

MINUTES OF OLCC ADVISORY COMMITTEE MEETING

OAR 845-013-0080

Sponsorships

**Wednesday, December 16, 2009 at 9:00 AM in Room 103A,
Commission Offices, Portland**

Present: Andy Andrews, Mark Walen, Nancy Turner (Columbia Distribution Co.); Brian McMenamin, Jeramie Mykisen (McMenamins); Ashley Skaurud (Hood River Distillery/Government Relations Strategies); Bill Johnstone (Oregon Association of Broadcasters); Tyler Fuller (Fuller Events LLC); Jim Moran (Oregon Beverage Services); Kara Thallon (Oregon Restaurant Association); Danelle Romain (OBWDA); George Cordova (The Bite of Oregon, Pride Festival. Waterfront Blues Festival); Charlie Thorpe (Southern Wine & Spirits); Jay Nelson (Young's Market Company of Oregon); Greg Sellers (Beam Global); Brian Butenschoen (Oregon Brewers Guild); Paul Cosgrove (DISCUS); Mitch Stanley (Refectory); Jeff Ruscoe (Mental Health & Addictions Services); Lise Gervais (Public Action Management); Dan Croy, Linda Ignowski, Laura Paul, Jennifer Huntsman (OLCC Staff).

Invited but not Present: Rob VanVolkinburg (Hood River Distillers); Erik Martin (Oregon Distillers Guild); David Jackson (Pernod Ricard); Ted Farthing (Oregon Winegrowers Association); Paul Romain (OBWDA); Kelly Luzania (Davis Wright Tremaine); Erica Hagedorn (7-11/A-B); Judy Craine (Holman Bar & Grill); Bill Perry (Oregon Restaurant Association); Kathy Stromvig (MADD); Judy Cushing, Pete Schulberg (Oregon Partnership); Mary Ellen Glynn (OR Alcohol & Drug Policy Commission); Pamela Erickson (Public Action Management); Stephanie Soares Pump (Alcohol & Drug Abuse Prevention Advocate); Officer Charles Harris (Portland Police Bureau); Gretchen McKenzie (ODOT); Theresa Marchetti (Office of Neighborhood Involvement); Lynne Johnson, Donna Vandall (OLCC)

The meeting began at approximately 9:05 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 OAR 845-013-0080 Manufacturer or Wholesaler Sponsorship of a Temporary Special Event. This new rule would describe the items and services that a supplier may provide to a retail licensee for use at a temporary special event. Staff is recommending adoption of a new rule regulating sponsorships which would replace the current Commission guidelines titled "Corporate Sponsorships Information Memo". Under the rule proposal the only approved items/services for the most part will be those allowed under the existing financial assistance rules (Division 13); however licensees providing or accepting these sponsorships would have this specific rule to reference which would provide a definition of temporary special events for the purposes of sponsorship regulations.

Ms. Huntsman explained that we would be discussing the rule language proposed to be adopted 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, March 30, 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 June 2010 meeting for final action to adopt the new rule.

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

Ms. Huntsman began with a review of this rulemaking process to date, explaining that input from the first Advisory Committee back in July 2009, as well as industry input gathered subsequently, was considered by the agency and the current "Staff

Draft” before them is the result. This version of the proposed rule language is very similar to the version the Commission initiated action on. There are some structural differences in how the rule is organized at the beginning of the rule; the long introductory paragraph has been broken up and a new section with a definition of “temporary special event” created. For added clarity, the next couple of sections now cover all of the license types that this rule does **not** apply to. The rest of the concepts covered are the same as the original rule version with one exception; there is no longer language allowing manufacturers or wholesalers to provide entertainment as part of a sponsorship of a temporary special event.

One member asked whether Kell’s St. Patrick’s Day event would be governed by this new rule. Staff responded that yes, since they obtain a temporary use license for this event, they would be covered.

Another advisory committee member asked if the offer to a retailer of a VIP package for \$50,000 would be allowed. Staff clarified that no, the new rule will make it clear that no cash payments can go to the retail licensee (unless the licensee is a non-profit). A supplier would, under the new rule, be allowed to pay a third party for advertising of an event, but unlike the “Guidelines” we are replacing with this rule, no money can pass through the retailer.

Advisory committee members had no further questions, concerns, or suggestions regarding most of the rule language proposed. The only two rule sections where issues were raised were section (5) and (7).

Section (5)

Two issues were raised. The first was a concern that, with the current wording, a supplier would be able to provide a tent for a temporary special event if they just paid the third party tent supplier directly. This is not the case under existing financial assistance regulations, (a tent could only be provided to a non-profit licensee), so staff will look at the possibility of changing “items or services” to “advertising”.

The second issue raised was regarding the selling (or purchasing) of advertising and is actually a side issue related to the application of the financial assistance regulations to annually licensed premises, and not to the current rulemaking regarding financial assistance at temporary special events. The scenario raised was regarding alcohol advertising such as that provided by Water Closet Media which places advertisements in the restrooms of on-premises licensees. What if they approached Guinness regarding placing an advertising spot with their company, Guinness purchases the spot from Water Closet Media, and then Water Closet Media turns around and approaches Kell’s (for example) regarding their advertising

services, and Water Closet Media winds up purchasing restroom advertising space from Kell's? Is this allowed?

Some members considered this indirect financial assistance and thus not allowable, and others cautioned as to how broadly "indirect" per the statutes should be defined. Some members added that they thought as long as Guinness (or any alcohol supplier) was paying the same amount to Water Closet Media as other products were for the advertising, then the Commission should have no issue with it.

Separate from this rulemaking, staff promised to research the answer and get clear guidance back out to the industry.

Section (7)

A couple of committee members raised an issue with the limits being proposed for the number of sponsorships allowed per retailer per year. It was pointed out that the number of different brands carried by a wholesaler can be quite different than that of a manufacturer, and the fairness of the proposed language was questioned. One member suggested possibly making the limits "by brand" instead.

Closing Thoughts

One member encouraged the Commission to leave things as they are with money only allowed to be given to non-profits, period. They stated that this makes it easier to follow the money trail and thus easier to enforce.

Another member expressed some concern over the recordkeeping requirements in the proposed rule language, stating that with the large quantities of product to track, plus needing to keep track of non-profit versus for-profit special event licensees and their differing regulations, there could be difficulties complying. Staff clarified that, as with any new rule requirements, there will be an education process between regulatory staff and licensees on initial rollout.

Additionally, a committee member suggested that the Commission do more to get the word out about the financial assistance regulations, including real-life problems that are occurring so that they all can learn. A "Did you know?" section on the agency website was one suggestion. This member stated that the industry is trying to comply and that more clear information about what specific examples are and aren't o.k. would be beneficial to all.

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:

While for all practical purposes, all liquor licensees are considered small business, it was pointed out that among them there is a range of sizes of operations. For smaller places there is the potential for negative impact as anything but on-premises events could be cost prohibitive to do on their own; smaller places don't have the money of say a larger place to rent outside space for a temporary special event.

It was acknowledged that to the extent that sponsorships are occurring now outside of the financial assistance laws, because the new proposed rule will replace the existing "Guidelines" and rein these practices in, the adoption of this rule will have some negative impact.

A potential for positive impact was also envisioned in that promulgating clarifying rule language should lead to more understanding by licensees and thus higher compliance.

Ms. Huntsman stated that a new draft of the proposed rule adoption will go out with the Advisory Committee minutes within the next few weeks. This will be the version of the proposed rule language 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, March 30, 2010 at 10:00 am in Room 103A. Written comment would then be received into the rulemaking record until 5:00 pm on Tuesday, April 13, 2010. The tentative plan is to present a report to the Commissioners at their June 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 10:10 am.