

For your information

The Oregon Liquor Control Commission has:

Amended

Adopted

Suspended

OAR 845-025-1115
PERMANENT

Effective Date: May 16, 2021

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

845-025-1115

Denial of Application

(1) The Commission must deny an initial or renewal application if:

(a) An applicant is under the age of 21.

(b) The applicant's land use compatibility statement shows that the proposed land use is prohibited in the applicable zone, if a land use compatibility statement is required.

(c) The proposed licensed premises is located:

(A) On federal property.

(B) On reservation or tribal trust land of a federally recognized Indian tribe unless that tribe has entered into an agreement with the State of Oregon which allows licensing of recreational marijuana businesses.

(C) At the same location as a **producer, retailer**, processor, **wholesaler**, or **laboratory** license, unless the licenses are of different types and all of the licenses at the location are held or sought by identical applicants. **For the purpose of this paragraph, "at the same location" means that any area of the proposed licensed premises is within the licensed premises of another license.**

(d) The location proposed to be licensed is prohibited under OAR 845-025-1230.

(e) The proposed licensed premises of a processor who has applied for an

endorsement to process extracts is located in an area that is zoned exclusively for residential use.

(f) The proposed licensed premises of a retail applicant is located:

(A) Except as provided in ORS 475B.109, within 1,000 feet of:

(i) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or

(ii) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030.

(B) In an area that is zoned exclusively for residential use.

(g) The proposed licensed premises of a wholesaler applicant is in an area zoned exclusively for residential use.

(h) A city or county has prohibited the license type for which the applicant is applying, in accordance with ORS 475B.968.

(2) The Commission may deny an initial or renewal application, unless the applicant shows good cause to overcome the denial criteria, if the Commission has reasonable cause to believe that:

(a) The applicant:

(A) Is in the habit of using alcoholic beverages, habit-forming drugs, marijuana, or controlled substances to excess.

(B) Has made false statements to the Commission.

(C) Is incompetent or physically unable to carry on the management of the establishment proposed to be licensed.

(D) Is not of good repute and moral character.

(E) Does not have a good record of compliance with ORS 475B.010 to 475B.545, or these rules, prior to or after licensure, including but not limited to:

(i) The giving away of marijuana items as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind, in violation of ORS 475B.333;

(ii) Providing marijuana items to an individual without checking that the individual is 21 or older;

(iii) Unlicensed transfer of marijuana items for financial consideration; or

(iv) Violations of local ordinances adopted under ORS 475B.486, pending or adjudicated by the local government that adopted the ordinance.

(F) Does not have a good record of compliance with ORS Chapter 471 or any rules adopted thereunder.

(G) Is not possessed of or has not demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed.

(H) Is unable to understand the laws of this state related to marijuana or these rules. This may be demonstrated by violations documented by the Oregon Health Authority.

(I) For license renewal, has not submitted all fees, forms, documents and information required to act on the renewal application that is pending on or after January 1, 2019 within the time period prescribed by the Commission.

(J) Has, or previously had, an unapproved ownership interest in a license issued by the Commission other than as provided in OAR 845-025-1160(4).

(b) Any individual listed on the application has been convicted of violating a general or local law of this state or another state, or of violating a federal law, if the conviction is substantially related to the fitness and ability of the applicant to lawfully carry out activities under the license, except as specified in ORS 475B.045(3). The Commission may consider factors set forth in subsection (8) of this rule to determine if this refusal basis is supported or overcome.

(c) Any applicant is not the legitimate owner of the business proposed to be licensed, or other persons have an ownership interest in the business have not been disclosed to the Commission.

(d) The business proposed to be licensed is located:

(A) At the same physical location or address as a premises licensed under ORS Chapter 471 or as a retail liquor agent appointed by the Commission; **or**

(B) At the same address as a producer, retailer, processor, wholesaler, or laboratory license, unless the licenses are of different types and all of the licenses at the location or address are held or sought by identical applicants.

(e) The proposed licensed premises of a producer applicant is on the same tax lot as another producer licensee under common ownership.

(f) The proposed licensed premises of a producer is located on the same tax lot as a site registered with Oregon Department of Agriculture for the production of industrial hemp, unless the applicant submits and the Commission approves a control plan describing how the registered site shall be separated from the premises proposed to be licensed and how the applicant shall prevent transfer of industrial hemp to the licensed premises.

(g) The applicant proposed to be licensed does not have access to the proposed license premises.

(h) The proposed licensed premises of the producer applicant is on the same tax lot as another producer licensee and the presence of multiple producers on the same tax lot creates a risk of non-compliance with any of these rules.

(i) The applicant is a business entity that is required to be registered with the Oregon Secretary of State but has failed to register.

(3) The Commission may refuse to issue a license to any license applicant or refuse to renew the license of any licensee **or laboratory licensee** when conditions exist in relation to any person having a financial interest in the business or in the place of business which would constitute grounds for refusing to issue a license or for revocation or suspension of a license if such person were the license applicant, **licensee or laboratory** licensee.

(4)(a) The Commission may deny any initial or renewal application and may revoke any license if medical marijuana items are produced, processed, stored, sold or transported, to or from the same address or location of licensed business or business proposed to be licensed.

(b) The Commission will not deny an initial application under this subsection if:

(A) The applicant surrenders any registration issued by the Authority for the address or location of the business proposed to be licensed;

(B) If applicable, the applicant notifies all other growers registered by the Authority at the location or address proposed to be licensed, in a form and manner prescribed by the Commission, that the grower is no longer permitted to produce medical marijuana at the address or location proposed to be licensed and must surrender his or her registration at that address or location; and

(C) All medical marijuana activity at the location or address proposed to be licensed ceases prior to being issued an OLCC license.

(5) If the Commission denies an application because an applicant submitted false or misleading information to the Commission, the Commission may prohibit the applicant from re-applying for five years.

(6) The Commission may revoke a license for any of the reasons that it may deny a license.

(7) A notice of denial must be issued in accordance with ORS 183.

(8) Factors that may support or overcome license denial pursuant to subsection (2)(b) of this rule. These factors may have occurred before or after the incident or incidents that are relevant to the specific criterion. The factors may be weighed in favor of the

applicant, weighed against the applicant, or weighed neither for nor against the applicant.

(a) Definitions. For purposes of this subsection:

(A) "Administrative violation" means an administrative agency has taken a final action finding that an individual, or a legal entity that the individual is part of, violated a regulation of that administrative agency.

(B) "Compliance risk factors" means factors that show the individual's tendency to disobey laws, rules, and regulations; including but not limited to probation and parole violations, non-relevant convictions, and administrative violations.

(C) "Relevant conviction" means a conviction, other than those listed in ORS 475B.045(3), that involved violence or the threat of violence; dishonesty or deception; drugs, alcohol, or other regulated substances; non-compliance with driver license requirements; or a conviction as a felon in possession of a weapon.

(D) "Successful treatment" means:

(i) The Commission receives written confirmation from the individual's licensed treatment provider that the individual completed treatment that is related to a relevant conviction and the Commission has determined that the individual has not had another conviction for a similar incident since the completion of the treatment; or

(ii) The individual is still in a treatment program that is related to a relevant conviction; however, the Commission receives written confirmation from the individual's licensed treatment provider that the individual has demonstrated sufficient success towards stopping the behavior that led to the conviction and the Commission has determined that the individual has not had another conviction for a similar incident since the date the provider determined that the individual demonstrated sufficient success towards stopping the behavior that led to the conviction.

(b) Upon the Commission's determination that a basis to refuse the application has been established under this criterion, the Commission may consider the following factors and may consider other factors, depending on the facts of the case:

(A) Passage of time, whichever date is later:

(i) Since the date of the most recent incident that led to a relevant conviction, but not counting time spent incarcerated or other factors the Commission determines affect the passage of time; or

(ii) Since the date of the most recent compliance risk factor, but not counting time spent incarcerated or other factors the Commission determines affect the passage of time.

(B) Compliance risk factors.

(C) Successful treatment.

(D) The severity of the individual's relevant conviction record as shown by the number of convictions, whether a conviction was a felony or non-felony, and whether a conviction involved violence or the manufacture or delivery of controlled substances.

(E) The individual's record of compliance with the Commission.

Statutory/Other Authority: ORS 475B.025

Statutes/Other Implemented: ORS 475B.040, 475B.045, 475B.063, 475B.070, 475B.090, 475B.100, 475B.105, 475B.560 & 475B.968