

OREGON LIQUOR CONTROL COMMISSION

MINUTES

March 16, 2012

Friday, March 16, 2012

9:05 A.M. The Commissioners present were Alex Duarte, Michael Harper, Bob Rice, Ron Roome, and Chair Cassandra SkinnerLopata. Executive Director Steve Pharo attended along with members of staff.

Minutes – Commissioner Duarte moved to approve the minutes of the February 10, 2012 meeting with a minor typo correction. Passed 5/0.

PUBLIC FORUM

No one present for public forum.

RULES

Jennifer Huntsman, Rules Coordinator, presented.

INITIAL ACTION

OAR 845- Division 3 Contested Case Package (Housekeeping)

This package contains the Commission specific rules governing contested case procedures. They need to be amended to bring them into compliance with the recently amended Attorney General Rules for the Office of Administrative Hearings.

Commissioner Roome asked about the good cause standard and whether it would be uniform. Ms. Huntsman said that we will strike our own definition of good cause standard and defer to the standard set by the office of administrative hearings.

Commissioner Roome moved to initiate rulemaking to amend all of the rules in Chapter 845 Division 3, and to hold a rulemaking hearing at staff's discretion. Passed 5/0.

FINAL ACTION

OAR 845 – Division 15 – Retail Store Package (Part 2)

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 and build more flexibility into the retail store classification process.

Executive Director Steve Pharo came forward to give background on what happened during the legislative session. He appeared before the House Business and Labor Committee, at their request, to share more information on this rule package and intent behind the rule changes. The committee co-chairs sent a letter asking the commission to not move forward with these changes until the legislature had an opportunity to weigh in next session. Upon further meetings with the co-chairs, it was discussed that the commission could consider these changes on a limited basis to test the concept. The co-chairs sent a letter supporting a limited test, if the commission adopts these rule changes.

Steve Brown, Agent at Lincoln City N and Salem, Battlecreek appeared in favor of the rule package. He expressed concern over the adjustments to the original proposal after so much work was put into bringing this proposal together. He noted that the changes in Washington coming forward with 1183 are based on the state's reluctance to modernize and serve the marketplace. He added that adding beer and wine to liquor stores is all about addressing the customer's needs.

Tom Parker, Oregon Partnership Communications Director, came forward in opposition to the rule changes. He asked that the commission proceed with caution when entering into this area. Commissioner Rice asked if Mr. Parker was aware that there is not a provision in this package that considers adding outlets, it is merely to adjust the eligibility of who is allowed to apply.

Mark Conan and Tim Coate -Plaid Pantry appeared in opposition of the changes.

Chair SkinnerLopata asked Mr. Brown to come forward to share the experience with agents compensation to address some of the comments made by Mr. Conan and Mr. Coate.

He noted that the compensation is set by the legislature and a study was done on compensation at their request, which recommended an increase. An increase has yet to be offered. He discussed the interests of agents to market Oregon products and that it was not the intent to take away from other stores customer bases.

Commissioner Roome asked Mr. Brown what he has heard from other agents about their concerns over allowing a corporation to be eligible as an agent. Mr. Brown noted that he the growth will only be as agencies become available and the decision making rests with the Commissioners.

MaryAnn Schwab came forward to express her concerns over having corporations be agents.

The intent of the Commission in amending the rules in this package is to allow for the conducting of limited tests in the areas of liquor agents selling beer & wine and corporations (such as grocery stores) serving as liquor agents, for the remainder of the biennium. Commission staff is directed to proceed with a limited pool of four agents and four corporations, primarily as a way to test and gather information for the benefit of the legislature and our stakeholders.

With that proviso, Commissioner Duarte moved to amend OAR 845-015-0101, OAR 845-015-0105, OAR 845-015-0115, & OAR 845-015-0118, effective April 1, 2012.

Passed 4/1. Harper no.

COMPLIANCE

Becky Voelkel, Administrative Process Division presented.

There were 14 settlement agreements before the commissioners for ratification; Rite Aid #5370; Jefferson Grocery; The Village Pizza Ristorante; Aurora Colony Market; Sierra Restaurant & Market; Salem Gas Foodmart and Espresso; T & G Market; Wassabi; Los Baez; Golden Crown Restaurant; Gee's Family Restaurant; Gary's Bakery & Bistro; Stars Cabaret Bridgeport; Winderlea Vineyard & Winery.

Commissioner Roome moved to ratify the 14 agreements. Passed 5/0.

LICENSE MATTERS

Gwenn McNeal, License Services Division presented.

Service Permit Refusals-

There were two service permit refusals before Commissioners for ratification.

Commissioner Harper asked why there were only two this month and if the criteria for review had changed. Ms McNeal responded that there is a typical seasonal decrease in applications and that may be the reason for the decreased refusals.

Commissioner Rice moved to ratify the two refusals. Passed 5/0.

Service Permit Settlement Agreement

A settlement agreement for Starla K. Rosenberg is before commissioners for ratification.

Commissioner Harper moved to ratify the service permit settlement agreement. Passed 5/0.

License Applications

Farshad Allahdadi, License Services Division Director, presented.

Cartlandia, SE 82nd Ave. Portland; Limited On premises sales, New Outlet; Applicants Roger Goldingay and Dr Carol Otis, and their attorney Duke Tufty, appeared before commissioners.

Commissioner Rice asked a clarifying question about food service during times of alcohol sales. Mr. Goldingay confirmed that there would be ample food service available during the time when alcohol was permitted. Commissioner Rice discussed the minor posting and the way that an establishment changes over the time of day and to be aware that the later crowds might not necessarily be the family friendly crowd of earlier in the day.

Commissioner Harper asked about the fees paid to the City and whether any of these went to pedestrian improvements outside of the property. Mr. Goldingay said they were for improvements on the property itself. Lighting was also noted as a concern my Commissioner Harper.

Commissioner Roome asked about the number of employees, which will be monitoring the area during times of alcohol sales.

MaryAnn Schwab appeared in opposition to the license application.

Assistant Portland Police Chief Erik Hendriks appeared in opposition to the application.

Commissioner Roome asked Chief Hendriks to address his comments on appropriate rulemaking and how that would look different than the restrictions which are proposed on this application. Chief Hendricks said that the process should involve the city, neighborhoods and police.

Chair SkinnerLopata asked Mr. Allahdadi to address the repeated concern that all 700 food carts in Portland will become new outlets for alcohol. Mr. Allahdadi noted that he has no indication that all 700 carts would even apply for a license, let alone that all would qualify. Staff process about 75 new outlets and change in ownership actions monthly within the city of Portland. He expects that brick and mortar establishments would still be the predominant type of business.

Captain Mark Krugar came forward in opposition to the application.

Captain Ed Hammond came forward in opposition to the application and to explain why the city originally sent a favorable recommendation.

Commissioner Roome asked whether the concern today is the opening of the floodgates or the actual application being considered today.

Captain Hammond said that it is both. There are public safety concerns with the location and the floodgates.

Commissioner Rice commented that we do not license concepts, we license each individual applicant. We look at each application individually to see if it fits our licensing criteria.

Theresa Marchetti Office of Neighborhood Involvement came forward in opposition to the application.

Commissioner Roome asked what other restrictions the city would like to see on the application. Ms Marchetti noted that they would like to see the hours of sales cease earlier than midnight. She added that they would like to see more security staff also.

Commissioner Duarte expressed concern over the mixed messages from the city of Portland. He noted that they have said we are not authorized to license the structures and that we do not have rules in place. He would like to understand which concern is the city's main concern. She said that they do not believe food carts should have licenses at all without a more public process.

Ben Walters, City of Portland Attorney's office, appeared in opposition. He addressed some questions which had come up earlier. The Brentwood Darlington neighborhood would typically be neighbors not businesses in the area, there is an 82nd avenue business association. The 85k in fees paid was to change the principal use of the property from a used car lot to a food area.

Commissioner Duarte asked Mr. Walters to expand on his comment that the carts are transient and why that was a concern of the city. The applicant is the landlord for that property. Mr. Walters said that the concern is that the license and the food operation are usually combined. The separation is a concern. Commissioner Duarte asked why. Mr. Walter said that when they are split it would present difficulties in how those operations are handled side by side.

Commissioner Roome was also puzzled by this concern.

Mr. Walters added that since the food will be sold by tenants rather than employees this may present difficulties in dealing with problems as there is little recourse to deal with issues.

Commissioner Rice commented that he thinks it is fair to say that the decision today might set precedence for future decisions, yet it is also fair to say that there are many similar establishments that would not be willing to take the steps that this applicant has taken to get to the point they have presented as their business plan. He thinks it is unfair to say that brick and mortar facilities are the only places where monitoring is contained. So many establishments are not monitoring everything that is happening inside and outside of the building.

Tom Parker, Oregon Partnership, appeared in opposition to the application.

Gloria Morgan, Boise Neighborhood Association Chair (location of Prost! In North Portland where the applicants are landlords, but not the licensee) appeared in opposition to the application. She shared her negative experiences with that establishment.

Mr. Goldingay and Mr. Tufty came back and discussed his experiences with Prost and the neighbors. He believes that the enhancements they have made to the property at Cartlandia have enhanced public safety and that they have had a good relationship with the police. He has personally taken the responsibility of maintaining the landscaping of the area adjacent to the corridor to help reduce illicit activity. The zoning is light industrial, not residential.

Commissioner Roome commented on the restrictions and asked about the city's concerns with the number of monitors which are required and the description of the area and whether that was expandable. Do sales need to occur until midnight?

Mr. Goldingay said that he looks at two as the minimum standard. He expects to deputize all of the food cart owners to act as monitors as they are vested to ensure that the operation is successful. The sales to midnight, he does not see very much activity past 9 pm. They probably will close at 10 pm.

Commissioner Roome asked if they would be willing to modify the restriction to close at 10 pm. Mr. Goldingay asked if it could be 11 on the weekends and 10 during the week.

Discussed adding the restriction that the entire property be fenced.

Commissioner Duarte moved to approve the application with the five restriction set forth on page 8-9 with the following amendment to #4 no alcohol service past 10 pm M-Th and 11pm Fri, Sat, Sun. and add restriction #6 'The licensed premises will be enclosed by a six foot high chain-link fence with three secured gates wide enough to accommodate cars and an additional three gates to accommodate pedestrians'. Passed 5/0.

Recessed for a break 11:45

Reconvened 11:59

RETAIL SERVICES

Brian Flemming, Retail Services Director, presented.

Distillery Agent Appointment- Ted Pappas of Big Bottom Whiskey has submitted an application to be appointed as agent at the 21420 NW Nicholas Court , Ste D-9; Hillsboro location. This appointment would allow for bottle sales at that location.

Commissioner Rice moved to appoint Theodore Pappas as the permanent distillery retail sales agent at Big Bottom Whiskey effective April 1, 2012. Passed 5/0.

CONTESTED CASE HEARINGS

George J Iverson; OLCC-11-SPR-019

A proposed order was issued on January 20, 2012. Mr. Iverson did not appear. Case presenter Gwenn McNeal presented staff comments.

Recessed to deliberate contested cases 12:05

Reconvened 12:09

Decisions on contested cases

George J Iverson; OLCC-11-SPR-019

Commissioner Roome moved to defer this item to the June meeting. Passed 5/0.

Adjourned 12:10 pm

_____/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