



CITY OF  
**PORTLAND, OREGON**

HEARINGS OFFICE

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**HEARINGS OFFICER'S ORDER**

CITY OF PORTLAND, petitioner, vs. DONALD R. SEXTON and KON TIKI, LTD., respondents

CASE NO. 2090009

PROPERTY / ZONE / PARK: 318 SW 3<sup>rd</sup> Avenue  
City of Portland, Multnomah County, Oregon

HEARINGS OFFICER: Mr. Gregory J. Frank

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A written submission to the record (exhibit 36) from Deputy City Attorney Osoinach indicated that the City and Respondent reached an agreement in this case and desired the "Settlement Agreement" to be incorporated into the Hearings Officer Order. Respondent, per exhibit 33, is represented by legal counsel.

Exhibit 1, the City's Complaint, lists Donald R. Sexton as the Respondent. Exhibit 36a lists the Kon Tiki, Ltd. and Donald R. Sexton as parties to the settlement. The Hearings Officer, on his own motion, finds that the Respondents in this case, for the purposes of this Order, shall be Kon Tiki, Ltd. and Donald R. Sexton.

The Hearings Officer, having reviewed Exhibit 36a, finds it reasonable and appropriate to incorporate Exhibit 36a as part of this Order and the terms of Exhibit 36a shall be considered the findings and order of this Hearings Officer.

**ORDER AND DETERMINATION**

1. The stipulated agreement between the parties, attached hereto and incorporated herein by this reference, is hereby approved and made the order herein. The respondent is ordered and directed to comply with its terms.
2. This order has been mailed to the parties on April 27, 2009, and shall be final and effective immediately.
3. This case will be closed on July 27, 2009.

This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 27, 2009

GJF:cb/rs

Enclosure

Gregory J. Frank, Hearings Officer

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Code Complaint	Alarcon de Morris, Amalia	Received
2	Bureau mailing list	Alarcon de Morris, Amalia	Received
3	OLCC application	Alarcon de Morris, Amalia	Received
3a	OLCC Corporation Questionnaire	Alarcon de Morris, Amalia	Received
3b	OLCC Individual History	Alarcon de Morris, Amalia	Received
4	Letter from Chief Rosanne Sizer to Thomas Breaseale dated 12/12/08	Alarcon de Morris, Amalia	Received
5	14 pg. doc. "Abatement Plan" on ONI letterhead dated 12/30/08	Alarcon de Morris, Amalia	Received
6	2 pg. doc. "Abatement Plan" on ONI letterhead dated 1/9/09	Alarcon de Morris, Amalia	Received
7	Copy of email from Marchetti to Neill dated 1/21/09	Alarcon de Morris, Amalia	Received
8	Copy of 5 pg. email stream	Alarcon de Morris, Amalia	Received
9	Custody & Continuation report on Robbins - 3 pgs	Alarcon de Morris, Amalia	Received
10	Fingerprint sheet	Alarcon de Morris, Amalia	Received
10a	FBI info. sheet	Alarcon de Morris, Amalia	Received
11	2nd Custody report (1 pg., not exactly like Exh. 9)	Alarcon de Morris, Amalia	Received
12	Fingerprint sheet (no name; not exactly like Exh. 10)	Alarcon de Morris, Amalia	Received
13	Investigation & Continuation report on McJunkin & Chambery (5 pgs.)	Alarcon de Morris, Amalia	Received
14	OLCC Intake/Compliance Action report	Alarcon de Morris, Amalia	Received
15	Email from Jackie Paul to mfriedman at PPB dated 7/25/08	Alarcon de Morris, Amalia	Received
16	Data printout labeled PPDS Address/Case display	Alarcon de Morris, Amalia	Received
17	Investigation & Continuation report on Sheffield & McFeron (5 pgs.)	Alarcon de Morris, Amalia	Received
18	Custody report for McFeron (2 pgs.)	Alarcon de Morris, Amalia	Received
19	Fingerprint sheet	Alarcon de Morris, Amalia	Received
19a	FBI info. sheet	Alarcon de Morris, Amalia	Received
20	Custody report for McFeron (1 pg., not exactly like Exh. 18)	Alarcon de Morris, Amalia	Received
21	Fingerprint sheet (no name; not exactly like Exh. 19)	Alarcon de Morris, Amalia	Received
22	Property/Evidence receipt for McFeron	Alarcon de Morris, Amalia	Received
23	Non-Connect Special Report from John Miller (1 pg.)	Alarcon de Morris, Amalia	Received
24	Investigation & Continuation report for Campbell (4 pgs.)	Alarcon de Morris, Amalia	Received
25	Investigation report for Peters-Carmody (2 pgs.)	Alarcon de Morris, Amalia	Received
26	"Sensitive Information" data sheet from PPB	Alarcon de Morris, Amalia	Received
27	Investigation & Continuation report for Snider & Owens-Faurentino (4 pgs.)	Alarcon de Morris, Amalia	Received
28	Investigation report for Kincaid, Owens-Faurentino, & Snider (2 pgs.)	Alarcon de Morris, Amalia	Received
29	Investigation report for Borgen (2 pgs.)	Alarcon de Morris, Amalia	Received
30	Mailing list	Hearings Office	Received
31	Hearing notice	Hearings Office	Received
32	Notice of Rights & Procedures	Hearings Office	Received
33	Request to reschedule	Neill, James K.	Received
34	Rescheduled hearing notice	Hearings Office	Received
35	Letter stating agreement reached between parties	Osoinach, Ellen	Received
35a	Settlement Agreement (2 pgs.)	Osoinach, Ellen	Received
35b	Abatement Plan labeled by Osoinach as "Exhibit A" (2 pgs.)	Osoinach, Ellen	Received
36	4/24/09 letter with attachments	Osoinach, Ellen	Received
36a	Settlement Agreement	Osoinach, Ellen	Received
36b	Abatement Plan	Osoinach, Ellen	Received

# **SETTLEMENT AGREEMENT**

**Between**

**THE CITY OF PORTLAND**

**And**

**KON TIKI, LTD. AND DONALD R. SEXTON.**

The parties agree that the following stipulations and remedies appropriately address Hearings Code Complaint No. 2090009 and, therefore, ask the hearings code officer to incorporate this stipulated agreement into his final order.

The parties stipulate that Exhibits 1-31 be entered into the official record.

Kon-Tiki, Ltd. and Donald R. Sexton admit the following disputed allegations contained in the complaint:


- From October 16, 2008 to present Kon-Tiki, Ltd is the liquor licensee and operator of the establishment known as Silverado located at 318 SW 3<sup>rd</sup> Avenue.
- On December 30, 2008, it failed to enter into an abatement plan with the City of Portland.
- Between October 16, 2008 and November 2, 2008 at the establishment located at 318 SW 3<sup>rd</sup> Avenue, an establishment that serves alcoholic beverages, four nuisance activities occurred that were related to or arising out of the establishment.

The parties agree that the following time, place and manner restrictions appropriately address the complaint, and will, therefore, ask the hearings code officer to issue the following order:

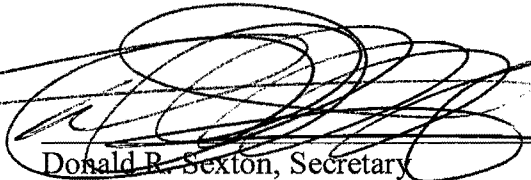
1. Respondent Kon-Tiki, Ltd. is ordered to comply with the Abatement Plan attached to this agreement and labeled as "Exhibit 1".
2. The Abatement Plan represents a reasonable time, place, and manner restriction. The restriction on the business located at 318 SW 3<sup>rd</sup> Avenue (known as Silverado) and its licensee Kon-Tiki, Ltd. shall apply for a 90 (ninety) day period. The restriction period shall begin on April 27, 2009 and shall last through and including 4:00 pm on July 25, 2009.
3. The Hearings Officer retains jurisdiction in this case until 4:00pm on July 27, 2009.

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Exhibit #36a  
Case # 2090009  
Bureau Case # None given

4. At any time during the period in which the Hearings Officer retains jurisdiction, the City may set a hearing with the court to present evidence that this order has been violated.

  
Ellen Osoinach  
City of Portland

4.23.09

  
Donald R. Sexton, Secretary  
Kon-Tiki, Ltd.



CITY OF

**PORTLAND, OREGON**

OFFICE OF NEIGHBORHOOD INVOLVEMENT

**EXHIBIT  
1**

Amalia Alarcón de Morris, Bureau Director  
Liquor Licensing Programs  
1221 SW 4th Avenue, Room 110  
Portland, Oregon 97204

*Enhancing the quality of Portland's Neighborhoods through community participation*

The following Abatement Plan is intended to address the nuisance activities occurring at Silverado, located at 318 SW 3<sup>rd</sup> Ave, Portland, OR 97204. As the representative of the licensee, Kon-Tiki, LTD, Donald Sexton stipulate to the violation of the Time Place Manner Ordinance 14B.120.

### 1.1 SECURITY

- Licensee will submit proof of DPSST Certification of all personnel working in security capacity (doormen, alcohol monitors, bouncers, etc.) to the Portland Police Bureau, Officer Nola Watts, within 14 days of signature.
- Licensee will designate one person as an alcohol monitor between the hours of 11pm and 2:30am whose primary duty is to monitor the premises for intoxicated patrons.
- Licensee will train security staff in recognizing intoxication within 7 days of hire and require signature of all existing and future security personnel indicating they understand how to recognize intoxication; security will not allow entrance to persons exhibiting signs of intoxication.
- Licensee and staff will maintain incident log detailing all complaints/incidents occurring in or around Silverado, 318 SW 2<sup>nd</sup> Ave including 1) who was involved; 2) when the incident/complaint occurred 3) where the incident/complaint occurred; 4) detailed description of what occurred; 5) contact information for employees involved. This log will be available for review by Portland Police, the Office of Neighborhood Involvement, Noise Control or the OLCC at all times.
- Licensee will check ID of all patrons under the age of 35 prior to 9pm. After 9pm, licensee will check identification of all patrons in order to actively monitor and assess patrons as they enter the establishment. After 9pm, if a person does not have acceptable identification, the Silverado staff will not allow entrance to that person.

### 1.2 SERVICE

- Licensee and staff will follow all OLCC rules and regulations regarding the service of alcohol.
- Licensee will mandate and host quarterly trainings regarding VIP (very Intoxicated Persons) for all employees on staff utilizing literature from the

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Exhibit #36b  
Case # 2090009  
Bureau Case # 1100000



OLCC. The first training will be held within 30 days of signature of this agreement.

- Licensee will ensure bartenders and servers do not serve anyone until they have established that person does not show signs of intoxication.
- Licensee will not allow a patron to have more than one alcoholic beverage in their possession at one time. An alcoholic beverage is defined as 6 ounces of wine, 12 ounces of beer, or 1.5 ounces of distilled spirits.
- Licensee will use measured pours to serve patrons and will not allow bar staff to "freepour".

## **1.2 OPERATIONS**

- Licensee will have a manager or supervisor on site at all times the establishment is in operation.
- Licensee will post a copy of the Time Place Manner violation letter and signed abatement plan in an area easily accessible to employees.
- Licensee will develop and submit house policies regarding conduct of employees, conduct of patrons, and exclusion policies, within 30 days of signature.