

OREGON LIQUOR CONTROL COMMISSION
CHAPTER 845
PROPOSED AMENDMENT – FINAL STAFF DRAFT

Note: **Bold and underlined** = new text; *italics and strikethrough* = deleted text

845-006-0345
Prohibited Conduct

The Commission holds licensees accountable for the acts of their agents and employees. (OAR 845-006-0362). No employee or agent of a licensee may violate any provision of this rule. A violation of any section of this rule by an employee or agent of a licensee is considered a violation by the licensee.

(1) Drinking on Duty: No licensee, **or** permittee, ~~employee or agent~~ will drink or be under the influence of intoxicants while on duty. "On duty" means from the beginning of a work shift that involves the sale or service of alcoholic beverages, checking identification or controlling conduct on the premises, to the end of the shift including coffee and meal breaks. "A work shift that involves the sale and service of alcoholic beverages" includes supervising those who sell or serve, check identification or control the premises. **Being under the influence of intoxicants on duty is a Category II violation. Drinking on duty is a Category III violation.**

(2) No licensee or permittee will fail to call the police when a Commission regulatory employee directs the licensee or permittee to call. **Violation of this section is a Category II violation.**

(3) Evidence: ~~No licensee or permittee will:~~

(a) No licensee or permittee will:

~~(a)~~ **(A)** Destroy, damage, alter, remove, or conceal potential evidence, or attempt to do so;

~~(b)~~ **(B)** Refuse to give a Commission regulatory employee or police officer this evidence when the employee or officer lawfully requests it; or

~~(c)~~ **(C)** Ask or encourage another person to do subsections (a) or (b) of this section.

(b) Violation of this section is a Category III violation.

(4) Access to Premises:

(a) No licensee or permittee will deny entrance to the licensed premises during regular business hours to a Commission regulatory employee or police officer who enters or wants to enter to conduct reasonable search to ensure compliance with alcoholic beverage law. Once the regulatory employee or police officer is on the licensed premises, no licensee or permittee will ask the regulatory employee or officer to leave until the regulatory employee or officer has had an opportunity to conduct a reasonable search to ensure compliance with the alcoholic beverage laws;

(b) Examination of premises that are or appear closed occurs only when there is reason to believe an alcoholic beverage law violation is occurring. No licensee or permittee will refuse or fail to promptly admit a Commission regulatory employee or police officer to the licensed premises when the regulatory employee or officer identifies him/herself and asks to enter to conduct a reasonable search to ensure compliance with the alcoholic beverage laws.

(c) Violation of this section is a Category II violation.

(5) Open Containers: No licensee or permittee will permit a person to take an open container of alcoholic beverages from the licensed premises, except as ORS 471.178, 471.200 and 471.175 allow. **Except for tastings as allowed in OAR 845-006-0450, no Off-Premises Sales licensee will permit an open container of alcoholic beverages on the licensed premises unless the licensee also holds another license at the premises that allows on-premises consumption. Violation of this section is a Category V violation.**

(6) Liquor on Premises: No licensee or permittee will have or permit any alcoholic liquor on the licensed premises which the license does not allow the licensee to sell or serve. **Notwithstanding this requirement, a limited on-premises or brewery-public house sales licensee may have distilled spirits on the premises if the distilled spirits are used only for cooking, are kept in a container only in the food preparation area, and the container is clearly marked "for cooking only". Violation of this section is a Category V violation.**

(7) Drive-up Window: No licensee or permittee ~~who sells alcoholic beverages for off-premises consumption~~ will sell or deliver any alcoholic beverages through a drive-up window. ~~This prohibition does not apply to licenses permitting distilled spirits by the drink which were in existence and operating with a food service drive-up window prior to November 1, 1998.~~ **Violation of this section is a Category III violation.**

(8) Liquor as a Prize: Except as allowed in ORS 471.408, no licensee or permittee will give or permit any alcoholic beverage as a prize, premium, or consideration for any lottery, contest, game of chance or skill, **exhibition**, or any competition of any kind on the licensed premises. **Violation of this section is a Category V violation.**

(9) "Good Faith Effort": ORS 471.315(1)(a)(G), and 471.412(2) prohibit a licensee or permittee from knowingly allowing a visibly intoxicated person to drink alcoholic beverages. A licensee or permittee who makes a good faith effort to remove the alcoholic beverage does not violate these statutes:-

(a) As used in ORS 471.412(2) and this rule, "good faith effort" means:

(A) Placing a hand on the drink and trying to remove it; or

(B) Making a verbal request for the drink, if the server has reason to believe that touching the patron's drink could cause a disturbance.

(b) The Commission will issue letters of reprimand for the first three violations of this section within a two-year period. A fourth violation within a two-year period is a Category III violation assessed at the fourth level (cancellation).

(10) No ~~Limited On-Premises Sales~~ licensee, ~~or the licensee's agent or employee~~, shall sell or otherwise provide a keg of malt beverages to go off-premises from any area where the Commission allows minor patronage. Violation of this section is a Category III violation.

(11) Promotions. ~~Prohibited practices include:~~

(a) The following practices are prohibited:

~~(a)~~ **(A)** The sale, offer or service to any person of an unlimited number of alcoholic beverage(s) during any set period of time for a fixed price;

(B) The sale, offer or service of distilled spirits by the bottle for consumption on the premises, except as allowed in OAR 845-006-0433 (Minibars in Hotel Guest Rooms) and OAR 845-006-0434 (Minibars in Arena Suites). This subsection does not prohibit a Full On-Premises Public Location Sales Licensee (F-PL) or Full On-Premises Catering Sales Licensee (F-Cat) from charging clients by the bottle for distilled spirits that are served by the drink at hotel suites, banquets, receptions or catered events with more than 50 attendees;

~~(b) Temporary price reductions on alcoholic beverages after 12:00 midnight;~~

(C) Price reductions on alcoholic beverages by the drink from 12:00 midnight until 2:30 a.m. A price reduction is a lower price as compared to the usual, customary, or established non-discounted price the licensee charges for a drink of that type on the licensed premises;

(D) The sale, offer or service of alcoholic beverages by the drink for a price per drink that is less than the licensee's cost for the alcohol to any person paying a fixed "buy in" price, entry fee, cover or door charge;

~~(e) Conducting, operating, organizing, or promoting any "drinking contest" or "drinking game" that is designed to increase consumption at an extraordinary speed, or in increased quantities, or in a more potent form.~~

(E) Operating, encouraging or permitting games of chance or skill, contests, exhibitions, or competitions of any kind on the licensed premises that involve drinking alcoholic beverages, (i.e. beer pong, "21 for 21");

(F) Dispensing, pouring or otherwise serving any alcoholic beverage directly into a person's mouth, including through any device such as a "bong";

(G) Permitting use of an alcohol vaporization device on a premises licensed for the sale of alcoholic liquor. An alcohol vaporization device, also called an alcohol without liquid machine, is a device, machine or process which mixes spirits,

alcoholic liquors or any product containing alcoholic liquor with oxygen or any other gas to produce a vaporized product for consumption by humans by inhalation.

(b) Violation of this section is a Category III violation.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.030, 471.040, 471.175, 471.178, 471.200, 471.315(1)(a)(G), 471.405(1), 471.408, 471.412, 471.675 & 471.730