

MINUTES OF OLCC ADVISORY COMMITTEE MEETING

OAR 845-008-0045 PRIVATE CLUBS

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

Present: Cameron McMurry (Multnomah Athletic Club); Grover Simmons (Elks Lodge); Dennis Gloyn (VFW); Phil Bennett (Waverley Country Club); Dean Dunn (Eagles Lodge); April Ramirez (Arlington Club); Jeff Ruscoe (Mental Health & Addictions Services); Dan Croy, Jeff Jett, Rudy Williams, Laura Paul, Jennifer Huntsman; (OLCC Staff).

Invited but not Present: Dennis Pacholke (Moose Lodge); Dennis Leonard (American Legion); Bill Perry (ORA); Fred Carter (Portland Yacht Club); Juan Molina (MADD); Judy Cushing, Pete Schulberg (Oregon Partnership); Pamela Erickson (Public Action Management); Officer Jacob Clark (Portland Police Bureau); Gretchen McKenzie (ODOT); Stephanie Soares-Pump (Governor's Council on Alcohol & Drug Abuse Programs); Theresa Marchetti (Office of Neighborhood Involvement); Linda Ignowski (OLCC).

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 amendments & renumbering of OAR 845-008-0045 Service to Guests by Full On-Premises Sales Licensees. This rule describes to whom and under what conditions private clubs may sell and serve alcoholic beverages under the privileges of their full on-premises sales license.

This rule package would eliminate the Division 8 private club rule, and instead create two new rules governing private clubs that would follow our normal rule structure, one in Division 5 setting license criteria (OAR 845-005-0321) and one in Division 6 setting compliance requirements (OAR 845-006-0490). The proposal would also amend OAR 845-005-0320 (License Refusal Reasons that Can Not be Overcome) by deleting section (5) regarding private clubs and moving the concepts of minimum membership, required charter time, and the definition of members into the new licensing rule specific to private clubs.

Both of the two new rules proposed would contain a definitions section containing clarified private club definitions for members (full and auxiliary), nonmembers, and nonprofit corporations. (ORS 471.175(8) requires a private club to be nonprofit for liquor licensing purposes.)

Staff recommends a greatly simplified requirements rule for private clubs in that the new OAR 845-006-0490 would eliminate both the concept of private clubs having to track all their different types of events and guest relationships, and also of requiring guest lists. Instead the proposed rule language would focus on the core compliance issues of when the higher Full-Commercial food service standard is required, and the requirements regarding accompanying nonmembers when they are in the private club together with the service of alcohol.

Staff believes the proposed amendments address the major concerns expressed by private club licensees regarding requirements that do not make sense in their real-world application such as that the current rule requires a member's minor children to sign in, requires a member's spouse to have everything purchased for them at the club, and stands as a barrier to holding memorial services for deceased members. The goal is to leave the operational details up to the private club and instead focus the Commission's compliance efforts on responsible alcohol service.

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 Wednesday, April 22, 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 June 2009 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 the discussion by saying that the first rule in the packet is being opened only to delete section (5) of OAR 845-005-0320 and move it to section (2) of the new, specifically private club license criteria rule OAR 845-005-0321. Staff is not proposing to change any of the concepts there, just move them.

Staff is also proposing four clarifying definitions that are identical in each of the new rules. The first three definitions are “member”, “auxiliary member” (which private clubs set their own standards for), and “nonmember”. And lastly, because a private club is required by statute to be “nonprofit”, OLCC is trying to clarify the definition of what we mean by nonprofit, which is being registered as a nonprofit with Oregon’s Secretary of State. There were no objections to the definitions section from the committee members.

The main changes being proposed are in OAR 845-006-0490, the requirements rule. Ms. Huntsman explained that the rules would be greatly simplified, but there are two main things that the Commission wants to keep in the rules. The first element is the food service requirements; staff is not changing any of the requirements but trying to make them clearer in the private club rule. When opening clubs to the general public for a special occasion or community event, clubs must hold to the higher food service standards of a Full-Commercial license, including meal period requirements and having five substantial food items rather than three, which is the normal private club requirement. It was acknowledged that private clubs already typically exceed the minimum food service requirements, not only for private club rules, but also for Full-Commercial license rules.

The only concern expressed regarding this food service section was that the wording could be misinterpreted to mean that private clubs are required to serve the public and may need some explanatory language to clarify that is not the case. The member stated that private clubs do not want to lose their classification with

the federal government that qualifies them for a tax exemption which is given because they are not a place of “public accommodation”.

The second element remaining in the requirements rule would be clarifying that anywhere alcohol is being served, and a nonmember is present, whether a guest or the public, they must be accompanied by a member. This could be either one on one, or if it is a group, at least one member who is responsible and present at all times. The only suggestion was to condense subsection (3)(a) and (b) down into one simplified sentence, or change subsection (a) to use the word “present” as it is in subsection (b) rather than the word “accompanied”. The member felt that “accompanied” could even mean to the bathroom. Staff clarified that “accompanied” meant only where alcohol is being served.

The committee also discussed the fact that a special permit process with OLCC staff would no longer be required to have community wide events. The current requirements to obtain pre-approval for various event types would go away. Members felt this would reduce paperwork for both private club staff and OLCC regulatory staff, thus increasing private club efficiency while also freeing up commission resources for more important public safety issues.

There were no objections from anyone in the group to basically repeal the language in the current OAR 845-008-0045 rule. Members appreciate the changes and feel that they greatly simplify and streamline things to help them better take care of their club members’ needs.

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 did not see any negative fiscal impact to any business, including small businesses. They felt that the impacts would only be positive for private clubs, making the rules easier to understand and abide by. The new rules would free up resources by decreasing time spent filling out paper work for both their staff and OLCC staff. OLCC investigators would have more time to focus on the public safety issues of over consumption and minors in possession rather than trying to interpret confusing rules.

The fact that clubs would no longer have to wait for special permission to have a community event means that they would be allowed more flexibility for events

such as member's memorial services, without having to risk an OLCC violation.

Ms. Huntsman stated that a new draft of the proposed rule amendments will go out with the Advisory Committee minutes within the next few weeks. This will be the version of the proposed rule amendments 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 April 22, 2009 at 10:00 am in Room 103A. Written comment would then be received into the rulemaking record until 5:00 pm on Wednesday, May 6, 2009. The tentative plan is to present a report to the Commissioners at their June 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 9:45 am.