewed by the Commissioners at their February 2021 Commission Meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Licensees' hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Licensees waive 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. Underground Sports Bar, LLC  
Jimmy Truong, Managing Member  
18659 SW TV Hwy  
Aloha, OR 97008  
dba **UNDERGROUND SPORTS BAR** <sup>1</sup>  
18641 SW TV Hwy  
Aloha, OR 97006

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 18641 SW TV Hwy, Aloha, Oregon, or involving patrons of the establishment in the immediate vicinity of the premises. The problems occurred from January 14, 2018 to December 11, 2019.

Note: Licensee was charged with this violation by Notice dated January 8, 2020. The standard sanction for this violation is license cancellation. Licensee requested a hearing and now wishes to enter into this settlement agreement.

(1<sup>st</sup> Level Category I)

<sup>1</sup> The tradename has been changed to 89 Sports Bar and Billiards.

**SYNOPSIS:** This full on-premises licensee was charged with a history of serious and persistent problems based on 23 incidents from January 14, 2018 to December 11, 2019. Based on a reduction in police calls in 2020, Licensee’s voluntary change of its business model from dance club to sports bar, and Licensee’s willingness to accept license restrictions, Licensee appears to have demonstrated the willingness and ability to control the premises.

#### **TERMS OF AGREEMENT**

1. Licensee accepts responsibility for the violation as set out in the Notice. This was Licensee’s first Category I violation. 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. Commission staff originally proposed for this violation the standard sanction of license cancellation.
3. The Commission will reduce the sanction for the violation to a 30-day license suspension or a \$4,950.00 civil penalty.
4. Subject to the COVID offset stated in paragraph 5 below, Licensee will either pay a \$4,950.00 civil penalty before 5:00 PM on March 15, 2021 **OR** serve a 30-day suspension beginning at 7:00 AM on March 22, 2021 and ending at 7:00 AM on April 21, 2021.
5. Licensee may off-set the number of days it was prohibited from exercising its on-premises license privileges pursuant to the Governor’s Executive Order 20-07, or any successor that extends that order, against the 30-day suspension referenced in Paragraph 4.

(continue **UNDERGROUND SPORTS BAR**)

6. The Commission will impose restrictions on the license. Licensee accepts the imposition of the following license restrictions without conditions or reservations:
  - (1) The sale and service of alcohol is prohibited from 1:00 am to 7:00 am.
  - (2) Licensee will not allow patrons to possess or consume alcohol from 2:00 am to 7:00 am.
  - (3) Patron entry and reentry is prohibited from 1:00 am to 7:00 am.
  - (4) A patron may possess no 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.
  - (5) Licensee's alcohol servers will use a one-ounce jigger or measuring tool to measure pours of distilled spirits.
  - (6) From 10:00 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 monitor patron entrances and exits, and the interior 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. (Note: Friday night includes Saturday after 12:01 am until closing, and Saturday night includes Sunday after 12:01 am until closing.)
  - (7) On Friday and Saturday, from 10:00 pm to close of business at least one DPSST-certified security person will patrol the areas adjacent to or outside the premises at least every 20 minutes to discourage loitering and illegal activity.
  - (8) Licensee's employees or representatives will immediately report any violent or illegal activity observed within or outside the premises to law enforcement.
  - (9) 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 and the licensed patio. 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 unaltered video surveillance footage available, upon request, to any OLCC inspector or law enforcement officer.
7. Licensee withdraws the request for a hearing.

(continue **UNDERGROUND SPORTS BAR**)

8. 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 for this violation. 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.
9. This agreement is conditional upon final approval of the Oregon Liquor Control Commission and will be reviewed by the Commissioners at their February 2021 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.