

# MINUTES OF OLCC ADVISORY COMMITTEE MEETING

## OAR 845-015-0130 Liquor Store Advertising (PETITION)

**Tuesday, November 17, 2009 at 9:00 AM in Room 103A,  
Commission Offices, Portland**

Present: Lise Gervais (Public Action Management); Joe Valls (1184 - Wilsonville); Oliver Coker (1068 - Woodburn); Judy Cushing, Pete Schulberg (Oregon Partnership); Saleem Noorani (1194 – Corvallis North); Paul Cosgrove (DISCUS); Randy Howell, Tom Erwin, Christie Scott, Merle Lindsey, Laura Paul, Jennifer Huntsman (OLCC Staff).

Invited but not Present: Steve Brown (1091 – Lincoln City); Shawn Miller (NW Grocers Association); Erik Martin (Oregon Distillers Guild); Hasina Squires (Government Relations Strategies/Hood River Distillers); Rob VanVolkinburg (Hood River Distillers); Maury Hornstein (Distillery Representatives of Oregon); Charlie Thorpe (Southern Wine & Spirits); Greg Sellers (Beam Global); Chris Girard (Plaid Pantries/ONSA); Jay Nelson (Young’s Market Company of Oregon); Bill Perry, Kara Thallon (Oregon Restaurant Association); Kathy Stromvig (MADD); Pamela Erickson (Public Action Management); Stephanie Soares Pump (Alcohol & Drug Abuse Prevention Advocate); Officer Charles Harris (Portland Police Bureau); Jeff Ruscoe (Mental Health & Addictions Services); Gretchen McKenzie (ODOT); Theresa Marchetti (Office of Neighborhood Involvement)

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The meeting began at approximately 9:10 a.m. 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 and their interest in this rule. Ms. Huntsman reminded everyone of the purpose of this meeting.

Ms. Huntsman explained that 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. She explained that 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. 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.

Ms. Huntsman noted that members of this advisory committee would discuss the possible amendment of OAR 845-015-0130 Advertising a Retail Liquor Store. This rule describes the specific advertising the Commission allows a retail sales agent to use to advertise a retail liquor store. The Commission accepted a petition from Saleem Noorani (a Corvallis liquor agent) requesting amendment of this rule to provide much more flexibility in what advertising, including outside signage, a liquor store would be allowed to utilize. It also proposes to allow a liquor store website to list the specific brands of distilled spirits they carry.

Ms. Huntsman explained that we would be discussing the rule language in detail and that this discussion and suggestions will be used in the permanent rulemaking process.

There will be a formal rulemaking hearing on this matter on Thursday, February 4, 2010 at 10:00 am in Room 103A. Ms. Huntsman advised that she will repeat that information at the end of the meeting, but asked everyone to please note the dates on their agendas for the hearing and public comment period. Staff plans to have this back to the Commissioners for the April 2010 meeting for final action to adopt any amendments to the rule.

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

Ms. Huntsman began by way of providing a little bit of history on this rule and the fact that unlike many of the Commission's rules which specify what is prohibited, the current language in this rule spells out what is specifically allowed. The legal interpretation has been if the rule language doesn't specifically mention that some type of advertising is allowed, then it is prohibited, and this has prevented any flexibility as new modes of advertising have become available. The discussion on proposed rule language covered four basic concepts:

#### 1) Advertising a Retail Liquor Store Generally

The discussion began with one committee member asking what all was considered retail advertising. Retail liquor agents shared that it could mean websites, emails to customers regarding in-store tastings, or signage on the vehicles used for deliveries to bars/restaurants. One specific example given of the current problem the agents hope to address is a store that changed locations over 3 years ago and customers

still don't know the new location is there. The goal for the stores is to increase customer awareness. It's not about price promotions and steering customers away from another store, as it is with beer and wine retailers, because the State establishes price controls and all liquor stores charge the same prices. The liquor agents want to communicate where they are located, the services they offer, and their hours.

One committee member asked the agents what would be on the vehicle signs. The response was that they would like to include that they deliver (to businesses) along with the name, address, and phone number of the store. Agents clarified that they won't and can't include specific brand advertising; the State as the retailer of distilled spirits is a government entity and cannot have actual or even perceived discrimination in favor of only certain products they carry. There was no opposition to the agents having advertising on their delivery vehicles which is informational regarding the liquor store, as long as it is not promoting specific products.

The question was raised as to whether the liquor agents would want to advertise on buses or billboards. The agents responded that, unlike the distillers who advertise on television, it would be too expensive for their small businesses. In addition, the point was raised that the Commission has multiple responsibilities including public safety and the agents would have to get prior Commission approval for any advertising they are proposing.

Some members wondered if we couldn't draft rule language that would give both Commission staff and the liquor agents more specific guidance on what advertising would be allowed; they felt that the current proposed language was too vague and could create a lot of work for the Commission in responding to requests. Other members felt that it was important to keep as much flexibility as possible in the rule in order to adapt quickly to changing times and technology, and it was pointed out that the Commission also has the Retail Services Manual to use as an operational guide.

Committee members were receptive to the suggestion that a small list of advertising practices that wouldn't be allowed be included in the rule, rather than trying to create a specific list of what would be allowed. Some specific items mentioned that some of the members would like to see prohibited are advertising on billboards, in sports arenas, and on public transit. A specific written list will be submitted to the Commission for possible use in this rulemaking.

One member asked why there should be more advertising restrictions on distilled spirits than on beer and wine. Some of the public safety partners felt that more regulation was needed because of the higher alcohol content and their concerns

about over-consumption, and underage drinking in particular, in light of the huge role that advertising plays. It was asked if there is any data available in this regard, and studies out of Georgetown University will be shared.

One member stated that most kids are not getting their distilled spirits from the liquor stores and while the committee seemed in agreement on that point, the concern was still raised that advertising attracts kids and that distilled spirits are finding their way to college/university games. Another member believed this to be an enforcement issue, rather than an advertising issue.

The liquor agents stressed that they have no desire to entice minors; that would be a huge risk for them as they face extremely high penalties for furnishing.

## 2) Advertising via Signs

One committee member asked what the exterior signs under the new proposed rule language would look like. Liquor agents responded that they would like their store signs to blend more into say a shopping center's signage (style, etc.) One agent said that without the ability to also let customers know where he is, less traditional liquor signs are not as successful.

A member asked if there would be product signs in the liquor store windows. Agents responded that no, because they can't show a preference for certain brands, there would be no such window signage.

Ms. Huntsman pointed out that except for deleting the outdated language regarding "mixer shops" and the more specific language regarding the location of signage for stores that are within another business, the new proposed language is the same as the current language. Both specify that all exterior signs must be approved by the Commission for content and location.

## 3) Product List on Store Websites

Liquor agents explained that the proposed language is intended to allow them to list all the products that they sell, without discrimination. There would be no pictures or product logos; again, as mentioned earlier, the State cannot get into specific brand advertising. One member stated that the internet is so important today as a communication method versus say print media and that unlike many other modes of advertising, the internet is not as cost-prohibitive.

The liquor agents would like for customers to be able to check a store's hours and product availability via a store's website, similar to what is available currently on the Commission's website, but the agents would have more flexibility than the state regarding the visual and functional aspects of the site. One committee member

stated that the Commission still receives complaints that the liquor stores are hard to find and that it is a good idea to allow the stores to expand their advertising in a controlled manner so as to bring them into the 21<sup>st</sup> century. Another member agreed, stating that other retailers advertise and compete on price, but this is not an issue for liquor stores as they all sell at the same Commission set price; the stores just want to be able to move into the types of media that other retailers are using.

One committee member questioned whether the Commission will be able to manage the content of 243 store websites. Others pointed out that while all could do a website, not all will. Another member stated that it should be easier to monitor than other types of advertising since it can be done from here versus out at the physical store locations. Others brought up that the Commission has 5 district managers, in addition to our enforcement staff, who could assist with monitoring the website advertising. These district managers do visit the stores and perform regular evaluations on them. It was also pointed out that the liquor agents will monitor each other as they wouldn't want some agents with a competitive advantage.

Some committee members stated that there is already other website advertising by distillers which includes brand promotion and that what the liquor stores are requesting is nowhere near that. The agents contend that allowing product lists via websites will have no impact on underage drinking.

All committee members agreed that the advertising the liquor agents are seeking is informational, not promotional. Members representing public safety just want the agents to be reasonable about what is on their website and are not opposed to a listing of all the products they carry.

#### 4) Pricing on Store Websites

Some committee members expressed a concern with listing the prices along with the product listing on a liquor store website. Of particular concern were the monthly specials, which are established by the Commission and listed on the Commission's price list. Some members believe that underage college students will plan their tailgate parties around them. One member also felt that even just mentioning any kind of special price on a website is crossing over into promotional rather than just informational.

Other members stated that the information is already available and that price lists posted on a liquor store website would just be changing the media or method of sharing the information. They also questioned drafting rules that could disenfranchise the 90% of distilled spirits consumers who are of legal drinking age.

Staff then clarified that only terminology matching what is on the Commission website would be approved on store websites.

As stated earlier, while public safety representatives do not oppose a product listing, they oppose listing the prices on the store website. Because minors are so price sensitive, they suggested a link from the liquor store website to the Commission website as an alternative. While some members found this suggestion to be a reasonable compromise, others felt that the consumer would find the additional steps frustrating.

### Overall

Members representing public safety felt that the agents participating today seemed reasonable, but were concerned about what advertising the larger population of liquor agents would pursue under the proposed amendments, especially given that distilled spirits brand advertising is at an all time high already. One member responded with a reminder that the Commission will have the final say in approving any advertising under the new rule language. Some of the liquor agents closed by saying that they just want to modernize the rules so they can keep their businesses viable and that most of the advertising mechanisms out there remain cost-prohibitive.

### Fiscal Impact Statement

Ms. Huntsman led the committee through a discussion of the Fiscal Impact Statement and the need to quantify (if possible) fiscal impacts this rulemaking will have in general, as well as any adverse impact on small businesses. During the discussion on the Fiscal Impact Statement, the following points were made:

Committee members felt that while direct fiscal impact to any one liquor store would be negligible, there should be an overall positive impact for liquor stores statewide. The positive impact would come from more available information on hours and services translating into consumers being able to better find and utilize the locations we have.

While direct fiscal impact on individual liquor stores, especially in the Portland metro area, is not anticipated, there could be a direct positive impact on the stores in certain destination locations such as Lincoln City.

In regards to small businesses, the liquor stores fall in this category and the only impacts foreseen for them would be positive. As to convenience stores and grocery stores, no negative impact is expected, as distilled spirits are not a product that they sell.

While there was some concern regarding the impact on Commission resources by additional advertising requests and monitoring created by these rule amendments, staff felt that it would just be the nature of the requests, not the volume that would change. They also felt that any added monitoring of websites in particular could be absorbed into their unit's 60-day store reviews.

Ms. Huntsman stated that a new draft of the proposed rule amendment will go out with the Advisory Committee minutes within the next couple of weeks. This will be the version of the proposed rule amendment that folks will be asked to comment on at the hearing and in this next written comment period.

Ms. Huntsman reminded members of the rest of the process: the rulemaking hearing is currently scheduled for Thursday, February 4, 2010 at 10:00 am in Room 103A. Written comment would then be received into the rulemaking record until 5:00 pm on Thursday, February 18, 2010. The tentative plan is to present a report to the Commissioners at their April 2010 meeting for possible final action on this matter.

Ms. Huntsman closed the meeting by thanking members for their attendance and participation. The meeting ended at 10:46 am.