

## For your information

### The Oregon Liquor Control Commission has:

Amended  
 Adopted  
 Suspended

### **OAR 845-006-0345** Temporary

Effective Dates: July 31, 2020 - December 17, 2020

Note: **Bold and underlined** = new text; *~~italics and strikethrough~~* = deleted text

#### **845-006-0345** **Prohibited Conduct**

The Commission holds licensees accountable for the acts of their agents and employees. (OAR 845-006-0362). No employee or agent of a licensee may violate any provision of this rule. A violation of any section of this rule by an employee or agent of a licensee is considered a violation by the licensee.

(1) Drinking on Duty: No licensee, permittee, or agent of a licensee will drink alcoholic beverages or be under the influence of intoxicants while on duty.

(a) "On duty" means from the beginning of a work shift that involves the mixing, sale or service of alcoholic beverages, checking identification or controlling conduct on the premises, to the end of the shift including any breaks.

(b) "On duty" also means, for those working outside a scheduled work shift, having the authority to put himself or herself on duty and performing acts on behalf of the licensee which involve the mixing, sale or service of alcoholic beverages, checking identification or controlling conduct on the premises. Whether a person is paid or scheduled for work is not determinative of whether the person is considered "on duty" under this subsection.

(c) "A work shift that involves the sale and service of alcoholic beverages" includes supervising those who mix, sell or serve, check identification or control the premises.

(d) Being under the influence of intoxicants on duty is a Category II violation.

(e) Drinking on duty is a Category III violation.

(2) Despite subsection (1) of this rule, a person may self-serve and may taste malt beverages, wine, or cider while on duty or as an agent of a licensee only under the following conditions:

(a) The person is not a minor.

(b) The person is not visibly intoxicated.

(c) The time the alcoholic beverage is consumed is between 7:00 a.m. and 2:30 a.m. on the succeeding calendar day.

(d) The alcoholic beverage consumed is only malt beverages, wine, or cider.

(e) The amount of alcoholic beverage consumed per serving does not exceed one ounce.

(f) The person does not consume more than a total of six ounces of alcoholic beverages pursuant to this section between 7:00 a.m. and 2:30 a.m. on the succeeding calendar day.

(g) The purpose of the consumption is for educational purposes or to test the quality of the alcoholic beverage to ensure the product is not flawed or deteriorated.

(3) No licensee or permittee will fail to call the police when a Commission regulatory employee directs the licensee or permittee to call. Violation of this section is a Category II violation.

(4) Evidence:

(a) No licensee or permittee will:

(A) Destroy, damage, alter, remove, or conceal potential evidence, or attempt to do so;

(B) Refuse to give a Commission regulatory employee or police officer this evidence when the employee or officer lawfully requests it; or

(C) Ask or encourage another person to do subsections (a) or (b) of this section.

(b) Violation of this section is a Category III violation.

(5) Access to Premises:

(a) Both during regular business hours and when a premises is closed, no licensee or permittee will refuse to admit or fail to immediately admit to the licensed premises a

Commission regulatory employee or police officer who identifies him/herself and who enters or wants to enter to conduct a reasonable search to ensure compliance with alcoholic beverage law. Examination of premises that are or appear closed occurs only when there is reason to believe an alcoholic beverage law violation is occurring.

(b) Once the regulatory employee or police officer is on the licensed premises, no licensee or permittee will ask the regulatory employee or officer to leave until the regulatory employee or officer has had an opportunity to conduct a reasonable search to ensure compliance with the alcoholic beverage laws.

(c) Violation of this section is a Category II violation.

(6) Open Containers: No licensee or permittee will permit a person to take an open container of alcoholic beverages from the licensed premises, except as ORS 471.175, 471.178, 471.186, 471.190, 471.200, 471.220, 471.223 and 471.227 allow. Except for tastings as allowed in OAR 845-006-0450, no Off-Premises Sales licensee will permit an open container of alcoholic beverages on the licensed premises unless the licensee also holds another license at the premises that allows on-premises consumption. Violation of this section is a Category V violation.

(7) Liquor on Premises: No licensee or permittee will have or permit any alcoholic liquor on the licensed premises which the license does not allow the licensee to sell or serve. Notwithstanding this requirement, a limited on-premises or brewery-public house sales licensee may have distilled spirits on the premises if the distilled spirits are used only for cooking, are kept in a container only in the food preparation area, and the container is clearly marked "for cooking only." Violation of this section is a Category V violation.

(8) Drive-up Window: No licensee or permittee will sell or deliver any alcoholic beverages through a drive-up window. Violation of this section is a Category III violation.

(9) Liquor as a Prize: Except as allowed in ORS 471.408, no licensee or permittee will give or permit any alcoholic beverage as a prize, premium, or consideration for any lottery, contest, game of chance or skill, exhibition, or any competition of any kind on the licensed premises. Violation of this section is a Category V violation.

(10) "Good Faith Effort": ORS 471.315(1)(a)(H), and 471.412(1) prohibit a licensee or permittee from allowing a visibly intoxicated person to drink alcoholic beverages. A licensee or permittee who makes a good faith effort to remove the alcoholic beverage does not violate these statutes.

(a) As used in ORS 471.412(2) and this rule, "good faith effort" means:

(A) Placing a hand on the drink and trying to remove it; or

(B) Making a verbal request for the drink, if the server has reason to believe that touching the patron's drink could cause a disturbance;

(b) The Commission will issue letters of reprimand for the first three violations of this section within a two-year period. A fourth violation within a two-year period is a Category III violation assessed at the fourth level (cancellation).

(11) Promotions.

(a) The following practices are prohibited:

(A) The sale, offer or service to any person of an unlimited number of alcoholic beverage(s) during any set period of time for a fixed price;

(B) The sale, offer or service of alcoholic beverages by the drink for a price per drink that is less than the licensee's cost for the alcohol to any person paying a fixed "buy in" price, entry fee, cover or door charge;

(C) Price reductions on alcoholic beverages by the drink from 12:00 midnight until 2:30 a.m. A price reduction is a lower price as compared to the usual, customary, or established non-discounted price the licensee charges for a drink of that type on the licensed premises;

(D) The sale, offer or service of distilled spirits by the bottle for consumption on the premises, except as allowed in OAR 845-006-0433 (Minibars in Hotel Guest Rooms) and 845-006-0434 (Minibars in Arena Suites). This subsection does not prohibit a Full On-Premises Public Location Sales Licensee (F-PL) or Full On-Premises Catering Sales Licensee (F-Cat) from charging clients by the bottle for distilled spirits that are served by the drink at hotel suites, banquets, receptions or catered events where the reasonably projected attendance is at least 20 patrons;

(E) Operating, encouraging or permitting games of chance or skill, contests, exhibitions, or competitions of any kind on the licensed premises that involve drinking alcoholic beverages, (e.g., beer pong, "21 for 21");

(F) Dispensing, pouring or otherwise serving any alcoholic beverage directly into a person's mouth, including through any device such as a "bong"; and

(G) The use of any device or serving technique that produces an alcoholic mist or vapor for consumption by inhalation. An alcohol vaporization device, for example, also called an alcohol without liquid machine, is a device, machine or process which mixes spirits, alcoholic liquors or any product containing alcoholic liquor with oxygen or any other gas to produce a vaporized product for consumption by humans by inhalation.

(b) Violation of this section is a Category III violation.

(12) Self-Service. No licensee or permittee will permit any patron to mix, dispense or serve an alcoholic beverage for or to himself or herself for on-premises or off-premises consumption. Violation of this section is a Category III violation.

(13) Marijuana Use. No licensee or permittee will permit the use, consumption, ingestion, or inhalation of marijuana items as defined in ORS 475B.015 and OAR 845-025-1015 on a premises licensed to sell or serve alcoholic beverages. Violation of this section is a Category III violation.

(14) No licensee or permittee will manufacture, store, transport, sell, or offer to sell an alcoholic beverage that is manufactured with any substance derived from cannabis, or cannabinoids derived from any source, unless the substance has been approved for use in alcoholic beverages by the Alcohol and Tobacco Tax and Trade Bureau (TTB) and the U.S. Food and Drug Administration (FDA). Violation of this section is a Category III violation.

(15) No licensee or permittee will engage in or permit any activity that violates an order issued by the Governor relating to the manufacture, possession, sale, purchase, transportation, importation or delivery of alcoholic liquor. Violation of this rule is a Category II violation and shall apply to any conduct that occurs on or after March 17, 2020, 5:01 p.m. local time.

(16) A licensee located in a county that has been approved for a phased opening in accordance with Executive Order 20-27 must comply with guidelines created by the Oregon Health Authority (OHA) relating to the hours that a business may serve alcoholic beverages for on-premises consumption on the licensed premises. These guidelines may be found at <https://govstatus.egov.com/or-covid-19/>. Failure to comply with OHA guidelines is a Category II violation and shall apply to any conduct that occurs on or after May 15, 2020.

**(17) Failure to abide by or enforce Oregon Health Authority Guidance.**

**(a) A licensee may not engage in or permit any activity that violates the Oregon Health Authority's Statewide Mask, Face Shield, Face Covering Guidance issued on July 24, 2020, incorporated herein by reference. A licensee's failure to follow or enforce the guidance referenced in this subsection and ensure that employees and patrons on the premises are wearing masks, face shields or face coverings creates an immediate and serious danger to the health and safety of all patrons and employees on the premises. These guidelines may be found at:**

**[https://www.oregon.gov/olcc/docs/covid19/OHA\\_Statewide\\_FaceCoveringGuidance\\_072420.pdf](https://www.oregon.gov/olcc/docs/covid19/OHA_Statewide_FaceCoveringGuidance_072420.pdf)**

**(b) A licensee may not engage in or permit any activity that violates the Oregon Health Authority's Phase One Reopening Guidance for Restaurants and Bars issued on July 24, 2020, and the Oregon Health Authority's Phase Two Reopening Guidance for Restaurants and Bars issued on July 24, 2020, incorporated herein by reference. A**

**licensee's failure to follow or enforce the guidance referenced in this subsection creates an immediate and serious danger to the health and safety of all patrons and employees on the premises. These guidelines may be found at:**

**[https://www.oregon.gov/olcc/docs/covid19/OHA\\_Phase1\\_Restaurants\\_Bars\\_073020.pdf](https://www.oregon.gov/olcc/docs/covid19/OHA_Phase1_Restaurants_Bars_073020.pdf)**

**[https://www.oregon.gov/olcc/docs/covid19/OHA\\_Phase2\\_Restaurants\\_Bars\\_073020.pdf](https://www.oregon.gov/olcc/docs/covid19/OHA_Phase2_Restaurants_Bars_073020.pdf)**

**(c) Violation of this section is a Category II violation.**

**Statutory/Other Authority:** ORS 471, 471.030, 471.040, 471.730(1), 471.175 , E.O. 20-27, & **E.O. 20-30**

**Statutes/Other Implemented:** ORS 471.030, 471.040, 471.178, 471.186, 471.200, 471.223, 471.227, 471.315(1)(a)(H), 471.351(1), 471.405(1), 471.408, 471.412, 471.675, 471.730 & 471.446