

OREGON LIQUOR CONTROL COMMISSION
MINUTES
February 21, 2014

Friday February 21, 2014

9:23 a.m. Commissioners present were Marvin Révoal, Michael Harper and Chairman Rob Patridge. Commissioners Bob Rice and Pamela Weatherspoon were not in attendance.

Executive Director, Steve Marks, attended along with members of staff.

APPROVE MINUTES

Commissioner Harper moved to approve the minutes of the January 24, 2014 Commission Meeting.

Passed 3/0

PUBLIC FORUM

There were no members of the public to speak

RETAIL SALES AGENT UPDATE

There were no agents to speak

COMPLIANCE

Stipulated Settlement Agreements

Becky Voelkel, Administrative Policy and Process Division presented.

There were fifteen stipulated settlement agreements before the Commissioners for ratification; Clement Bradley, Ahern's Stop & Shop, Star Sushi 2, Pizza Hut, Blue Pine Kitchen & Bar, Sports Page, Joe's Sports Bar & Grill/Star Catering, Stanford's Restaurant & Bar, WOW Burger of Oregon, Putter's Bar & Grill, Henry Estate Winery, Kathleen Shayler, Uptown Market, Prost Portland, and B & B Dining & Spirits.

Commissioner Harper asked about the process of sanctioning both the licensee and the service permittee for settlements #11 & 12. Ms. Voelkel explained the employer is held responsible for their employee. The employee holds a service permit so we can sanction against her service permit for allowing her four young children to be an area posted "no children allowed".

Commissioner Harper asked if staff tracks data of how many people come back and get their service permit or DPSST certification after they have been sanctioned for not having them. Ms. Voelkel said we do not.

Commissioner Révoal moved to ratify the fifteen settlement agreements as listed.

Passed 3/0

Ratification of Service Permit Refusals

Gwenn McNeal, Public Safety Division presented.

There were seven service permit refusals before the Commissioners for ratification.

Commissioner Harper moved to adopt the service permit refusals as listed.

Passed 3/0

New License Applicant Stipulated Settlement Agreements

COMMISSION MEMBERS:

Chairman, Rob Patridge Michael Harper Marvin Révoal Bob Rice Pamela Weatherspoon

Annabelle Henry, Administrative Policy and Process Division presented. There were seven licensing stipulated settlement agreements before the Commissioners for ratification; The Lot, Boogies Burgers & Brew, Sassy's Bar & Grill, The Woods Roadhouse, The Hoppy Camper, Thirsty Barn and Fried Egg I'm in Love.

Commissioner Révoal moved to ratify the seven licensing settlement agreements as listed.

Passed 3/0

LICENSE MATTERS -

Dan McNeal, Licensing Division presented.

Rose Town Beverages, 550 SW Washington St., Portland

Mr. McNeal said this is an application for a new off-premise sales outlet at the Rose Town Liquor store. Kimberly Saunders, agent, was recently approved for the non-exclusive status by the board. The City of Portland gave an unfavorable recommendation. Staff found the premise to be located in a problem area but also found good cause. Staff recommends granting the license without restrictions because the retail agent contract has limitations in it. Commissioner Harper asked the applicant, Kimberly Saunders, how she feels about the City of Portland's negative recommendation. Ms. Saunders said they are operating in good faith and have built good relationships with the local police and is very active in the neighborhood association. Ms. Saunders regularly educates her staff and has a code of conduct for how they handle street drinkers and pan handlers. She is working hard to clean up the business and cater to the professionals. Commissioner Révoal does not see how the applicant has done anything to warrant the cities position.

Commissioner Révoal moved to grant the license for Rose Town Beverages.

Passed 3/0

Van's 76 Food Mart, 5520 NE MLK Jr. Blvd., Portland

Mr. McNeal said this license application received an unfavorable recommendation from the City of Portland as the applicant did not have a good record of compliance when previously licensed by the Commission. Mr. McNeal said the license was canceled back in 2009 but when looking at all the facts now, there is good cause to grant the license without restrictions. Chairman Patridge asked the licensee, Mike Phan, what the circumstances were in 2011 and what processes are now in place to prevent the same thing from happening again. Mr. Phan said at the time, his father (previously the licensee) was out of the country when the vendor brought in products that were above the 6% alcohol volume the premise was allowed to carry. As soon as he was notified, the product was removed from the shelves. Mr. Phan said the new process to bring product will include fewer people, and many double and triple checks to ensure the correct products are on the shelves.

Commissioner Révoal noted the city only provided one incident of street drinking and it appears the applicant has taken some precautions to ensure the correct product is on the shelves.

Commissioner Harper moved to grant the license for Van's 76 Food Mart.

Passed 3/0

CONTESTED CASE HEARINGS

COMMISSION MEMBERS:

Chairman, Rob Patridge Michael Harper Marvin Révoal Bob Rice Pamela Weatherspoon

Lotsa Luck Bar & Grill - OLCC-13-V-015

Becky Voelkel presented this case on behalf of the Commission at the administrative hearing. A proposed order was issued on November 8, 2013. Ms. Voelkel submitted comments to the proposed order and appeared to speak to her comments. Licensee's attorney, Paul Thompson, did not submit exceptions to the proposed order but appeared to speak to Ms. Voelkel's comments. Licensee, Hristos Koukoumanos, also appeared.

Commissioner Harper said the board takes the use of firearms at any license premise very seriously. He asked Ms. Voelkel if there is any history of firearm at this premise. Ms. Voelkel said they are not saying the licensee could have prevented the person from having a firearm but accountable for allowing the people to remain outside and argue which ended in shots fired. Commissioner Harper asked if the couple were ever in the bar, Ms. Voelkel said they arrived together and were in and out of the premise multiple times. Commissioner Harper asked if the suspect was ever apprehended by the police. Ms. Voelkel said at the time of the hearing, they had not located the suspect.

Mr. Thompson said the licensee stated the customers did argument but about stupid stuff. He noted that there any many arguments in bars and restaurants about politics', sports, etc. He said an argument does not necessarily equal permitting illegal activity. Ms. Drake told the man "no violence in Here" as soon as the man made the threat.

Chairman Patridge said after looking at the finding of facts, it seems concerning, they were back and forth and continuing the fight. It is the totality of the circumstances not just a couple having a small argument in a bar. Mr. Thompson said from the video the customer's body language was not aggressive. Ms. Drake has ten years experience, and was monitoring the situation. The man was not drinking alcohol and they were the only two in the bar.

Commissioner Révoal said reading the materials, the statements were stronger than just "stupid stuff" the issue is where the bartender stepped in. Mr. Thompson said Ms. Drake stepped in when the threatening statement was made. The man left the bar right after she told him there was no violence allowed in the bar, he drove around the block and then came back and fired the weapon.

Mr. Koukoumanos began to give his background. Chairman Patridge said he appreciates his background, but the board is limited to the legal record.

RECESS 10:15 am

IN CHAMBERS DELIBERATION OF CONTESTED CASES

Coyote Joes – Request for Reconsideration

RECONVENE 10:56 am

CONTESTED CASE HEARINGS- Decisions on contested cases

Chairman Patridge stated he appreciates staff's arguments but he does not feel there is enough evidence to overcome the findings of the ALJ. The Chairman does believe disorderly conduct is a fact specific related argument and there is opportunity as these types of cases are looked at in the future to decide how we argue and define what disorderly conduct is to preserve those before the record of the Commission.

Lotsa Luck Bar & Grill - OLCC-13-V-015

COMMISSION MEMBERS:

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Commissioner Révoal moved to amend the Proposed Order pursuant to the list which will accompany the minutes and adopt the amended order as a Final Order of the Commission. Chairman Patridge clarified the amendment is a technical change to the finding but would still sustain the ALJ's decision.

Passed 3/0

Coyote Joes – Request for Reconsideration

Commissioner Révoal moved to deny the request for reconsideration of the final order by default for Coyote Joes Inc. dated December 16, 2013.

Passed 3/0

RULES

Annabell Sweet, Administrative Policy & Process Division presented.

INITIAL ACTION

Procedural Rules Package

The rules in this package are technically deficient and need to be amended for the following reasons:

In 2012, 2008 and 2007, the Commission amended OAR 845-001-0007 Attorney General's Model Rules of Procedure. These rulemaking actions were designed to adopt the Attorney General's Model Rules for Rulemaking by reference. However, due to a technical defect, these rulemaking actions are invalid. The rule's language is also ambiguous. Permanent rulemaking is required to correct these deficiencies.

In 2012, the Commission amended all of its Division 3 rules. This rulemaking action had two goals: (1) To adopt the Attorney General's Model Rules of Procedure for Contested Cases division subtitle Office of Administrative Hearings, and (2) To adopt eight additional, compatible procedural rules for contested case proceedings. However, due to a technical defect, this rulemaking action is invalid. Certain language is also ambiguous. This rulemaking action also fails to adopt by reference the Attorney General's Model Rules for Orders in Other Than Contested Cases. Permanent rulemaking is required to correct these deficiencies.

On February 3, 2014, the Department of Justice (DOJ) amended its letter authorizing lay representation in certain classes of contested case proceedings, in effect expanding the Commission's authority to use employee representatives. DOJ last amended this letter on June 6, 1996. Permanent rulemaking is required to reflect this expanded authority.

Commissioner Révoal asked how staff plans to avoid the same mistake in the future. Ms. Henry said the technical deficiencies were due to an old process of submitting documents to the Secretary Of State. This process has since been changed to an electronic submittal which eliminates the problem.

Commissioner Harper moved to initiate rulemaking to amend the rules identified in the record as part of the "Procedural Rules Package."

Passed 3/0

ADMINISTRATION

Budget/Revenue Presentation - Presentation of Secretary of States audit results, agency revenue status, current budget preparations and revenue forecast.

COMMISSION MEMBERS:

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(Michael O'Connor and Bill Schuette)

Mr. O'Connor reported on the Secretary Of State audit which was completed in July 2013. The SOS preformed tests and evaluations on our system of internal control of the agencies revenue cycle. They evaluated processes and procedures related to the collection and reporting of liquor revenues and privilege tax collected. Mr. O'Connor said he was happy to report there were no reportable findings in the audit. Subsequent to the initial audit, the SOS came back in November and December to look at cost of goods and the extended testing for the Statewide financial report of the agencies cost of goods and additional testing on the revenue collection of liquor sales. This audit also found no reportable findings.

For tab number three, Mr. O'Connor reported on financial updates, as of December 31, 2013, we are on track to meet our forecast of revenue. Since the inception of the surcharge we have collected 67.3 million dollars which have been dispended directly to the general fund. Mr. O'Connor noted the agency is operating under a very lean budget for OLCC administration at this time the agency is about 150 thousand dollars over our budget but we are closely watching. Mr. O'Connor said we are preparing for the next budget cycle. First step is preparing the forecast for the 2015-17 biennium.

Mr. Schuette outlined the process for preparing the forecast, using the econometric forecast method which is similar to what is used by the State of Oregon economist. There is a risk of having to look so far out, the agencies historical accuracy is plus or minus four percent.

Mr. Schuette explained the biggest risk to our forecast is the agencies limited resources in the warehouse for shipping product. Given our current service level, the agency will hit our limit if our resources stay stagnant.

Commissioner Révoal stated if the agency does not have reserves to ship product, the State will loss money. Commissioner Révoal expressed the importance of the Commission to get the message out to legislators and cities to understand the value of what we do in this organization.

Commissioner Harper asked if the agency tracks 5 cent bottle return tax. Mr. O'Connor said we have nothing to do with the revenue perspective; the agency only decides if the location is appropriate for redemption centers. Commissioner Harper asked how the forecast is changed if there is a change in how we distribute distilled spirits. Mr. Schuette explained the forecast is created based on demand of distilled spirits in the State of Oregon and is adjusted periodically but our current forecast is made with the system in its current form. Commissioner Harper said thank you to both Mr. O'Connor and Mr. Schuette for their diligence and exceeding the forecast. Chairman Patridge also thanked them for running a tight budget and keeping all the finances in line. The board understands the need for investment. The board will communicate with the public about the efficiency of the agency.

Policy – Debrief of legislative session and current position of Senate Bill 1559.

(Steve Marks)

Steve Marks spoke to the board regarding Senator Beyer's bill, Senate Bill 1559. Mr. Marks believes the agency met the mark to put forward a discussion draft for the legislature to consider. Subsequent to the work session, the bill was amended and is now a study bill. The bill also includes a fix for the agency to run LEDS checks. The study bill calls for a task force of twelve members.

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Chairman Patridge said the retail innovations group came together to put forth some ideas for the legislature to consider. The main consensus of the group was the system needs an investment in order to maximize revenue for the state. Regardless of the merits of the bill, it brought the issues about the agency to light and provides a platform to make decisions for 2015. The agency does need the LEDS amendment for public safety.

Commissioner Harper said the mission is to promote the public interest through the responsible sales and service of alcohol. In Commissioner Harper's view, it is not about the revenue so much as the public interest. He appreciates the opportunity to sit in and be a part of the process.

Mr. Marks said the work was extremely fast and the agency is working to improve the communication to our board members in order to utilize and inform them.

Legislative/Communications – Debrief of work being done to address the agencies access to LEDS and current legislation being tracked.

Ranee Niedermeyer, Director of Communications and Government Affairs, said the LEDS amendment will save the agency \$333, 000 over the biennium. The error came in 2012 when SB 1528 classified the entire agency as a "criminal justice agency" rather than a "delegated agency". This change prohibited the agency from using LEDS for anything other than criminal investigations. The agency then had to contract out LEDS checks for licensing new applicants, new agent contracts or hiring new employees which equals about 10,000 checks per year. The bill is currently in the subcommittee of the Ways and Means.

Ms. Niedermeyer said the short session is very fast, it is a 35 day session, ending on March 9th. The agency is actively tracking eight bills along with SB 1559.

HB 4094

This bill gives immunity to minors who seek medical or law enforcement help for themselves or others due to over consumption of alcohol. The bill has passed both the House and the Senate and is awaiting signature.

HB 4099 and SB 1556 both address marijuana.

HB 4099 directs the study of laws of this state that would need to be amended if the people vote to legalize marijuana at the next general election. The bill is currently in the Ways and Means subcommittee on public safety and is scheduled for a hearing on Monday.

SB 1556 refers to the voters an initiative in 2014 that would direct the legislature to in act laws for the regulating, production, buying, and taxation of marijuana. The bill is currently in the Senate Rules committee.

HB 4133

This bill directs the review of statute laws to identify outdated and obsolete or duplicative laws. It is currently in the Senate Rules committee.

HB 4135

Mandates a Strategic Technology Team to advise the CIO and executive members of state agencies who are responsible for developing IT systems to set priorities, verify projects are implemented appropriately and evaluate budgets for technology. The bill is in the subcommittee of Ways and Means on General Government.

SB 1546

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Specifies that grocery clerks who unintentionally sell alcohol to a minor while operating a check out device could be convicted of a class A violation rather than a misdemeanor (for the first offense). It is at the House desk awaiting third reading.

SB1567

Modifies bumping rights of management positions who came directly from classified positions and are released during their trial period (with no cause). But not if they are released after the trial period. The bill is scheduled for the third reading in the House.

SB1583

Prohibits a public body from obtaining location information from a cell phone or other electronic devices without a warrant. The bill did not pass out of the Senate General Government Consumer and Small Business committee.

Commissioner Input

There were no issues from Commissioners.

RECESS 11:42 AM

RECONVENE 1:37 PM

Chairman Patridge recognized the great work of warehouse staff for the work and dedication to come in during the snow storm in order to continue business.

RETAIL SERVICES

Brian Flemming, Retail Services Director, presented.

Retail Sales Agent and Distillery Sales Agent Contract Renewals

Nine agents have met the terms of the contract and were up for reappointment.

Commissioner Harper moved to approve the nine agent contract renewals listed in the Retail Services materials under tab 1.

Passed 3/0

Distillery Retail Outlet Agent Appointments

Christopher Beatty of Oregon Ryegrass Spirits submitted an application for a distillery outlet appointment.

Commissioner Révoal moved to appoint Christopher Beatty as the permanent distillery retail sales agent at Oregon Ryegrass Spirits effective April 1, 2014.

Passed 3/0

Brett Joyce is applying to become the permanent distillery retail outlet agent under ORS 471.230(2). This appointment is made necessary due to Jack Joyce's retirement effective February 28, 2014.

Commissioner Harper asked if any of the parties from the company were present. Brian Scheipenhieser, in house attorney, appeared before the Commission. Mr. Scheipenhieser said that Brett has been the president for the past 4-5 years.

Commissioner Harper moved to appoint Brett Joyce as the permanent distillery retail sales agent at Rogue River Brewing and Oregon Brewing effective March 1, 2014.

Passed 3/0

COMMISSION MEMBERS:

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Brett Joyce of Rogue River Brewing and Oregon Brewing (5 locations) submitted applications for a distillery outlet appointment at five locations.

Commissioner Harper moved to appoint Brett Joyce as the permanent distillery retail sales agent at Rogue River Brewing and Oregon Brewing at the five locations listed under tab 4 effective March 1, 2014.

Passed 3/0

Mr. Flemming noted the proposals today will not include the usual store remodel as the current agents of both stores have invested a great deal and they are “turn key” or ready for business.

Agent Appointments

1113 Portland Menlo Park

Hector Hassen presented his business plans proposal and qualifications to run Portland Menlo Park liquor store.

Narinder Sachdeva (Bobby) presented his business plans proposal and qualifications to run Portland Menlo Park liquor store.

1229 Eugene West

Timothy Woodhead presented his business plans proposal and qualifications to run Eugene West liquor store.

RECESS 2:07 PM

EXECUTIVE SESSION PER ORS 192.660(2)(a)

Deliberations on Agent Selection

RECONVENE 2:22 PM

Decision on Agent Selection

1113 Portland Menlo Park

Commissioner Harper moved to appoint Narinder Sachdeva as the permanent agent at Store 1113 Portland, Menlo Park effective April 2014.

Passed 3/0

1229 Eugene West

Commissioner Révoal moved to appoint Timothy Woodhead as the permanent agent at Store 1229 Eugene, West effective February 28, 2014.

Passed 3/0

The board thanked and recognized Shelly Robertson for her contribution to the State of Oregon as the retiring agent of Portland Menlo Park.

Staff Approval of Distillery Retail Outlet Agents

Mr. Flemming stated, staff is asking the commissioners to delegate the appointment of distillery retail outlet agents to staff.

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Commissioner Révoal moved to approve the delegation of distillery retail outlet agent appointment to staff.

Commissioner Harper said he prefers these come to the full commission.

Passed 2/1 Commissioner Harper voted no.

ADJOURNED

Michael E Harper, Sr., Commissioner

Rob Patridge, Chairman

Marvin Révoal, Commissioner

Bob Rice, Commissioner

Pamela Weatherspoon, Commissioner

Steve Marks, Executive Director
and Secretary to the Commissioners

NOTE: The next Commission Meeting will be by phone on March 21, 2014

For more information, please telephone Toll Free 1-800-452-6522 or

Portland 503-872-5006

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