

Oregon Liquor Control Commission Advisory Committee Meeting

Minutes

License Application Fee Package

**Wednesday, December 16, 2015
9:00 am – Noon**

Present

Mike Boyer (ONI), Judy Craine (Holman's Bar & Grill), Michael Mills (Oregon Restaurant and Lodging Association), Bryant Haley (OLCC), Dan Croy (OLCC), Danica Hibpshman (OLCC), Carolyn Moreno (OLCC), Brainard Brauer (Redland Station)

Invited but Not Present

Mitchell Orellana (Portland Police), Doug Ehrich, Commander (Hillsboro Police Department), Kathy Stromvig / Anne Pratt (Mothers Against Drunk Driving), Daniel Estes (Oregon Department of Transportation), Lisa Frisch / Bill Sinnott (Portland Downtown Retail & Clean & Safe Programs), Lise Gervais (Public Action Management), Daniel Ward (Oregon Alcohol & Drug Policy Commission), Scott Winkels (League of Oregon Cities), Veronica Rinard (Travel Portland), Patty McMillan (Safe Communities Program Coordinator - Clackamas County), Mike Boyer - (ONI Liquor Licensing Coordinator), Bill Perry (Balance point strategies), Brian Butenschoen (Oregon Brewers Guild), Brian McMenamin (McMenamin's), Duke Tufty (Wyse Kadish), Elaine Albrich (Stoel Rives), Gregg Abbott (Oregon Street Food Association), Jeff Plew (Concept Entertainment), Jesse Lyon (Davis Wright Tremaine), Judy Craine (Holman Bar & Grill) Paul Romain (Romain Group), Mike O'Gorman (Craft brew.com), Ted Pappas (Oregon Distillers Guild), Brad Whiting (Clear Creek Distillery, HRD Spirits), Pete Mulligan (NW Cider Association), Dan Jarman (Oregon Wine Board), Jesse Stafford (Southern Wine Spirit West), Jim Bernau (Willamette Valley Vineyards), Bill Cross (Willamette Valley Vineyards), Jana McKamey (Oregon Winegrowers Association), Glenda Hamstreet (Oregon Restaurant & Lodging Association), Jason Brandt (ORLA - President), Jeff Giametta (Davis Wright Tremaine), Shawn Miller (Lobbyist Grocery - Miller Public Affairs), T-Kee Henningsen (Concept Entertainment), Art Larrance (Licensee), Rebecca Ball (NW Public Affairs), Micheal Mills (ORLA), Marcus Reed (Craft Brew Alliance), Danelle Romain (The Romain Group)

Meeting Minutes

The meeting began at approximately 9:15 a.m. on December 16, 2015 in room 103A of the Oregon Liquor Control Commission's Portland Headquarters. Bryant Haley, OLCC Rules Coordinator, moderated the discussion.

Welcome Statement: Mr. Haley opened the meeting with a brief welcome statement and a review of the rulemaking process and the purpose of advisory committee meetings.

Mr. Haley explained that the purpose of an advisory committee is to increase the public's involvement in the drafting and development of administrative rules. The Oregon Legislature, through its enactment of the Administrative Procedures Act (chapter 183 of the Oregon Revised Statutes) has noted the critical importance of public participation in the development and implementation of sound public policy. Mr. Haley stated that advisory committees are an excellent way to solicit input from external stakeholders during the early stages of the rulemaking process.

Mr. Haley stated that during this meeting, he would seek members' input on the proposed amendments to the rule as well as their likely fiscal impact. Mr. Haley explained that the Commissioners would consider members' suggestions and comments; however, the Commissioners would not be bound by the conclusions that the advisory committee reached or the topics that it discussed.

Mr. Haley stated that under Oregon's Public Meeting Law, advisory committee meetings like this one are open to the public. Consequently, members of the public may observe the meeting, but may not offer comments. Mr. Haley also stated that the meeting would be digitally recorded and that a summary of the discussion would be published. However, because advisory committee meetings are intended to promote the open exchange of ideas, Mr. Haley explained that meeting minutes would be limited to the topics discussed and the main points made and, except for Mr. Haley, individual speakers would not be identified by name in the meeting minutes. Mr. Haley asked members who wished to receive a copy of the meeting minutes to sign the provided attendance sheet.

Discussion of the Proposed Rule Language: Mr. Haley opened the discussion of the proposed amendments with a brief review of the rulemaking history.

HB 2480 passed in the 2015 Oregon legislative session with an effective date of January 1, 2016. It makes several changes to how the Commission processes applications. Specifically, HB 2480 authorizes the OLCC to charge an application fee for a new license or a change of ownership. Further, HB 2480 requires a refund of the application fee if no license decision is proposed by the OLCC within 75 days.

One committee member began with a clarification question about how the fee will be applied. Specifically, the committee member asked if the fee will be on top of the regular annual application fee. Mr. Haley stated that was correct.

The committee member then further clarified that the fee would not be refunded unless the OLCC does not take action on a licensing decision within the seventy-five day limit.

Staff took the moment to clarify what a “completed application” meant. Specifically, under the rule changes, an applicant must maintain a “completed” application. If an applicant fails to maintain a complete application they will not receive a refund.

A committee member then stated that for new licenses, the fee would be double for the licenses. Staff countered that license types vary in cost and that some licenses are up to four hundred dollars so that wouldn’t double the cost.

A committee member then requested what the legislative intent was behind adding an additional fee. The member specifically wanted to know why the additional fee would be imposed. They wondered if the fee was a revenue generator, stream lining process idea or a fixing something that’s wrong with process idea.

At this point, Mr. Haley took a moment to explain that the legislative intent was to partner with the industry to make a minimum commitment of one hundred and fifty dollars to the application process. He went on to explain that the commission often receives incomplete applications that do not materialize into a license and the commission loses money on processing applications. This is usually due to applicants failing to provide and secure all the information necessary to have a complete application. The failure to complete applications causes staff to waste time on applications that will never come to fruition.

The committee then went on to further clarify that only new applicants pay the application fee. Further, change in ownership also must pay the application.

At this point, committee members steered the committee into a discussion about biannual licensing. Several members asked that the discussion become part of the rulemaking record to ensure that the during the application fee process rulemaking that staff engage in a thoughtful process about adding a biannual license option.

Staff thanked committee members for bringing up the issues and went onto explain the realities and potential future of licensing. Specifically, staff explained that currently OLCC cannot accept online payments and that is a partial barrier to biannual licensing. However, staff went on to explain that during the marijuana roll out of online licensing the goal is to take the lessons learned from online marijuana licensing over to the alcohol side.

Committee members were interested in the prospect of an electronic application and wondered why biannual licensing couldn’t move forward without the online licensing. Members wanted to understand what the issues were that prevented the OLCC from moving to a biannual licensing standard. Staff further explained logistical barriers, but also informed committee members that not all licensees want biannual licenses, as opening an establishment is a risk and two years is a significant amount of time to be licensed for without any guarantee of success. Further, staff reminded the committee that some statutory changes would be required to accomplish biannual licensing.

Committee members then began a discussion about licensing timelines from different city regulatory bodies. Specifically, a question was asked about how timelines from other agencies (i.e. City of Portland) would be taken into an account given they may extend well past the seventy five day timeline. Staff explained that some cases will just result in the OLCC returning the application fee, as no decision will be made by the local governing body to approve or deny a license. It was cited that there were only six instances of this happening in the past year.

Another committee member then commented upon the fact that the rule in no way changes the license process or license qualifications. Staff affirmed that there would be no changes to the process or qualifications for a license.

This led members to question what the legislature projected as a fiscal impact of the law and subsequent rule. Mr. Haley promised he would find and send the legislature fiscal impact statement to the committee members. [Note: Mr. Haley sent all attendees a copy of the legislative fiscal impact statement on 12.16.15.]

Staff then clarified that this fee would apply to new licenses and the addition of privileges, as that is essentially a request for a new license type and not a renewal. Further, staff explained that any licensing action that would require a local governing body endorsement would also require an application fee.

Then the committee turned its focus to complete applications and how changes would affect the seventy five day time line. Staff explained that often applicants provide the OLCC with incomplete applications that require more information. Then staff must send a list of items that must be added or corrected to the applicant. Staff went onto explain that the definition of “completed” application was an attempt to deal with applications that will require multiple exchanges between staff and applicants that will eat into the seventy five day time line. That is to say, if an applicant sends an incomplete application the clock stops until the application is complete.

A committee member emphasized that he regularly works with applicants after they have attempted to submit an application and failed because they could not accurately compile all of the necessary information.

After, the fiscal impact was completed, a member asked to revisit the rule changes to OAR 845-005-0314. Specifically, the member was interested as to why the language had been significantly shortened. Staff explained that most of the content of 005-0314 was placed into 005-0312. The goal was to separate the rules into 005-0312 being for new licenses and 005-0314 would be for other than a new license or change in ownership. Staff explained that there are many minor changes to licenses that occur regularly.

This led the committee to a discussion about the definition of an application so committee members could assess if that was an adequate way to describe what requires an application. Members noted that the requirements for floors plans to be submitted had

been removed. Staff explained, while the OLCC will still ask for floor plan later; the goal of the changes was to remove aspects of the licensing process that overburdened the initial application process. To that end, staff will have to be more diligent and an online license process could smooth these issues.

A member then asked if the descriptions of floor plans and lease summary were still in the rule. Staff explained that yes they were but in a more generic format. The goal again was to focus on the initial application process then work on the details down the line. Committee members encouraged that the OLCC do some public information campaign about these changes when the rule goes forward, as some licensees are accustomed to the current unchanged language. Staff explained that this would take place during the rulemaking process.

Discussion of the Fiscal Impact Statement: Next, Mr. Haley solicited the advisory committee's help in drafting the Commission's fiscal impact statement.

The discussion started out with one committee member commenting that the statutory language says authorizes the OLCC to charge a fee. Staff informed the member that the language also says "shall" and not may, thus requiring the Commission to charge the application fee.

The committee stated that there would be an impact to licensees of one hundred and fifty dollars. However, the committee members would not say that the impact was significant. One member explained that concerns could arise when a person purchases another licensed premises and then would be required to pay the application fee for change of ownership. The member explained they foresee licensees disliking an extra fee on top of purchasing an already licensed location. However, the same member continued to say that they would not call that a significantly adverse impact, but just an adverse impact.

Another member commented that, as a small business owner, they are always afraid of another fee or another license that impacts the bottom line. Further, another member, went on to say that any business taxes can effect and upset small business owners.

The committee then again returned to the fact that an electronic licensing system would consolidate a lot of the paper work burden. This comment led to the conversation that an electronic system could further along biannual licensing. The committee then discussed some statutory issues around biannual licensing.

Finally, a member clarified that the only burden being added by this rule package is a financial impact of one hundred and fifty dollars, but there is no additional paper work burden being placed upon licensees.

Next in Rulemaking: Mr. Haley stated that this rule will be in process for some time, as the rule changes require license process changes. Mr. Haley closed the meeting by thanking members for their attendance and participation. The meeting ended at

approximately 10:00 a.m. on December 16, 2015.