

OREGON LIQUOR CONTROL COMMISSION

MINUTES

August 11, 2011

Thursday, August 11, 2011

9:03 A.M. Commissioners Alex Duarte, Ron Roome, and Chair Cassandra SkinnerLopata attended. Deputy Director Merle Lindsey attended in person along with members of staff.

Minutes – Commissioner Duarte moved to approve the minutes of the July 15 meeting. Passed 3/0.

PUBLIC FORUM

Saleem Noorani representing Associated Liquor Stores of Oregon came forward to review some of the work the agents have embarked upon with the agency over the past year. He specifically addressed the agent's buy out rules which will be considered for amendment by Commissioners at a future meeting and noted that the proposal represents months of collaboration. He plans to appear before Commissioners regularly to keep open the lines of communication. He shared his website address oregonliquoragents.com and frequently updates other agents on the progress of these types of issues. Chair SkinnerLopata asked how many agents are currently members of ALSO. Nr. Noorani said about 65. Chair SkinnerLopata thanked him for his update.

COMPLIANCE

Becky Voelkel, Administrative Process Program presented.

There were 11 settlement agreements before the commissioners for ratification; Habaneros Mexican Restaurant; Division Chevron; Mercado Abastos; Country Market & Deli; 99 Food Market; Slabtown; Ugly Mug Coffeehouse; Cactus Jack's Café; Riley's Billiardroom; Cabaret Lounge; Granary Pizza Co, Café Lucky Noodle, Club Snafu/Fantasy 55, Ring of Fire Restaurant & Lava Lounge (all 4 businesses are involved with Corporate Principal Joshua Keim). Chair SkinnerLopata noted the typo within the agreement in item #10. Commissioner Roome asked how a person with medical marijuana card who is ordered to not be under of the influence of marijuana would be enforced. Ms. Voelkel said that it would probably be by chance that an inspector might notice an aroma or any evidence of marijuana use at the licensed premises.

Commissioner Roome moved to ratify the 11 agreements. Passed 3/0.

LICENSE MATTERS

Farshad Allahdadi, License Services Director

Restaurant El Kora- N Central Ave., Medford. Limited On-Premises Sales, New Owner.

This application is before the Commissioners based on an Unfavorable Recommendation from the City of Medford based on Mr. Uribe's 2009 conviction for Identity Theft. In March 2010 the conviction was reduced to a misdemeanor and Mr. Uribe was issued a valid social security card in his name in June 2010. The Commission will consider a felony as a basis for denial if the felony involves alcohol, drugs, violence or threats of violence. Because the original charge did not involve these categories of acts and the charge was later reduced, staff believes this denial criteria does not apply and recommends the license be granted. Since this is a L type license and a change of ownership, the applicant received a 90 day temp to operate and did so without any reported problems at the premises. Commissioner Duarte moved to grant the license. Passed 3/0.

Executive Director Pharo joined the meeting.

Star Theater- NW 6th Ave., Portland. Full On-Premises Sales, New Outlet. Applicant Frank Faillace appeared before the Commissioners. The City of Portland provided an unfavorable recommendation on the application citing that the premises is in a problem area. They noted that if the commission granted the license, they would like to have a restricted license issued for this applicant. Staff determined that the premises is in a problem location, but that the applicant has shown good cause to overcome this denial basis including a control plan. The control plan will be the basis of the restrictions. Commissioner Roome asked about the two container restriction in the control plan compared to the proposed restrictions. Mr. Allahdadi noted that the standard restriction is for two containers. Chair SkinnerLopata asked the applicant if he understood the restrictions and the result if those restrictions were violated. He confirmed that he understands the restrictions and the results of violations. License Investigator Eric Hildebrand came forward to clarify that the licensee had agreed to two containers and one container had been discussed; the control plan in the materials was an earlier draft. Chair SkinnerLopata asked about the fire code violations mentioned in the letter from the City of Portland's letter. Mr. Faillace said they had all been cleared as of the end of May. Commissioner Roome moved to grant with the restrictions and clarified that it is a 2 container restriction. Passed 3/0. Chair SkinnerLopata commented on the work that the licensee has done with the neighbors and appreciated his efforts.

The New Killingsworth Dynasty- N Killingsworth St Portland. Full On- Premises Sales, New Outlet. Applicant Michael Wolfson and Attorney Duke Tufty appeared before the commissioners.

The City of Portland provided an unfavorable recommendation based on the premises being in a problem area, however if the commission grants the license that restrictions be imposed on the license. Staff has found that the premises is in a problem area, however the applicant has shown good cause to overcome the refusal basis.

Commissioner Roome had a question about the security professionals and the time difference noted between 15 minutes and 30 minutes in patrolling the area. Also, the

limited entertainment time on the proposal. Mr. Allahdadi noted that the 30 minute patrol seemed reasonable given the area and the environment and the experience level of the applicant. He said that the timing of the entertainment was less weighty than the issues pertaining to the service of alcohol. Commissioner Duarte asked applicant about the Good Neighbor agreement development. Mr. Wolfson said there has been no Good Neighbor agreement requested by the neighbors. He shared his past experience drafting Good Neighbor agreements for his own neighborhood association. He noted the conversations he has had with Portland staff and the true nature of their concerns about his patrons' safety in the neighborhood from street crime more than impact of adding his establishment to the area that led to their opposition. Chair SkinnerLopata asked about the permits and violations and the status. Applicant said that some have been resolved and some have not. One issue is re-permitting the occupancy limit. They have been working with the fire bureau for over a year. Commissioner Duarte asked the applicant if he understands the difference between his licenses without restrictions and this license with the restrictions. Mr. Wolfson expressed his desire to work with OLCC to prove that the license can operate responsibly. He discussed his desire to sell two drinks to a person allowed if possible, but would accept the one as proposed. Commissioner Duarte and applicant discussed the pros and cons of drink possession limits on the license. Chair SkinnerLopata asked if applicant would be willing to move soft close from 2am to 1:30 am to offset the one to two drink possession. Mr. Wolfson explained why he is not willing to change this item as most of the crowd tends to arrive around 11pm, it would be a big loss in revenue for the establishment to close that much earlier. Commissioner Roome asked if we could change the patrol time from 30 minutes to 15 minutes. Applicant suggested changing patrols to 15 minutes at midnight. Commissioner Duarte moved to approve the license with the following restrictions:

- 1) A patron may possess no more than two containers of alcohol at a time and each container of alcohol will contain no more 16 ounces of a malt beverage, 6 ounces of wine or two ounces of distilled spirits. Despite this requirement: A) a patron who orders a bottle of wine (including champagne) may also possess the bottle from which the wine is served; or B) a patron may possess one 22 ounce bottle of malt beverage.
- 2) Licensee shall not sell or serve alcohol from 2:00 am to 2:30 am.
- 3) Licensee shall have at least two DPSST certified security people on the premises and on-duty Thursday- Saturday from 9:00 pm to the close of business. Licensee will ensure that the outside areas adjacent to the premises are patrolled at least every 30 minutes starting at 9:00 pm and every 15 minutes starting at midnight to close of business to discourage loitering and illegal activity. Licensee will ensure that any violent or illegal activity observed within or outside the premises is immediately reported to the Portland Police Bureau. Passed 3/0.

Commodore Grocery- SW 16th Ave Portland. Off-Premises Sales, Change of Ownership. Applicants Jong Chul and Bokyeo Sun Shin appeared before the Commissioners. The City of Portland provided an unfavorable recommendation to the Commission citing problem

area for the basis of their recommendation. Mr. Allahdadi noted that problem area does not apply to this type of license, but staff investigated the city's concerns about street drinking in the area. Staff determined that street drinking is a problem in the area. Applicants have offered to address these issues through improved lighting and video surveillance, but the applicant's lack of liquor license experience weighed heavily enough to warrant three restrictions. The proposed restrictions are currently being followed by the applicant under the 90 day temporary license and there have been no incidents while they have been temporarily operating. Commissioner Roome asked about the city of Portland's restrictions and the appearance that they are in line with Alcohol Impact Area type restrictions. Mr. Allahdadi said that since the Alcohol Impact Area rulemaking is still in progress, it would not be prudent to adhere to those possible restrictions not knowing the outcome of our process. Commissioner Duarte asked about the type of craft brewed beers which come in a larger bottle and the limits on sale with these types of items. Mr. Allahdadi discussed enforceability and the FDA limitations on labeling products with more than 6 % ABV. Commissioner Duarte moved to grant with the restrictions:
The licensee does not permit the sale of malt beverages containing more than 6% ABV
The licensee does not permit the sale of wine containing more than 13.8% ABV
The licensee does not permit the sale of malt beverages in single containers. The licensee does not permit the sale of any malt beverages in other than multi-packs (e.g. 4-pack, 6-pack, 1/2 case, and case)
Passed 3/0.

Gwenn McNeal, License Services Division presented.

Service Permit Refusals- There were 4 service permit refusals before the Commissioners for ratification.

Commissioner Roome moved to ratify the refusals. Passed 3/0.

RULES

Jennifer Huntsman, Rules Coordinator, presented.

INITIAL ACTION

OAR 845-015-0120 Retail Sales Agent Selection Procedure

This rule describes the Commission's standard procedure for seeking applications from the public to fill a retail sales agent vacancy. Staff recommends amending the rule to provide greater flexibility in advertising methods, beyond just printed newspaper ads. Commissioner Roome moved to initiate rulemaking to amend OAR 845-015-0120 and to hold a rulemaking hearing at staff's discretion. Passed 3/0.

OAR 845-015-0185 Special Orders for Distilled Spirits

This rule describes the Commission's procedures for special orders for distilled spirits by customers. SB 944 eliminates the one case minimum order requirement in some circumstances, and this rule needs to be amended to bring it into statutory compliance effective January 1, 2012.

Commissioner Duarte moved to initiate rulemaking to amend OAR 845-015-0185 and to hold a rulemaking hearing at staff's discretion. 3/0.

OAR 845-005-0425 Qualifications for Wine Self-Distribution Permit for Wine and Cider

This rule describes the qualifications necessary for an out-of-state manufacturer to obtain a Self-Distribution Permit, which allows the permittee to ship wine or cider they manufacture directly to Oregon retail licensees. HB 2147 has passed with an emergency clause, effective June 2, 2011, and eliminated the statutory requirement to provide a true copy of an applicant's manufacturing license. This rule needs to be amended to bring it into statutory compliance.

Commissioner Roome moved to initiate rulemaking to amend OAR 845-005-0425 and to hold a rulemaking hearing at staff's discretion. 3/0.

FINAL ACTION

OAR 845 – Division 5 & 15 – Distilled Spirits Tastings Package

The two rules in this package govern distilled spirits tastings to the public at a Full On-Premises location and in a retail liquor store. Staff recommends amending these rules to allow these tastings to be mixed with nonalcoholic beverages, as they are at a Distillery's premises and at their special events.

Commissioner Duarte moved to amend OAR 845-005-0428 & OAR 845-015-0155, effective September 1, 2011. Passed 3/0.

OAR 845-006-0497 Enforceable Compliance Plans

Currently compliance plans are voluntary and are usually developed at the time of an intervention meeting. Staff proposes adoption of a new rule which will give the Commission authority to require such plans when there is evidence of serious compliance problems and to sanction a licensee if a compliance plan is not being followed.

Commissioner Roome moved to adopt OAR 845-006-0497 effective September 1, 2011. Passed 3/0.

OAR 845-013-0080 Manufacturer or Wholesaler Sponsorship of a Temporary Special Event

This rule will describe the items and services that a supplier may provide to a retail licensee for use at a temporary special event. Because of the passage of SB 669, which amends ORS 471.401, staff recommends re-adoption of this new rule with some slight revisions to clarify the interplay between this rule and the statute authorizing direct advertising payments to certain liquor licensees. This new rule will replace the current guidelines that are inconsistent with statute.

Commissioner Duarte moved to rescind the previous February 18, 2011 action adopting OAR 845-013-0080, and to re-adopt OAR 845-013-0080 as proposed in the attached draft, effective September 1, 2011. Passed 3/0.

RETAIL SERVICES

Brian Flemming, Retail Services Director, presented.

Contract Renewals

24 agent contracts have Retail Sales Agent Agreements that are approaching the expiration date.

Under reappointment criteria these 16 reappointments are for 5 years:

<u>Agent</u>	<u>Agency#</u>	<u>Location</u>	<u>Contract Expiration</u>
Michael Benson	1212	West Linn North	1/3/2012
Timothy Grimes	1016	Dallas	1/31/2012
Traci Brumbles	1052	Rainier	1/31/2012
Richard Richardson Jr	1134	Canyonville	1/31/2012
Coni Hastings	1029	Winston	2/28/2012
Jay Nesmith	1072	Vernonia	2/28/2012
Robin Wilson	1175	Idleyld Park	3/31/2012
Rick Aster	1033	Pilot Rock	4/25/2012
Robert Hui	1215	Portland Woodstock	4/26/2012
Jeremy White	1060	Sutherlin	4/30/2012
Douglas Bryant	1093	Portland Kenton	4/30/2012
Timothy Wray	1174	Medford South	5/29/2012
Jerry Boyer	1233	Monument	5/31/2012
Tina Stone	1054	Independence	6/20/2012
Debra Kendall	1110	Chemult	6/22/2012
Susan Donally	1210	Medford West	6/29/2012

Under the reappointment criteria, these eight reappointments are for 10 years:

<u>Agent</u>	<u>Agency#</u>	<u>Location</u>	<u>Contract Expiration</u>
Mona Husley	1196	Springfield East	2/28/2012
Paul Babin	1201	Portland Jantzen Beach	2/28/2012
John Feuerstein	1186	Portland Eastport	3/2/2012
Angela Jones	1135	Dayville	5/14/2012
William George	1132	Stayton	6/1/2012
Azizur Rahman	1142	Portland St Johns	6/11/2012
Ann Herold	1095	Roseburg East	6/21/2012
Margaret Elliott	1034	La Pine	6/25/2012

Commissioner Roome moved to approve the contract renewals as listed. Passed 3/0.

Commissioner Duarte asked for clarification on the two different renewals. Mr. Felmming responded that two or greater outstanding evaluations in three years would meet the criteria for a ten year renewal.

Distillery Agent Renewals

Two distillers who are also retail sales agents for the purpose of selling their products through their tasting rooms have Distillery Retail Sales Outlet Agreements that are in need of renewal. These renewals will be for five years:

<u>Agent</u>	<u>Agency#</u>	<u>Location</u>	<u>Contract Expiration</u>
Megan Meyers	9312	Side Pocket Foods	4/1/2012
Stephen McCarthy	9303	Clear Creek/McCurdy Farms	4/27/2012

Commissioner Duarte moved to renew the distillery agent renewals as indicated. Passed 3/0.

Store Relocation # 1242 West Bend-

Agent Giorgio Roccasalva has requested site approval to relocate the West Bend liquor store 1242 into a larger retail space. The proposed location would be 155 SW Century Drive, Suite 100. This site has greater visibility and the move would provide an increased sales area and enhanced product display. The store would remain exclusive and self service.

Commissioner Roome asked if OLCC had any issues with agent, based on the tone of the letter received from C & K. Commissioner Duarte commented on letter sent by the current landlords, C & K, and that he found it offensive and inappropriate for the leasing agent to bring a personal dispute into the decision making process. Commissioner Roome commented on the proposed location and that he thought it will be a great new location and that C & K should not be negatively affected by the change.

Commissioner Duarte moved to approve the relocation of #1242 Bend West from 210 SW Century Dr to 155 SW Century Dr effective December 2011. Passed 3/0.

Recessed 10:25 AM

Reconvened 10:34 AM

Recessed 10:35 AM to deliberate continued contested case items and then to lunch

Reconvened 1:00PM

CONTESTED CASE HEARINGS

U-N-Me, Inc., Theresa Brown, dba Foster Waterhole. OLCC-10-L-012.

A proposed order was issued on June 21, 2011. Kelly Routt presented staff comments. Attorney Mike Mills appeared to present exceptions and was joined by licensee, Theresa Brown.

Commissioner Duarte asked what harm would come from allowing the prohibited person to perform the handy man duties as Mr. Mills has described. Commissioner Roome clarified where in Oregon Foster is located.

Manneh, LLC, Pa Manneh, Managing Member, dba Animata's OLCC-11-V-003.

A proposed order was issued on June 10, 2011. Becky Voelkel presented staff comments. Licensee and attorney did not appear.

Amy L Norris. OLCC-11-SPR-001

A proposed order was issued on June 21, 2011. Ms. Norris did not appear and staff did not present.

Miranda G Vasquez. OLCC-11-SPR-002

A proposed order was issued on June 22, 2011. Ms. Vasquez did not appear and staff did not present

Recessed 1:13 PM to deliberate contested cases

Reconvened 1:52 PM

Decisions on Contested Cases

Animata's

Commissioner Duarte moved to amend the proposed order per the list that will accompany the minutes and adopt the amended proposed order as the final order. Passed 3/0.

Foster Waterhole

Commissioner Roome moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order. Passed 2/1, Commissioner Duarte no.

Amy L Norris

Commissioner Roome moved to continue deliberations until the October Commission Meeting. Passed 3/0.

Miranda G Vasquez

Commissioner Duarte moved to continue deliberations until the September Commission meeting.

Favorite Mistake; Nyquist Hospitality, Inc.; Roger Nyquist, President/Stockholder, dba. OLCC-10-V-061

Commissioner Duarte moved to continue deliberations until the October meeting.

Recessed 1:55 PM

Reconvened 2:05 PM

ADMINISTRATION

Inspector Swearing In- Public Safety Program Director Rudy Williams presented two new inspectors to the Commission- Amanda Cooper and Dave Luster. Chair SkinnerLopata conducted their oath.

Special Presentation to ODOT- Public Safety Director Rudy Williams presented special recognition certificates to Troy Costales, John Kazmierski, Linda Fisher-Lewis for the work done on the special video project "It's Your Call".

Adjourned 2:39 P.M.

_____/s/_____
Cassandra SkinnerLopata, Chair

_____/s/_____
Alex M. Duarte, Commissioner

_____/s/_____
Michael E Harper, Sr., Commissioner

_____/s/_____
Bob Rice, Commissioner

_____/s/_____
Ron Roome, Commissioner

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