

OREGON LIQUOR CONTROL COMMISSION  
MINUTES  
November 19, 2010

Friday, November 19, 2010

9:00 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, Deputy Director Rudy Williams and members of staff.

**Minutes** – Commissioner Duarte moved to approve the minutes of the October commission meeting. Passed 5/0.

**PUBLIC FORUM**

No one was present for Public Forum.

**ADMINISTRATION**

**Alcohol Energy Drinks-**

Judy Cushing of Oregon Partnership, came forward to implore the Commissioners to consider a temporary emergency rule to take the products off the market.

Chairman Lang summarized the week's events. The FDA held a press conference on Wednesday which found four products to be unsafe. As a result of that meeting, Chairman asked three distributors of those products to come in and meet with staff to discuss next steps. Chairman Lang indicated that these products are not sold by most large retailers; they are mostly sold through convenience stores. In the meantime, we are considering asking retailers to put up a sign warning consumers that the FDA has safety concerns about the product. He told the distributors that he plans to go to the new governor and ask to have legislative support to have more authority over this type of product for future consideration.

Ms Cushing asked if the OLCC would be willing to work with DHS to craft emergency action.

**COMPLIANCE**

Becky Voelkel, Administrative Policy and Process Program presented.

There were 9 settlement agreements before the commissioners for ratification; High Forest Shell Mart, Hitchin Post Pizza, Enitel Communications, Papa Son's, Mulligan's Bar & Grill, Eugene City Brewery, Southside Speakeasy, Riverfront Bar & Grill aka Bourbon Street Cabaret, Western Beverage Company.

Commissioner Roome moved to ratify the 9 settlement agreements. Passed 5/0.

**LICENSE MATTERS**

Dan Croy, License Services Division presented.

**Luttrell's Country Junction** Junction Rd, Glendale. Off-Premises, Change of Owner. Mr Luttrell appeared before the Commissioners. Chairman Lang commented that he was disappointed in the content of the report as it did not show what the applicant has been doing in the time that passed. Mr. Luttrell advised that he lost his previous restaurant

through the real estate market downturn and he has worked as a chef in Vancouver in the time in question.

Commissioner SkinnerLopata moved to grant the license. Passed 5/0.

**El Noa Noa** SE Division St, Portland. Full On-Premises, New Outlet. Applicants William Escobar and Gerardo Guzman appeared before Commissioners.

Commissioner Roome was troubled that neither of the applicants have experience operating an establishment like this and the lack of a control plan. Commissioner Rice asked if staff has discussed the proposed restrictions with the licensee and if they understood the restrictions. The owner of the building confirmed that the applicants had discussed and understand the restrictions. He noted that the applicant was in this business in California for many years and moved to Oregon recently. He has met with the neighbors who had noise concerns and they reached a good neighbor agreement. Commissioner Rice commented on the late night aspect of the entertainment business. He believes that the restriction after 10 pm will severely limit his business opportunities. The applicant has a plan that includes other types of entertainment. He provided a letter from the neighborhood association behind his building, which was not the same neighborhood that was opposed to the application. Commissioner Duarte asked the applicant how long he thought he would operate before he came back to the Commissioners to ask for restrictions to be lifted. The applicant said he thought it would be six months to a year. Chairman Lang asked the license investigator to come forward. Eric Hildebrand, license investigator, came forward and stated that with the names and birthdates he has for the applicants, he found no record of them being licensed previously. The applicants indicated that they were managers, not licensees. Commissioner Duarte said he was willing to give Mr. Escobar the benefit of the doubt, but asked a little more about the nature of his role at the business in California. Mr. Escobar said that he started in 1983 as a dishwasher, worked into a cook role and then lead cook and manager. He ran the business for 5-6 years and managed 23 people. Commissioner Duarte asked the other applicant what his experience was. He said that he had no experience, he was financing. Commissioner Duarte moved to approve the application with the understanding that the restrictions are very strictly enforced and understanding that in the future he may come before the commissioners . No music after 10 pm and the garage door remain closed. Rice aye with cautionary note that the nature of the entertainment restriction put commissioners in a difficult situation as it will be difficult to demonstrate that he has operated responsibly under that restriction as he will have no proof. Passed 5/0.

Chairman Lang left the room.

**Service Permit Refusals-** There were 3 service permit refusals before the Commissioners for ratification.

**Service Permit Settlement Agreements-** There were two Service Permit Settlement Agreements before the Commissioners for ratification; Shiloh K Baker, and Melissa A Mills.

Commissioner Roome moved to ratify the service permit refusals and settlement agreements under Tab 2A and B. Passed 4/0.

## **RETAIL SERVICES**

Brian Flemming, Retail Services Director, presented

### **Distillery Retail Sales Agent Appointment Oregon Spirit Distillers .**

Bradley Irwin of Oregon Spirit Distillers is applying for a distillery retail sales agent agreement to allow sales at their Bend location. Commissioner Roome asked if they are required to have liability insurance for selling at the location. Mr. Flemming stated that they are required to do so under the contract. Commissioner Rice asked if Mr. Irwin is the owner of the distillery. He is. Commissioner SkinnerLopata asked what role Kathy Irwin would play in this business. Mr. Flemming said that she will be the bookkeeper and help with other business operations.

Commissioner Duarte moved to appoint Bradley Irwin effective December 2010. Passed 4/0.

### **Settlement Agreement, Powell 1183 –**

Commissioner Roome commented that the he was concerned that the attorney signed for the agent. Commissioner SkinnerLopata asked if the agent would be willing to sign an agreement for the record. Commissioner Roome moved to ratify the agreement for A1183. Passed 4/0.

### **Recessed- 9:56 a.m.**

### **Reconvened in Room 120 for Work Session- 10:50**

Regulatory Services Director Linda Ignowski began her presentation on Compliance issues with a discussion on restrictions.

Chairman Lang commented that he did not want staff to use restrictions in lieu of when a license should just be denied. Commissioner Duarte said he is in favor of restrictions if they are used smartly and make the licensee become a better operator. Ms Ignowski commented on the need for feedback to help us find the types of licenses that they would like more scope of authority to deny a license so we can look at legislation to help make this happen. Licensing Director Farshad Allahdadi commented on the past practice of continuing restrictions on existing licenses and how they are now reviewed and updated as license change hands in the future. Ms. Ignowski said that enforcement staff are now specifically looking at restrictions to ensure that they are being followed. Also they are educating licensees to ensure that they understand what the restrictions involve and the consequences for violating those restrictions.

#### **Aggravating and Mitigating Factors**

Discussed written warnings and the use as aggravating factors in the future. There was concern expressed about having no way to contest the written warning, but it is used against a licensee if there are future violations. Concern was also expressed that more violations will result if there are less warnings written. This is a rule, so any policy changes could be made at the Commission level. Commissioners took this under advisement but were not ready to make any decisions on direction of this issue.

#### **Age Verification Equipment Discussion**

Discussed the recommendations of the AVE task force:

- 1) Limiting aggravations on these violations to two years instead of aggravating for an unlimited time period.
- 2) If licensee says that AVE is malfunctioning, they have 10 days to fix the machine. All other excuses will be aggravated. Commissioner Duarte asked why the licensee did not have the responsibility to contact the Commission when they discovered they had a malfunctioning machine.

3) Remove portion of OAR 845-009-0140 (6) which dictates where AVE must be kept. Commissioners agreed with this proposed change.

4) Executive Director Steve Pharo reviewed the AVE \$20 option. Should credit for getting AVE be offset by a \$1650 fine, or should they receive actual cost credit against the fine. In addition, if the \$20 machine does not document the use, does it meet the criteria? Commissioner Rice commented on establishing a standard for equipment; what the intent of the fine is- financial hardship or compliance? Would we allow insurance, so to speak, by giving a free pass in the future. Commissioners agreed to look at standards for equipment by rule. Chairman Lang would like to close the door on the malfunctioning equipment excuse.

Commissioner Rice would really like to look at getting AVE equipment into establishments in hopes that licensees would use the equipment before they violate in the future.

Ms. Bracanovich reviewed commissioners' intent on the recommendations. There was not agreement on the first recommendation. On the second item- Commissioner Duarte suggested altering to the 'safe harbor' option. Staff will review and report back. Ms. Ignowski suggested another option is that we not use any excuses for mitigating.

Enforceable Compliance Plans- Ms. Ignowski reviewed the Advisory Committee (AC) which happened earlier in the week. Concern was expressed over the vagueness of when the proposal would be instituted. There will be a revision and another AC in the future. Robust discussion about compliance plans. These plans will not result in a category one violation, they will be a category three.

She briefly reviewed the new First Call program which focuses on more education for new licensees to help ensure better compliance.

Priority Violations-

Re-evaluating priority violations to allow for some discretion under certain circumstances. She shared the case of a service permittee who has been in the industry for over twenty years forgot to send in the renewal for their service permit and received a criminal citation. She shared some areas where there would be no discretion, and some areas which could be more circumstantial. Discussed adding material false statements to the list of items that would still fall under priority violations.

Violation review process. The new compliance technician reviews all violations for statewide consistency.

**Adjourned 2:10 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