

OREGON LIQUOR CONTROL COMMISSION MINUTES

February 18, 2011

Friday, February 18, 2011

9:00 A.M. The Commissioners present were Alex Duarte, Bob Rice, Ron Roome, Cassandra SkinnerLopata and Chairman Phil Lang. Others present were Executive Director Steve Pharo and Deputy Director Merle Lindsey and members of staff.

Minutes – Commissioner Roome moved to approve the minutes of the January 14, 2011 commission meetings.

Passed 5/0.

PUBLIC FORUM

No one present for Public Forum.

COMPLIANCE

Becky Voelkel, Administrative Policy and Process Division presented.

There were eleven stipulated settlement agreements before the commissioners for ratification; C & K Market Inc., Ray's Shop Smart #2, The Dusty Spur Pizza Company, Tienda Y Video El Palmar, Bobo's Eats & Grog, Liberal Country Store, Sam's Stop & Shop No. 3, Cerulean, R & G Grand Buffet, Residence Inn by Marriott Portland West, US Market #245, and Duffy's Irish Pub.

Commissioner Duarte moved to ratify the eleven settlement agreements as presented.

Passed 5/0

LICENSE MATTERS

Dan Croy, License Services Division presented.

The Cruise Inn – Lincoln City Oregon, Licensee's were present

Commissioner SkinnerLopata questioned the letter from the City of Lincoln City Police Chief regarding a serious assault that occurred within a week of May 4th and asked for the details of the serious assault. Dan Croy responded stating there is a summary of the events that took place, under Fact 21. Licensee spoke of the events that occurred on the evening of May 4th.

Commissioner Roome had two questions for the licensees; there is a proposal to renew the license with restrictions and he asked if the licensees are in agreement with the restrictions as outline. Licensees responded they are in agreement with the restrictions. Commissioner Roome continued stating that due to the incidents involving the local police department and the neighborhood, relating to the premises, it appears there is a pattern of deliberately not complying with the control plan created with the assistance of OLCC inspector. Licensee responded he has communicated with OLCC inspector about the changes in control plans and states he feels they have complied with the control plan.

Commissioner Rice noted that with the pending sale of the business the licensee appears to have little to no concern of the restrictions proposed. He wanted to clarify that the

potential purchaser will have the same restrictions as proposed and that it is the current licensees responsibility to inform the purchaser of those potential restrictions.

Commissioner SkinnerLopata moved to deny the license renewal for The Cruise Inn.

Passed 4/1

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

Commissioner Roome moved to ratify the three service permit refusals as presented under Tab 2A.

Passed 5/0

RETAIL SERVICES

Merle Lindsey, Deputy Director Distilled Spirits Program and Brian Flemming, Retail Services Director, presented.

Retail Enterprise Review Committee Final Report - Merle Lindsey presented the Retail Enterprise Review Committee Final Report as presented in the commission materials under Retail Services.

Commissioner Roome stated that a portion of the proposed rule allows corporations to apply as liquor store agents which could offer opportunities as well as some risk and that he was anxious to see how this plays out.

Chairman Lang personally thanked the committee for coming forward with the recommendations as presented. Chairman Lang also thanked Commissioner Rice for his commitment to the committee given his background and expertise.

Commissioner Rice motioned to accept the Retail Enterprise Review Committee Final Report into the record.

Passed 5/0

Report on 1049, Lakeside Store Location – Merle Lindsey, Deputy Director, Distilled Spirits Program, provided an update on the Lakeside Liquor Store Location. Heidi Heller appeared before the commissioner to answer questions.

Chairman Lang and Merle Lindsey traveled to Lakeside on February 10. Chairman Lang stated that during their travel to Lakeside, Chairman Lang contacted Chuck McKay, as recommended by District Senator Verger, who owns multiple grocery outlets in the area. Chairman Lang asked Mr. McKay if he would entertain the idea of a store-with-in-a-store inside McKay's of Lakeside. Mr. McKay declined the offer.

Chairman Lang and Merle Lindsey also toured the new proposed location at 125 N. 8th Street. The new proposed location is move-in ready with the exception of enhancements planned by agent Heidi Heller.

The choices before the commission; accept the relocation proposal to 125 N. 8th Street and post the relocation, the commission could consider re-advertising and applying agents could come before the commission with their proposal, or discontinue the service of distilled spirits to the city of Lakeside.

Chairman Lang continued stating he purposefully has not communicated with other commissioners as to not influence or persuade their decision.

Commissioner Rice asked Ms. Heller if the new location, given the limited options in Lakeside, is one that she would consider acceptable. Ms. Heller responded most definitely. Commissioner Rice furthered questioning asking Ms. Heller if she has had conversations with the landlord and the landlord is in agreement of having Ms. Heller as a tenant and if there has preliminarily been an inspection of the proposed location? Ms. Heller responded yes to each question. Ms. Heller further stated that the location is within code and any of the minor deficiencies are already being repaired.

Commissioner SkinnerLopata expressed her appreciation for Ms. Heller’s commitment in attending the meetings as requested, dealing with the population of Lakeside and for sticking it out.

Commissioner Roome stated he stands by Ms. Heller as a commissioner and is looking forward to a happy ending.

Commissioner Duarte stated it is his desire and commitment, to continue his support for Ms. Heller. He asked Ms. Heller what she believes is the best option in proceeding? Ms. Heller stated her preference would be to proceed with the new location.

Chairman Lang stated that given the comments of Commissioners they will approve the posting of the new location and allow a comment period of fourteen days. The written comments will be reviewed at the March meeting for final action. Unanimous consent as outlined by Chairman Lang.

Agent Contract Renewals –

Brian Flemming presented. Thirty agents have retail sales agent contracts that are approaching the expiration date. Staff propose renewing the contracts as follows, seventeen for five years and thirteen for ten years.

Proposed renewals for five years:

Agent	Agency	Location	Contract Expiration
Carol Hinshaw	1019	Reedsport	07/01/2011
William Ingvaldson	1076	Grants Pass Downtown	07/02/2011
Scott Farlow	1108	Coos Bay	07/11/2011
Esther Lowrey	1119	Gresham Rockwood	07/31/2011
Walter Hazen	1211	Charleston	07/31/2011
Lynn Troxel	1225	Roseburg West	07/31/2011
Leon Stratton	1189	King City	08/31/2011
Giorgio Roccasalva	1242	Bend West	09/27/2011
Brian Anders	1085	Central Point	09/28/2011
Marie Wilcox	1204	Huntington	09/28/2011
Douglas Benedict	1231	Salem Downtown	09/30/2011
Kara Willits	1038	North Powder	10/12/2011
Judith Anton	1082	Joseph	10/31/2011
James Risinger	1106	Sweet Home	10/31/2011
Troy McConnell	1226	Butte Falls	10/31/2011
John Schiebel	1124	Sherwood	11/09/2011
Freddie Thomas	1047	Shady Cove	11/30/2011

Proposed renewals for ten years:

Agent	Agency	Location	Contract Expiration
Mike Babbitt	1241	Portland Garden Home	07/06/2011
Kenton Anderson	1011	Ontario	07/10/2011
Debra Thorpe	1062	Philomath	07/19/2011
Deborah O'Leary	1151	Seaside	07/19/2011
Mark Freeman	1042	Hood River	07/30/2011
Raymond Michael	1161	Boardman	08/31/2011
Herb Heier	1217	Medford East	09/11/2011
Randy Guerra	1243	Portland Bethany Blvd	09/25/2011
Daniel Powell	1219	Albany Downtown	10/02/2011
Barry Osborne	1056	Bandon	10/31/2011
Oliver Coker	1068	Woodburn	10/31/2011
Robin Holmberg	1069	Bend South	10/31/2011
Leslie Pike	1046	Estacada	11/28/2011

Commissioner Duarte moved to reappoint the seventeen agents for five years and the thirteen agents for ten years as noted.

Passed 5/0

Agent Appointment – 1030 Klamath Falls

This vacancy occurs as a result of the resignation of the current agent Linda Quinn. The interview committee interviewed five applicants. There were three finalists Melody Bare, Robert Dickey, and Doris Fronckowiak. The three finalists presented their qualifications to the Commissioners.

Commissioner Rice asked Robert Dickey about his intent to invest into remodeling the current location with the intent of relocating in the future. Mr. Dickey responded that yes, his intent is to remodel the current location and eventually move to the new proposed location. Mr. Dickey stated that due to the economic environment and the waiting period for the proposed relocation site he has some concern that the proposed relocation site may not be available or that landlord relationship may not be as desired so he is proposing remodeling the current location with the intent of relocating in the near future.

Executive Session: Per ORS 192.660(2)(a)
Deliberations on Agent Selection

Recessed to executive session: 10:06

Reconvened: 10:22

The Commission presented a plaque to retiring agent Linda Quinn in honor of her years of service and commitment to the State of Oregon.

Commissioner SkinnerLopata moved to appoint Melody Bare as agent of 1030, Klamath Falls.

Passed 5/0.

RULES

PETITION FOR RULEMAKING/POSSIBLE INITIAL ACTION

Jennifer Huntsman, OLCC Rules Coordinator presented.

INITIAL 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 initiate rulemaking to amend OAR 845-005-0428 & OAR 845-015-0155, and to hold a rulemaking hearing at staff's discretion.

Passed 5/0

- **OAR 845 – Division 15 – Retail Store Package**

In order to update and modernize the current distilled spirits retail system, staff recommends the proposed amendments in this rule package which would allow corporations to be retail sales agents, build more flexibility into the retail store classification process, update the resignation buy-out program, and add flexibility to accommodate future pilot programs.

Commissioner Roome questioned the reasoning for the increase in resignation buy-out percentage from two percent to four percent. Jennifer Huntsman responded the increase in buy-out may provide some incentive for long-term agents the opportunity to retire.

Commissioner SkinnerLopata moved to initiate rulemaking to amend OAR 845-015-0101, OAR 845-015-0105, OAR 845-015-0115, OAR 845-015-0118, OAR 845-015-0190, & OAR 845-015-0196, and adopt OAR 845-015-0210, and to hold a rulemaking hearing at staff's discretion.

Passed 5/0

FINAL ACTION

OAR 845-005-0311 True Name on Application; Interest in Business (Housekeeping)

This rule defines "interest in the business", including financial interest, for the purposes of describing who the Commission's license refusal reasons apply to. Staff recommends amendment of this rule to clarify the term "unlicensable".

Commissioner Roome moved to amend OAR 845-005-0311, effective March 1, 2011.

Passed 5/0

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. Staff is recommending adoption of a new rule regulating sponsorships which would prohibit direct monetary payments, allow items/services that are allowed under current financial assistance rules (i.e. point of

sale material), and also allow supplier provided advertising of the event. This new rule will replace the current guidelines that are inconsistent with statute.

Commissioner Duarte moved to adopt OAR 845-013-0080, effective September 1, 2011.
Passed 5/0

OAR 845 – Division 5 & 6 – Operating as Proposed Package

In an effort to further address neighborhood livability issues and hold licensees accountable for their proposed operating plans where they impact licensure, this package would amend the Commission’s rules on licensing exterior areas, restricting license privileges, and required notice of premises changes.

Commissioner Roome moved to amend OAR 845-005-0331, OAR 845-005-0355, & OAR 845-006-0480, effective March 1, 2011.
Passed 5/0

ADMINISTRATION

Priority Bills (Set #1)

Tom Erwin, Government Affairs & Communications Director, presented. This is the first set of priority bills presented to the Commissioners for their review, input and formal agency position.

Bill: HB 2147- Electronic Proof of License, HB 2148 Responsible Vendor Program Expansion, HB 2149 License Application Fees

Staff’s Recommendation: Support

Discussion: No further discussion

Final Decision: No objections to the recommendation. Unanimous consent.

Bill: HB2718 - (sister bill of 2149) License Application Fees

Staff’s Recommendation: Remain Neutral

Discussion: No further discussion

Final Decision: No objections to the recommendation. Unanimous consent.

Bill: HB 2150 – Winery License is related to HB 2633 - (sister bill of 2150) Winery License

Staff’s Recommendation: Support

Discussion: No further discussion

Final Decision: No objections to the recommendation. Unanimous consent.

Bill: HB 2361 ‘Knowing’ Standard, HB 2641 replaces OLCC HB 2146

Staff’s Recommendation: Support the combination of the two bills

Discussion: Commissioner Duarte questioned the culpable mental state and what that means and what would change with this new bill? Judith Bracanovich, Administrative Policy and Process Director appeared before the Commissioners to explain the changes.

Final Decision: No objections to the recommendation. Unanimous consent.

Bill: SB 36 - Local Government Recommendations

Staff’s Recommendation: Remain neutral

Discussion: Commissioner Rice shared his concern and has objection to the term “neutral”. With a neutral position, it appears the agency has little to no concern if a

particular bill passes or fails. It also suggests that the agency is equally agreeable with the outcome of the bill. Executive Director Steve Pharo conveyed the conversations he has had with Brian Shipley, the Legislative Director for the Governor, in regards to the Liquor Commission's position and the relationship with making a decision and standing by those decision. Steve Pharo continued stating OLCC staff will communicate with the Governor's office background information and will ensure the Governor's office understands the reasoning behind the Commissions position. Commissioner Rice moved to change the recommendation from neutral to opposition.

Final Decision: No objections to the amended recommendation. Unanimous consent.

Bill: SB 434 – Caffeine in Alcoholic Beverages

Staff's Recommendation: Support with amendments

Discussion: Chairman Lang shared his concern that he has heard discussion of the elimination of only distilled spirits products that contain caffeine. Tom Erwin responded that others share the same concern and that all products need to be reviewed.

Final Decision: No objections to the amended recommendation. Unanimous consent.

Bill: SB438 – Warehousing by Off-Premises Licensee

Staff's Recommendation: Opposition

Discussion: Chairman Lang commented that the tradition in the legislature has been not to interfere in pending litigation and is certainly the case for the OLCC. Steve Pharo commented that during his testimony to the committee he informed the committee of the status of this case being in the midst of the court of appeals process.

Final Decision:

438 No objections to the amended recommendation. Unanimous consent.

Bill: SB 5522 Non-limited Expenditures for Agent's Compensation and Bank Card Fees

Staff's Recommendation: Support

Discussion: Commissioner Rice asked if any amendments have been filed? Tom Erwin responded that at this time there are no amendments filed. Tom Erwin further added that the agency's budget hearing is scheduled for March 1-3.

Final Decision: No objections to the recommendation. Unanimous consent.

Bill: HB 2590 – Optional Multi Year Renewal

Staff's Recommendation: Remain neutral with concerns

Discussion: Steve Pharo commented that currently OLCC has the authority to have multi-year licenses and at previous occasions have requested multi-year licenses. There was opposition to multi-year licenses for multiple reasons. The current version takes it out of our hands and places the responsibility and authority with the licensee and does not remove the OLCC from the controversy.

Final Decision: Amended position is in Opposition. No objections to the amended recommendation. Unanimous consent.

Bill: HB 2716 – Local Government Option is similar to OLCC HB 2151, which has since been withdrawn.

Staff's Recommendation: Remain neutral

Discussion: Steve Pharo commented that he feels this is not a bad idea. Chairman Lang commented that this is considered a saturation issue that the OLCC has authority over and but that the agency has chosen not to pursue the issue. Commissioner Duarte

stated that if there is a saturation issue in a given area and we as an agency have chosen not to pursue that he has great concern with this bill. Commissioner SkinnerLopata shares in the concern for this bill and the future that it could create.

Final Decision: Amended position is in Opposition. No objections to the amended recommendation. Unanimous consent.

Bill: HB 2599 – Food Requirements for Cigar Bars

Staff's Recommendation: Oppose as written

Discussion: Representative Schaufler may be submitting amendments.

Final Decision: No objections to the recommendation. Unanimous consent.

Bill: HB 2704 – Inspectors. This bill brought forward by the AFSCME Unions.

Staff's Recommendation: Support

Discussion: Commissioner Rice asked for clarification if this will require our OLCC inspectors go through DPSST for training versus being trained in-house by a DPSST certified trainer?

Final Decision: No objections to the recommendation. Unanimous consent.

Bill: HB 2717 - OLCC Commission Membership & **SB 699** - OLCC Commission Membership

Staff's Recommendation: Neutral

Discussion: Commissioner SkinnerLopata asked if HB 2717 is an immediate expansion of the commission or if it will be similar to SB 699 where it will only apply at the conclusion of each term? It is unclear at this time if the sponsors of the two bills have been in communication with each other. Commissioner Duarte commented that both sponsors have appeared before the commission on particular issues and they have not always been in support of the commission's decisions and further, if it is not broke do not fix it. Chairman Lang pointed out that we currently have a member of public health and public safety if there is concern for representation from those areas. Commissioner SkinnerLopata motioned to oppose the expansion of the board and remain neutral on the replacement at the time of expired terms. Commissioner Rice agreed with Commissioner SkinnerLopata's recommendation to be opposed to the expansion of the board and remain neutral on changing the representation at the conclusion of their term. Commissioner Duarte had no objection to changing the position on the expansion, but does oppose the amended recommendation as proposed by Commissioner SkinnerLopata in regards to the change in representation.

Final Decision:

Oppose the expansion and take no position on the designation of the representations.

Bill: HB 2924 – Brewery License Expansion

Staff's Recommendation: Neutral

Discussion: Chairman Lang asked who is pushing this bill. Tom Erwin responded that it isn't clear who is behind this bill.

Final Decision: Neutral until further updates can be provided.

The following bills have been released over the last week and are still under review by staff. Staff will bring them back to the next meeting for your consideration, but wanted you to be aware of them in the meantime.

Bill: SB 669 – Sponsorships

Allows manufacturer or wholesaler of alcoholic liquor to purchase advertising space and time at sports venues, amphitheaters and dance halls of certain size in connection with events held on premises.

Bill: SB 696 – County Privilege Taxes

Authorizes counties to impose taxes on malt beverages and wine. Directs Oregon Liquor Control Commission to collect taxes. Distributes tax revenues to counties imposing tax, for specified purposes relating to alcohol or drug addiction. Takes effect on 91st day following adjournment sine die.

Bill: SB 698 – City Ordered Cessation of Liquor Sales

Allows city to order cessation of alcoholic beverage sales or other operations at premises licensed for full or limited on-premises sales or as brewery-public house upon reasonable belief that continued sales or operation are immediate threat to public safety. Declares emergency, effective on passage.

Bill: SB 700 – License Restrictions

Allows Oregon Liquor Control Commission to place restrictions on activities at licensed premises if commission has grounds to believe certain conditions exist. Allows commission to refuse license if commission reasonably believes granting license would pose threat to public safety. Allows commission to suspend or revoke license upon finding or having grounds for believing continued operations at licensed premises would pose threat to public safety. Declares emergency, effective on passage.

Bill: HB 3145 - Bottle Bill Expansion

Changes definition of “beverage.” Allows beverage distributors or importers to establish distributor cooperative for certain purposes. Provides that dealer that uses distributor cooperative is not required to return beverage containers to distributor or importer that does not participate in distributor cooperative. Requires distributor cooperative and distributors and importers that do not participate in distributor cooperative to provide Oregon Liquor Control Commission with report on beverage container return rate each calendar year. Increases refund value for beverage containers. Requires local governments to allow siting of redemption center in certain cases.

Bill: HB 3012 – Interagency Compliance Network

Other Legislation

The following bills are for your information and are being tracked. Staff is not seeking a position on this legislation. However, if the board would like to take a position on any of these bills, those positions are reflected.

Bill: HB 2750 – Culinary Career

Allows district school board to adopt policy for use of alcoholic beverages in culinary arts classes taught at schools of school district. Establishes requirements of policy.

Bill: HB 3042 (similar to HB 2750) – Culinary Career Exceptions

Provides that charging or payment of tuition or fee for food or beverage career program class, or for workshop or seminar concerning food or beverage industry training, that is offered by education provider and includes consumption of alcoholic beverages is not sale or purchase of alcoholic beverages. Allows serving of alcoholic beverages for

educational purposes to persons 18 to 20 years of age enrolled in food or beverage career program if service is part of program class or, with approval of education provider, part of workshop or seminar concerning food or beverage industry training. Allows possession and consumption of alcoholic beverages for educational purposes by persons 18 to 20 years of age enrolled in food or beverage career program if service is part of program class or, with approval of education provider, part of workshop or seminar concerning food or beverage industry training. Provides that property owner may allow person 18 to 20 years of age who possesses and consumes alcoholic beverages for educational purposes as part of education provider class, workshop or seminar to remain on property. Becomes operative September 1, 2011. Declares emergency, effective on passage.

Bill: HB 2769 – All Age ID Checking

Requires driver license or identification card issued by Department of Transportation to indicate that person may not purchase alcoholic liquor for period of three years if person is convicted at least two times of driving while under influence of intoxicants. Prohibits person issued license or card with alcohol restriction from attempting to purchase or purchasing alcoholic beverages. Punishes by maximum \$720 fine. Requires licensees and permittees of Oregon Liquor Control Commission to check identification of all persons before selling or serving alcoholic liquor. Directs commission to cancel or suspend license of licensee who knowingly sells alcoholic liquor to person prohibited from purchasing alcoholic liquor.

Bill: SB 661 – All Age ID Checking

Requires driver license or identification card issued by Department of Transportation to indicate that person may not purchase alcoholic liquor if person is convicted at least two times of driving while under influence of intoxicants. Requires licensees and permittees of Oregon Liquor Control Commission to check identification of all persons before selling or serving alcoholic liquor. Directs commission to cancel or suspend license of certain licensees who knowingly sell alcoholic liquor to person prohibited from purchasing alcoholic liquor.

Bill: SB 499 – Abolishes the OLCC

Directs specified state agencies, boards and commissions (Including OLCC) to report to Legislative Assembly or Emergency Board on plan to abolish agency, board or commission or merge with another agency, board or commission. Directs specified state agencies, boards and commissions to report to Legislative Assembly or Emergency Board on plan to reduce funding level of agency, board or commission by specified percentage below legislatively approved budget for agency, board or commission for biennium beginning July 1, 2009. Directs specified state agencies to maintain expenditures at level equal to level of legislatively approved budget for agency for biennium beginning July 1, 2009. Suspends cost-of-living increases, salary step increases, upward reclassifications, filling of vacant positions, creation of new positions and out-of-state travel for employees of specified state agencies. Suspends purchases of additional goods or supplies. Declares emergency, effective on passage.

Public Officials, Meetings and Records

Several bills have been introduced which change elements of all of these areas. Following are a few that may affect the way we schedule Commission Meetings, or what is required of Commissioners as public officials.

Bill: SB 41 - Establishes deadlines by which public bodies must respond to public records requests. Provides exceptions. Delays application of deadlines to local governments until July 1, 2013. Provides exceptions. Limits amount of fees public bodies may charge for responding to public records requests. Provides exceptions. Establishes jurisdiction of Attorney General to hear petitions for review of public records in custody of elected officials by persons denied right to inspect records. Requires Attorney General to develop training materials on public records. Declares emergency, effective on passage public records

Bill: SB 540 – Requires certain public officials and candidates to file quarterly statements of economic interest with Oregon Government Ethics Commission. Becomes operative January 1, 2012. Declares emergency, effective on passage.

Bill: HB 2465 – Requires at least 72 hours notice for conduct of public meetings, unless actual emergency warrants less notice. Requires emergency justification for public meetings held with less than 72 hours notice to be described in minutes and to be affirmed by at least a three-fifths majority vote of governing body.

Bill: HB 2723 – Self check out and alcohol
Prohibits holder of off-premises sales license from selling alcoholic beverages by means that avoid or allow avoidance of cashier participation in transaction. Makes violation subject to maximum of \$6,250 fine, one years imprisonment, or both.

Bill: HB 2829 - Prohibits sale of certain consumer goods (including alcohol) by self-checkout device.

Bill: SB 444 – Homebrew Bill

Expands exemption of homemade beer, wine and fermented fruit juice from Liquor Control Act. Allows storage at licensed premises of malt beverages and wine made on premises by unlicensed person and storage of homemade beer, wine and fermented fruit juice. Allows licensee to conduct organized judging, tasting, exhibition, contest or competition of unlicensed malt beverages and wine or homemade beer, wine or fermented fruit juice at licensed premises subject to Oregon Liquor Control Commission restrictions. Declares emergency, effective on passage.

LUNCH RECESS

Reconvene: 1:29 p.m.

CONTESTED CASE HEARINGS

Administration Policy and Process Division case presenters presented

**Rainbow Market, Roxanne Ventures, Inc., Roxanne McInturff, Pres.
Danielle Wood, Sec. dba; OLCC-09-V-122 –**
Case Presenter – Anna Davis presented

A proposed license cancellation was filed alleging a history of serious and persistent problems involving disturbances, lewd or unlawful activities or noise either in the premises or involving patrons of the establishment in the immediate vicinity of the premises in violation of ORS 471.315 (1) (c). The ALJ issued a proposed order finding

that Commission staff had not proven the alleged violation of ORS 471.315(1) (c) during the period charged, February 26, 2008 through August 22, 2009. Commission staff filed comments on the proposed order. It is proposed that the charge that Licensee Roxanne Ventures, Inc., Roxanne McInturff, President/Stockholder and Danielle Wood, Secretary, dba The Rainbow Market violated ORS 471.315(1)(c) (history of serious and persistent problems) be dismissed. It is further proposed, that the application for renewal of the Off-Premises Sales license filed by Roxanne Ventures, Inc., Roxanne McInturff, President/Stockholder and Danielle Wood, Secretary, dba The Rainbow Market be granted. Licensee has not filed comments or exceptions. Attorney Gassner agreed with the findings of the ALJ.

Tim Gassner attorney for licensee and licensee Roxanne McInturff appeared before the commission.

Commissioner Roome recused himself from the voting on the matter, as his law office is a representative of the Confederated Tribe of Warm Springs.

Lava Lanes of Medford/ Donnelly's Sports Pub & Grill, Ric Donnelly, and Kennedy & Donnelly, LLC, Kathryn Kennedy, Managing Member – OLCC - 10-V-018, -018A, -018B: It is proposed that the Full On Premises Sales Licenses held by Ric Donnelly and by Kennedy & Donnelly, LLC, Managing Member Kathryn Kennedy, dba Lava Lanes of Medford/Donnelly's Sports Pub and Grill located at 2980 Crater Lake Hwy. in Medford Oregon be cancelled.

Case presenter Anna Davis presented.

On February 2, 2010, the Oregon Liquor Control Commission issued a notice of Proposed License Cancellation to Ric Donnelly, personally, to Kennedy & Donnelly, LLC and to Kathryn Kennedy, the Managing Member of the LLC. Licensees jointly operate a business under the name of Lava Lanes of Medford/Donnelly's Sports Pub & Grill in Medford Oregon. The OLCC proposed that Licensee's license be cancelled for incurring four Category III violations of Oregon liquor laws within a period of two years. Licensee members present included Ric Donnelly and Kathryn Kennedy and attorney Michael Mills appeared before the commission. Staff also filed comments on this matter.

Commissioner Roome requested clarification regarding the service permit violation and the Fast track violation which was delivered to the licensee but was rescinded when it was determined that this was the third violation and not the second.

Commissioner Roome asked Mr. Michael Mills asked about the evidence findings that the licensee has age verification equipment. Mr. Mills responded the employee in question had only been employed for three days and that the licensee holds monthly meetings where the age verification equipment is discussed and reviewed. The employee had not attended one of those meetings yet.

GPS Market – Gurmail Singh, Surinder Kaur, dba; OLCC-10-V-042

Anna Davis presented.

On July 15, 2010 the Oregon Liquor Control Commission issued a Violation Notice to Gurmail Singh and Surinder Kaur, licensees, doing business as GPS Market, located at 1655 Queen Ave. SW, Albany, Oregon. The notice alleged that licensees employee Diana Thomas knowingly sold or otherwise made alcoholic liquor available to a visibly

intoxicated person in violation of ORS 471.401(1). The notice proposed a penalty of a 10-day suspension. The case was referred to the Office of Administrative Hearings and a hearing was held in October 2010.

Silver Lace Club (fka Stables) – Scherer Enterprises, Inc., Mary Scherer, Pres./Dir./Stockholder, Robert Welch, Vice Pres., dba; OLCC-10-L-001
Case presenter Kelly Route presented.

On December 27, 2010 the Oregon Liquor Control Commission issued a Proposed Order finding as follow: there is a history of serious and persistent problems at licensee's premises based upon incidents occurring between December 11, 2008 and February 18, 2011; subsequent to that history, licensee has demonstrated a willingness and ability to control the premises; Corporate Principal Scherer did not make a false representation or statement to the Commission to induce or prevent action by the Commission in violation of ORS 471.425(1); licensee did not permit disorderly activity on the licensed premises or in areas the licensee controls that are adjacent to or outside the premises on August 28, 2009; and the Commission does not have basis to refuse to renew the license under ORS 471.313(b) or (g). OLCC staff filed comments to the proposed order, questioning two findings of facts, Facts 36 and 37, and challenged the conclusions that licensee has the willingness and ability to adequately control the premises and that Scherer did not make a false statement on the licensee's renewal application. The City of Springfield filed exceptions to the proposed order, challenging certain findings and the conclusions that licensee did not make a false statement on licensee's renewal application. OLCC staff also filed comments.

Mary Bridget Smith, Attorney representing the City of Springfield appeared before the commission requesting the Commission to not follow the recommendation of the Administrative Law Judge and further that the Commission cancel the licensee's liquor license and deny the renewal application due to serious and persistent history at the licensee's premises. Mrs. Smith continued stating that if the Commission was to grant the license, the City of Springfield would like restrictions placed on the license. Attorney and Duke Tufty, attorney for licensee appeared before the commission. Commissioner Roome asked Mrs. Smith, Attorney representative for the City of Springfield, if there was supporting evidence brought forth during the ALJ hearing that indicated the likelihood or unlikelihood that if the renewal license is granted that the serious and persistent issues will continue, or is it just a fear that the City has? Mrs. Smith responded stating that the City does have great concern that if the license renewal application is granted, there will be an increase in negative activity surrounding the premises.

Kelly Route presented the staff comments.

Commissioner Roome stated that he isn't convinced that the Commission can overturn the decision made by the ALJ in regards to the actions of Mr. Welsh. Ms. Routt stated OLCC staff reviewed the ALJ's analysis in regards to the disorderly activity and within the staff comments OLCC staff declined to file comments on this charge.

Duke Tufty, Attorney for the licensee. Mr. Tufty apologized for the absence of the licensee. Commissioner Roome asked about the question raised by the city that the licensee has changed the operation, turned things around in the past twelve months, but the licensee will revert back to previous practices or the previous model, once the renewal application is granted. Mr. Tufty responded stating that the licensee's are proactive and are committed to ensuring a successful business model while working with the city to protect the community. Commissioner Rice asked Mr. Tufty if he and

the licensee have had any conversations regarding potential restrictions that could be placed on the license, if granted. Mr. Tufty responded he is not aware of any discussions and that the licensee's are in support of the proposed order being adopted.

Recessed to Confer with Counsel on Contested Case Items: 2:15 pm

DECISIONS ON CONTESED CASES

Reconvened : 3:35 pm

Rainbow Market

Commissioner Rice, in the matter of Roxanne Ventures Inc. dba Rainbow Market, moved to amend the proposed order of the ALJ pursuant to the list accompanying the minutes and to adopt the amended order as the final order of the Commission.

Passed 4/1 (Roome recused)

Lava Lanes

Commissioner SkinnerLopata, in the matter of Lava Lanes of Medford/Donnelly's Sports Pub & Grill, Ric Donnelly, and Kennedy & Donnelly, LLC, Kathryn Kennedy, Managing Member, moved to amend the proposed order of the ALJ pursuant to the list accompanying the minutes and to adopt the amended order as the final order of the Commission.

Passed 5/0

GPS Market

Commissioner Duarte, in the matter of Gurmail Singh and Surinder Kaur dba GPS Market, moved to adopt the proposed order of the ALJ as the final order of the Commission.

Passed 5/0

Silver Lace Club

Commissioner Roome, in the matter of the full-on premises sales license Scherer Enterprises, Inc., Mary Scherer, Pres./Dir./Stockholder, Robert Welch, Vice Pres., dba; Silver Lace Club (fka Stables), moved to amend the proposed order of the ALJ pursuant to the list accompanying the minutes and to adopt the amended order as the final order of the Commission.

Commissioner SkinnerLopata wanted in clear in her vote that she felt that the licensees did not have the ability nor the willingness to control the premises and for that she votes no.

Passed 4/1

Continued Deliberations Cases

El Flamingo

Commissioner Roome continue deliberations to the April 2011 meeting.

Commissioner SkinnerLopata - no

Passes 4/1

Adjourned 3:42 pm.

**NOTE: The next Commission Meeting is an in-person meeting on
April 14-15, 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