

MINUTES OF OLCC ADVISORY COMMITTEE MEETING

OAR 845-005-0460 AIA Petition (Downtown Portland) Part 1

**Tuesday, November 1, 2011 9:00 AM in Room 103A,
Commission Offices, Portland**

Present: Tom Bizeau (City of Portland), Theresa Marchetti (ONI), Amy Archer (ONI), Mike Boyer (ONI), Officer Mark Friedman (PPB), Officer Josh Kraner (PPB), Marvin Mitchell (Julia West House), Brooke Buxbaum (Eliot Tower Condo Association), Joan Booth (Allied Health Services Alder), Veronica Rinard (Travel Portland), Kaitlyn Allegretti (Macdonald Center), Darrel Schenck (PPI), Tom Parker, (Oregon Partnership), Mary Ellen Glynn (OR Alcohol & Drug Policy Commission), Brian Butenschoen (Oregon Brewers Guild), Katie Jacoy (Wine Institute), Hasina Squires (Wine Institute), Dan Jarman (Oregon Winegrowers Association), Paul Romain (Oregon Beer & Wine Distributors Association), Shawn Miller (NW Grocery Association), Gwenn Baldwin (Whole Foods), Evyan Jarvis (Fred Meyer/Safeway), Erica Hagedorn (7-11/Anheuser Busch), Chris Girard (Plain Pantries), Tim Cote (Plaid Pantries), Doug Peterson (Peterson's on Morrison, Yamhill & Fourth Ave.), Kara Ruecker (ORLA), Dan Croy, Donna Vandall, Judith Bracanovich, Farshad Allahdadi, Christie Scott, Rudy Williams, Jennifer Huntsman and Susan Rudberg (OLCC staff).

Observing: Steve Mysinger (General Distributors Inc.), Greg Dougall (Pearl Whole Foods), Stephanie Reynolds (ONI), Nancy Turner (Columbia Distributing), Ashley Evenson & Courtney Chu (Oregon Health Authority), Janene Grace & Mary Rait (Craft Brewers Alliance), and Lise Gervais (Public Action Management).

Invited but not present: Commissioner Fritz (City of Portland), Suzanne Hayden (Citizens Crime Commission), Shane Abma (Clean & Safe Program), Ed Blackburn (Central City Concern), Tony Williamson (Portland Rescue Mission), Rick Underwood (Rite Aid), Richard Kosesan (ONSA/Beer Institute), Peter Chung (KAGRO), Ted Chong (Katina's Deli & Grocery), and Shannon Hoffeditz (OLCC).

The meeting began at approximately 9:00 am in Room 103A of the OLCC's Milwaukie office. Jennifer Huntsman, OLCC Rules Coordinator, moderated the discussion and opened the meeting with a review of the process, history of how this rulemaking came about and introductions of those in attendance. Ms. Huntsman reminded everyone of the purpose of this meeting.

The Legislature has said (through Oregon's Administrative Procedures Act) that it wants agencies to involve interested parties in policy development. Rulemaking is one way agencies develop policies and Advisory Committees are a good way to hear from people

or groups likely to have an interest in a particular issue - or who are likely to be impacted by a policy or change an agency is considering. Advisory Committees are just that: advisory. The purpose of an Advisory Committee is to give everyone a chance to express their thoughts on issues. The Commissioners are not bound by what we discuss or decide in these meetings. They are the policy-makers, and will make the final decision on whether to adopt the proposed amendments.

Ms. Huntsman explained that under Oregon's Public Meeting Law, this meeting is open to the public. We will take and retain minutes of the meeting. The discussion today will be informal; the minutes will reflect the main points that are made. We do not identify who said what, except for Ms. Huntsman. Everyone on the mailing list for this rule will be sent a copy of the minutes; attendees were reminded to record their name and email address on the sign-in sheet.

This meeting is to discuss the possible adoption of OAR 845-005-0460 Alcohol Impact Area (AIA) – City of Portland – Downtown Core. The Commission accepted a petition from the city of Portland to adopt a new rule establishing an Alcohol Impact Area in the city's Downtown Core. In order to address problems related to street drinking and public intoxication, the petitioner proposes that within the designated boundaries of this AIA off-premises sales licensees with a market operation would be subject to certain alcohol product restrictions.

Ms. Huntsman explained that we would be discussing the proposed rule language in detail and that these discussions and suggestions will be used in the permanent rulemaking process. There are two possible versions of proposed rule language for discussion. The City has revised their initial draft language to produce the formula approach version we are discussing today. And Commission staff has developed a second banned product list version.

Later there will be a formal rulemaking hearing on this matter as well as a written comment period. These steps will take place before this rule matter goes back to the Commissioners for possible final action.

Ms. Huntsman asked members to introduce themselves before proceeding to discuss the proposed rule language.

Product Restrictions – Overall Approach: The vast majority of the Advisory Committee's discussion centered on finding the most effective and efficient way to craft a ban on alcohol products. All committee members agreed that there is a serious street drinking problem in Portland's downtown core and expressed a desire to address the problem. Committee members also expressed a desire to allow the alcohol industry to continue to sell non-problem products (high-end/expensive table wines and craft brews/imported malt beverages) within the AIA. One member pointed out that we need to minimize unintended consequences – we need a healthier sidewalk environment for our downtown residents, businesses and visitors, but we also need to ensure that residents

and visitors have access to Oregon products in our downtown area.

While most committee members feel that there are severe limitations with both proposed rule drafts, some members support the formula approach and some the banned product list approach. Whichever approach is adopted, committee members felt strongly that there needed to be a nimble process for updating product lists (exception list or banned list). The question was raised whether either type of list would have to be updated via a rulemaking process, and if so what impact that would have on the goal of having an expedited process.

Some committee members felt that the bottom line is we need this rule to be simple and we need a rule that works. Committee members felt that no matter what approach we use, we need the most effective rule at reducing the street drinking problems, both in the short-term and the long-term.

Formula Approach: The City's draft version would implement broad bans against certain categories of alcohol products (i.e. no malt beverages over 5.75% ABV, no wine over 14% ABV), with then three types of exceptions available: 1. requests to exempt individual licensed businesses based on their business operation not contributing to the problem (existing OAR 845-005-0303); 2. broad exceptions based on type of business operation for gift shops, wine shops, and On-Premises licensees (section (2)); and 3. exceptions for specific products based on sufficient evidence that it does not and is not likely to contribute to the problem (is not a high alcohol content/low cost product) (section (5)).

Some members felt that the formula approach was the only effective one, especially in the long run. They felt that the product data collected reflects the shared characteristics of alcohol products contributing to the problem, thus forming the basis for broad banned categories.

Because the originally proposed malt beverage and wine carve-out language turned out to have legal issues, the new section (5) has been added to serve as a vehicle by which non-problem alcohol products can be individually exempted from the ban. Those who support this approach believe that the burden of this list's creation and maintenance can and should be born by industry in order to alleviate street drinking problems. Some committee members expressed being open to the idea of individual licensees submitting the product exception requests but then applying approved exceptions to all licensees in the AIA.

Opponents of the formula approach contend that such a product exception list would contain thousands of products and that creation and ongoing maintenance of such a list would prove too onerous for industry. One example given was that in Oregon alone there are 400 wineries, each producing 5 varietals on average, with their exact wine products and ABV % fluctuating annually. This was shared as an illustration of why some members feel a product exception list would not be practical or enforceable.

In regards to the proposed ban on all wines over 14% ABV, some committee members questioned whether wine over 14% ABV was truly the problem since this will include

many expensive wines. Others answered that the 14% threshold is also intended to capture the “fortified” wines which have distilled spirits added. Some felt that if “fortified” wines are what we are trying to get at, the product data collected does not support this; they stated that wine overall is only 7% of the problem and that within that the percentage of “fortified” wines is miniscule. Because the product data is just sample data, other members were concerned that if wine is left out of the ban then the street drinkers will just switch to wine products.

Without a way to carve-out the non-problem products, opponents saw the formula approach as being too broad and sweeping, encompassing many wine and malt beverage products which are both legally sold and responsibly consumed.

Banned Product List Approach: Staff’s draft version would ban a specific list of alcohol brands shown to be linked to the problem of street drinking in the downtown core, and would ban all flavors and sizes of each brand on the list.

Those who were supportive of a banned product list approach believe that since it is a much more narrowly tailored approach it will be more effective in banning those products which are truly linked to the problem of street drinking. Because the size of the list would be much smaller than a product exception list, they also felt that this would be more practical from the aspect of maintaining a list and enforcing it. Supporters believe that the City should be able to provide ongoing data on the problem products associated with street drinking, and that this is a reasonable burden for any party seeking to ban the sale of a lawful product. Some members pointed out that under either approach, ongoing product data will be necessary, whether to prove what should be included in the ban or what should be exempted.

Those committee members who support the banned product list approach also point out that this is the approach used in all of the State of Washington’s AIAs, and that it has a proven track record of reducing crimes related to public intoxication in those areas. They point out that if we are going to point to Washington’s success with AIAs as a reason to establish one here in Oregon, then we should follow their proven methodology.

Opponents of a banned product list state that while Washington has had initial success with such an approach, it has not been sustainable. While admitting that the Washington State Liquor Control Board (WSLCB) has an overall favorable opinion of using a banned product list, they point out that local jurisdictions have been frustrated by the speed at which manufacturers have substituted new products for the banned ones. Four Loko was cited as a recent example of this in Oregon; one member shared that they changed their formula and their label in just 4 days when their caffeinated product was banned. Another committee member pointed out that Four Loko was first banned on a national level and that if it had only been an Oregon ban the manufacturer would not have reformulated, but instead just removed the product from the retail market in Oregon.

Some opponents cited Seattle in particular as only having managed to update their banned list once, that it took 14 months to do so, and that Seattle has asked the WSLCB

to look into a formula based approach.

It was acknowledged that Tacoma has had a more positive experience with their banned product list due to a very strong cooperative relationship with the distributors. However, those in opposition shared that while Washington's local jurisdictions are much more residential and were able to rely on community involvement in the form of litter patrols to collect product data, Portland's proposed area has a lot more businesses. In Oregon, we also have recycling laws that place a redemption value on beverage containers, which reduces litter. For these reasons, along with lack of resources, some committee members felt that it would be difficult for the City to identify what is being drunk on the streets, and that it would be easier for the alcohol distributors to identify specific products that should be exempted from the ban.

Third Alternative: Most committee members believed there was some merit to exploring the possible use of pricing in establishing product restrictions. While many members were concerned about the legality of such an approach, they agreed that it is the low cost/high alcohol content products that are the problem, and that such an approach would keep non-problem products (high-end/expensive table wines and craft brews/imported malt beverages) out of the ban. Staff agreed to look into the legal question of utilizing a price point approach.

Many committee members liked the idea of working to create a more comprehensive proactive list of banned products to start with which would include all of the low cost/high alcohol content products available in the downtown core. They also wanted to work to create a process by which the Commission could update the banned list as frequently as every quarter.

Distilled Spirits: Several committee members wondered if street drinkers would switch to low cost distilled spirits products once a ban is placed on malt beverages and wine. Even though this is outside the scope of a rule imposing a ban on licensees, many members wanted to know how the Commission would handle this. Some committee members felt that it would be easy to work with individual outlets since there are only a few liquor stores in the proposed area. Also, because these are state controlled stores, the Commission would be able to react quickly if specific distilled spirits products became a problem.

Ms. Huntsman closed the meeting by thanking members for their attendance and participation. The plan is to pick back up where we left off on the agenda at next week's meeting on November 8, 2011. Members were asked to bring their handouts back with them the following week. The meeting ended at 12:00 pm.