NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 845
OREGON LIQUOR CONTROL COMMISSION

FILING CAPTION: The amendments implement a license application fee for new liquor licensees or change in ownership.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/10/2018 5:00 PM
The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Bryant Haley
503-872-5136
bryant.haley@oregon.gov

9079 SE McLoughlin Blvd.
Portland, OR 97222

Filed By: Bryant Haley
Rules Coordinator

HEARING(S)
Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/28/2018
TIME: 10:00 AM - 11:00 AM
OFFICER: Bryant Haley
ADDRESS: Oregon Liquor Control Commission
9079 SE McLoughlin Blvd
Portland, OR 97222

NEED FOR THE RULE(S):
HB 2480 passed during the 2015 Oregon legislative session makes several changes to how the Commission processes applications. Specifically, HB 2480 authorizes the OLCC to charge an application fee for a new license or a change of ownership. Further, HB 2480 requires a refund of the application fee if no license decision is made within 75 days. The amendments align the rule with the statutory requirements.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:
House Bill 2480 from the 2015 Legislative Session; available upon request from Legislative Counsel
ORS 471.311; available upon request from Legislative Counsel
License Application Fee Package rulemaking file; available upon request from the OLCC

FISCAL AND ECONOMIC IMPACT:
This statement takes into account the fiscal impact on: (a) Recreational Marijuana Licensees; (b) Local Government; (c) State Agencies; and (d) the Public.
(a) Liquor Licensees.

New Liquor licensees and businesses applying for a change in ownership will face a financial impact of paying an application fee for licenses.

These rules will have a neutral fiscal impact upon other licensees, as this fee will only apply to new licensees or change in ownership.

(b) Local Government.

The Commission expects the proposed amendments to have no impact upon local governments, as the rules does not apply to them.

(c) State Agencies.

The Commission expects the proposed amendments to have no impact upon other state agencies, as the rules does not apply to them.

The Oregon Liquor Control Commission will be required to collect and process the application fee. This will require processing and passing the monies through the agency. Further, the Commission will need to find process efficiencies to meet the 75 day deadline to avoid refunding the application fees. The additional funds collected may have a positive fiscal impact upon the agency.

(d) The Public.

The Commission forecasts that the proposed amendments may have an impact upon the public, as the consumer may see an increase in cost. Any cost increase in licensing costs could filter down to the consumer.

COST OF COMPLIANCE:
(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s). (1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).
1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Commission anticipates no new costs to comply with the proposed amendments for most state agencies and local government. However, the Commission will have face some impact of having to process new fees and allocate them as appropriate. Further, the Commission will need to find process efficiencies to meet the 75 day deadline to avoid refunding the application fees.

The consumer may see an increase in cost, as any cost increase in licensing costs could filter down to the consumer.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The license application fee would effect all businesses applying to obtain a liquor license or a licensee making a change in ownership.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The application fee being implemented via this rulemaking is statutory and the Commission is required to charge this fee. That said, the Commission does anticipate some increased administrative costs to comply with filing and paying the fee.

c. Equipment, supplies, labor and increased administration required for compliance:

The application fee being implemented via this rulemaking is statutory and the Commission is required to charge this fee. That said, the Commission does anticipate some increased administrative costs to comply with filing and paying the fee.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Commission held an advisory committee meeting on September 25, 2018.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES
RULES PROPOSED:
845-005-0312, 845-005-0314

AMEND: 845-005-0312

RULE SUMMARY: HB 2480 passed during the 2015 Oregon legislative session makes several changes to how the Commission processes applications. Specifically, HB 2480 authorizes the OLCC to charge an application fee for a new license or a change of ownership. Further, HB 2480 requires a refund of the application fee if no license decision is made within 75 days. The amendments align the rule with the statutory requirements.

CHANGE TO RULE:

845-005-0312
Forms Required Application for New License Applications or Change in Ownership License ¶

(1) As a part of the application:
(a) The applicant ORS 471.311 requires the Commission to charge an application fee to process an application for a new license or a license shall submit a completed Liquor License following a change in ownership. This rule describes the Application process for these license actions. ¶
(b1) The licensee submitting a request for approval of a change as required by Commission rules must submit a signed and dated request in writing. Definitions. For this rule: ¶
(a) "Annual license" means licenses issued under ORS 471.175, 471.178, 471.186, 471.200, 471.221, 471.223, 471.227, 471.230, 471.235, and 471.242. ¶
(b) "Application fee" means a nonrefundable fee for each class of annual license for which the applicant has applied. The fee is equal to the annual license fee as described in ORS 471.311 but no more than $150 per license. ¶
(c) "Application for a change in ownership license" means an application for an annual license: ¶
(eA) All individual applicants, all general partners in a limited partnership, limited partners whose investment commitment is ten percent or more of the total investment commitment, all members in a limited liability company or partnership whose investment commitment an address with a current liquor license; ¶
(B) The application is for an annual license of a type currently issued to that address; ¶
(C) All applicants are different from the current licensee or licensees of record; and ¶
(D) If the application is approved by the Commission, the current licensee or licensees of record will no longer be a licensee of record at the address. ¶
(d) "Application for a new license" means an application for an annual license: ¶
(A) At an address that does not have a current liquor license; ¶
(B) By a licensee for an additional or different class of liquor license at an address where the licensee holds a current license; ¶
(C) By a licensee to add one or more co-licensees to a license at that address; or ¶
(D) By a new applicant for membership interest is ten percent or greater, all directors who own a new license at an address with a current license and the current licensee will remain as a licensee at that address. ¶
(e) "Initially completed application" means the Commission determined that an application for a change in ownership license or an application for control three percent or more of the voting stock, principal officers (as defined in OAR 845-006-0475) of corporate applicants, and all natural person stockholders owning or controlling ten percent or more of the voting stock of corporate applicants will submit a completed Individual History form. ¶
(d) All applicants will submit a statement of funding, and verify a new license contained all of the forms, documents, information, and fees required by the Commission and the Commission determined that all of the forms, documents, information, and fees were complete, accurate, legible, and correct. ¶
(f) "Entity" means an association, corporation, limited liability company, partnership, trust or any similar entity that has legal standing under the laws of Oregon or another state within the United States. ¶
(g) "Legible" means the form, document, or other information is in the English language and has been typed.
(h) "Propose that the license be granted, granted with restrictions, or refused" or "proposed licensing decision" means the Commission’s Administrator or designee has provided written or electronic notification to the applicant that it proposes the license be granted, granted with restrictions, or refused.

(2) An applicant for an annual license that is a new license or change in ownership license must submit any applicable additional financial information, including, but not limited to, a financial statement and documentation of the origination of funding to the Commission. The application must contain the forms, documents, information, and fees required by the Commission to accept an application and the forms, documents, information, and fees must be complete, accurate, legible, and correct. The forms, documents, information, and fees required by the Commission to accept an application are:

(a) Liquor License Application form.

(eb) Any applicant that is a registered entity, and any registered entity that has a ten percent or greater ownership interest in an applicant-registrant entity, must complete a questionnaire that lists, as appropriate, the officers, directors, shareholders, general and limited partners, or members of the entity. If a corporation has more than twenty shareholders or a limited partnership has more than twenty limited partners, only those Individual History forms. All persons identified in (6) of this rule are required to submit this form.

(c) Entity questionnaire. All entities as identified in (7) of this rule are required to submit this form.

(d) Business Information form.

(e) Proof that the applicant provided written notice to the local government per OAR 845-005-0304(3) or proof that the applicant is not required to submit the application to the local government.

(f) Proof that the applicant has, or will have, access to the real property at the address of the proposed licensed premises.

(g) The nonrefundable application fee for each class of license for which the applicant has applied.

(3) The Commission may:

(a) Refuse to accept an application that does not contain all of the forms, documents, information, and fees required by the Commission or the forms, documents, information, and fee amount are not complete, accurate, legible, and correct; or

(b) Determine that an application is an initially completed application, and if such a determination is made, the Commission will provide written or electronic notification to the applicant of the date of the initially completed application.

(4) After the initially completed application date, the Commission may require applicants to submit Individual History forms from managers when additional forms, documents, information, and fees necessary for the Commission to make a proposed licensing decision. The applicant is inexperienced or new to the industry, or when the applicant will not personally manage the premises, or when the applicant must continue to maintain the application as complete by providing to the Commission all forms, documents, information, and fees required by the Commission and the forms, documents, information, and fees must be complete, accurate, legible, and correct. An applicant fails to maintain a completed application if:

(a) After the initially completed application date, the Commission provides written or electronic notice to the applicant that the applicant’s premises has a history of problems or is located in a problem area. For purposes of this rule a manager is an individual who has the authority to act on behalf of the applicant.

(b) The applicant’s premises has a history of problems or is located in a problem area. For purposes of this rule a manager is an individual who has the authority to act on behalf of the applicant.

(c) The applicant does not provide the premises.

(2) For the purposes of this rule, a registered entity is a legal form of organization required to register as such with the Oregon Secretary of State and includes such forms as a corporation, limited liability company, limited liability partnership and limited partnership. Trusts, family trusts, and general partnerships are not registered entities for the purposes of this requested forms, documents, information, or fees to the Commission that are complete.
accurate, legible, and correct the Commission will refuse to process the application and the applicant will not be entitled to receive a refund of the application fee; or

(B) If after the 10 calendar days, but within a total of 30 calendar days after the notice, the applicant does provide the requested forms, documents, information, or fees to the Commission that are complete, accurate, legible, and correct the Commission will process the application; however, the applicant will not be entitled to receive a refund of the application fee.

(b) After the initially completed application date, the Commission receives notice that the funds for the application fee are unavailable to the Commission, such as by non-sufficient funds (NSF) or a stop payment on a check. The Commission provides written or electronic notice to the applicant that the funds were unavailable.

(3A) If a legal entity applying for a license is wholly owned by another legal entity and was created in whole or in part to apply for the license, the Commission may require the parent legal entity to provide the requested forms, documents, information, or fees to the Commission that are complete, accurate, legible, and correct the Commission will process the application; however, the applicant will not be entitled to receive a refund of the application fee.

(B) If the applicant pays the application fee in cash or by money order within 10 calendar days of the notice the Commission will process the application; however, the applicant will not be entitled to receive a refund of the application fee.

5 All application fees assessed under this rule are nonrefundable, except that the Commission:

(a) Shall refund the fee if the applicant maintained a completed application and the Commission did not, on or before 75 days following the date of the initially completed application, issue the license or issue a proposed licensing decision; or

(b) May apply the fee to the license fee if the applicant maintained a completed application and after the 75 days following the date of the initially completed application the Commission proposes to grant the license or grant the license.

Process Director may waive the requirements of this rule to take account of unusual or extraordinary circumstances. These circumstances may include the following:

(a) Previous licensing by the Commission of the applicant;

(b) General reputation with restrictions.

6 Individual History form.

(a) When the applicant is an individual, the individual must submit this form.

(b) When the applicant is an entity:

(A) If the entity provides proof it is listed on an exchange registered with the U.S. Securities and Exchange Commission, no person needs to submit this form.

(B) If the entity is not listed, or cannot provide proof that it is listed, on an exchange registered with the U.S. Securities and Exchange Commission, all natural persons defined as an applicant or licensee per OAR 845-006-0301 must submit this form.

7 Entity Questionnaire.

(a) All entity applicants must submit this form.

(b) An entity that owns 10% or greater of the entity applicant;

(c) Information from other state or federal regulatory agencies that the entity is not listed, or cannot provide proof that it is listed, on an exchange registered with the U.S. Securities and Exchange Commission.

(5) ORS 471.757 allows the Commission to deny, cancel or suspend a license if an unlicensable person has any financial interest must also submit this form.

(8) Nothing in this rule prohibits the Commission from withdrawing a proposed licensing decision if the Commission receives information that would alter its proposal that a license be granted, granted with restrictions, or refused.

(9) After accepting an application as initially complete, the business or place of business. The Commission may require a personal history or fingerprints from any person who has a financial interest in the licensed business to
help determine if this person is licensable. Applicant fails to maintain a completed application, the Commission may refuse to process the application per OAR 845-005-0315 and the application fee is nonrefundable.

(10) After an application is accepted as initially complete, the applicant may provide written or electronic notice to the Commission that it is withdrawing the application. The application fee is nonrefundable if the applicant withdraws the application.

(611) Nothing in this rule prevents the Commission from requiring additional information, documents, or information from the applicant or from other persons where there is reason to believe that these forms, documents, or information may help the Commission determine the merits of a license application or to otherwise perform its statutory duties.

[ED. NOTE: Forms referenced are available from the agency.]

Statutory/Other Authority: ORS 471, including 311, 471.030, 471.040, 471.730(1), (5)

Statutes/Other Implemented: ORS 471.757
AMEND: 845-005-0314

RULE SUMMARY: HB 2480 passed during the 2015 Oregon legislative session makes several changes to how the Commission processes applications. Specifically, HB 2480 authorizes the OLCC to charge an application fee for a new license or a change of ownership. Further, HB 2480 requires a refund of the application fee if no license decision is made within 75 days. The amendments align the rule with the statutory requirements.

CHANGES TO RULE:

845-005-0314

Refusal to Accept an Application

Application or Request for a License Action that is not a License Renewal and the License Action is for other than a New License or Change in Ownership License

(1) ORS 471.311(2) authorizes the Commission to reject any application that is not in the form required by rule. This rule defines the required form of a complete application. The Commission shall reject any application that is not in the form required by this rule. The Commission shall give applicants the opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

(2) Any Commission forms, statements or requests required as part of an application shall be completed legibly to qualify for acceptance. To be legible as required by this rule, a form, statement or request must be signed and dated by the applicant and made or completed:

(a) In the English language;

(b) By typing or by printing that is clearly legible to Commission staff.

Application or Request for a License Action

that is not a License Renewal and the License Action is for other than a New License or Change in Ownership License

(3) Any floor or plot plan sketches required by this rule shall be completed legibly in ink on application or request submitted to the Commission’s Floor Plan form, be reasonably to scale and set forth in a manner that allows a person unfamiliar with the property to understand the general layout of the premises, and the boundaries and uses of areas proposed to be licensed.

(4) A complete application shall include any forms, statements or requests required by OAR 845-005-0312, all fully completed and signed and dated.

(5) A complete application shall include disclosures and documentation regarding parties with ownership or financial interest as defined by OAR 845-005-0311 as follows:

(a) Documentation of funding sources described on the Statement of Funding form. For instance, if funding is from a bank loan, documentation may be a copy of the loan agreement or the bank’s written verification of loan commitment. Commission staff may require further documentation in the course of license investigation;

(b) Lease summary form(s) if the applicant is leasing the real property, equipment, furnishings or business at the location proposed to be licensed;

(c) Purchase agreement summary form(s) if the applicant is buying the real property, equipment, furnishings or business at the location proposed to be licensed and, if the purchase transaction has not been closed, a copy of the applicant’s accepted earnest money agreement; information, and fees required by the Commission and the forms, documents, furnishings or business at the location proposed to be licensed;

(d) Franchise agreement summary form(s) the Commission may form if the applicant is or will be a franchisee at the location proposed to be licensed;

(e) If the applicant is not an individual, but is a registered entity as defined in OAR 845-005-0312(2) (for instance a corporation, a limited partnership, a LLC) and registered as such with the Oregon Secretary of State, a copy of such registration and a completed form showing the individuals and persons who are the owners, principals, directors, officers, trustees, investors, members or partners in the applicant registered entity;

(f) If any owner, member or partner with a 10% or greater ownership interest in the applicant registered entity is itself a registered entity, the applicant shall provide a completed form showing the individuals and persons who
are the owners, principals, directors, officers, trustees, investors, members or partners in that registered entity.

(6) A complete application shall include documentation and disclosures that record how the applicant proposes to operate the licensed business, and demonstrate the applicant’s qualification for a liquor license, as follows:

refuse

to accept an application or request that does not contain all of the forms, documents, information, and fees required by the Commission or the forms, documents, information, and fee amount are not complete, accurate, legible, and correct.

(a) Floor or plot plan sketch showing the areas proposed to be licensed for any Full or Limited On-Premises Sales license or Brewery Public House license, including identification of table seating that meets the dining seating requirement of OAR 845-006-0460 or 845-006-0461 if the application is for a Full On-Premises license;

(b) Floor or plot plan sketch showing the proposed on-premises alcohol service or consumption areas of any manufacturer's licensed premises;

(c) Operating data questionnaire form if the applicant will sell alcoholic beverages at retail;

(d) Food service proposal form if the application is The Commission may refuse to process an application or request if the applicant neglects for a license or privilege that requires food service to patrons at the licensed premises.

(e) All supporting documents required as attachments to the Commission's food service proposal form;

(f) If the application is by a private club for a Full On-Premises Sales license, a copy of the club's charter and copies of documents refuses to provide in a timely manner any form, document, information, of current dues-paid club membership of 200 or more members with voting rights in the affairs of the club fee requested by the Commission.

Statutory/Other Authority: ORS 471, including 471.030, 471.040, 471.730(1), (5), ORS 471.311

Statutes/Other Implemented: ORS 471.311(2)