

MINUTES OF OLCC ADVISORY COMMITTEE MEETING

DIVISION 5 & 6 Distillery Rules Package

Wednesday, February 25, 2009 at 9:00 AM in Room 103A,
Commission Offices, Portland

Present: Tom Burkleaux (New Deal Distillery); Steve McCarthy, Charlie Williamson (Clear Creek Distillery); Brian McMenamain, Jeramie Mykisen, Kevin Tillotson, Clark McCool (McMenamins); Erik Martin (Artisan Spirits); Jim Bendis (Bendistillery); Diane Paulson (Cascade Peak Spirits); Terry and Anu Wilhelm (Terry Wilhelm Distillery); Steven Guy (Torii Mor Winery); Lee Medoff (House Spirits Distillery); Mike Sherwood (Sub Rosa Spirits/Oregon Distillers Guild); Dan Croy, Rudy Williams, Donna Vandall, Jim MacAlistaire, Jeff Jett, Laura Paul, Jennifer Huntsman (OLCC Staff).

Invited but not Present: Erik Svenson (Hood River Distillers); Hasina Squires (Government Relations Strategies/Hood River Distillers); David and Georgia Nowlin (Brandy Peak Distillery); Jack Joyce (Rogue Ales & Spirits); Bill Meyer (Sidepocket Foods); Dr. Donald Olson (Torii Mor Winery); Judith Bacon (Turkey Crick Ranch); Mihai Talvan (Lil' Bit Distillery); Juan Molina (MADD); Officer Jacob Clark (Portland Police Bureau); Pamela Erickson (Public Action Management); Judy Cushing, Pete Schulberg (Oregon Partnership); Jeff Ruscoe (Mental Health & Addictions Services); Gretchen McKenzie (ODOT); Stephanie Soares Pump (Governor's Council on Alcohol & Drug Abuse Programs); Theresa Marchetti (Office of Neighborhood Involvement); Randy Howell, Linda Ignowski, Merle Lindsey, Steve Pharo (OLCC Staff).

The meeting began at approximately 9:00 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 adoption of 2 rules, OAR 845-005-0430 & OAR 845-006-0451. These rules describe both the qualifications and the requirements a distillery licensee must meet in order to provide tastings on its premises or on another premises owned or leased by the licensee. The 2007 legislature passed Senate Bill (SB) 451, effective January 1, 2008. Senate Bill 451 amended ORS 471.230 removing the restriction that permitted tastings of only brandy or pot distilled liquor. This statutory change, which opens up the possibility of tasting rooms to a lot more distillery licensees, prompted the Commission to initiate rulemaking to address the basic guidelines these tasting rooms must follow.

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 Tuesday, May 26, 2009 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 August 2009 meeting for possible final action to adopt the new rules.

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

After looking over the agenda, one member asked to add the topic of liqueurs to the discussion. The member wanted to inquire whether or not there could be a different standard in the rule for liqueurs because they have a much lower proof,

with a maximum of 25% alcohol. Staff clarified that by law they are defined as a distilled spirit and thus, would most likely have to be treated the same.

The meeting began with the majority of the committee members expressing a desire to change some of the wording in (1)(a) “Tasting”, which is found in the definitions section of both OAR 845-005-0430 and OAR 845-006-0451. Members have issues with the “not mixed with any other substance” language in the rule, because many of their products are not meant to be served straight. Distilled spirits such as Absinthe (ranging from 132-168 proof) and Pepper Vodka for example, are not being shown in their true context if they are served without an appropriate mixer, (anything from water to pineapple juice). All members agreed that keeping the “one-half ounce of distilled liquor per single container” language and adding “up to one and one-half ounce of non-alcoholic mixer” to the tasting definition would allow them to present their products more favorably. This change would still make a clear distinction between a taste and a drink because of the size limitation. Members expressed their appreciation for the ability to sell tastings to the general public if they so choose.

Some of the committee participants would like for the size per tasting, found in section (1)(a) not to be applied to trade visitors. According to those members, many trade professionals are not consuming the tastings; they are simply seeing, smelling, and tasting, then spitting it out. When distillers have a signature cocktail they want to be able to show the full presentation; they feel this is key to selling that product. It was also suggested that if it would help maintain the constitutionally required distinction between a tasting and a drink, the rule could require tastings for trade visitors (unlike the public) be free.

The committee would like the language in (1)(f) “Trade visitor” (also found in the definition section of each rule) broadened to include someone who effectively “recommends the purchase” of distilled spirits. Members agreed that trade visitors are the real way their businesses will grow and those visitors are not always the actual purchaser. Many times distilleries are dealing with employees whose job it is to make recommendations of purchase to the owner of the business.

In the proposed language of OAR 845-006-0451 section (2) distilleries would need to keep the public and trade visitors in separate areas for tastings. Each distillery has a unique set-up, many too small to allow for a separate room and extra employees. Members agreed that for OLCC enforcement purposes there needs to be some way to distinguish trade visitors from the public. Some suggestions from the committee about how to identify trade visitors were having a badge system, serving trade visitors with different glassware, or using a sign-in sheet. One person suggested having each distillery clearly write their specific plan for distinction on

their OLCC application for tastings. No consensus was reached by committee members on the method(s) that would work for everyone if prescribed in rule.

In section (4) of the same rule (006-0451) the committee was in agreement that the limit of two and one half ounces total per person per day on tastings to the public was adequate for their needs.

The final topic discussed was section (8) of OAR 845-005-0430, which is the tastings application process. This has raised some concern for the distilleries that are already doing tastings. These members don't want to interrupt the business of their tasting rooms while their paperwork is being processed. Staff confirmed that distilleries that are already doing tastings, will not be required to stop during the application process. Ms. Huntsman further explained that each application will be done on a case by case basis. Information will be compiled together into one file for those distilleries that have already completed some of the requirements at an earlier point, but each distillery will have a few basic requirements, including signing a new application form. OLCC staff will make every effort to ensure the process is as simple and streamlined as possible.

One member was concerned that as the rule reads now, distilleries currently doing tastings would be in violation immediately upon the rule's passage. Incorporating some kind of grace period into the rule language was suggested. Staff noted that if the Commissioners decide to adopt these rules, the effective date could be slightly delayed to give distilleries time to fill out the necessary paperwork and complete the tastings application process.

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:

The committee agreed that having the option to sell tastings would help cover the cost of purchasing from the Commission the liquor used, which would positively impact them.

Several members felt that there could be a positive impact on their sales if some of the language suggested today were added, such as: being able to mix with non-alcoholic mixers; being able to present their product in context, especially to trade visitors; carving out special requirements for liqueurs; and including those who recommend purchases in the definition of trade visitor. If the further suggestions are not incorporated into the rule language, members would not sell as much

product and that would have a negative financial impact.

A minimal negative fiscal impact was also anticipated from both the establishment of a process for distinguishing trade visitors from the public, and also the time and resources spent on the initial tasting application form and process.

Ms. Huntsman stated that a new draft of the proposed rule amendment will go out with the Advisory Committee minutes within the next few weeks. This will be the version of the proposed rules 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 Tuesday, May 26, 2009 at 10:00 am in Room 103A. Written comment would then be received into the rulemaking record until 5:00 pm on Tuesday, June 9, 2009. The tentative plan is to present a report to the Commissioners at their August 2009 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 10:45 am.