

INDEX OF TOPICS

INSTRUCTIONS

A. HEARING PROCESS

1. Right to Contested Case Hearing

2. Adequacy of Hearing Process

- a. Jurisdiction
- b. Notice
- c. Party Status
- d. Subpoenas/Depositions/Public Record
- e. Default
 - 1. Late Request for Hearing
 - 2. Withdrawal of Request for Hearing
 - 3. Failure to Appear at Hearing
- f. Interpreters
- g. Offer of Proof
- h. Compelled Testimony
- i. Ex Parte Communications
- j. Presiding Officer's Development of Record
- k. Change of Presiding Officers
- l. Bias
- m. Issue Preclusion/Claim Preclusion
- n. Late Exceptions/Good Cause
- o. Finalization of Proposed Order
- p. Reopening/Reconsideration
- q. Stay of Final Order
- r. Attorney General/Agency Representation

3. Adequacy of Statute/Rule

- a. Constitutionality of Statute/Rule
 - 1. Agency Authority to Decide Constitutional Issues
 - 2. Specific Constitutional Issues
 - a. Vagueness
 - b. Overbreadth
 - c. Free Speech and Expression
 - d. Police Power
 - e. Commerce Clause
 - f. Liquor by the Drink (Art. 1, Sec. 39, Oregon Constitution)
 - g. Equal Protection (14th Amend., U.S. Constitution; Art. I, Sec. 20, Oregon Constitution)
- b. Rule Exceeds Statutory Authority and Rule Construction
- c. Improper Rulemaking

- d. Retroactivity
- e. Need for Prior Rulemaking
- f. Statutory Construction

4. Constitutional Issues (Processes)

- a. Agency Authority to Decide Constitutional Issues
- b. Specific Constitutional Issues
 - 1. Due Process
 - 2. Search and Seizure
 - 3. Speedy Trial (Art. I, Sec. 10, Oregon Constitution)
 - 4. Right to Counsel
 - 5. Equal Protection (14th Amend., U.S. Constitution; Art. I, Sec.20, Oregon Constitution)
 - 6. Cruel and Unusual Punishment, 8th Amend., U.S. Constitution; Art. I, Sec. 16, Oregon Constitution
 - 7. Right to Confrontation, 6th Amend., U.S. Constitution; Art. I, Sec 11, Oregon Constitution

5. Adequacy of Evidence

- a. Burden of Proof
- b. Standard of Proof
- c. Admissibility
 - 1. Cumulativeness
 - 2. Relevance
 - 3. Reliability
 - 4. Privilege
- d. Factors Affecting Credibility
- e. Official/Judicial Notice
- f. Witness Testimony/Perjury

6. Adequacy of Contested Case Order

- a. Adequate Findings
 - 1. Failure to Make Findings
 - 2. Findings Not Supported by Substantial Evidence
 - 3. Credibility Determinations
 - a. Hearings Examiner Determinations
 - b. Review Board Determinations
- b. Adequate Reasoning/Conclusions
- c. Addressing Parties' Arguments
- d. Scope of Review

7. Rulings and Motions in Contested Cases

B. LICENSING/RENEWAL

1. General Criteria for Licensing

a. Public Interest or Convenience

1. Problems at Other Licensed Premises (OAR 845-005-0326(1))
2. Proximity to Facilities (OAR 845-005-0326(2))
3. Problem Areas (OAR 845-005-0326(3))
4. Off-Premises Sales License (OAR 845-005-0326(4))
5. Local Government Recommendation (ORS 471.166(1), OAR 845-005-0308)
6. Public Opinion (OAR 845-005-0308(4))

b. Applicant's Personal Qualifications

1. False Statements (ORS 471.313(4)(b), ORS 471.380(1)(b), OAR 845-005-0325(6))
2. Tied-House (ORS 471.313(3), OAR 845-005-0320(1))
3. Applicant is a Retail Sales Agent (OAR 845-005-0320(6))
4. Failure to Complete Alcohol Server Education (OAR 845-005-0320(7))
5. Insufficient Financial Responsibility (ORS 471.313(4)(i), OAR 845-005-0325(1))
6. Unable to Communicate in English (ORS 471.313(4)(j), OAR 845-005-0325(3))
7. Conviction History (ORS 471.313(4)(d), ORS 471.380(1)(d), OAR 845-005-0325(5), [OAR 845-005-0326(6)], ORS 670.280)
8. Alcohol/Controlled Substance History, Record, Habit of Use to Excess (ORS 471.313(4)(a), ORS 471.380(1)(a), OAR 845-005-0325(4))
9. OLCC Compliance History (ORS 471.313(4)(g), OAR 845-005-0320(8), [OAR 845-005-0326(6)])
10. Unfavorable Evaluation of Mental, Emotional or Physical Condition (OAR 845-005-0326(5))
11. Lack of Good Repute and Moral Character (ORS 471.313(4)(f))

c. Operation or Location of Premises

1. Hidden Ownership (ORS 471.313(4)(h), OAR 845-005-0311)
 - a. Receipt of Profits (OAR 845-005-0311(3)(a))
 - b. Compensation Out of the Ordinary (OAR 845-005-0311(3)(b))
 - c. Contract to Manage (OAR 845-005-0311(3)(c))
 - d. Investment in Licensed Business (OAR 845-005-0311(3)(d))
 - e. Contract Purchaser (OAR 845-005-0311(3)(e))
 - f. Unlicensable Person with a Financial Interest (OAR 845-005-0311(4))
2. Failure to Operate as Proposed (ORS 471.405(1), OAR 845-005-0325(2), OAR 845-005-0355(5))
3. Illegal activities, Recent History of Altercations, Noisy Conduct or

Disturbances ([ORS 471.295(4)(e)], [ORS 472.160(4)(e)],
[OAR 845-05-025(10)])

4. Lewd Establishment ([ORS 471.295(4)(e)], [ORS 472.160(4)(e)])
5. Insanitary Establishment (ORS 471.313(4)(e))
6. Insufficient Demand (ORS 471.313(1), OAR 845-005-0326))
7. History of Serious and Persistent Problems (ORS 471.313(5))

d. Incomplete Application (OAR 845-005-0314, OAR 845-005-0315)

2. Criteria Relating to Specific Licenses

a. On-Premises Sales

1. General Requirements for all Full and Limited On-Premises

- a. Off-Premises Use of License
- b. Insurance

2. Specific Requirements for Types of Full On-Premises

- a. Food Service Requirements
- b. Days and Hours of Operation
- c. Outdoor Seating Areas

b. Off-Premises Sales

c. Temporary Sales

d. All Other License Types

1. PS Licenses
2. RMB/Brewery-Public House
3. Wholesale Malt Beverage and Wine

3. Service Permits (SP)

- a. Miscellaneous SP Refusal Bases (ORS 471.380)
- b. Failure to Complete Alcohol Server Education (ASE) (ORS 471.542; OAR 845-009-0100)
- c. Service Permit Denial Criteria Rule (OAR 845-009-0020) and Revocations

4. Change of Operation

- a. Remodeling (OAR 845-006-0480(2), (3)(a))
- b. Menu (OAR 845-006-0480(3)(c))
- c. Hours (OAR 845-006-0480(3)(b))

5. Minor Postings (OAR 845-006-0340)

6. Conditions and Restrictions (OAR 845-005-0355)

7. Secured Party Authority to Operate (OAR 845-005-0450)

C. VIOLATIONS

1. Specific Violations

a. Violations Relating to Minors

1. Sale to Minor (ORS 471.410(2), ORS 471.315(1)(a)(G))
2. Permitted Minor to Consume (OAR 845-006-0335(3)(a))
3. Permitted Minor on Premises (OAR 845-006-0335(3)(b))
4. Age Verification (ORS 471.130, OAR 845-006-0335(1))
5. Minor Employee in Prohibited Area (OAR 845-006-0335 (4), (5), (6))
6. Unlawful Service/Sale By Minor (ORS 471.480(1), ORS 471.482(1);
OAR 845-006-0335(4))
7. Minor Decoy Operation Standards (ORS 471.346, OAR 845-009-0200)

b. Violations Relating to Visibly Intoxicated Persons

1. Sale to Visibly Intoxicated Person (ORS 471.410(1), ORS 471.315(1)(a)(G))
2. Allowing Visibly Intoxicated Person to Consume (ORS 471.412, ORS
471.315(1)(a)(G))

c. Employee Without Service Permit (ORS 471.360, ORS 471.375(1);
OAR 845-009-0010)

1. Failure to Make Service Permit Available (ORS 471.360(1)(c))

d. Drinking on Duty (OAR 845-006-0345(1))

e. Open Container Carried Out of Premises (OAR 845-006-0345(5))

f. False Statements (ORS 471.425(1), ORS 471.315(1)(a)(B))

g. Hidden Ownership (ORS 471.757, OAR 845-005-0311(4))

1. Receipt of Profits (OAR 845-005-0311(3)(a))
2. Compensation Out of the Ordinary (OAR 845-005-0311(3)(b))
3. Contract to Manage (OAR 845-005-0311(3)(c))
4. Investment in Licensed Business (OAR 845-005-0311(3)(d))
5. Contract Purchaser (OAR 845-005-0311(3)(e))
6. Waiver of Prior Approval (OAR 845-005-0311(5))

h. Habit of Using Alcohol or Controlled Substances to Excess (ORS 471.315(1)(a)(F))

i. Conviction of Felony, Liquor Laws or Violation on Licensed Premises
(ORS 471.385(1)(b), ORS 471.315(1)(a)(I), ORS 670.280) (See also B.1.b.7.))

j. Noisy Activities (ORS 471.425(2), OAR 845-006-0347(1)(b), (2)(a))

k. Lewd Activities (ORS 471.425(2), [OAR 845-006-0347(1)(b), (2)(a)])

l. Disorderly Activities (ORS 471.425(2), (OAR 845-006-0347(1)(a), (2)(a))

m. Unlawful Activity at Licensed Premises (OAR 845-006-0347(3))

n. Operating During Prohibited Hours (OAR 845-006-0425))

o. Hindering Investigation

1. Failure to Phone Police (OAR 845-006-0345(2))
2. Destruction of, or Refusal to Provide, Evidence (OAR 845-006-0345(3))
3. Failure to Admit Inspector/Police Officer (OAR 845-006-0345(4))
4. Physical Interference (ORS 471.675)

p. Improper Food Service (OAR 845-006-0460, -0461, -0462, -0463, -0464, -0465, -0466,
-0467, -0468, -0469)

q. Failure to Maintain or Produce Records (OAR 845-006-0435)

- r. Failure to Reopen Premises (OAR 845-006-0481)
- s. Unapproved Change in Operation (OAR 845-006-0480)
- t. Connections Between Wholesalers and Retailers
 - 1. Tied-House (ORS 471.394(2), ORS 471.396(2)(a))
 - 2. Financial Assistance (ORS 471.398, ORS 471.400(3), OAR 845-006-0365, OAR 845-013-0020 and other rules)
- u. Wholesaler Delivery to Unlicensed Premises [(ORS 471.235)]
- v. Private Club Sale to Nonmember (OAR 845-008-0045(2))
- w. Prohibited Advertising (OAR 845-007-005(3))
- x. Unauthorized Alcoholic Beverages Sold or Offered for Sale in a Manner other than the license permits (ORS 471.405, OAR 845-006-0345(6))
- y. Violation of Restrictions on License (OAR 845-005-0355(5))
- z. Failure to Maintain Bond/Insurance (ORS 471.155, ORS 471.168; OAR 845-005-0400)
- aa. Unauthorized Exercise of License Privileges [(OAR 845-05-060)]
- bb. History of Serious and Persistent Problems (ORS 471.315(1)(c))
- cc. Failure to Pay State Taxes (ORS 305.385(4)(c) and (d))
- dd. Service of Alcohol without food [(472.100(4)(b))]
- ee. Failure to Read/Sign/Retain Training Brochure (845-009-0130)
- ff. Operating While Suspended [(OAR 845-006-0361)]
- gg. Failure to Maintain Records (OAR 845-010-0170)
- hh. Change in Corporate Structure Without Notice (OAR 845-006-0475)

2. Defenses

- a. Estoppel
- b. Laches
- c. Entrapment
- d. Immunity
- e. Conflict of Interest and Misc. Defenses

3. Responsibility for Violation

- a. Licensee v. Permittee/Employee
- b. Co-licensees

4. Penalties

- a. Aggravation/Mitigation
 - 1. Prior Warnings or Violations
 - 2. Intent/Good Faith Effort
 - 3. Extent of Licensee's/Permittee's Participation
 - 4. Others' Penalties
 - 5. Actions/Events after Violation
 - 6. Inability to Pay Fine
 - 7. Death of Licensee
 - 8. Failure to Use Age Verification Equipment
 - 9. Miscellaneous Penalties
- b. Consolidation of Penalties
- c. Penalty Schedule

- d. Mixed Penalty

D. EMERGENCY SUSPENSION

E. RETAIL AGENTS

1. Responsibility for Shortages

2. Termination Grounds

- a. Reporting/Depositing Correct Sales
- b. Proper Accounting
- c. Recording Sales
- d. Retaining Records
- e. Miscellaneous

3. Fine/Suspension in Lieu of Termination

4. Violations

- a. Sales to Minors/Failure to Verify Age
- b. Sales to Visibly Intoxicated Persons
- c. Miscellaneous (i.e. Failure to Return Cost Survey)
- d. Audit

5. Grounds for Termination

F. SERVER EDUCATION PROGRAM PROVIDERS

1. Violations (OAR 845-016-0015; OAR 845-016-0035)

2. Penalties

G. DECLARATORY RULING

H. ATTORNEY FEES/SANCTIONS

I. WORDS & PHRASES