

# OREGON LIQUOR CONTROL COMMISSION MINUTES

October 15, 2009

Thursday, October 15, 2009

9:30 A.M. The Commissioners present were Alex Duarte, Bob Rice, Ron Roome, Cassandra SkinnerLopata and Chairman Phil Lang. Others present were Executive Director Steve Pharo, and members of staff.

**Minutes** – Chairman Lang asked if there were any changes to the draft minutes of the September 14 Commission Meeting. Commissioner Duarte moved to approve the minutes of the September meeting. Passed 5 /0.

## **PUBLIC FORUM**

No one was present for public forum.

## **COMPLIANCE**

Kelly Routt, Administrative Process Program presented.

There were 12 settlement agreements before the commissioners for ratification; Mt. Hood Arco, Sherwood Shell, Calderas, Westside Market, Roadhouse Pub, Happy Fortune Restaurant, Portland Courtyard by Marriott/The Original, Raleigh Hills Pub, Holocene, 7-eleven Store #2363-17234D, Six Ultra lounge, Jimmy's Smokehouse & Pizzeria, LV's Sports Bar Restaurant & Lounge. Commissioner Roome moved to ratify the settlement agreements. Passed 5 /0.

## **LICENSE MATTERS**

Dan Croy, Administrative Process Program presented.

**Service Permit Refusals**- There were 6 service permit refusals before the Commissioners for ratification.

## **Licensing Settlement Agreement**

There is one licensing settlement agreement before Commissioners for Winks Sports Pub & Pizza.

Commissioner SkinnerLopata moved to ratify the service permit refusals and settlement agreement under tabs 1A & B. Passed 5/0.

## **RULES**

Jennifer Huntsman, Rules Coordinator, presented.

## **INITIAL ACTION**

### **OAR 845-007-0020(2) Restrictions (Happy Hour)**

This rule places restrictions on the content of alcohol advertising that liquor licensees use. Due to recent case history, staff recommends amendment of section (2) regarding temporary price reductions in order to make it more enforceable and understandable. Commissioner Roome asked if the proposed rule is accepted that licensees would be able to advertise that they have happy hour. Ms. Huntsman said that as the proposal is submitted, no specific terms will be prohibited. Commissioner Roome further asked if specific price advertisements would be prohibited. Ms. Huntsman confirmed that the specific price advertisements would be prohibited. Commissioner Rice moved to initiate rulemaking to

amend OAR 845-007-0020 and to hold a rulemaking hearing at staff's discretion. Passed 5/0.

### **PETITION FOR RULEMAKING/POSSIBLE INITIAL ACTION**

#### **OAR 845-015-0130 Advertising a Retail Liquor Store**

We have received a petition from a Corvallis liquor agent requesting amendment of this rule. The petitioner requests to amend this rule so that there would be much more flexibility in what advertising, including outside signage, a liquor store would be allowed to utilize.

Commissioner Duarte asked what things other alcohol retailers are allowed to do that liquor stores would like to do specifically. Ms. Hunstman said that the rule currently lists out specifically what is allowed and does not allow for other avenues, such as advertising a relocation of the liquor store on a website. Commissioner Roome said that the proposed change will still require prior commission approval. Ms. Huntsman said that it still would have to be approved by the retail service division, is that consistent with other alcohol retailers? Ms. Huntsman said that it is not consistent; they have rules that prohibit and allow certain things.

Mr. Saleem Noorani, the petitioning agent, came forward to answer any questions and further clarify his petition.

Commissioner Roome moved to accept the petition for rulemaking to amend OAR 845-015-0130 to initiate rulemaking on this matter and to hold a rulemaking hearing at staff's discretion. Passed 5/0.

### **FINAL ACTION – SHORT FORM**

#### **OAR 845-008-0030 Tap Labeling (renumber only)**

This rule describes the labeling requirements for retail licensees who dispense draught beer from taps. Staff recommends renumbering the rule, with no amendments, and moving it to Division 6. The Attorney General's Model Rules allow this renumbering of a rule without prior notice or going through the regular rulemaking process.

Commissioner Duarte moved to renumber OAR 845-008-0030 to OAR 845-006-0443, effective December 1, 2009. Passed 5/0.

### **FINAL ACTION**

#### **OAR 845-005-0415 Special Event Winery and Special Event Grower Sales Licenses**

This rule describes Special Event licenses that are available to current Winery or Grower Sales Privilege licensees and also describes the application process. Because the rule is in conflict with its enabling statutes, we need to amend this rule in order to bring the rule language within the scope of the current statutory language.

Chairman Lang commented that the wine industry may bring this to the legislature in the future to change the statute.

Commissioner SkinnerLopata moved to amend OAR 845-005-0415 effective January 11, 2010. Passed 5/0.

### **ADMINISTRATION**

#### **2009 Annual Performance Progress Report (Key Performance Measures)-**

Farshad Allahdadi, Research Analyst, presented. He reviewed the most current key performance measures; sales to minors, rate of second violation, licensing time, customer service, rate of return and boards and commission best practices.

Commissioner Rice asked about the customer service area and that there is no weighting to the responses amongst the groups. Mr. Allahdadi confirmed that the response is numerical only and there is no weighting. The methodology on this particular measure is prescribed by the legislature. There is a major challenge to getting responses especially from licensees and the general public. It is difficult to validate the responses for their actual interaction with the commission. Chairman Lang thanked Mr. Allahdadi for the report.

### **Retailer Lists**

Donna Vandall, Administrative Policy & Process Division presented Commissioners with a concept for possible rule amendment. There is interest in allowing wineries and breweries to release a list of where their products are available at the retail level. Distilled spirits lists are available on the commission's website and amending this rule would make things more equitable.

Commissioner Rice commented that on the face he completely supports this idea, but that he has concerns about enforcing the requirement to list all of the retailers as keeping the list current would be a daunting task. Ms. Vandall said that the participation in this would be optional and the concept assumed that it would be more useful to limited availability products moreso than widely available products.

Executive Director Pharo commented on the concept and our hope that this concept would be viewed as a customer service rather than an enforcement issue. He hopes that Commissioner Rice's concern would be one of the issues that could be worked through the Advisory Committee.

Commissioner Duarte expressed concern over equity in listing and that some smaller stores may be left out.

Chairman Lang asked if there was any objection to staff further pursuing this issue. There was none and it was so ordered.

### **RETAIL SERVICES**

Merle Lindsey, Deputy Director, Distilled Sprits Program, presented

#### **Proposal to Amend Sales Guidelines for Non-Exclusive Liquor Stores**

Mr. Lindsey presented a proposal to Commissioners to raise the sales guidelines for non-exclusive stores from \$750, 000 to \$1.5 million.

Commissioner Roome asked if there was any reason to not do this. Mr. Lindsey said he did not have any reasons to not change. Chairman Lang commented that he thought this was a catch up item. Commissioner Roome moved to approve raising the non exclusive sales guideline to \$1.5 million. Passed 5/0.

#### **Proposed New Store Location- South Salem**

A proposal is before Commissioners to locate a new exclusive liquor store in the South Salem/Battlecreek area. There are three factors which determine success of a store: customer population, economic development or proposed economic development of the area and location of complimentary businesses. Staff use GIS which uses grocery store proximity, roads and access, and population density as well as licensees in the area and distance to the closest agent, population allocation to the agent. This proposal is 1.5 miles to the closest agent. Mr. Lindsey provided a map of the area, the distance and sales volume of the nearest agent. The new store will be exclusive and self service with projected annual first year sales of about \$1 million, tentative opening could be in the spring of 2010. He added that new stores are not opened lightly; it does have an impact on surrounding

agents. He has received some calls from some of the neighboring agents and has had discussions about the impact. We have prepared an analysis which shows on average a store may experience a 3% reduction of their sales pre store opening. The analysis also shows that the recovery for the existing agents may take between three and eighteen months depending on several conditions.

Elizabeth Molgard, agent of South Salem, came forward to express concerns over the proposed new store. She reviewed the sales in the proposed area and discussed the population demographics. She believes that the area is not as densely populated as North Salem/Keizer. She does not believe the area can support another store. She held up a chart which projects population and employment over a 31 year period. The chart indicated that currently the population of North Salem and South Salem are very similar, 76,000 in North Salem and 74,000 in South Salem. Projected to be 91,580 North Salem and 110, 935 South Salem in 2031. Employment is currently 45,000 in North Salem and 36,500 in South Salem; projected to be very similar in 2031. She proposed, rather than adding a new store, to move her current store to help even out the service in the area. She feels that adding another store would have a devastating effect on her store, downtown and west Salem stores. She thinks that the population in N Salem and Keizer is denser, citing a recent apartment building completed in the area. She thinks that if she has the opportunity to move her store further South, she would be willing to work things out to make that move and possibly to have a very small satellite store in her current location. She reviewed all of the extra work she is doing to ensure that her store doesn't sell to minors and follows all of the Commission's rules. She said that between herself and her husband they have had the South Salem store for over 50 years.

Commissioner Rice asked if Ms. Molgard has the appropriate evaluations to apply for a second store and if this is the first discussion she has had with staff on her proposal. Ms. Molgard said that when this store was initially proposed it was discussed as a satellite store pilot program. When she toured the area with Mr. Lindsey, the property he is referencing was the best property available at the time. The area she is proposing has only recently become available. She said that her evaluation did not qualify and confirmed that this presentation was the first time her proposal had been shared with staff.

Commissioner Duarte asked if staff had a response to the information provided by Ms. Molgard. Mr. Lindsey said that we have not received the information and would need to analyze the information to see why there are any discrepancies between the two sets.

Commissioner Duarte confirmed that staff has detailed data points which helped determine that now is the right time to place a store in the area. Mr. Lindsey confirmed that we have detailed information available for review. Commissioner Duarte commented that he is concerned that there are good data points that were discussed which needed to be weighed to help come to a conclusion on whether to open a new store. Mr. Lindsey agreed. Commissioner Roome asked if Ms. Molgard could move her store and it would eliminate the need for a second store. Mr. Lindsey said that we need to evaluate the information presented today before he could answer that question. . Chairman Lang asked if we had any idea of how many stores are within a mile and a half of each other. Mr. Lindsey said he can pull together that information, but distances are often much closer in metropolitan areas.

Executive Director Pharo commented on the recovery time when opening a new store and also the gain realized by the other stores in the area after the initial impact of the new store. Commissioner Duarte asked if there could be an analysis of data in an area comparable with this, such as Bend or Eugene were there would be a relatively comparable density, which could give some apples to apples data points. This would help to weigh the decision at hand. Mr. Lindsey commented that it is not a perfect science, and before GIS it

was just a guess of where to site a store. He pointed out several examples of areas where opportunities may arise in the future which we are watching with GIS and reviewing for future proposals.

Commissioner Rice moved to defer this decision to our November meeting and asked staff to integrate the information which was presented today and evaluate that within the context of how we make the agent location decisions. Passed 5/0.

### **Retail Sales Agent Appointment – Superfly Distillery**

Michael Webster of Superfly Distillery has applied for a distillery retail sales agent agreement under ORS 471.230(2) for their current distillery at 16399 Lower Harbor Rd. in Brookings. Commissioner SkinnerLopata moved to approve the appointment of Michael Webster. Passed 5/0.

### **Agent Appointment – Depoe Bay, #1020**

This vacancy occurs as a result of agent Craig Toll's death. The interview committee interviewed four applicants. The two finalists; Todd Holden, Shellie O'Donnell, appeared before Commissioners to present their qualifications.

**Recessed:** 10:55 a.m.

**Reconvened:** 11:10 p.m.

Commissioner SkinnerLopata moved to appoint Shellie O'Donnell as agent of Depoe Bay. Passed 5/0.

Recessed for lunch break and contested case deliberations: 11:15

Reconvened 1:30 pm

### **CONTESTED CASE HEARINGS**

Judith Bracanovich, Administrative Process Division Director, presented.

**Cedars Restaurant & Lounge, Inc., David G Layman, Pres/Dir/Stockholder, dba** OLCC-08-V-099 , OLCC-08-V-099A. A proposed order was issued on June 15, 2009. David Layman and attorney Mike Mills appeared to present their exceptions. Donna Vandall will present staff exceptions.

Commissioner Roome asked Mr. Mills why the towing of the beer trailer on Saturday afternoon was submitted for consideration when there were violations on Friday and Saturday morning should warrant re-opening the record. Mr. Mills said that the clarification was to help offer third party evidence to lend credibility to Mr. Riddle's testimony. Commissioner Roome confirmed that Commissioners do not have the authority to overturn the findings of fact of the ALJ. Mr. Mills said that the finding of credibility cannot be overturned, but the findings of fact, he wasn't sure of the latitude. He hopes to give extra information for some of the ALJ's inferences drawn in those finding of fact.

Commissioner Duarte asked Mr. Mills to look at pg 9 of 14 of proposed order and asked for clarification on which towing company was used. He commented that he found it a bit of a stretch to open the record to clarify which towing company was used.

Commissioner Roome said that the ALJ found that there was a personal relationship between Cedars and the licensee's fiancée, and he is unsure if that finding of the ALJ could be overturned. Ms Vandall said that she did not believe that could be overturned.

**Tommy's Too, Utilize, Inc., Craig Desmarais, Pres/Dir/Stockholder, dba** OLCC-09-V-024, OLCC-09-V-024A. A proposed order was issued on July 22, 2009. Licensee Craig Desmarais and attorney David Nepom appeared before commissioners. Anna Davis presented staff comments.

**US Market #109, US Market #109, LLC, Lal Sidhu, Managing Meber, dba** OLCC-08-V-112. A proposed order was issued July 31, 2009. Terrence McLaughlin, attorney, appeared to present exceptions. Anna Davis appeared to present staff comments. Commissioner Roome asked why he should consider in the licensee's favor when the key pad on the age verification equipment appeared functional. Mr. McLaughlin said that because there is a lone employee who said that he is not really sure that he knew about the keypad, is a non-native speaker and his testimony is not very clear. The person who trained him clearly states that he was trained in the use of the key pad function. When you have something that only works sometimes it apparently became too confusing for him. It was something that the licensee had no control over and took every step possible to ameliorate throughout the entire process. Commissioner SkinnerLopata confirmed with Mr. McLaughlin that the licensee is held responsible for the actions and non-actions of his employees. Mr. McLaughlin agreed, but thinks there is a certain limit of controlling an employee's actions. She asked if the employee had been sanctioned. Mr. McLaughlin said he was sanctioned immediately after the hearing.

**Center Markets(Center Market #1, #2, #9, Center Market, Inc., Bahadur Singh, Pres/Dir/Stockholder, Parvinder Sindal, Stockholder; Center Market #5, #6, Raman, Inc., Bahadur Singh, Pres/Dir/Stockholder; Center Market #12, Amrit, Inc., Bahdur Singh, Pres/Dir/Stockholder)** OLCC-08-V-104, OLCC-08-V-105, OLCC-08-V-106. A proposed order was issued on July 31, 2009. Licensee Bahadur Singh and attorney Mike Mills appeared before Commissioners. Donna Vandall presented staff comments. Commissioner Roome asked about the time period reviewed for passage of time; whether it is date of conviction of date of violation.

**Eclectic Restaurant/Envy Lounge, Restaurant Management Group, LLC, Sirivanh Vorachith, Member, Raoul Calderon, Member, dba** OLCC-09-V-028, OLCC-09-V-028A, OLCC-09-V-028B. A proposed order was issued on August 18, 2009. The attorney did not appear and staff rested on their submitted comments.

**The Rainbow Market, Roxanne Ventures, Inc., Roxanne McInturff, Pres/Stockholder, Danielle Wood, Secretary, dba** OLCC-08-V-124, OLCC-08-V-124A, OLCC-08-V-124B. A proposed order was issued on August 18, 2009. Roxanne McInturff and attorney Timothy Gassner appeared by telephone. Staff rested on the ALJ's proposed order.

**Cabaret Lounge, DK Entertainment, LLC, David Kiraz, Managing Member, dba** OLCC-08-V-061, -064, -097, OLCC-08-V-061A, -064A, -097A. A proposed order was issued August 12, 2009. Licensee David Kiraz and attorney Duke Tufty appeared to present exceptions to the proposed order. Anna Davis presented staff comments. Commissioner Roome asked specifically how a person swinging a baton 100 ft away from the incident could be described as self-defense. Mr. Tufty said it is not self-defense, it is the nexus of the seriousness of the situation.

**Girtle's Restaurant & Lounge, Marbet, Inc., Robert Girtle, Sr., Pres/Dir, Robert Girtle II, Sec./Tres./Dir., dba OLCC-98-V-079.** A proposed order was issued on September 3, 2009. Licensees did not appear. Attorney Mike Mills appeared on their behalf to present exceptions to the proposed order. Anna Davis presented staff comments.

Recessed to deliberate contested case items: 3:45 p.m.

### **Friday, October 16, 2009**

The Commissioners present were Alex Duarte, Bob Rice, Ron Roome, Cassandra SkinnerLopata and Chairman Phil Lang. Others present were Executive Director Steve Pharo, and members of staff.

9:30 a.m.- Commissioners met with counsel in recess to deliberate contested case items.

Reconvened: 2:47 p.m.

### **DECISIONS ON CONTESED CASES**

**Cedars Restaurant & Lounge** – Commissioner SkinnerLopata moved to deny the motion to re-open. Passed 5/0.

Commissioner SkinnerLopata moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order. Passed 5/0.

**Tommy's Too** – Commissioner Roome moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order. Passed 5/0.

**US Market #109** –Commissioner SkinnerLopata moved to continue deliberations on this item to the December meeting. Passed 5/0.

**Center Markets** –Commissioner Roome moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order. Passed 5/0.

**Eclectic Restaurant/Envy Lounge**- Commissioner Rice moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order. Passed 5/0.

**The Rainbow Market**- Commissioner Duarte moved to amend and reverse the proposed order per the list that will accompany the minutes and adopt the amended order as the final order. Passed 5/0.

**Cabaret Lounge**- Commissioner Duarte moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order. Passed 5/0.

**Girtle's Restaurant** – Commissioner Duarte moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the amended proposed order. Passed 5/0.

**Spot 79** – Commissioner Roome moved to continue deliberations this matter to the December Commission meeting. Passed 5/0.

**US Market #180** – Commissioner Rice moved to amend and reverse the proposed order per the list that will accompany the minutes and adopt the amended order as the final order. Passed 4/1, SkinnerLopata, no.

**Star Theater** – Commissioner SkinnerLopata moved to adopt the amended order denying a stay. Passed 4/0, Commissioner Roome recused himself from voting and deliberating on this matter.

Commissioner SkinnerLopata moved to adopt the amended order denying a motion for reconsideration or a rehearing as the final order. Passed 4/0, Commissioner Roome recused himself from deliberating and voting on this matter.

**Downtown Deli & Greek Cusina** – Commission SkinnerLopata moved to grant the motion to reconsider. Passed 5/0.

Commissioner SkinnerLopata moved to amend the final order pursuant to the list that will accompany the minutes and adopt the amended order as the amended final order. Passed 5/0.

**Nick’s Famous Coney Island** – Commissioner Duarte moved to grant the motion for reconsideration. Passed 5/0.

Commissioner Duarte moved to rescind the final order on default and grant the right to a hearing. Passed 5/0.

**City Center Food Mart** – Commissioner Roome moved to deny the petition for reconsideration. Passed 5/0.

Adjourned 3:07 p.m.

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Phil Lang, Chairman

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Alex Duarte, Commissioner

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Bob Rice, Commissioner

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Ron Roome, Commissioner

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Cassandra SkinnerLopata, Commissioner

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**Stephen A. Pharo, Executive Director  
and Secretary to the Commissioners**