

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

LKW Ventures, LLC, d/b/a	)	Docket No. 21-ALJ-17-0087-CC
Breaker’s Bar and Grill,	)	
	)	
Petitioner,	)	
	)	
vs.	)	<b>FINAL ORDER</b>
	)	
South Carolina Department of Revenue,	)	
	)	
Respondent.	)	
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This matter comes before the Administrative Law Court (ALC or Court) on a request by LKW Ventures, LLC, d/b/a Breaker’s Bar and Grill, (Petitioner) for a contested case hearing to challenge a determination by the South Carolina Department of Revenue (Department or Respondent) to deny Petitioner’s applications for an On-Premises Beer and Wine Permit and a Business Liquor by the Drink License.

**BACKGROUND**

The Department is charged with the responsibility of administering and enforcing the laws and regulations governing the sale and consumption of alcoholic beverages, including beer and wine. S.C. Code Ann. § 61-2-20 (2009). In this case, Petitioner purchased an ongoing business and applied for an On-Premises Beer and Wine Permit and a Business Liquor by the Drink License. Pursuant to S.C. Code Ann. §§ 61-4-210 and 61-6-505 (2009), Petitioner also applied for temporary licenses.<sup>1</sup> The Department issued the temporary licenses on December 16, 2020, the same date on which the applications were filed.<sup>2</sup>

The Department issued an Administrative Determination on March 29, 2021, denying the application on these grounds:



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<sup>1</sup> See also S.C. Code Ann. § 61-6-2005. This section in its caption refers to the sale of liquor “by the drink.”

<sup>2</sup> S.C. Code Ann. § 61-4-210(B) (2009) limits temporary licenses “until a biennial retail beer or beer and wine permit is approved or disapproved by the department, but in no case is it valid for more than one hundred twenty days from the date of issuance. When the period expired, Petitioner’s temporary permit and license were revoked.

1. That Applicant lacked the reputation for peace and good order in its community as required by S.C. Code Ann. § 61-6-1820(2); and
2. That Applicant's proposed location was not a proper one as required by S.C. Code Ann. § 61-4-520(5).

These grounds pose the issues before the Court.

### STIPULATIONS AND FINDINGS OF FACT

At the contested case hearing, the parties submitted, in open Court, the following Stipulation of Facts pursuant to S.C. Code Ann. § 12-60-3320 (2014) (*See also* Rule 43(k) SCRPC and SCALC Rule 68.):<sup>3</sup>

1. LKW Ventures, LLC, d/b/a Breaker's Bar and Grill (Breaker's) owns and operates a retail business located at 801 Harden Street, Columbia, South Carolina.
2. LKW Ventures, LLC, d/b/a Breaker's Live (Breaker's Live) owns and operates a retail business located at 805 Harden Street, Columbia, South Carolina.<sup>4</sup>
3. Petitioner purchased these retail business locations from Conspicuous Consumption, LLC d/b/a Breaker's Bar and Grill and Conspicuous Consumption, LLC d/b/a Breaker's Live.
4. On or about December 16, 2020, LKW Ventures, LLC, d/b/a Breaker's Bar and Grill and LKW Ventures, LLC, d/b/a Breaker's Live (Petitioner) applied for an on-premises beer and wine permit and business liquor by the drink license for the premises at 801 Harden Street and 805 Harden Street, Columbia, South Carolina.
5. On or about December 16, 2020, the Department granted a temporary on-premises beer and wine permit and business liquor by the drink license (Temporary Permits) to Petitioner pursuant to S.C. Code §§ 61-4-210 and 61-6-2005 (2009). From approximately December 16, 2020, through March 29, 2021, Petitioner operated Breaker's and Breaker's Live under the Temporary Permits.
6. On February 4, 2021, the Columbia Police Department (CPD) responded to a complaint at Breaker's Live. The complainant was a twenty-year old female patron who was inside Breaker's Live.
7. On February 5, 2021, the Columbia Police Department (CPD) responded to a complaint at Breaker's Live. A witness was an eighteen-year old female patron who was inside Breaker's Live.

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<sup>3</sup> The Stipulations, as admitted into evidence, contained corrections in Items 25 and 26(a). These corrections have been incorporated into the Stipulations as printed herein.

<sup>4</sup> The stipulations distinguish Breaker's Bar and Grill from Breaker's Live. The Order refers to each and both as Breaker's.

8. The City of Columbia contracts with Statewide Security Systems to place security cameras in Columbia.
9. Security camera video footage from February 12, 2021, which was provided by Statement Security Systems, which may or may not be complete, shows the following:
  - a. Sean Brooks entered Breaker's Live on February 12, 2021 at approximately 17:23.
  - b. Sean Brooks exited Breaker's Live on February 12, 2021 at approximately 20:26.
10. The camera footage of Sean Brooks provided by Statewide Security Systems is an authentic representation of the events depicted therein, and is admissible pursuant to Rule 803(6) of the South Carolina Rules of Evidence.
11. Sean Brooks testified that on the night of February 12, 2021, he consumed alcohol beverages at a friend's house and then at Breaker's Live. For purposes of this hearing only, there is no evidence that Sean Brooks consumed any alcoholic beverages at any other business or location in the Five Points Entertainment District after leaving Breaker's Live at approximately 20:26 on the night of February 12, 2021.
12. On February 12, 2021, at approximately 20:44 Sean Brooks was hit by an automobile while he was attempting to walk across the 1800 block of Blossom Street in Columbia, South Carolina.
13. Mr. Brooks was found by Police to have a Mississippi identification that stated he was over the age of twenty-one.
14. Sean Brooks' date of birth is August 31, 2001.
15. On February 12, 2021 SLED Special Agent Tortorello conducted a compliance check at Breaker's Live. At that time, Special Agent Tortorello states he observed a female in possession of alcohol who appeared to be under the age of twenty-one (21). After being detained, the individual, who was 20, presented a Massachusetts IDs that identified her as over twenty-one but was determined by SLED's age ID app to be fake. The individual also presented her State of Massachusetts driver's license which indicated she was twenty (20) years old. Special Agent Tortorello issued the individual criminal citations for violation S.C. Code Ann. § 63-10-2450(A), possession of liquor by a person under the age of 21, for violating S.C. Code Ann. § 56-1-510(1), and possession of an altered ID. The individual was not asked how she obtained the alcohol or whether it was purchased from the establishment. The matter is currently pending.

16. During the February 12, 2021 compliance check, Special Agent Tortorello states he also observed a male in possession of alcohol who appeared to be under the age of twenty-one (21). After being detained, the individual, who was 20, presented a New York ID that identified him as over twenty-one but was determined by SLED's age ID app to be fake. Thereafter, the individual presented an authentic State of New York driver's license which indicated he was twenty (20) years old. Special Agent Tortorello issued the individual criminal citations for violation S.C. Code Ann. § 63-10-2450(A), possession of liquor by a person under the age of 21 and for violating S.C. Code Ann. § 56-1-510(1), possession of an altered ID. The individual was not asked how he obtained the alcohol or whether it was purchased from the establishment. The matter is currently pending.
17. On February 26, 2021 SLED Special Agent Jordan conducted a compliance check at Breaker's Live. At that time, Special Agent Jordan states she observed a female in possession of alcohol who appeared to be under the age of twenty-one (21). The individual presented a State of South Carolina driver's license that confirmed she was nineteen (19) years old. Special Agent Jordan issued the individual for violation S.C Code Ann. 63-10-2450(A), possession of liquor by a person under the age of twenty-one (21). The matter is currently pending.
18. On February 26, 2021 SLED Special Agent Jordan conducted a compliance check at Breaker's Live. At that time, Special Agent Jordan states she observed a female in possession of alcohol who appeared to be under the age of twenty-one (21). After being detained, the individual, who was 19, presented a Georgia ID that identified her as over twenty-one but was determined by SLED's age ID app to be fake. Thereafter, the individual presented a valid State of South Carolina driver's license which confirmed she was nineteen (19) years old. Special Agent Jordan issued the individual criminal citations for violation S.C Code Ann. 63-10-2450(A), She was cited for possession of liquor by a person under the age of twenty-one (21), and for violating S.C. Code Ann. 56-1-510(1), possession of an altered ID. The individual was not asked how he obtained the alcohol or whether it was purchased from the establishment. The matter is currently pending.
19. On February 26, 2021 SLED Special Agent Phillips conducted a compliance check at Breaker's Live. At that time, Special Agent Phillips states he observed a male in possession of alcohol who appeared to be under the age of twenty-one (21). After being detained, the individual, who was 19, presented a South Carolina ID that identified him as over twenty-one but was determined by SLED's age ID app to be fake. Thereafter, the individual presented a valid State of South Carolina driver's license which confirmed the individual's birthdate was 10/05/2001, making him nineteen (19) years old. Special Agent Phillips issued the individual criminal citations for violation S.C Code Ann. 63-10-2450(A), possession of liquor by a person under the age of twenty-one (21), and for violating S.C. Code Ann. 56-1-510(1), possession of an altered ID. The individual was not asked how he obtained the alcohol or whether it was purchased from the establishment. The matter is currently pending.

20. On March 18, 2021, Columbia Police Department conducted an investigation of Breaker's. At that time, Officer Johnson states he observed a female in possession of alcohol who appeared to be under the age of twenty-one (21). The individual presented an ID which indicated she was twenty-one (21), but she told Officer Johnson that she was only nineteen (19) years old. Officer Johnson scanned the ID using the CPD Age ID application, and the ID came back as valid even though it was not. Officer Johnson issued a citation to the individual for possession of an altered ID.
21. On March 20, 2021 SLED Special Agents Jordan, Dorman, Phillips, Count, Parikh, and Smith conducted an undercover compliance check at Breaker's. At approximately 6:30 p.m., Special Agent Parikh and Smith in plain clothes entered Breaker's Bar and Grill and were scanned by the doorman before entering. At that time, Special Agent Parikh and Smith witnessed a male approach the bar and request a drink from the Bartender, who was later identified as Mary E. Wagner. Ms. Wagner did not request to see the ID of the male before serving him the "trash can" mixed liquor beverage. Special Agent Parikh and Smith recorded a video of this transaction. Upon request, the male presented the SLED Special Agents with a valid State of Virginia driver's license, which indicated he was under twenty-one (21) until March 1, 2022. Special Agent Powell issued the individual a criminal citation for violation S.C Code Ann. 63-10-2450(A), possession of liquor by a person under the age of twenty-one (21).
22. As a result of this compliance check, Special Agent Jordan issued the Petitioner an administrative violation for the violation of S.C. Code Regs. 7-200.4, permitting the purchase of liquor by an individual under the age of twenty-one (21). Thereafter, on the same date, she advised Mr. Pennington, the owner, that his ID scanners may not be accurate. This matter is currently pending.
23. For purposes of this hearing only and based solely on deposition testimony, on March 20, 2021, Laer Hohmann, Kurdt Hohmann, Will Ruhlin, and Chance Yurco, entered the Petitioner's location through a side gate without showing identification. At the time, they were under the age of twenty-one (21).
24. Laer Hohmann testified that while inside the Petitioner's location, he consumed at least three alcoholic liquor drinks. For purposes of this hearing only, there is no evidence that Laer Hohmann consumed any alcoholic beverages at any other business or location in the Five Points Entertainment District after leaving at approximately 1:04 AM on the morning of March 21, 2021.
25. Kurdt Hohmann testified that while in one of the Petitioner's locations, he consumed at least four alcoholic liquor drinks.
26. Security camera video footage from March 21, 2021, which was provided by Statement Security Systems and may or may not be complete, shows the following:

- a. Laer Hohmann, Kurdt Hohmann, and Chance Yurco exit one of the Petitioner's locations on March 21, 2021 at approximately 1:04 AM.
- b. After leaving Petitioner, the three individuals proceed to walk down Devine Street.
- c. At approximately 01:35, Laer Hohmann stops and enters The Bird Dog, a business located at 715 Harden Street, Columbia, SC 29205.
- d. At approximately 01:36, Laer Hohmann walks toward the rear of The Bird Dog in the direction of the restrooms.
- e. At approximately 01:43, Laer Hohmann walks toward the exit of The Bird Dog and speaks with a patron.
- f. At approximately 01:45, Laer Hohmann exits The Bird Dog.
- g. The video footage does not show Laer Hohmann purchasing any alcoholic beverages while at The Bird Dog.
- h. At approximately 01:51, Laer Hohmann attempts to cross Devine Street and is hit by an automobile.

27. The camera footage of Laer Hohmann provided by Statewide Security Systems is an authentic representation of the events depicted therein of the night of March 20 and early morning of March 21, 2021,-and is admissible pursuant to Rule 803(6) of the South Carolina Rules of Evidence.

Laer Hohmann testified that he traveled to Columbia from Charleston on March 20, 2021. He met his brother, Jorg Hellmut Hohmann, III, (Kurdt), at a house where one of the brother's friends had taken the brother. There, he drank three White Claws (an alcoholic seltzer) prior to going to Five Points. At Five Points he, his brother, and two other individuals went to Breaker's. They entered Breaker's without showing identification although all of them were under twenty-one years of age at the time. At Breaker's he purchased and consumed three or four "trash cans" without having to show identification. According to Laer Hohmann, a "trash can" is a mixture of several liquors and a green syrup. He admitted drinking in Hilton Head where he lives and in Charleston the night before coming to Columbia. He has no memory of anything that occurred after leaving Breaker's. He became separated from his brother and their companions after leaving Breaker's. He admitted to having a bogus identification but denied using it at Breaker's. He was hit by a car later that evening while crossing Devine Street.

Kurdt Hohmann also drank three White Claws before going to Five Points. He testified that they went to Breaker's because one of their group, Will Ruhlin, knew someone who could get them in. Kurdt confirmed that they entered at a "back" area where there was no one to check their

identifications. Kurdt Hohmann had three or four cranberry vodkas at Breaker's. They left Breaker's but did not enter another establishment that evening. Kurdt left the group to find a restroom. When he returned his brother was absent. He learned about his brother's injuries on the afternoon of March 21. Kurdt admitted having and using a bogus identification and having been drinking in Five Points on approximately twenty (20) occasions.

Will Ruhlin testified by deposition. He met the Hohmann brothers on one occasion, the night of Laer's accident (March 20-21, 2021). He denied telling the Hohmann brothers that he could arrange for them to get into any establishment in Five Points. After arriving in Five Points near Breaker's, someone that he did not know told them that they could get into Breaker's using a gate near the business's dumpsters. He did not believe that the individual was an employee of Breaker's.

Ruhlin, Kurdt, and Chance (the fourth member of the group) left Breaker's and were picked up by the individual who dropped the Hohmann brothers off at Ruhlin's house originally. Ruhlin stated that they never went to Breaker's Live. To do so, they would have had to exit Breaker's Bar and Grill and get into the line at Breaker's Live. Although he denied speaking to anyone at Breaker's before they entered on the evening of March 20, 2021, Ruhlin admitted knowing some people who are or were employed at Breaker's. He also admitted suggesting to Laer and Kurdt that they should go to Breaker's. Invoking his "Fifth Amendment" rights, Ruhlin refused to answer questions about his consumption of alcoholic beverages, how he paid for them, or whether he had bogus identification.

Sean Christopher Brooks was nineteen (19) on February 12, 2021. He lives in Baton Rouge, Louisiana, and his date of birth is August 31, 2001. He consumed alcoholic beverages at Breaker's in Five Points on that date. He did not remember drinking anywhere else. When asked how he got into Breaker's, he invoked his "Fifth Amendment right not to incriminate [himself]." He admitted to having two beers before going to Five Points. When asked about having bogus identification from Mississippi and using that to gain entrance to Breaker's, he also invoked his "Fifth Amendment right not to incriminate [himself]." A driver's license identifying Sean Christopher Brooks as a resident of Meridian, Mississippi, with a birthdate of August 31, 1998, was entered as Petitioner's Exhibit 10.<sup>5</sup>

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<sup>5</sup> This exhibit was admitted without objection.

Kirkland Jordan, a special agent for the State Law Enforcement Division, participates in alcohol enforcement activities in Five Points. Jordan stated that Breaker's and the owners have a reputation for peace and good order. She opined that establishments should check identification at the door as well as at the point of sale. She recommends an emphasis at the point of sale with visual examination as well as electronic scans of identification documents. She confirmed that Breaker's used TokenWorks scanners at the entrances. At some point after an incident in March, Breaker's began scanning at the point of sale as well as at the point of entry.

Jordan confirmed that Breaker's began using upgraded TokenWorks scanners that identified bogus documents. Bogus identification has become very sophisticated and difficult to detect. Jordan distinguished three types of investigations: checks focused on licenses, hours of operation, and private club compliance; underage sales using individuals under the age of twenty who attempt entry or purchase with their own South Carolina driver's licenses; and underage consumption. In cases of underage consumption, when a law enforcement officer finds a minor person in possession of an alcoholic beverage, the individual is removed from the premises and ticketed. The business is not informed of the arrest.

Anthony Wayne Pennington and Kimberly Painter Pennington (his wife) are co-owners of Breaker's and submitted applications for permits and licenses for the two businesses. He confirmed that they are United States citizens residing in South Carolina. They have no arrest records and are current on all taxes. They also have the required liability insurance for both locations. He met with the group that had been protesting beer permits and liquor licenses in Five Points. As a result of the meeting and after giving a tour to one of the group's leaders and showing him what they had done and planned to do, the protestants withdrew their protests. Pennington insisted they planned to operate restaurants in contrast to their immediate predecessors at the locations. Alcohol-licensed businesses have operated in the premises for approximately thirty (30) to thirty-five (35) years.

Pennington and his wife will manage the businesses without traditional "managers" and referred to the key employees as "team leaders." According to Pennington, managers tell people what to do. Leaders help, show, coach, and try to improve everyone they work with. They hired one to add to four retained employees for a total of five team leaders. Team leaders make day to day decisions. Purchases, big decisions, hiring and firing decisions, have to be authorized by the owners.



Alex Waelde is one of the team leaders. When the owners are on the premises, they make decisions. During the day when they are not present, Waelde orders inventory or supplies, handles the point of sale system, and technology including sound system. If Waelde's name is on an order, Pennington insisted that it was a purchase he authorized. However, in at least one email, he referred to Waelde as "general manager."

When the assets of the two locations were purchased, the kitchens were not operable. Pennington spent over \$225,000 upgrading and making the kitchens operational so that the locations could serve lunch and dinner. He estimates there are about 100 seats inside each location. The businesses use a single set of books and a single point of sale system.

During the three months Breaker's was open, Pennington asserted that visual checks or scans were done for everyone who entered the two locations. The results of scanning provided records of approximately 25,000 scans. In February 2021, a meeting was held at Breaker's involving law enforcement and representatives of other businesses in Five Points. The consensus was to use scanners in an effort to make Five Points safer.

When it became apparent that the scanners initially purchased were not effective in identifying bogus documents, Breaker's began using upgraded scanners, also from TokenWorks, which could identify bogus documents.<sup>6</sup>

Pennington's plan is to use these improved scanners at the point of sale during lunch (11:00 AM to 2:00 PM) and dinner, to move the scanners to entry points after dinner, and to use visual inspection, stamps, or wrist bands at the bars or points of sale. After the expiration of the Covid pandemic restricted hours of operation, the last call for liquor would be at 1:15 and at 1:45 for beer. Pennington also agreed that Breaker's would not advertise or offer any special prices on alcoholic beverages.

Breaker's continued selling the "trash can" in which rum and vodka are combined with a syrup and an opened can of Red Bull dumped upside down in a sixteen (16) ounce cup.<sup>7</sup> Usual prices start at \$3.00 for beer and \$4.00 for liquor drinks. Breaker's also does spot checks during each

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<sup>6</sup> Petitioner's Exhibit 7 (sealed) shows defective or bogus identification documents were identified on several occasions with the upgraded scanners.

<sup>7</sup> This combination of liquor with a strong stimulant is dangerous and encourages further drinking by masking the depressant effects of alcohol.

evening and employs Richland County Deputies at the front door of each location from Thursday through Saturday, and one on Tuesday. Pennington will also add a second doorman and a camera at the back entrance that proved to be a weak point in his security. There will also be cameras at the front entrances of both locations.

Testimony shows that intoxicated customers have been served at Breaker's and that some customers had not been able to control their bodily functions. It also shows that an employee was instructed to allow entry to three individuals without checking identification.

Officer Lis of the Columbia Police Department testified that on February 12, 2021, an accident occurred at the 1800 block of Blossom Street that involved a vehicle hitting a pedestrian (Sean Brooks). The officer's observation of and conversation with the pedestrian at a hospital about 45 minutes after the incident led him to conclude that the individual was intoxicated or otherwise impaired. On March 21, 2021, another incident occurred in the 700 block of Harden Street (Laer Hohmann).

Another Columbia Policeman, Officer Baire, testified that he observed Waelde drinking on the premises and believed that Waelde was working at the time. Baire also testified that the new owners of Breaker's wanted to cooperate to make positive changes in Five Points. In his opinion, communication between bar owners and law enforcement has improved, and the use of scanners has increased and should help to reduce and control underage alcohol consumption.

### **DISCUSSION AND CONCLUSIONS OF LAW**

The ALC has jurisdiction in this matter pursuant to S.C. Code Ann. § 61-2-260 (2009) and S.C. Code Ann. § 1-23-600 (Supp. 2016). *See Palmer v. S.C. Alcoholic Beverage Control Comm'n*, 282 S.C. 246, 248, 317 S.E.2d 476, 477 (Ct. App. 1984) (“[T]he issuance or granting of a license to sell beer or alcoholic beverages rests in the sound discretion of the body or official to whom the duty of issuing it is committed....”).

Licenses and permits issued by the state for the sale of beer, wine, and liquor are not rights of property but are rather privileges granted in the exercise of the police power of the State. *Wall v. S.C. Alcohol Beverage Control Comm'n*, 269 S.C. 13, 15, 235 S.E.2d 806, 807 (1977).

S.C. Code Ann. § 61-4-520 (2009) sets forth the specific requirements for issuance of a beer and wine permit. S.C. Code Ann. § 61-6-1820 (2009) sets forth the specific requirements for the

issuance of a license for a restaurant to sell liquor by the drink. The law provides that all persons and principals must be of good moral character. S.C. Code Ann. §§ 61-2-100(D), 61-4-520(1), and 61-6-1820(2) (2009). In addition, the law requires that the location be proper and suitable. S.C. Code Ann. §§ 61-4-520(5), (6) and 61-6-910(2).

Generally, good moral character means someone who is able to comply with rules and is viewed in a positive light and as an upstanding member of the community. *See* 48 C.J.S. *Intoxicating Liquors* § 171 (2016). Some factors that are usually considered when evaluating the character of an applicant include whether the person has ever violated any of the liquor laws of South Carolina, whether the person has ever been found guilty of a crime of moral turpitude, and whether the applicant concealed a material fact on the application for the alcohol license. *See id.* In this case, the Court believes the owners misunderstood the scope of the term “principal” (*see infra*).

The owners of Breaker’s have a reputation for peace and good order in the community and are of good moral character. They have committed to taking adequate steps to prevent underage alcohol consumption in their businesses and to coordinate those efforts with law enforcement and to comply with suggestions from law enforcement officers.

Two individuals, Brooks and Hohmann, were injured while walking in Five Points after consuming alcohol at Breaker’s. Both had been drinking before going to Five Points.

The February incident involved Sean Brooks who used bogus identification showing him to be over twenty-two (22) years old although he, in fact, was under twenty-one (21). Breaker’s business records show that he bought at least one alcoholic drink in Breaker’s.<sup>8</sup>

The March incident involved Laer Hohmann who entered Breakers through the trash removal area while the doorman assigned to the area was otherwise occupied. Once inside, he was able to obtain alcoholic beverages because there were no safeguards in place to prevent individuals who had been admitted from purchasing alcohol. Breaker’s will add a second doorman to this area and install a camera to monitor the area.

The “team leaders” exercise management responsibility in the absence of the owners and must carry out their instructions when the owners are away from the premises. S.C. Code Ann. §61-2-

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<sup>8</sup> Respondent’s Exhibit 4. In his deposition, Sean Brooks refused to answer questions that might have clarified his actions on the night of his injury.

100(H)(2) includes “an employee who has day-to-day operational management responsibilities for the business or entity” in the definition of a “Principal.” Breaker’s “Team Leaders” fall within this definition and should be required to pass SLED background checks prior to working at Breaker’s.

The Court joins the Department’s concern with the frequency of underage alcohol consumption in Five Points generally and at Breaker’s particularly. However, the arrest or ticketing of a “minor in possession” is not communicated to the business at which the behavior occurs. Moreover, the behavior is often facilitated by bogus identification that is difficult for the business or even law enforcement to detect. Breaker’s has agreed to and is committed to using “forensic” scanners, suggested by SLED, to enhance its ability to reduce underage consumption.

A determination of suitability for a location “is not solely a function of geography. It involves an infinite variety of considerations related to the nature and operation of the proposed business and its impact on the community” in which it is established. *Kearney v. Allen*, 287 S.C. 324, 326-27, 338 S.E.2d 335, 337 (1985). The geographical concerns identified in the statute include “proximity to [and interference with quiet enjoyment of] residences, schools, playground, and churches.” S.C. Ann. § 61-4-520(6). Additional factors include the burden on law enforcement (*See Palmer*, at 250, 317 S.E.2d at 478 and may traffic impacts on the surrounding residential areas. *Kearney*, at 327, 338 S.E.2d at 337.

The record shows that the neighborhood protestants have withdrawn their protests and that there are no other geographical proximity issues. Given the extent of law enforcement presence in the area and Petitioner’s investment in additional officers for its premises, the Court concludes that the permits and licenses should not be denied on the ground that the location is unsuitable.

Accordingly, the Department Determination as to Breaker’s Bar and Grill is **REVERSED**. The matter is **REMANDED** to the Department to complete the required background investigations and to evaluate the legality and advisability for separately licensed locations to operate with a single set of books and a unified point of sale system. The Court is concerned that alcohol inventories and taxes and sales taxes cannot be accurately accounted for. When these issues are resolved, the

Department may issue the Permit and Licenses with the following conditions and restrictions on the Permit and License:<sup>9</sup>

1. Alex Waelde shall under no circumstances be employed by or contracted to provide services to Breaker's or to the owners as individuals.
2. Alex Waelde shall under no circumstances be permitted to be a manager of, officer of, board member of, shareholder of, employee of, consultant to, or otherwise be employed by Petitioners, in any capacity – with or without compensation – or have a direct or indirect financial interest in the businesses at the proposed locations owned and operated by Petitioners.
3. Petitioner must use a Forensic ID scanner at all entrances to the Licensed Premises and must scan the identification documents of every person entering the Licensed Premises.
4. Petitioner must use a hand stamp system to mark each person admitted to the premises and check the stamp for every individual at the point of purchase of beer, wine, or alcoholic liquor.
5. Petitioner must spot check approximately ten (10%) percent of individuals purchasing beer, wine or alcoholic liquor with an Age Verification ID scanner at all points of sale for beer, wine, or alcoholic liquor.
6. Petitioner must maintain current, updated software for each Forensic ID or Age Verification ID scanner that it uses.
7. Petitioner must keep and maintain records or data generated by the ID scanners referenced above that will show all ID scans made by Petitioner's employees. Petitioner must retain these records or data for a rolling thirty (30) day period, meaning the Petitioner must always have in its possession, custody, or control these records or data for the prior thirty (30) days.
8. Upon the request of law enforcement, Petitioner agrees to provide to law enforcement copies of or access to the ID scanning records or data referenced in Paragraph 7.
9. If law enforcement issues a citation to a minor in possession of alcohol on the Licensed Premises and Petitioner receives notification from law enforcement of that citation, Petitioner must preserve and retain the ID scanning records for the date of the citation (as well as one calendar day before and after the date of the citation) and provide those records to law enforcement upon request. This condition

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<sup>9</sup> These restrictions are based on the conditions requested by the Department and agreed to by Petitioner in the event that the Court ordered the permit and the license to be issued. However, they deviate slightly according to the factual findings and concerns of the Court.

does not apply if law enforcement does not notify Petitioner or its on-duty manager (team leader) of the citation within five (5) days of the date of the citation.

10. If Petitioner receives written notification from law enforcement that a citation has been issued to a minor in possession of alcohol in the Licensed Premises, Petitioner must preserve and retain all point of sale records or register receipts for the date of the citation (as well as one calendar day before and after the date of the citation) and provide the point of sale records and or register receipts to law enforcement upon request. Petitioner must also preserve and retain all security camera recordings for the date of the citation (as well as one calendar day before and after the date of the citation) and provide the security camera footage to law enforcement upon request. This condition does not apply if law enforcement does not notify Petitioner or its on-duty manager of the citation within five (5) days of the date of the citation.
11. Petitioner must maintain and operate security cameras that record all entrances to the Licensed Premises.
12. Petitioner must maintain and operate security cameras that record all point-of-sale locations where beer, wine, or alcoholic liquor is ordered or purchased by customers on the Licensed Premises.
13. Petitioner must keep and maintain the security camera recordings for all of its security cameras for a rolling seven (7) day period, meaning the Petitioner must always have in its possession, custody, or control all security camera footage for the prior seven (7) days.
14. Upon the written request of law enforcement, received by Petitioner, Petitioner agrees to provide to law enforcement copies of or access to any security camera recordings.
15. Petitioner will cooperate with law enforcement to encourage compliance walk-throughs of the business in which law enforcement checks for identification.
16. Petitioner will maintain its current prices for all liquor drinks at \$4.00 or more and all beer at \$3.00 or more and will offer no alcohol specials or discounts.
17. Petitioner will not sell or serve alcoholic beverages using Red Bull or a similar stimulant as a mixer with the exception of coffee.

**Petitioner understands and agrees that violation of any of the above-listed conditions shall be deemed a violation of the permit and license.**

Petitioner further understands and agrees that, upon the Department's receiving a sworn affidavit from law enforcement establishing Petitioner's noncompliance with these conditions or

restrictions, the Department may, in its discretion, immediately suspend the Alcohol Licenses. Petitioner reserves the right to challenge the Department's determination that Petitioner failed to comply with this Agreement, as provided by law; but Petitioner understands and agrees that the summary suspension will remain in effect until there is an administrative or judicial order lifting the suspension, or by agreement between Petitioner and the Department.

For the purposes of the summary suspension described above, Petitioner knowingly and voluntarily waives any notice requirements or investigative requirements that may be provided under the Administrative Procedures Act or Revenue Procedures Act, except as provided herein.

If the Administrative Law Court or other court of competent jurisdiction finds the Petitioner has failed to comply with any provision of this Agreement, Petitioner agrees and consents to the immediate revocation of its Alcohol Licenses (beer, wine, and liquor) for the Licensed Premises. In the event the Administrative Law Court or other court of competent jurisdiction finds the Petitioner did not violate any provision of this Agreement herein, the summary suspension of the Alcohol Licenses shall be immediately terminated.

Petitioner further understands and agrees that upon a finding by the Administrative Law Court that the Petitioner knowingly permitted the sale of beer, wine, or alcoholic liquor to an individual under the age of twenty-one, Petitioner agrees to the following enhanced penalties:

1st offense within three years	45 day suspension
2nd offense within three years	Revocation

In assessing these penalties, the Department may consider the mitigating circumstances provided for in Revenue Procedure #13-2.

**AND IT IS SO ORDERED.**

July 20, 2021  
Columbia, South Carolina



**CERTIFICATE OF SERVICE**

I, Elizabeth A. Perkins, hereby certify that I have this date served this **FINAL ORDER** upon all parties to this case by depositing a copy hereof, in the United States mail, postage paid, and by electronic mail to the address provided by the parties, and/or their attorney(s).

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*Elizabeth A. Perkins*

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Elizabeth A. Perkins  
Judicial Law Clerk

July 20, 2021  
Columbia, South Carolina

