

OREGON LIQUOR CONTROL COMMISSION

MINUTES

December 1, 2011

Thursday, December 1, 2011

9:07 A.M. The Commissioners present were Alex Duarte, Michael Harper Bob Rice, Ron Roome, and Chair Cassandra SkinnerLopata. Executive Director Steve Pharo, and Deputy Director Merle Lindsey also along with members of staff.

Minutes – Commissioner Duarte moved to approve the minutes of the November 18, 2011 meeting. Passed 5/0.

PUBLIC FORUM

No one appeared under public forum.

ADMINISTRATION

Redemption Center Application from OBRC

Tom Erwin, Government Affairs and Communications Director presented.

Oregon Beverage Recycling Cooperative (OBRC) has submitted an application for approval of a pilot project redemption center to be located at 4815 Commercial St SE in Salem. This center is intended to be the pilot project authorized by the passage of HB 3145. HB 3145 amended ORS 459.735 to establish a redemption center pilot project. This pilot project differs from existing redemption centers by requiring that the center be sited in a city with a population of less than 300,000; increases the container return limit to 300 containers per person/per day; and establishes two convenience zones around the site of 1.5 mile radius and 1.5 to 3 mile radius. John Anderson, OBRC President, presented a Powerpoint overview of the specifics of the proposed center.

Commissioner Rice asked about the other redemption centers impacts on grocers and convenience stores- what would have been expected as an adverse impact? Mr. Anderson said that it was a mathematical measure based on whether there was an increase in the redemptions at convenience stores. There was no increase, in fact most of the volumes decreased. Also they looked to grocers to share the feedback they received from consumers at the participating stores. After an initial transition period, there was no negative feedback on the new process. Also the Walmart in Wood Village which elected not to participate in the redemption center saw a decrease in their historically high redemption rate indicating that the public was choosing to take their containers to the redemption center instead of the grocery store.

Commissioner Roome asked about previous concerns of increased traffic around redemption centers and what has been done to address those issues. Mr Anderson said that they have done some traffic study analysis based on redemption centers in other

states. He has observed that when people have the opportunity to return more containers, they save up and return more containers on each trip. Although they spend more time at the redemption center to do this, they make fewer trips to the centers. Commissioner Roome asked if there are any complaints from surrounding businesses. Mr. Anderson said that conceptually the increased traffic helps the other area businesses. There was one issue with parking at the Oregon City site. They worked with the tenant and landlord to address those concerns. The tenant moved to a different site in the complex and the redemption center expanded into that space.

Commissioner Harper asked how they find their staff and how many employees they have at the centers. Mr Anderson deferred the question to Alisa Shifflet, the redemption center project manager. She noted that they use craigslist and they have about six employee at each facility. Mr Anderson added that many customers query about job opportunities as well.

Commissioner Rice moved to approve the pilot project redemption center proposed by OBRC to be located at 4815 Commercial St SE in Salem based on our determination that it will provide a convenient service to the public and to direct the issuance of an order approving redemption center listing the dealers to be served by the center and such other provisions as will ensure that the center will provide a convenient service to the public. Passed 5/0.

RULES

Jennifer Huntsman, Rules Coordinator, presented.

FINAL ACTION

OAR 845 – Division 15 – Retail Store Package

In order to update and modernize the current distilled spirits retail system, staff recommends the proposed amendments in this rule package which would allow corporations to be retail sales agents, build more flexibility into the retail store classification process, update the resignation buy-out program, and add flexibility to accommodate future pilot programs.

Commissioner Roome asked a clarifying question about a corporation as a retail agent. Ms Huntsman responded that yes, current rule does not allow a corporation to apply as agent, only an individual. The proposal would allow a corporation to enter into a contract as a retail liquor agent with the OLCC. Commissioner Roome asked if we had a sense for what effect agents selling beer, for example, might have. Ms Huntsman said that we do not have any exact figures; there are a lot of 'ifs' in the statement: If more agents become nonexclusive, and if those that become nonexclusive want to sell beer and wine, then yes, there would very likely be an impact to other outlets for those products. A lot of that would depend on how many other outlets there are around them, whether they are in a rural or urban environment – there are a lot of possibilities. But definitely if you set up a model where more stores can choose to ask to be nonexclusive the commission would still be in a position of approving those based on the business plan, then you do have a

possibility for more of them to possibly sell more of the types of products that convenience stores sell. Commissioner Roome asked if a corporation was appointed as an agent whether there would have to be a store within a store concept or if it would be spirits in the store with the other groceries. Ms Huntsman said it would be a store within a store model, the spirits would be separate and walled off from the other products.

Commissioner Duarte asked if we know the rationale for a corporation being prohibited from entering into a contract as a retail liquor agent. Ms Huntsman said she was not sure, but she imagined that at the time it was not considered with the current considerations for types of corporations.

Commissioner Harper asked what would be the standard competition between an individual's financial statement and a corporate financial statement when looking at an application for a retail liquor agent contract. Which would rise to the top and where is the equality? Ms Huntsman deferred to Executive Director Steve Pharo to answer the question. Executive Director Pharo responded that if commissioners choose to pass the rule there will be a process of going through each of those nuances in the process of selection and reviewing those. The financial statement would reflect the relevance to being able to establish and maintain and do the kind of liquor store that the commission wants. If there was an individual with suitable funds, no matter how much Safeway had, they would be seen as just as equal to establish a store that would work for us as much as anybody. If either of those candidates has weak funds to establish a store, we would treat them the same. Commissioner Harper still did not see the equality in the process if there was a corporation and an individual competing for the same contract. Executive Director Pharo explained further that the choice of who to appoint will still be up to the Commissioners based on who they felt would provide the type of service levels that the Commission expects. It would not matter if one applicant had significantly more funds available as this is currently seen with individual applicants. Commissioners still find one applicant will have a better store or location or be a better agent and still make those decisions.

Commissioner Rice commented on his time on the Commission he has reviewed hundreds of applications and universally the standard has been whether the financial statement is adequate of sufficient; does this person show sufficient financial strength to do the job. Once that threshold is met, then that is set aside and we evaluate their plan, who they are, what their experience is, what we think they can bring and so forth. So it is simply and efficiency or adequacy test, not who has the biggest bankroll. He has never seen an instance where the Commissioners have determined an appointment based on who has the most money. He has no concern about equality of the appointments with respect to the consideration of corporate vs. individual financial statements.

Commissioner Roome asked about the resignation buy out and whether this increase was getting the commission the bang for the buck? Ms Huntsman answered that staff believes that we are. The current values for buyout have been in place for quite some time and this is a reasonable move up. It is in an effort to help agents recoup some of the investment that

we hope that they continue to put into their business to improve it and to improve the customer experience.

Commissioner Harper asked about item #4, with respect the proposed rule change to expand circumstances under which the Commission may appoint a temporary agent. Would those appointments come before Commissioners for approval or would that be done at the staff level? Ms Huntsman responded that the temporary appointments would be done at the staff level in line with other temporary appointments.

Commissioner Rice commented that, although it would probably seem odd as he served as a member of the task force which met at length to develop these proposals, in light of what we have seen in Washington and what we may see occurring at the legislature when they are next in session, since much of this would be changed under any changes, and he does not view this as an emergency, he recommends that we defer this consideration until after the next legislative session, in the event the legislature would see fit to make any changes to the model at that time. His recommendation is simply to defer action until March.

Testifying in support of the rules package were Saleem Noorani, Steve Brown.

Commissioner Roome asked Mr Brown how he thought a grocery store with liquor added in Lincoln City might impact his liquor store there. Mr Brown answered that the intent was allowing corporation to apply for existing stores as they became available, not adding new stores. He added that in his 30+ years as a retailer, he feels that his store currently offers one of the best selections in the state. Adding liquor to a Safeway(for example) would not be in the best interest of the Commission as the best choice to serve the public in that area is the current model of his store. Commissioner Roome asked if he would consider selling beer at that store under this proposal. Mr Brown said that he would, but would offer select Oregon wine and beer products to help capitalize on the tourist market. Commissioner Rice clarified that the proposal allows agents to apply to become nonexclusive, not to specifically add beer and wine into the liquor stores. There is a process.

Commissioner Duarte asked Mr Brown to reflect on Commissioner Rice's earlier comments about waiting to see what the legislature will do when they are in session and whether he thought there were any parts of the rule package that commissioners should carve out and consider right now. Mr Brown replied that he believes that the Commission would be making a wrong move to defer until after the legislative session. He believes that retailers must evolve continuously and customers like to see change. He thinks it is important that the Commission make a statement that they are evolving and they continue to evolve. He said that in his past seven years as an agent there has been growth as stores as a destination. He realizes that government moves slow, but he would like the ability to not have his hands tied by the nonexclusive/exclusive rules; he thinks the resignation buyout program needs to be updated to reflect current market value.

Chris Girard, President of Plaid Pantries and Chairman of the Oregon Neighborhood Store Association appeared in opposition to the proposed rule package.

Tom Parker, Communications Director, Oregon Partnership, appeared in opposition to the proposed rule package.

Commissioner Duarte asked Mr Parker if he felt that item 3 in the rule package (resignation/buy out) was something that was a concern to Oregon Partnership. Mr Parker said that he personally understood that an agent would want to recoup the investment they had made in their business over the years to the best value, but that he was concerned that this might lead to selling out to the highest bidder, which would not be ideal.

Commissioner Duarte asked for his thoughts on item 4 in the rule package. Mr Parker said that as long as there is a set time period and it is a closed ended model he supports it.

Commissioner Duarte asked if there were any thoughts of breaking up the rule package and looking at the items individually. Ms Huntsman replied that staff believe it is all important but that Commissioners have received advice from those who testified today about what they thought could be broken out of the package.

Commissioner Harper commented that he did not see the correlation in the package.

Ms Huntsman reviewed instances when Commissioners have taken a different path other than a packaged proposal before them in a meeting.

Chair SkinnerLopata asked when rulemaking began and how many meetings there were and the stakeholders involved. Ms Huntsman reported that action was initiated in February 2011. There was one Advisory Committee that was well attended by the stakeholders who have testified today and in the record, however that was preceded by several months of the Retail Enterprise Review which Chair Lang established and Commissioner Rice sat on. The rule package development phase was vetted through that group before a rule package was brought for initiation in February. Chair SkinnerLopata asked for a review of the pros and cons of deferring or not. Ms Huntsman said she would take the 5th on whether or not they should defer on the conceptual issues. She thinks there are a few things in the package that could be addressed, such as the temporary agent rule which would reflect the needed reality of today. She thinks agents have strong feelings about the agent buy out piece moving forward today.

Commissioner Rice added that he is not trying to be obstructive if there are individual pieces that could be moved forward today. He thinks we have to suspend our disbelief that in November 2012 Oregon voters won't be faced with a privatization measure on the ballot. He still has faith that the legislature will deal with tough issues and February will be their opportunity to head off parts of a measure that we as citizens and as an agency and they as a legislature would find highly undesirable. He hopes that they will do that. He is reluctant to give some less brave legislators the opportunity when presented with that consideration in February to say the liquor commission already dealt with that at their December meeting, they've already taken care of that, which would be preposterous on the face but would be an opportunity for them to take that position. This package doesn't represent a response to 1183. Even though he was personally part of the process and is very supportive of much of what is in here , other than a couple of items, he does not see the emergency, and sees no harm in deferring it to March and makes that motion.

Commissioner Duarte asked, before voting on the motion, there do not appear to be any objection to the items dealing with Resignation/ Buy Out, Temp Agent or Pilot Programs. He wants to know if any of the people who appeared today had concerns or objections to those three items. Mr Girard commented that they support those three items.

Chair SkinnerLopata commented that she thinks the package the work effort and process was a good one. The work and collaboration that went into it was frankly phenomenal. In light of what is happening in Washington, her goal is to keep this agency effective and existing and able to do so in a modernized role. She does not believe that moving the entire package today would limit the legislature's ability to address 1183, and to address other issues that are not addressed in this package. They have more than enough ability to do that. She thinks that if it is deferred they are missing a really good opportunity to provide the legislature meaningful change within this agency, now.

Roll call on Commissioner Rice's motion to defer the entire package to March 2012. Motion failed 1/4. Duarte, Harper, Roome and SkinnerLopata no.

Commissioner Duarte moved to amend OAR 845-015-0190 (Resignation Buy Out Program for Retail Sales Agents), OAR 845-015-0196(Temporary Appointment of a Retail Sales Agent or Operation By Staff), adopt OAR 845-015-0210 (Pilot Programs) and amend OAR 845-015-0101(Definitions) except adding "legal entity" in section 5 & 7, effective January 1, 2012 and to defer action on OAR 845-015-0105, OAR 845-015-0115 and OAR 845-015-0118 to the March commission meeting.

Passed 4/1, SkinnerLopata, no.

Recessed 10:55 am

Reconvened 11:00 am

OAR 845-009-0135 Responsible Vendor Program

HB 2148 changes the definition of "retail licensee" for the purpose of who may participate in the Responsible Vendor Program, and this rule needs to be amended to bring it into compliance with the new statutory language effective January 1, 2012. Staff is also recommending minor amendments to the program standards related to required postings, as well as some housekeeping amendments.

Commissioner Roome moved to amend OAR 845-009-0135, effective January 1, 2012.

Passed 5/0.

OAR 845-005-0425 Qualifications for Wine Self-Distribution Permit for Wine and Cider

This rule describes the qualifications necessary for an out-of-state manufacturer to obtain a Self-Distribution Permit, which allows the permittee to ship wine or cider they manufacture directly to Oregon retail licensees. HB 2147 has passed with an emergency clause, effective June 2, 2011, and eliminated the statutory requirement to provide a true copy of an applicant's manufacturing license. This rule needs to be amended to bring it into statutory compliance.

Commissioner Duarte moved to amend OAR 845-005-0425 effective January 1, 2012.
Passed 5/0.

OAR 845-015-0120 Retail Sales Agent Selection Procedure

This rule describes the Commission's standard procedure for seeking applications from the public to fill a retail sales agent vacancy. Staff recommends amending the rule to provide greater flexibility in advertising methods, beyond just printed newspaper ads.

She believes this issue is worth exploring through an advisory committee.

Commissioner Roome moved to amend OAR 845-015-0120 effective January 1, 2012.
Passed 5/0.

OAR 845-015-0185 Special Orders for Distilled Spirits

This rule describes the Commission's procedures for special orders for distilled spirits by customers. SB 944 eliminates the one case minimum order requirement in some circumstances, and this rule needs to be amended to bring it into statutory compliance effective January 1, 2012. Commissioner Harper clarified what is done currently.

Commissioner Roome asked what happened to the rest of the case if there is only one bottle required to be purchased.

Commissioner Roome moved to amend OAR 845-015-0185 effective January 1, 2012.
Passed 5/0.

COMPLIANCE

Anna Davis, Administrative Process Program presented.

There were 13 settlement agreements before the commissioners for ratification; Hitchin Post Pizza, F & F Grocery, Rick Swan, Darcelle XV, Kin's Bar & Grill, Angela D Jones, Zena R Klingler, Portland Wine Merchants, and Sharkbites Seafood Café.

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

LICENSE MATTERS

Gwenn McNeal, License Services Division, presented.

Service Permit Refusals-

There were four service permit refusals before Commissioners for ratification.

Commissioner Roome moved to ratify the four refusals. Passed 5/0.

Neighborhood Market #2 – Main St W, Monmouth, Off Premises Sales and New Outlet. Applicant Harnek Dohte and his attorney appeared before commissioners. Commissioner Duarte moved to grant with a cautionary statement that these issues are taken very seriously and while there are not proposed restrictions, he still wants to remind the applicant that his compliance with alcohol laws is of utmost importance. Commissioner Harper asked the applicant about his relationship with the neighboring university in Monmouth. Commissioner Duarte's motion to grant passed 5/0.

The Spot Sports Bar & Grill – SW TV Hwy, Aloha. Full On Premises Sales, Change in Ownership. Applicants Autumn Youngchu and Rekha Luy appeared before Commissioners. Commissioner Rice strongly cautioned Mr Luy about his record and the lack of tolerance the Commission has on any future infractions. Chair SkinnerLopata asked Mr Luy if he has resided in Oregon for the whole time since his convictions. Mr Luy said that he has resided at the same address since 1993 and the criminal history was when he was young and irresponsible. He has since graduated college and now has a family and is not the same person he was at 19. Commissioner Roome thanked Mr Luy for coming in today to help explain his history.

Commissioner Duarte moved to grant the license. He noted that the concerns are strong and he appreciated the applicant coming forward to explain his past. Commissioner Harper echoed Commissioner Duarte’s comments. Passed 5/0.

Mr Allahdadi referenced follow up materials which were sent in response to questions about licensing food carts from the October meeting and asked if there were any additional questions.

ADMINISTRATION

Annual Review of Executive Director’s Financial Transactions- Financial Services Director Michael O’Connor presented a detailed report to Commissioners reviewing Executive Director Pharo’s travel expenses and SPOTS transactions over the past fiscal year per OLCC Policy #845-101-005 and the Oregon Accounting Manual. He asked Commissioners to acknowledge receipt of the report for the record. Commissioner Rice asked a clarifying question. Chair SkinnerLopata acknowledged receipt of the report.

Responsible Retailers Forum OLCC Joint Over-service Project-

Public Safety Program Director Rudy Williams and Steve Sander of the Alcohol Server Education Program came forward to review the outcomes of the joint project with Responsible Retailers Forum to review over-service at on-premises licensed establishments. Over the course of 4 days, 67 licensed premises were visited by two “pseudo-intoxicated” mystery shoppers who entered each business and asked to be served alcohol while displaying signs of visible intoxication.

Commissioner Duarte asked about how the program started. In the feedback where there concerns about the subjectivity of their intoxication.

Commissioner Harper asked about what could be put into the ASE curriculum to help enhance recognizing signs of intoxications. Mr Sander said that he has spoken with licensees that do not feel that their staff lack recognition of the signs, they just have a fear of confrontation.

Reduction in Time to Obtain Alcohol Server Education Requirements-

Public Safety Program Director Rudy Williams presented a discussion concept regarding a reduction in the length of a temporary service permit from 45 to 30 days.

Commissioner Roome commented that other states also have a 30 day requirement. Commissioners did not have any objections to bring this back for rulemaking initiation. Commissioner Harper said that he had heard in class that 30 days was too soon to obtain a permit and thought that 45 days was better. He did note that the available options of obtaining a permit are evolving.

Recessed 12:20 pm

Reconvened 1:20 pm

CONTESTED CASE HEARINGS

US Market #145, LLC; Lal Sidhu, Managing Member; Satwinder Singh, Member; dba. OLCC 11-V-009, -009A, -009B.

A proposed order was issued on September 21, 2011. Licensee's attorney Mike Mills appeared along with licensees Lal Sidhu and Satwinder Singh to present exceptions to the proposed order. Anna Davis presented staff comments. Commissioner Roome commented that since the agreement was entered into voluntarily, it is difficult to treat the violation more gently. Commissioner Harper asked what Mr. Mills would like to see happen with this case. Mr. Mills said he would like to see the Commission uphold the ALJ's proposed order, as, like the ALJ, he believes that they would be a good risk for future compliance. Commissioner Roome asked how Ms Davis would respond to the ALJ's analysis that there could never be a factor that would not be negative or neutral.

Yogee's LLC; Robert Faas, Managing Member, Toby Faas, Member; dba. OLCC-10-V-066.

A proposed order was issued on October 25, 2011. Licensee Toby Faas and attorney Gregory Lusby appeared to respond to comments. Anna Davis presented staff comments. Commissioner Roome asked about the ALJ's response inferring from the testimony that there was a likeness in the id card. Ms Davis said that the testimony was just that it was an id card, but there was not discussion of biometric data.

Recessed 2:00 pm

Reconvened 3:08 pm

US Market #145, LLC; Lal Sidhu, Managing Member; Satwinder Singh, Member; dba. OLCC 11-V-009, -009A, -009B.

Commissioner Roome moved to continue deliberations until the February Commission meeting. Passed 5/0.

Yogee's LLC; Robert Faas, Managing Member, Toby Faas, Member; dba. OLCC-10-V-066.

Commissioner Harper 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.

Favorite Mistake; Nyquist Hospitality, Inc.; Roger Nyquist, President/Stockholder, dba. OLCC-10-V-061

Commissioner Rice moved to amend and reverse in part the proposed order as per the list that will accompany the minutes and adopt the amended order as the final order. Passed 3/2 Roome, SkinnerLopata no.

Adjourned .

_____/s/_____
Cassandra SkinnerLopata, Chair

_____/s/_____
Alex M. Duarte, Commissioner

_____/s/_____
Michael E Harper, Sr., Commissioner

_____/s/_____
Bob Rice, Commissioner

_____/s/_____
Ron Roome, Commissioner

_____/s/_____
Stephen A. Pharo, Executive Director
and Secretary to the Commissioners