

**THE DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:

Kiss, LLC  
t/a Kiss Tavern

Holder of a  
Retailer's Class CT License

at premises  
637 T Street, N.W.  
Washington, D.C. 20001

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)  
) Case No.: 21-CMP-00008  
) License No: ABRA-104710  
) Order No: 2021-134

**BEFORE:** Donovan Anderson, Chairperson  
James Short, Member  
Bobby Cato, Member  
Rafi Aliya Crockett, Member  
Jeni Hansen, Member  
Edward S. Grandis, Member

**ALSO PRESENT:** Kiss, LLC, t/a Kiss Tavern, Respondent

John Lui, Assistant Attorney General  
Office of the Attorney General for the District of Columbia

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**ORDER SUMMARILY REVOKING THE RESPONDENT'S LICENSE**

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**INTRODUCTION**

On January 29, 2021, the ownership of Kiss, LLC, t/a Kiss Tavern, (Respondent) intentionally and willfully violated various rules and regulations designed to protect the public from the spread of COVID-19 and staff engaged in a premeditated effort to evade detection with the knowledge of the ownership. The Alcoholic Beverage Control Board orders the revocation of the license because the willful violation of the law and attempt to evade detection renders the ownership unfit to be trusted to comply with any conditions the Board could impose and reveals a general contempt for the law that endangers the safety of staff, customers, and the general public while the COVID-19 pandemic is ongoing and beyond.

### ***Procedural Background***

This matter comes before the Board based on the allegations contained in Case Report No. 21-CMP-00008. On March 9, 2021, the Board executed a Notice issued by the Office of the Attorney General for the District of Columbia informing the establishment that the Board voted to summarily suspend the Respondent's license. *Notice of Summary Suspension*, 21-CMP-00008 [Notice]. Specifically, the Notice alleges that the Respondent violated various emergency rules and orders related to the COVID-19 pandemic on January 27, 2021, and January 29, 2021. *Id.* at 2-3. On the dates in question, in violation of the law, the Respondent is alleged to have operated after permitted hours; failed to provide security footage as required by law; failed to comply with contract tracing rules; illegally permitted hookah smoking; permitted more than 6 persons per table; played music above a conversational level; failed to serve food; permitted an illegal patron queue; served alcohol to standing patrons and patrons standing by a bar used by staff; violated capacity limits; did not enforce mask requirements; and delayed admittance of an ABRA investigator. *Id.* at 2-4. Therefore, the Government alleges that the Respondent violated 23 DCMR §§ 810.2(a)-(b), 810.4(a), 810(g)-(h), 810(k)-(l), 810(n)-(p), 810(s)-(u), § VII(2)-(5) of Mayor's Order 2020-075, § II of Mayor's Order 2020-080, and § III of Mayor's Order 2020-119.

The parties came before the Board for a summary suspension hearing on March 12, 2021. The question before the Board is whether “. . . the operations of a licensee present an imminent danger to the health and safety of the public,” and if so, “. . . the Board may summarily revoke, suspend, fine, or restrict, without a hearing, the license to sell alcoholic beverages in the District.” D.C. Code § 25-826(a). The Board notes that the Government focused its case on the events of January 29, 2021.

### **FINDINGS OF FACT**

The Board having considered the evidence contained in the record, the testimony of witnesses, the arguments of the parties, and the documents comprising the Board's official file, makes the following findings:<sup>1</sup>

#### **I. Kiss Tavern**

1. The Respondent, Kiss, LLC, t/a Kiss Tavern, holds a Retailer's Class CT License located at 637 T Street, N.W., Washington, D.C. *ABRA License No. 107468*.

#### **II. Relevant Violation History**

2. ABRA's records show that Kiss Tavern has a troubling pattern of failing to comply with the alcohol laws of the District of Columbia. *Case Report No. 21-CMP-00008*, at 5-7 (Investigative History).

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<sup>1</sup> The full transcript in this matter was not available at the time this Order was written; however, the Board is sufficiently versed in the evidence and testimony after holding the summary suspension hearing to make the findings of fact and conclusions of law contained in this Order. This action was necessary on the part of the Board, because § 25-826(c) requires the Board to issue an Order within 3 business days of the Summary Suspension Hearing. D.C. Code § 25-826(c).

3. Kiss Tavern committed its first primary tier violation on June 25, 2017, when it violated a Board Order. *Id.* at 7 (See No. 20); *see also In re Kiss, LLC, t/a Kiss Tavern*, Case No. 17-CMP-00397, Board Order No. 2018-047, ¶ 19 (D.C.A.B.C.B. Feb. 14, 2018). Based on the offense, the Board imposed a \$1,250 fine. *Case Report No. 21-CMP-00008*, at 7.

4. The Respondent's violation history shows that the establishment has committed various violations of its Settlement Agreement. *Id.* at 6 (See Nos. 17, 18, 19).

5. On January 16, 2019, Kiss Tavern admitted it again failed to comply with the terms of a Board Order on two occasions. *Id.* at 6 (See Nos. 11, 12); *see also In re Kiss, LLC, t/a Kiss Tavern*, Case Nos. 18-CMP-00092, 18-CMP-000119, Board Order No. 2019-037 (D.C.A.B.C.B. Jan. 16, 2019). Based on the offense, the Respondent admitted it had committed two primary tier violations and was issued a fine of \$2,500 fine for each offense. *Id.* at 6.

6. On October 7, 2020, Kiss Tavern had its license summarily suspended related to an alleged shooting that occurred in the vicinity of the establishment. *Id.* at 5 (See No. 3); *see also In re Kiss, LLC, t/a Kiss Tavern*, Case No. 20-CMP-00110, Board Order No. 2020-655, 2 (D.C.A.B.C.B. Nov. 2, 2020). While the Board permitted the Respondent to reopen, the Board conditioned lifting the suspension on the implementation of various security measures, including having an operational security camera system and ensuring that security continuously monitor all areas of the establishment accessible to patrons. *Government Exhibit No. 31*, Board Order No. 2020-655 at 6 (See paragraphs 1 and 8).

### **III. Mayor's Orders**

7. On March 11, 2020, the World Health Organization recognized that COVID-19 constituted a "public health emergency of international concern" that had become a global "pandemic." *Office of the Mayor, Phase Two of Washington, DC Reopening*, Mayor's Order 2020-075, 1 (June 19, 2020) [*Mayor's Order 2020-075*] *citing Office of the Mayor, Phase Two of Washington, DC Reopening*, Mayor's Order 2020-045, 1 (March 11, 2020) [*Mayor's Order 2020-045*] (incorporating findings contained in prior Mayor's Orders related to COVID-19); *Mayor's Order 2020-045*, at 1.

8. Beginning in the Spring of 2020, the Mayor of the District of Columbia exercised her authority to declare a public health emergency and "make regulations to prevent and control the spread of communicable and preventable diseases" in order to combat the COVID-19 pandemic. *Mayor's Order 2020-075*, at 1; *Mayor's Order 2020-045*, at § I(G). In March 2020, the Mayor recognized that the "person-to-person spread of COVID-19" created "an imminent threat to the health, safety, and welfare of District residents . . . ." *Mayor's Order 2020-045*, at § (I)D. The Mayor further recognized that combatting the COVID-19 pandemic would entail "Mandatory quarantines, self-isolation, business supply chain interruptions, and cancellation[] [of many events and activities]." *Id.* at § I(B).

9. On June 19, 2020, the Mayor issued Mayor's Order 2020-075, which describes criteria and restrictions for the limited reopening of business, social, and other activities during the

pandemic. *Mayor's Order 2020-075*, at § I(3). As part of the reopening plan, the Order requires that

Bars, nightclubs and mixed-use facilities shall remain closed, except to the extent that they are serving food consistent with prior Mayor's Orders and are operating pursuant to endorsements from the Alcoholic Beverage Regulation Administration.

*Id.* at § (V)(3). The Order further requires customers to be seated, place orders, and be served at tables; limits tables to 6 persons; prohibits bar seating when the bar is being used by staff; requires tables to be separated by at least 6 feet; and prohibits indoor queuing of patrons, in addition to other requirements. *Id.* at § VII(2)(a)-(g).

10. Mayor's Order 2020-075 further provides that:

Restaurants and other licensed food establishments may serve customers up to fifty percent (50%) of their maximum capacity, as listed in their Certificate of Occupancy, and restaurant staff and persons sitting outdoors are not counted in this capacity limit.

*Id.* at § VII(3). "Restaurants and other licensed food establishments are encouraged to use a reservation system, preferably online or by telephone, to avoid crowding and queuing nearby."

*Id.* at § VII(4). Finally, "Restaurants and other licensed food establishments are encouraged to keep customer logs to facilitate contact tracing if necessary." *Id.* at § VII(5).

11. On July 22, 2020, the Mayor issued Mayor's Order 2020-080, recognizing that "[c]ommunity transmission of COVID-19" was occurring "throughout the District." *Office of the Mayor, Phase Two of Washington, DC Reopening*, Mayor's Order 2020-080, 1 (July 22, 2020) [*Mayor's Order 2020-080*]. The Order reported that "[o]ver 11,427 District residents [had] tested positive for COVID-19 and tragically 580 District residents [had] lost their lives . . . due to COVID-19." *Id.* at § I(2). The Order also reported that "transmission [was] widespread" throughout the greater District of Columbia metropolitan area and other areas throughout the United States. *Id.* The Order further recognized that transmission of COVID-19 was occurring through persons who were "asymptomatic or pre-symptomatic." *Id.*

12. Mayor's Order 2020-080 also provided the consensus of health experts that "wearing masks . . . can reduce the spread of the disease dramatically." *Id.* at § I(3). Considering this consensus, the Order extends the mask wearing requirement and creates related enforcement mechanisms. *Id.* at § I(4). A mask is defined as any "cloth face covering . . . that covers the mouth and nose, as well as medical or surgical masks." *Id.* at § V. Regarding indoor mask wearing, the Order requires businesses "open to members of the public" to post signage informing customers that admission will be denied "unless the person is wearing a mask." *Id.* at § II(4). The Order further requires businesses to "exclude or attempt to eject persons who are not wearing masks or who remove their required mask." *Id.* at § II(2). Businesses are further required to "provide masks to their employees." *Id.* at § II(3). The Order exempts mask wearing when "[a] person is *actually* eating, drinking, or legally smoking." *Id.* at § IV(1)(b).

13. Mayor's Order 2020-080 then creates an enforcement mechanism whereby



All District government agencies that issue licenses, permits, certificates, endorsements, or other authorizations including . . . the Alcoholic Beverage Regulatory Administration (ABRA) . . . may issue rules consistent with or take enforcement action directly under this Order to provide for the revocation, suspension or limitation of a license, permit, certificate endorsement, or other authorization of a person or entity that violates this Order.

*Id.* at § VII(2); *see also* D.C. Code § 25-823(a)(1)-(2). It also states that “. . . a violation of a rule, order or other issuance (including a guidance) issued under the authority of a prior Order addressing the COVID-19 public health emergency shall constitute a violation of this Order.” *Id.* at ¶ VII(3).

14. Finally, Mayor’s Order 2020-119, issued on November 23, 2020, found that “Community transmission of COVID-19 is escalating throughout the District and is exploding in many parts of the country.” *Office of the Mayor, Phase Two of Washington, DC Reopening*, Mayor’s Order 2020-119, § I(2) (Nov. 23, 2020) [*Mayor’s Order 2020-119*]. The Order indicated that the District’s COVID-19 caseload had reached 20,290 infections and 672 residents had died from the virus. *Id.* at § I(3). Additionally, the “daily case rate” stood at “23.9 persons per 100,000 residents,” and that 82.9 percent of hospital beds in the District were in use. *Id.* at § I(4).

15. Based on these circumstances, the Order indicated that “decisive action to slow the spread of the virus” was warranted. *Id.* In particular, the Order recognized that “epidemiological data shows that private gatherings are a strong contributor to transmission of the COVID-19 virus.” *Id.* at § I(5). Additionally, the Order also found that “*inspections have revealed that later at night, particularly when alcohol is served, persons are less compliant with rules regarding social distancing and staying seated at restaurants, contributing to a high rate of spread of the COVID-19 virus.*” *Id.* (emphasis added).

16. In light of these findings, the Order currently permits licensed establishments to operate until midnight, but ends the sale, service, and consumption of alcohol at 10:00 p.m. *Mayor’s Order 2020-119*, at § III(1). The Order also reduces the indoor occupancy of licensed establishments to 25 percent. *Id.*, at § III(2). Finally, the Order warned that a violation of the Order could result in the “revocation of licenses.” *Id.*, at § VIII(1).

#### **IV. ABC Board Rulemakings Suspend and Restrict On-Premise Activities**

17. In response to the COVID-19 public health emergency orders enacted by the Mayor, the Board, through the enactment of emergency regulations, suspended on-premise alcohol sales and consumption on March 27, 2020. 67 DCR 4589 (Mar. 27, 2020). The Board later adopted new emergency regulations on June 19, 2020, that allowed some in-person dining at on-premise establishments. 67 DCR 9387 (Aug. 7, 2020). These emergency regulations were later extended and modified by various emergency rulemakings. *See e.g.*, 67 DCR 11139 (Sept. 18, 2020); 67 DCR 12724 (Oct. 30, 2020).

18. On January 13, 2021, the Board enacted new regulations that went into effect on January 22, 2021, and that will expire on May 13, 2021, unless extended or superseded. *Notice of Tenth Emergency Rulemaking*, at 3 (Jan. 13, 2021). These new regulations generally limit the indoor capacity of on-premise establishments to “[25] percent . . . of the lowest indoor occupancy load or seating capacity on” the establishment’s “certificate of occupancy”; limit on-premise alcohol service and consumption to 10:00 p.m.; and limit establishment operations to midnight, among other requirements. *Id.* The new emergency regulations are codified in § 810 of Title 23 of the D.C. Municipal Regulations. *Id.*

## **V. Violations Observed on January 29, 2021**

19. On January 29, 2021, after 10:00 p.m., Supervisory Investigator (SI) Jason Peru received a complaint that alleged that Kiss Tavern was letting unmasked patrons inside, that it had locked its front door, and was generating excessive noise. *Case Report No. 21-CMP-00008*, at 1-2.<sup>2</sup> SI Peru assigned ABRA Investigators Kevin Puente and Jeremy Zollarcoffer to monitor the establishment. *Id.* at 2. After receiving their report, SI Peru assigned ABRA Investigator Rhoda Glasgow to enter the establishment in an undercover capacity. *Id.*

20. Investigator Glasgow approached the Respondent’s entrance at around 11:15 p.m. *Id.* While in line, she noticed at least one person without a mask. She further noticed that the front door appeared locked and that the door did not open until someone in line knocked on the door. *Id.*

21. After waiting for five minutes, Investigator Glasgow saw the door open and the owner, Eyob Asbeha, stood in the entrance. *Id.* She then saw patrons in line begin entering the establishment and paying money without undergoing any security pat downs or body searches. *Id.* When Investigator Glasgow approached, the owner asked her for money but after a discussion, the owner let her in without paying. *Id.* No information related to contract tracing appeared to be taken or recorded by the establishment. *Id.*

22. Inside, Investigator Glasgow observed patrons walking around without face masks. *Id.*; *Government Exhibit Nos. 6* (woman standing without mask on right side of photo); *8* (two male patrons talking without face mask in the center of the photo); *12* (various patrons unmasked). She also observed tables that had more than 6 people. *Case Report No. 21-CMP-00008*, at 2. Furthermore, she observed some customers smoking hookah and did not observe any food being served. *Id.* Moreover, despite being after 10:00 p.m., the investigator observed full shots at various tables. *Id.*; *Government Exhibit Nos. 10-11*. Finally, photographs show multiple patrons standing. *Government Exhibit Nos. 3-9, 13-16*

23. While inside, Investigator Glasgow also counted more than 25 patrons inside the establishment. *Case Report No. 21-CMP-00008*, at 2. It should be noted that under the COVID-19 restrictions in effect all on-premise retail establishments must limit the number of patrons to

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<sup>2</sup> Based on the testimony produced at trial, the Board finds the case report submitted by the Government to be sufficiently credible where it discusses the observations of Investigator Glasgow and Supervisory Investigator Peru. The Board further notes that the citations to the case report in this Order are also supported by the testimony and evidence taken during the trial.

no more than 25 percent of the occupant load contained in their Certificates of Occupancy. *Id.* In this case, the establishment's Certificate of Occupancy has an occupant load of 99 persons, which means that the establishment cannot have more than 25 patrons inside. *Government Exhibit No. 17.*

24. After making these initial observations, Investigator Glasgow went to the bathroom to call SI Peru on her phone. *Case Report No. 21-CMP-00008*, at 2. She went to the bathroom because the music inside the establishment was too loud to conduct a phone conversation. *Id.* Over the phone, SI Peru asked her to buy a beverage, and consume it, if necessary, to maintain her cover. *Id.*

25. After exiting the bathroom, Investigator Glasgow sat in a seat near the front of the establishment. A server approached the table and she ordered a rum and coke. *Id.* The server indicated that they were only serving shots. *Id.* After a discussion, Investigator Glasgow indicated that she would take a shot of Patron, which is a well-known brand of alcohol. *Id.* at 2-3. The server took the investigator's identification and credit card and returned with a shot of Patron. *Id.* at 3. The investigator noted that at no time was she offered a menu or food item. *Id.*

26. After receiving her drink, Investigator Glasgow began taking photographs and video. *Id.* A server soon approached and asked her who she was with. *Id.* Investigator Glasgow told the server that she was waiting for people and drank her shot of Patron because she believed that she may have been recognized as an ABRA investigator. *Id.* There is no indication that she drank enough to become intoxicated or was actually intoxicated while present at the establishment.

27. SI Peru then asked the investigator to obtain another drink. *Id.* Investigator Glasgow purchased another drink. *Id.* She then walked around the establishment with the drink while taking photographs and videos of the scene. *Id.*

28. While undercover as a customer, Investigator Glasgow obtained two receipts. *Exhibit No. 22.* The first receipt indicates that the first "Patron Silver" drink was purchased around 11:22 p.m., cost \$15.40 with tax, and was not accompanied by the purchase of any food. *Id.* The second receipt indicates that the second "Patron Silver" drink was purchased around 11:26 p.m., cost \$15.40 with tax, and was not accompanied by the purchase of any food. *Id.*

29. Later in the evening, Investigator Glasgow was advised that ABRA Investigators and officers with the Metropolitan Police Department (MPD) were approaching the establishment. *Case Report No. 21-CMP-00008*, at 3. She then returned to her seat. *Id.*

30. Investigator Glasgow then observed that the Respondent's staff were acting as lookouts for government officials and had setup a warning system to attempt to avoid detection by law enforcement. *Id.* Specifically, as she waited for ABRA and MPD to arrive, she began to hear people barking like dogs. *Id.* She first noticed someone barking like a dog from the rear of the establishment. *Id.* After that, she noticed a second person barking near the bar area. *Id.* She then heard someone barking near the front entrance. *Id.* At this point, the lights inside the establishment came on and she saw a male employee pick up a black bin and attempt to clear

drinks and glasses from the tables. *Id.* The Board notes that the owner was present at the establishment; therefore, this occurred with his full knowledge.

31. The male employee with the bin then came to the investigator's table and advised her to finish her drink immediately. *Id.* The investigator asked for more time and the male employee walked away. *Id.* The investigator then concealed the shot and saved it for evidence. *Id.*

32. At 11:40 p.m., the investigative team approached the establishment. *Id.* SI Peru, accompanied by MPD, approached the front entrance and met the owner, Mr. Asbeha. *Id.* Mr. Asbeha stated that the establishment had ended operations. *Id.* Nevertheless, once inside, SI Peru observed a large crowd of patrons not wearing masks, patrons standing and sitting at a staffed bar, tables with more than 6 patrons, and tables and chairs not six feet apart. *Id.*

33. SI Peru accompanied the owner to the rear of the establishment. *Id.* There, he noticed that the rear door was locked and made the owner unlock it for safety purposes. *Id.* Around this time, Investigator Glasgow left the establishment. *Id.* at 4.

34. At ABRA Headquarters, the investigative team used an alcohol testing kit to test the contents of the shot confiscated by Investigator Glasgow. *Id.* The kit indicated that the beverage confiscated by the investigator contained alcohol. *Id.*

35. The owner, Eyob Asbeha, testified that he takes COVID-19 mitigation seriously. In that vein, he installed plexiglass all over the establishment, posted signs at regular intervals around the establishment, takes customer reservations, and advises customers of the rules. He also produced evidence showing that he passed a Department of Health inspection conducted on February 4, 2021. He was present on the date of the incident, stated that he did not witness the violations claimed by the Government, and disputes that they constitute a violation of the various laws related to COVID-19 prevention and mitigation.

36. Finally, the Board notes that the establishment has a security plan on file that indicates that the establishment has security cameras installed throughout the establishment. *Government Exhibit No. 4* (page 8-9).

## CONCLUSIONS OF LAW

37. "If the Board determines, after investigation, that the operations of a licensee present an imminent danger to the health and safety of the public, the Board may summarily revoke, suspend, fine, or restrict, without a hearing, the license to sell alcoholic beverages in the District." D.C. Code § 25-826(a); 23 DCMR § 1613.1 (West Supp. 2021). The Board also notes that it is empowered to consider the violations of the Mayor's Order by D.C. Official Code § 25-823(a)(1) and (a)(2).

### **I. Kiss Tavern exceeded the occupancy limit imposed by 23 DCMR § 810.2(a) and Mayor's Order 2020-119.**

38. The Board finds that the Respondent exceeded its permitted occupancy on January 29, 2021. In accordance with 23 DCMR § 810.2(a), "ABC-licensed establishments shall be

permitted to resume on-premises alcohol sales, service and consumption indoors provided that they: . . . Limit indoor capacity to twenty-five percent (25%) of the lowest indoor occupancy load or seating capacity on its certificate of occupancy, excluding employees and outdoor seating.” 23 DCMR § 810.2(a) (West Supp. 2021). This requirement is also mirrored by § III(1) of Mayor’s Order 2020-119. The Respondent’s Certificate of Occupancy listed an occupancy load of 99 persons, which restricts the occupancy of the premises to no more than 25 persons under § 810.2(a). Nevertheless, on January 29, 2021, Investigator Glasgow counted more than 25 patrons inside the establishment. *Supra*, at ¶ 23. Therefore, the Board agrees with the Government that the Respondent violated § 810.2(a) and Mayor’s Order 2020-119.

**II. Kiss Tavern violated the hours of alcohol sales, service, and consumption provided by 23 DCMR § 810.2(b) and Mayor’s Order 2020-119.**

39. The Board finds that the Respondent violated its hours of alcohol sales, service, and consumption on January 29, 2021. In accordance with 23 DCMR § 810.2(b), “ABC-licensed establishments shall be permitted to resume on-premises alcohol sales, service and consumption indoors provided that they: . . . Cease indoor on-premises alcohol sales, service, and consumption at 10:00 p.m., seven (7) days a week, and cease operations at midnight unless otherwise restricted by settlement agreement.” 23 DCMR § 810.2(b) (West Supp. 2021). This requirement is mirrored by § III(2) of Mayor’s Order 2020-119. In this case, Investigator Glasgow was permitted to enter the establishment after 10:00 p.m. *Supra*, at ¶ 20. Once inside, she was permitted to order and purchase two drinks after 10:00 p.m., and consume one of the two drinks after 10:00 p.m. as well. *Supra*, at ¶¶ 25-26, 28. The receipts produced by Investigator Glasgow credibly show that this occurred around 11:30 p.m. *Supra*, at ¶ 28. Therefore, the Government established a violation of § 810.2(b) and Mayor’s Order 2020-119.

**III. Kiss Tavern failed to maintain 6 feet of distance between tables in violation of 23 DCMR § 810.4(c) and Mayor’s Order 2020-075.**

40. The Respondent further failed to comply with the requirement that tables and chairs for different parties be placed no less than 6 feet apart. Under the emergency rules in effect at the time of the incident, as described in § 810.4(c), Kiss Tavern was obligated to “Place indoor or outdoor tables on the sidewalk café or summer garden so that separate parties are at least six feet (6 ft.) apart from one another.” 23 DCMR § 810.4(a) (West Supp. 2021) (emphasis added). In § VII(2)(d) of Mayor’s Order 2020-075, it provides that “All tables must be placed so that patrons are at least six (6) feet apart.” *Mayor’s Order 2020-075*, at § VII(2)(d). In this case, SI Peru observed tables and chairs placed less than 6 feet apart. *Supra*, at ¶ 32. The Board further notes that the photographs taken by Investigator Glasgow show that people in different parties were seated closer than 6 feet to one another based on how close people are sitting or standing next to one another. *Government Exhibit Nos. 6-8, 12-13, 16*. Therefore, the Government has shown that the Respondent failed to comply with 23 DCMR § 810.4(c) and Mayor’s Order 2020-075.



**IV. Kiss Tavern failed to comply with the minimum food sale and other food related requirements in violation of 23 DCMR § 810.4 and Mayor's Order 2020-075.**

41. The Respondent failed to satisfy any of the food requirements required by law as a condition of reopening. Under the emergency rules in effect at the time of the incident, as described in § 810.4(h), Kiss Tavern was obligated to "Have a menu in use containing a minimum of three (3) prepared food items available for purchase by patrons." 23 DCMR § 810.4(g) (West Supp. 2021). The Respondent was further obligated, pursuant to § 810.4(h), to "Require the purchase of one (1) or more prepared food items per table." 23 DCMR § 810.4(h) (West Supp. 2021). Mayor's Order 2020-075 also conditioned reopening on the service of food and operating pursuant to the requirements of the Alcoholic Beverage Regulation Administration. *Mayor's Order 2020-075*, at § (V)(3). Nevertheless, there is no indication that the establishment offered a menu to patrons, served food, or required food purchases on January 29, 2021. *Supra*, at ¶¶ 22, 25. Indeed, Investigator Glasgow was permitted to purchase and consume alcohol without purchasing food and was never offered a menu. *Supra*, at ¶¶ 25, 28. Therefore, the Government has demonstrated that the Respondent violated 23 DCMR §§ 810.4(h) and 810.4(g), and § (V)(3) of Mayor's Order 2020-075.

**V. Kiss Tavern permitted more than 6 persons to a table in violation of 23 DCMR § 810.4(k) and Mayor's Order 2020-075.**

42. Kiss Tavern permitted more than 6 persons to a table in violation of the emergency rules. Under the emergency rules in effect at the time of the incident, as described in § 810.4(k), Kiss Tavern was obligated to "Not have more than six (6) individuals seated at a table or a joined table outside." 23 DCMR § 810.4(k) (West Supp. 2021). Section VII(2)(b) of Mayor's Order 2020-75 also requires that "No more than six (6) individuals may be seated indoors at a table or a joined table." *Mayor's Order 2020-075*, at § VII(2)(b). In this case, both Investigator Glasgow and SI Peru observed tables with more than 6 patrons per table. *Supra*, at ¶¶ 22, 32. Therefore, the Government has demonstrated that the Respondent violated 23 DCMR § 810.4(k) and § VII(2)(b) of Mayor's Order 2020-075.

**VI. Kiss Tavern permitted patrons to stand in violation of 23 DCMR § 810.4(p) and Mayor's Order 2020-075.**

43. The Respondent failed to require patrons to sit at tables as required. Under the emergency rules in effect at the time of the incident, as described in § 810.4(p), Kiss Tavern was obligated to "Prohibit standing at indoor or outdoor bars and only permit seating at indoor or outdoor bars that are not being staffed or utilized by a bartender." 23 DCMR § 810.4(p) (West Supp. 2021). Likewise, under § VII(2)(a) of Mayor's Order 2020-075, "All indoor dining/drinking customers *must be seated*, place orders, and be served at tables." Mayor's Order 2020-075, at § VII(2)(a) (emphasis added). As noted in the photographs submitted into evidence, patrons are observed standing when the rules require patrons to be seated. *Supra*, at ¶ 22. Therefore, the Government has established a violation of 23 DCMR § 810.4(p) and Mayor's Order 2020-075.



**VII. Kiss Tavern violated 23 DCMR § 810.4(t) and Mayor's Order 2020-080 by failing to enforce face mask rules.**

44. The Respondent failed to enforce required face mask rules. Under the emergency rules in effect at the time of the incident, as described in § 810.4(t), Kiss Tavern was obligated to "Require that patrons wear masks or face coverings when waiting in line outside of the establishment and while traveling to use the restroom and until they are seated and eating or drinking." 23 DCMR § 810.4(t) (West Supp. 2021). Section II(2) of Mayor's Order 2020-080 requires businesses to "exclude or attempt to eject persons who are not wearing masks or who remove their required mask." *Mayor's Order 2020-080*, at § II(2). As observed by Investigator Glasgow, a patron in line outside the establishment was not wearing a face mask as required. *Supra*, at ¶ 20. While inside, she also observed other persons without face masks. *Supra*, at ¶ 22. Likewise, Investigator Peru observed patrons without face masks when he was present inside the establishment. *Supra*, at ¶ 32. Finally, there is no testimony that anyone working at the establishment attempted to enforce the mask requirements as required by Mayor's Order 2020-080. Therefore, the Government has established that the Respondent repeatedly violated 23 DCMR § 810.4(t) and Mayor's Order 2020-080.

**VIII. Kiss Tavern violated § 810.4(u) by failing to implement a reservation system.**

45. There is no evidence Kiss Tavern maintained a reservation system. Under the emergency rules in effect at the time of the incident, as described in § 810.4(u), Kiss Tavern was obligated to "Implement a reservation system by phone, on-line, or on-site and consider keeping customer logs to facilitate contact tracing by DC Health." 23 DCMR § 810.4(u) (West Supp. 2021). Nevertheless, Investigator Glasgow was not required to register or make a reservation before being permitted to enter. *Supra*, at ¶ 21. Furthermore, there is no indication that the establishment took any measure to record information for the purpose of contract tracing. Therefore, the Government has established a violation of § 810.4(u) on January 29, 2021.

**IX. The continued operation of Kiss Tavern constitutes an imminent danger based on the intentional violation of required COVID-19 restrictions, the involvement of the owner in the violations, and the attempt to evade detection.**

46. Based on each separate and independent determination above, the Board concludes that the Respondent constitutes an imminent danger to the health and safety of the public pursuant to D.C. Official Code § 25-826(a) where, with the knowledge of the owner, the Respondent intentionally violated regulations designed to prevent the spread of COVID-19, encouraged or permitted employees to attempt to hide the establishment's illegal activities, and whose prior violation demonstrates an unwillingness to comply with the alcohol laws of the District of Columbia.

47. First, the spread of COVID-19 presents an on-going threat to the health and safety to the public. *Supra*, at ¶¶ 7-8, 14. The disease is currently widespread throughout the D.C. metropolitan region and activity at licensed establishment may be a major driver of infections. *Supra*, at ¶¶ 11, 15. Therefore, the failure of licensed establishment to follow COVID-19 rules threatens the safety of anyone present at a licensed establishment and the public at large.

48. Second, the Board can infer that the Respondent's actions on January 29, 2021, were intentional and committed with the knowledge of ownership. Specifically, the owner was present when the violations noted above occurred. *Supra*, at ¶ 30. Furthermore, staff barked loudly and in a coordinated manner to signal when government officials were spotted in the vicinity. *Supra*, at ¶ 30. The employees also attempted to clean the scene of evidence before any officials could enter once the warning went out. *Supra*, at ¶¶ 30-31. Based on these facts, it is reasonable for the Board to infer that the violations were intentional and committed with the knowledge of ownership. Even worse, the ownership either instructed employees to act as lookouts and clean the establishment of evidence or, at the very least, consented to such behavior on the part of his staff. Therefore, the violations present in this case are intentional and egregious.

49. Considering the above, revocation is the only appropriate resolution. Specifically, the fact that the Respondent intentionally violated the law and permitted a premeditated scheme to evade detection go forward renders him unable to be trusted to comply with the District's alcohol laws when left to his own devices. *See* D.C. Code § 25-301(a)(1) (requiring applicants to be of "good character and generally fit for the responsibilities of licensure"). This determination is further supported by the Respondent's violation history, which demonstrates a general contempt for the law and an unwillingness to comply.

50. Therefore, where the Board cannot trust the Respondent to abide by conditions or other restrictions to remove the danger to the public, and the Respondent cannot otherwise be trusted to comply with the law going forward, the Respondent's license must be revoked.

#### **X. The Board is not persuaded by the Respondent's defense.**

51. In determining to revoke the Respondent's license, the Board considered the arguments and defenses presented by the Respondent; nevertheless, the Board did not find them persuasive. First, the Respondent disputed the visual observations of Investigator Glasgow and SI Peru regarding violations related to patron occupancy, table distance, face mask compliance, the number of patrons seated at tables, and other violations. The Board notes that such determinations may be made by visible inspection without formal measurement. Additionally, in contesting these accusations, the Respondent could have submitted the testimony of employees, video footage from the evening, a diagram of its table and seat arrangements, its menu and food receipts, etc., to dispute the charges; nevertheless, it did not. Therefore, the evidence remains uncontroverted. Second, the Respondent indicates that he has experienced ongoing harassment from investigators and had an angry conversation with an investigator on January 27, 2021. One unpleasant interaction with an investigator is not sufficient to demonstrate bias. Moreover, there is no indication that the investigator had any significant involvement with the investigation that occurred on January 29, 2021, which was the focus of the Government's case. The Board further notes that this case is not a mere "he-says, she-says" case based on statements alone, but supported by physical evidence such as photographs, videos, and receipts. The Respondent's investigative history further indicates an ongoing pattern of violations occurring since 2017; as a result, the Respondent cannot claim harassment when heightened attention and investigation is warranted based on the Respondent's own conduct. Third, the Respondent complains that the

punishment requested by the Government is too harsh when compared to other establishments. Nevertheless, the Respondent cannot complain about different treatment when it has a history of serious violations, the ownership was involved in the violations at issue in the present action, the Respondent intentionally violated the District's COVID-19 rules, and staff actively attempted to evade detection with the knowledge of ownership. Finally, as indicated in the various Orders issued by the Mayor, revocation of a license is an appropriate penalty. *Supra*, at ¶¶ 13, 16.

52. Consequently, the Board's determinations reasonably flow from the credible evidence in the record and the Respondent's own conduct.

### **ORDER**

Therefore, the Board, on this 17th day of March 2021, hereby **SUMMARILY REVOKES** the Retailer's Class CT License held by Kiss, LLC, t/a Kiss Tavern.

**IT IS FURTHER ORDERED** that the remaining charges brought by the Government in this case are rendered moot; therefore, the Board's final determination of these remaining charges shall be held in permanent abeyance unless the license is reactivated.

**IT IS FURTHER ORDERED** that the pending Show Cause cases related to this license are moot; therefore, these matters shall be held in permanent abeyance unless the license is reactivated.

**IT IS FURTHER ORDERED** that the individual owners, members, and license holders shall be prohibited from holding an alcoholic beverage license in the District of Columbia for five years in accordance with D.C. Official Code § 25-821.

A copy of this Order shall be sent to the Respondent and the Government.

District of Columbia  
Alcoholic Beverage Control Board

signed via SeamlessDocs.com  
*Donovan Anderson*  
Key: ac432b02c0d5b2e4c7300c31dccc9

Donovan Anderson, Chairperson

signed via SeamlessDocs.com  
*James Short*  
Key: 5474e973b2c0e6e8b1b73ca2043e

James Short, Member

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*Bobby Cato*  
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Bobby Cato, Member

Rema Wahabzadah, Member

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Edward S. Grandis, Member

Pursuant to 23 DCMR § 1719.1, any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, N.W., 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, District of Columbia Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b).

Finally, in the case of a summary suspension, “A person aggrieved by a final summary action may file an appeal in accordance with the procedures set forth in subchapter I of Chapter 5 of Title 2.” D.C. Code § 25-826(d).