

**OREGON LIQUOR CONTROL COMMISSION  
MINUTES**

December 16, 2010

**Thursday, December 16, 2010**

10:00 A.M. The Commissioners present were Bob Rice, Ron Roome, Cassandra SkinnerLopata and Chairman Phil Lang. Others present were Deputy Director Rudy Williams and members of staff.

**Minutes** – Commissioner Roome moved to approve the minutes of the November 19, 2010 and November 20, 2010 commission meetings. **Passed 4/o.**

**PUBLIC FORUM**

No one was present for Public Forum.

**COMPLIANCE**

Becky Voelkel, Administrative Policy and Process Program presented.

There were 7 stipulated settlement agreements before the commissioners for ratification; Downtown Grocery; House of Chen; Fox Den Eatery; Captain Ron's Sports Bar and Grill; El Patron Sports Bar and Grill; Jose Duarte (service permit).

Commissioner Roome moved to ratify the 7 settlement agreements as presented.

**Passed 4/o.**

**LICENSE MATTERS**

Dan Croy, License Services Division presented.

**Koken Market** – NE MLK, Jr. Blvd., Portland. Off- Premises, New Outlet. This matter is before the Commissioners based on a 'No Endorsement' recommendation which is considered an unfavorable recommendation from the city of Portland. Applicant Amanuel Mebrahtu appeared before Commissioners.

Commissioner SkinnerLopata moved to grant the license for Koken Market under Tab 1A.

**Passed 4/o**

Chairman Lang reviewed his discussion with the Licensing Director that if there is opposition received on a particular application, and the reasons are not issues that Commissioners may consider; the Licensing division will respond in writing outlining our limited authority on their concerns. This will assure communication back to those in opposition that we have received their concerns, although their concerns are not valid denial criteria.

**Service Permit Refusals-** There were eight service permit refusals before the Commissioners for ratification.

Commissioner Roome moved to ratify the eight service permit refusals as presented under Tab 2A. **Passed 4/o**

Commissioner Rice asked if there is a procedural distinction where an individual is questioned about their background and criminal history and they either inadvertently or blatantly omit information. Chairman Lang commented that he feels strongly that in the cases where the information is blatantly omitted the agency should consider prosecution as

this is a penalty of false swearing. It may be worth while for the agency to consider further action in these blatant cases. Dan Croy will follow up with Commissioner Rice.

### **RETAIL SERVICES**

Brian Flemming, Retail Services Director, presented

**Store Agent Appointment – 1049 , Lakeside.** This vacancy occurs as a result of Robert Edwards' resignation. An interview committee interviewed three applicants. The two finalists; Heidi M. Heller and Tina L. Ross, presented their liquor store proposals to the Commissioners.

Commissioner SkinnerLopata moved to appoint Heidi Heller as the new agent of Lakeside, 1049. **Passed 4/0.**

**Store Agent Appointment – 1177, Salem, West.** This vacancy occurs as a result of Ramon Gibson's resignation. An interview committee interviewed eight applicants. There were five finalists; Melody Bare, William R. George. Dorsey Greene, Dean O'Donnell, and Doug Powell. The five finalists presented their liquor store proposals to the Commissioners. Chairman Lang recognized the current agent Ramon Gibson and his many years of service.

Commissioner Rice moved to appoint Dean O'Donnell as the new agent of Salem, West, 1177. **Passed 4/0**

**Recessed- 11:50 a.m.**

### **CONTESTED CASE HEARINGS**

Judith Bracanovich presented.

*El Flamingo, Inc. Ramiro Rodriguez, pres/dir/stockholder, dba El Flamingo (OLCC-08-V-116)*

A proposed order was issued on December 2, 2008. Attorney Michael Mills appeared before the commissioners on behalf of Rodriguez. Kelly Routt, Administrative Policy and Process Division presented.

Staff rested on the ALJ's proposed amended order.

Commissioner Roome moved to continue deliberations until the February meeting.

**Passed 4/0**

*The Vault Bistro & Lounge – Park Avenue Jones, Inc.; Michael Leash, pres/dir/stockholder; dba. OLCC-10-V-006, -006A*

Attorney Michael Mills appeared to present exceptions of behalf of the licensee. Anna Davis, Administrative Policy and Process Division presented staff comments.

Commissioner SkinnerLopata moved to amend the proposed order of the ALJ pursuant to the list which will accompany the minutes and adopt the amended order as the final order of the Commission. **Passed 4/0**

*The Last Frontier/ Jennifer Victor OLCC-10-V-004 and OLCC-10-V-040*

Becky Voelkel, Administrative Policy and Process Division presented.

Commissioner Roome shared his concern with the decision by ALJ to allow the log notes into evidence based on the possibility of persuasion. He is also concerned that OLCC staff are presenting the log notes as reliable evidence.

Commissioner Rice moved to amend the proposed order of the ALJ pursuant to the list

which will accompany the minutes and adopt the amended order as the final order of the Commission.

Clarification by Commissioner SkinnerLopata to include the Service Permit for Jennifer Victor as well. **Passed 4/0**

*Justin W. Williams*

Justin W. Williams , OLCC-10-SPR-023 proposed that the service permit number 356058 issued to Justin W. Williams be revoked.  
Postponed until the February meeting.

*Monte P. Simpson*

Monte P. Simpson, OLCC-10-SPR-020 proposed that the application for service permit filed by Monte P. Simpson be denied.  
Commissioner SkinnerLopata moved to adopt the proposed order of the ALJ as the final order of the Commission. **Passed 4/0**

**RECESS** IN CHAMBERS DELIBERATION OF CONTESTED CASES

Rudy Williams recognized Chairman Lang for his birthday and asked the Board of Commissioners to join us in celebration of the Chair's birthday with a little cake.

**Adjourned 3:52 p.m.**

**Friday, December 17, 2010**

**9:30 a.m. RECONVENE**

9:30 A.M. The Commissioners present were Bob Rice, Ron Roome, Cassandra SkinnerLopata and Chairman Phil Lang. Others present Executive Director Steve Pharo, Deputy Director Rudy Williams and members of staff.

**RULES**

PETITION FOR RULEMAKING/POSSIBLE INITIAL ACTION

*OAR 845-005-0460 Alcohol Impact Area (Downtown Portland)*

Jennifer Huntsman, OLCC Rules Coordinator presented.

We have received a petition from the City of Portland. The petitioner requests to adopt a new rule which would establish an Alcohol Impact Area in the city's Downtown Core and set forth its designated boundaries and restrictions on certain alcohol products.

*IN SUPPORT:*

The following individuals appeared before the Commissioners in support of the petition for rulemaking on OAR 845-005-0460:

City of Portland, Commissioner, Amanda Fritz; Chief of Police, Portland Police Bureau Michael Reese; Sergeant, Portland Police Bureau, Mark Friedman; City of Portland, Office of Neighborhood Involvement, Liquor Licensing Specialist, Theresa Marchetti; Neighborhood residents: Shirley Rackner, Wendy Rahm, Alvin Rackner; Director of Julia West House Community Center, Marvin Mitchell; Chairman of the Board of Elliott Tower Condominium Owners Association, Christine Nielson; Executive Director, Citizens Crime Commission, Suzanne Hayden; President of the Clean and Safe Program, Shane Abma.

Commissioner Roome asked the Portland representatives how they concluded the outlined boundaries proposed in the initial petition and why the boundaries didn't extend "across the river"? Theresa Marchetti responded stating this was the most obvious boundary based on statistics showing saturation and volume of purchases of the specified products. Ms. Marchetti added that by having an annual review it would provide an opportunity to expand the boundaries if other areas have been identified in the future.

Commissioner Roome also questioned if there is any concern that micro-brews, which contain higher alcohol volume, will become the new preferred product. Sergeant Mark Friedman responded that it doesn't appear to strictly rely on the alcohol volume but price point as well. Current data shows a significant increase in the higher octane, lower price products, not necessarily the micro-brews.

Commissioner Rice commented that while he supports the concept, he is opposed to carving out geographical locations and selected products. He would be more supportive of a broader, more inclusive approach.

*IN OPPOSITION:*

The following people appeared before the Commissioners in opposition of the petition for rulemaking on OAR 845-005-0460:

Western Counsel of Wine Institute, Katie Jacoy; President and CEO Plaid Pantries Inc. and member of Oregon Neighborhood Store Association, Chris Girard; Attorney at Law, on behalf of the Oregon Neighborhood Store Association, Nathan R. Rietmann; Davis Wright Tremaine LLP, Kelly Luzania.

Commissioner Rice asked if the Wine Institute would be supportive of more of a reference vs. identified products, fortified wines vs. non-fortified wines, as opposed to a specific alcohol content or packaging. Ms. Jacoy responded that the Wine Institute would be more supportive in this scenario.

Commissioner Roome asked Nathan Rietmann if the intent of his testimony is truly to recognize commerce clause or if it is to more or less submarine the petition.

Commissioner SkinnerLopata asked if the concerns relating to the commerce clause, as Nathan Rietmann indicated in his testimony, would be addressed during the rulemaking process. Ms. Huntsman confirmed that it would.

Commissioner Roome asked if the boundaries will be discussed and addressed during the rulemaking process. Ms. Huntsman responded back the original petition that states "the purpose of this rule is to describe how the Commission, through the rulemaking process, designates an alcohol impact area and sets limitations and requirements within it."

Commissioner SkinnerLopata moved to accept the petition for rulemaking to adopt OAR 845-005-0460, to initiate rulemaking on this matter, and to hold a rulemaking hearing at staff's discretion.

Commissioner Rice noted that there are concerns with the legal sufficiency of the petition before the commission and shared that the OLCC's legal counsel with the attorney general's office has reviewed this and indicates that this petition is legally sufficient

Commissioner Roome shared his concern that the size of the boundaries may not be sufficient enough and would recommended expanding the boundaries through the rulemaking process.

Commissioner SkinnerLopata agreed that we should consider exploring greater boundaries.

Called the roll on Commissioner SkinnerLopata's motion **Passed 4/0**

*FINAL ACTION*

*OAR 845-015-0138 Distilled Spirits Retail Price*

We received a petition from the Distilled Spirits Council of the United States. The petitioner requests to adopt a new rule which would set forth a required public input process for changes in the distilled spirits pricing formula resulting in a retail price increase.

Chairman Lang moved to amend the proposed new rule to require 45 days, not 60 days, public notice before any change in the pricing formula resulting in a price increase could be made. **Passed 4/0**

Commissioner Rice moved to adopt the amended OAR 845-015-0138, effective January 1, 2011. **Passed 4/0**

*OAR 845 - Division 8 - Privilege Tax Package*

We received a petition from the Oregon Winegrowers Association (OWA) requesting the adoption of new rules governing the reporting and payment of privilege tax by wineries. The resulting rule package covers: tax reporting & liability, small winery exemption, export exemption, penalties & interest, and refunds.

Kelly Luzania, Davis Wright Tremaine, offered amendments to the proposed rule.

Commissioner Rice questioned asked for clarification of the staff recommendations of Option A as opposed to Option B. Financial Services Director Michael O'Connor appeared before Commissioners to clarify that there are issues and concerns during the audit process to be able to track the dissolution of one year over multiple years and this option would assist in lessening the administrative burden of tracking.

Commissioner Roome moved to adopt OAR 845-008-0050, OAR 845-008-0070, OAR 845-008-0080 and 845-008-0090 and amend and renumber OAR 845-010-0154 to OAR 845-008-0060 as proposed in the Option A draft, effective January 1, 2011 for tax periods beginning calendar year 2011. **Passed 4/0**

*OAR 845-006-0345(1) Prohibited Conduct (Drinking on Duty)*

This rule describes a variety of acts which both licensees (including their employees or agents) and service permittees are prohibited from engaging in. Due to recent case history, staff recommends amending the drinking on duty section to expand the definition of "on duty

Commissioner Rice questioned OLCC's authority to put an individual on duty vs. an employee placing themselves on duty or helping out. Donna Vandall, Administrative Policy and Process Program, appeared before Commissioners to review the case precedent and commented that there has not been a lot of cases where authority has come into

consideration, it relied more on the actions or duties one was performing at the time of the violation.

Judith Brancanovich, Administrative Policy and Process Program Director appeared before Commissioners stating the intent of this rule is to clarify language that is currently included in the rule.

Kelly Luzania, Davis Wright Tremaine, appeared before Commissioners to submit a proposed amendment to the rule language being considered today.

Judith Bracanovich presented an additional option, which would be to take action on the rule as it presented before them today and allow Davis Wright Tremaine to file a petition in order to initiate rulemaking in order to carve out an exception as presented in the OWA's proposed amendment.

Commissioner SkinnerLopata moved to amend OAR 845-006-0345(1), effective January 1, 2011. **Passed 4/0**

*OAR 845- Division 5 & 9 - Temporary Sales License (TSL) Package*

Staff proposes amendment of the two rules in this package due to current inconsistencies between the TSL rule (OAR 845-005-0440) and the Service Permit rule (OAR 845-009-0010) with regards to the required minimum age of servers at temporary sales licensed events.

Commissioner Roome moved to amend OAR 845-005-0440 and OAR 845-009-0010, effective January 1, 2011. **Passed 4/0**

*OAR 845-003-0670 Retained Authority of Commissioners*

This rule describes the specific authorities that the Commissioners delegate to others in connection with contested cases and states that the Commissioners retain all authority not specifically delegated. Amendment is needed to delegate to the Administrator the specific authority to prepare and issue orders addressing procedural matters such as deposition and discovery matters and requests to participate as a party in a contested case.

Commissioner Roome moved to amend OAR 845-003-0670, effective January 1, 2011. **Passed 4/0**

**ADMINISTRATION** - Presentation of various administrative matters

**Special Presentation to ODOT Transportation Safety Division and Video Lab** – Rudy Williams

**Licensing Activity Report Prototype** – Farshad Allahdadi is on medical leave and this issue will return on a future meeting agenda when he returns to work.

**ADJOURN 12:04**

**NOTE: The next Commission Meeting is a phone meeting on January 14, 2011 in Portland.** For more information, please telephone Toll Free 1-800-452-6522 or Portland 503-872-5006

---

Phil Lang, Chairman

---

Alex Duarte, Commissioner

---

Bob Rice, Commissioner

---

Ron Roome, Commissioner

---

Cassandra SkinnerLopata, Commissioner

---

Stephen A. Pharo, Executive Director  
and Secretary to the Commissioners