

*Bridgeway*

BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Application for Renewal of	)	
the Dispenser Class A (DA)	)	
License held by:	)	FINAL
	)	FINDINGS OF FACT,
Leisure Services, Inc.	)	CONCLUSIONS OF LAW,
dba FRANK PETER'S INN	)	AND ORDER
839 SW Fourth Avenue	)	
Portland, Oregon 97204	)	OLCC-84-L-031
- - - - -	)	
Multnomah County	)	

A hearing in the above matter was held on the 7th day of November, 1985, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was not represented by legal counsel. The Commission was represented by legal counsel.

On February 19, 1985, the Commission considered the record of the hearing, the Proposed Order of the Hearings Examiner, and applicable statutes and regulations. Pursuant to this review, the Commission enters the following:

ISSUES

I. The Commission's Staff asserts that the application should be denied because of the negative endorsement of the Portland City Council. OAR 845-05-025(1).

II. The Commission's Staff asserts that the application should be denied because the licensing of the premises would not be in the best interest of the community because of illegal activities or a recent history of altercations, noisy conduct,

or other disturbances in or around the premises. OAR 845-05-025(10).

III. The Commission's Staff asserts that the application should be denied because Applicant did not have a good record of compliance when previously licensed. ORS 471.295(4)(g).

#### I. NEGATIVE LOCAL ENDORSEMENT

The following criteria will be given sufficient consideration so that a license will not be issued unless good cause which outweighs the criteria involved is shown by the applicant:

(1) An adverse recommendation by the governing body of the appropriate city or county, after due consideration. The recommendation may be disregarded by the Commission if the body has failed to give to the applicant and to interested members of the public both reasonable notice of the proceedings at which the application was considered and reasonable opportunity to be heard. OAR 845-05-025(1).

#### Findings of Fact

1. On June 28, 1984, the Portland City Council considered the application for renewal.
2. The Council heard testimony by representatives of the Portland Police Bureau and by Applicant Frank Peters. Applicant had adequate notice and opportunity to be heard on the matter.
3. When the license had been renewed for the previous license year, 1983-84, the Portland City Council had recommended "Favorable with Letter of Warning." The City sent

Applicant a letter at this time informing him of its decision and stating, in pertinent part:

"The licensee is specifically warned that the Council will give serious consideration to an Unfavorable recommendation at the next renewal if the conditions in question continue.

"In your case, the concerns of the Council centered on 'Minor on Licensed Premises' violations cited by the Portland Police Bureau. The police report pointed out nine such violations between February 8, 1983 and April 20, 1983 and indicated that this rate of violation is far in excess of any other licensed establishment in your area."

4. At its June 28, 1984, meeting, the City Council heard testimony from police officers regarding various police calls to the premises since the renewal of the license on July 1, 1983. The police officers noted that there have been 23 calls to the premises during this time. Five of these calls involved a minor on the licensed premises. The other calls testified to by the police officers involved various incidents, such as disturbances, loitering for prostitution, pickpocketing, service of warrant by police, and a few other matters. The testimony of the police officers before the City Council indicated that in the view of the Police Bureau, Applicant has been unwilling or unable to correct the problems noted in the above letter of warning. The testimony of the police officers indicated that in their view most of the problems resulted from the presence on the premises of prostitutes.

5. The testimony of the police officers at the City Council meeting indicated that the Police Bureau was recommending to the City Council that the application be denied.

6. Following the testimony, the City Council voted to uphold the recommendation of the Police Bureau by recommending to the OLCC that the application be denied.

#### Conclusions of Law

The local governing body, the Portland City Council, has recommended that the application for renewal be denied. Although the minutes of the City Council meeting do not reflect a detailed statement of the reasons for the Council's decision, the minutes are sufficient to permit an inference as to the reasons. The Council's motion was based upon the negative recommendation of the Police Bureau. The minutes indicate that the Council took into account the police calls to the premises regarding various illegal activities and other incidents. The minutes also indicate that the Council concluded that Applicant had not sufficiently dealt with the problem of minors on the premises, a matter which had been the subject of a letter of warning from the City to Applicant at the time of the prior renewal.

Nothing in the record casts doubt upon the validity of the City Council's decision. Applicant did offer convincing testimony that the area in which the premises is located is a high-vice area and that operators in the area have had and continue to have problems with prostitutes. He did not, however, offer

a plan for dealing with the problems that have occurred at his premises. This evidence thus does not establish good cause to overcome the negative recommendation. In fact, it indicates that there is little likelihood of improvement in the situation.

It should be noted that the City Council indicated in their discussion that they did not regard Applicant as a bad operator, but rather that they viewed the premises as having very serious problems. However, their generally positive view of him also does not provide good cause for overcoming the negative recommendation, which relates to the license at this particular premises.

The Commission concludes that this criterion provides a basis for denying the application.

## II. ILLEGAL ACTIVITIES OR RECENT HISTORY OF ALTERCATIONS, NOISY CONDUCT, OR OTHER DISTURBANCES

The following criteria will be given sufficient consideration so that a license will not be issued unless good cause which outweighs the criteria involved is shown by the applicant:

. . .

(10) The licensing of the premises would not be in the best interests of the community because of illegal activities or a recent history of altercations, noisy conduct or other disturbances in or around the premises under the applicant's or other's ownership or control. OAR 845-05-025(10).

### Findings of Fact

7. During the period from July 1, 1983, to June 30, 1984, police reports indicate that the following incidents

occurred at Frank Peter's Inn: Seven disturbances or fights; six instances of theft; five instances of minor on the premises.

Conclusions of Law

The Commission concludes that the evidence establishes that illegal activities have occurred on the premises and that there has been a recent history of disturbances or altercations on the licensed premises. Although the record reflects that only approximately six of these incidents resulted in criminal convictions, that fact does not destroy the importance of the evidence. Criminal convictions require, of course, a higher standard of proof than is required in other legal proceedings. The testimony of the police officers at the City Council meeting and at the OLCC hearing is sufficient to establish that a substantial number of such incidents occurred.

The testimony of the police officers also indicates that these disturbances and illegal activities have, for the most part, been the result of the presence in the premises of working prostitutes and their clientele. Thus, some pattern to these incidents has been established. Furthermore, the evidence indicates that there is no real likelihood of improvement in the situation. The Commission concludes that the number of incidents and their causes are sufficient to establish that the renewal of the license would not be in the best interest of the public. The Commission therefore concludes that this criterion provides a basis for denying the application.

### III. POOR RECORD OF COMPLIANCE

The commission may refuse to license any applicant if it has reasonable ground to believe any of the following to be true:

. . .

(4) That the applicant:

. . .

(g) Did not have a good record of compliance with the alcoholic liquor laws of this state and the rules of the commission when previously licensed. ORS 471.295(4)(g).

#### Findings of Fact

8. Applicant has been licensed at Frank Peter's Inn since 1972. During that time, Licensee has been found guilty of the following violations:

<u>Date of Violation</u>	<u>Charge</u>	<u>Disposition</u>
November 1, 1974	Permitted loud, noisy, disorderly and boisterous conduct; employee without service permit.	\$500 Fine
April 18, 1975	Operated during prohibited hours.	\$450 Fine
June 7, 1977	Employee drinking on duty.	\$950 Fine
September 12, 1980	Allowed a minor to consume. Allowed a minor to enter and remain. Failed to check ID or take statement of age card.	\$455 Fine
February 26, 1982	Sold to a visibly intoxicated person.	\$1,300 Fine
July 15 and 31, and August 13, 1982	Failed immediately to transmit service permits.	\$1,300 Fine

November 20, 1982      Operated during prohibited \$1,950 Fine  
hours.

9. Applicant has been licensed at three other premises in the Portland area: Peter's Habit from approximately 1973 to 1979; the Neon Ceiling for approximately one year; and Peter's Superbowl from approximately 1979 to 1982. He had a good record of compliance at these establishments.

Conclusions of Law

The record reflects that Applicant has had approximately seven violations at Peter's Inn during the twelve years that he has been licensed there. The Commission concludes that this is not a "good record of compliance," although his apparently good record at other premises mitigates the importance of this record to some extent.

The Commission concludes that this criterion provides a basis for denying the application.

ULTIMATE CONCLUSIONS OF LAW

The application for renewal should be denied because the local governing body has recommended against renewal, because the illegal activities and recent history of disturbances and altercations at the premises indicate that renewal of the license would not be in the best interest of the community, and because Applicant has had a poor record of compliance at this premises. OAR 845-05-025(1), 845-05-025(10), and ORS 471.295(4)(g).

FINAL ORDER

It is hereby ordered that the application for renewal of the Dispenser Class "A" license by Leisure Services, Inc., in the trade name Frank Peter's Inn, 839 SW Fourth Avenue, Portland, Oregon 97204, be DENIED.

It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

Dated this 25th day of February, 1985.



C. Dean Smith  
Administrator  
OREGON LIQUOR CONTROL COMMISSION

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a Petition for Review within 60 days from the service of this Order. Judicial Review is pursuant to the Provisions of ORS Chapter 183.