

B. LICENSING/RENEWAL

B.1. General Criteria for Licensing

B.1.a. Public Interest or Convenience

B.1.a.1. Problems at Other Licensed Premises (OAR 845-005-0326(1)) [(OAR 845-05-026(1))]

B.1.a.2. Proximity to Facilities (OAR 845-005-0326(2)) [Proximity to Facilities (OAR 845-05-026(2)(a); School Objections, [OAR 845-05-025(2)(a)]; Church Objections, (OAR 845-05-025(2)(b); Hospital Objections, (OAR 845-05-025(c))]

Applicant sought to locate the premises within 500 feet of a park and child-oriented facility. The Commission found that when the premises was previously licensed, there were problems in the park which included alcohol-related litter (broken glass), consumption of alcohol in the park, intoxicated men passed out in the park, loud music from cars illegally parked near tables in the park, panhandling, and people being confronted and disruptive in the park and around the community center. The Commission concluded that alcohol sales at the proposed premises would adversely affect the park, and that OAR 845-005-0026(2) provided a basis to deny the license. However, the Commission concluded that good cause to overcome the denial basis existed in that the proposed operation was consistent with the zoning where the proposed premises was to be located, the proposed operation was consistent with the general area, and the adverse impact would not unreasonably affect the park and community center. The finding that the adverse impact would not unreasonably affect the facility was based on the conclusion that the area where the premises and facility are located had changed due to factors other than the fact that liquor was no longer sold at this location, that the previous problems had been taken care of largely due to police and community involvement, and that there was a change in the character of the neighborhood. These changes, coupled with Applicant's responsible mode of operation, experience, and good compliance record at a previous premises also located next to a park, convinced the Commission that, if restrictions were placed on the license, the adverse impact of alcohol sales at the premises would not unreasonably affect the park and community center. *Civic Food Mart*, OLCC-99-L-014, December 2000.

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B. LICENSING/RENEWAL

B.1.a.2. Proximity to Facilities (OAR 845-005-0326(2)) (continued)

[Proximity to Facilities (OAR 845-05-026(2)(a); School Objections, [OAR 845-05-025(2)(a)]; Church Objections, (OAR 845-05-025(2)(b); Hospital Objections, (OAR 845-05-025(c))]

Commission concluded that licensing would adversely affect park when: 1) there was a significant reduction in the number of incidents in the park of drinking in public by minors and adults, minors intimidating adults to furnish them with alcohol, gang graffiti and activity, litter, and vandalism, after the previous owner's license was canceled and alcohol was no longer sold at these premises; 2) there continued to be a significant gang presence in the neighborhood; 3) unlawful activities and disturbances related to minors and gangs that were a constant problem in the park before the preceding owner's license was canceled, shifted down the street to other licensed markets where they continue despite an increase in police patrols designed to disperse and discourage such behavior; and 4) the unlawful activities and disturbances associated with the sale of alcoholic beverages at the market in the past were likely to return if the license were issued. *Fast Market*, OLCC-94-L-006, May 1995.

OAR 845-05-026(2) did not provide a reason to deny the license where the evidence failed to show that the premises would have an adverse impact on the park. The fact that when the applicants had a temporary license to sell alcoholic liquor none of their customers consumed in the park or littered the park with alcoholic beverage containers was persuasive evidence that the premises would not adversely impact the park. And, even if the evidence had shown adverse impact, the applicant showed good cause to overcome any adverse impact because the operation was consistent with the zoning and the general character of the area, and the adverse impact would not unreasonably affect the park. *Dekum Food Market*, OLCC-90-L-005, May 1991.

Package Store license denied where license would significantly interfere with the treatment of resident alcoholic patients at hospital department located within 500 feet. Plaid Pantries, Inc., *Plaid Pantry Market No. 144*, OLCC-85-L-042, September 1986. (OAR 845-05-025(2)(c)).

Good cause found to overcome church objections where evidence did not prove that license issuance would interfere with any of the activities peculiar to churches that OAR 845-05-025(2)(b) is designed to address. Plaid Pantries, Inc., *Plaid Pantry Market No. 144*, OLCC-85-L-042, September 1986. (OAR 845-05-025(2)(b)).

OAR 845-05-025(2)(c) applied where a hospital department that administered medical treatment to resident patients was located within 500 feet of the proposed outlet, even though the main hospital was located two miles from the proposed outlet. Plaid Pantries, Inc., *Plaid Pantry Market No. 144*, OLCC-85-L-042, September 1986. (OAR 845-05-025(2)(c)).

Good cause was found for overcoming the objection of a church when the evidence did not show that the license would have an adverse effect on the functioning of the church, and because an existing licensee was near to the church. Southland Corporation, *7-Eleven Food Store*, OLCC-84-L-014, May 1985. (OAR 845-05-025(2)(b)).

B.1.a.2.

B. LICENSING/RENEWAL

B.1.a.2. Proximity to Facilities (OAR 845-005-0326(2)) (continued)

[Proximity to Facilities (OAR 845-05-026(2)(a); School Objections, [OAR 845-05-025(2)(a)]; Church Objections, (OAR 845-05-025(2)(b); Hospital Objections, (OAR 845-05-025(c))]

Church objection that patrons of proposed licensed premises will engage in criminal acts must be supported by something more than speculation. *Southland Corporation, 7-Eleven Food Store*, OLCC-84-L-014, May 1985. (OAR 845-05-025(2)(b)).

A church's objections showed unfavorable consideration where license issuance would be likely to increase noise and shouting and would be disturbing to the church and its parsonage. The Commission noted that the church had been at its location longer than the applicant, and that the church had objected to the granting of the original beer and wine license to the applicant. *Clare A. Ericson, Jr., and Clare A. Ericson, Sr., Pogy's Pub*, April 1984. (OAR 845-05-025(2)(b))

Good cause shown to overcome church objection because peak hours at church and tavern do not conflict, because no specific interference with church activities shown, because tavern located in downtown area zoned appropriately for tavern, and because strong public support for tavern shown. *Waylon & Willie's, Inc., Waylon & Willie's*, June 1983. (OAR 845-05-025(2)(b))

Application for a Package Store license was granted despite church opposition because the church facility operated only a small portion of the year and because the distance from the store to the church indicated that the actual effect of the license upon the church would be small. *Donald and Eleanor McDougal, Mill Creek General Store*, January 1983. (OAR 845-05-025(2)(b))

A Package Store application was denied where the store would be located immediately across the street from the local schools, where there was a teenage drinking problem in the community and where the next nearest PS outlet was only .25 miles away. *Robert W. Lindell, Corbett Cow*, June 1984. (OAR 845-05-025(2)(a))

Objections concerning the public health and safety found to be of greater weight than support based on public convenience. *Robert W. Lindell, Corbett Cow*, June 1984. (OAR 845-05-025(2)(a))

Church objections held not to apply as refusal grounds where church's objections were not based on any anticipated conflict between the operations of the applicant and the church. *Robert W. Lindell, Corbett Cow*, June 1984. (OAR 845-05-025(2)(b))

B.1.a.2.

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B.1.a.3. Problem Areas (OAR 845-005-0326(3)) [OAR 845-05-026(3)]

Applicants failed to demonstrate that sale or service of alcoholic beverages at the premises would not substantially contribute to the problems in the area where: (1) applicants have no consistent track record of problem-controlled alcohol service at the premises; and (2) they have not demonstrated that the introduction into the problem area of large numbers of persons at music events 2-3 times a week, combined with alcohol service, will not contribute to existing problems associated with alcohol consumption (public drinking and drunkenness, public urination, and litter), the large number of additional automobiles parked on the street (car prowls), competition for parking spaces (trespass and potential assaults), and the exposure of large numbers of patrons to the dangers of the area while transiting between the premises and automobiles on unlit streets (panhandling, theft, and potential assaults). *B Complex*, OLCC-01-L-002, February 2002.

Other uses to which a building may be put should a liquor license be refused is irrelevant to a determination of good cause. To find otherwise would, ultimately, require the Commission to explore and determine that there are alternative uses for a premises that would not have a greater adverse impact on the problem area before denying a liquor license under OAR 845-005-0326(3). Such an undertaking would be far outside the charge or expertise of the Commission. *B Complex*, OLCC-01-L-002, February 2002.

To satisfy OAR 845-005-0326 (3)(b)(B), the plan must demonstrate a willingness and the ability to adequately control the proposed premises and patrons' behavior near the licensed premises. Willingness can, in many instances, be demonstrated by the existence of a reasonable compliance plan; ability cannot. To determine ability, the plan must be examined in the context of the dimensions of the business proposal as it relates to the sale or service of alcohol, the character of the problem area, and other facts that bear upon a determination of whether the plan and its agent are likely to succeed, in the context of the problem area and the business proposal, in the objective of controlling the proposed premises and the patrons' behavior near the premises.

While selecting out types of music entertainment that tend to attract problem crowds is relevant and indicative of a willingness to control the premises and the patron's behavior, an exclusive focus on the type of entertainment overlooks the impact of the sheer number of people, combined with the service of alcohol, who are being introduced into a problem area, with its particular characteristics and conditions. Such a narrow focus foregoes the inquiry into the impact that number of patrons, interacting with those conditions, will have on existing problems of the area and the consequent ability to control exacerbation of those problems, if any. *B Complex*, OLCC-01-L-002, February 2002.

The specific license restrictions applicants offered to accept, and which the Commission considered under OAR 845-005-0355(1)(a), were insufficient to provide good cause to overcome the problem area refusal basis.
B Complex, OLCC-01-L-002, February 2002.

B.1.a.3.

B. LICENSING/RENEWAL

B.1.a.3. Problem Areas (OAR 845-005-0326(3)) (continued) [OAR 845-05-026(3)]

The Commission has considered the following factors as bearing on the willingness aspect of the good cause requirement: the willingness to have and operate under a compliance plan; the willingness to have restrictions placed on the license; cooperation with Regulatory staff, law enforcement personnel, and the community impacted, particularly in developing a plan and collaborative problem-solving commitments; financial investment; and membership in and commitment to the community. Factors bearing on ability have been: the nature and scope of the business proposal as it relates to the sale/service of alcohol; the contents of the plan to control the impact of alcohol service/sales; the acceptance of restrictions to the license that will ensure ability to control; applicant's compliance history; the current levels of problem activities in the problem area, without the addition of another liquor outlet; the character of the problem area, including unique conditions affecting the ability to control, such as history of the establishment, history of the area, type of population, etc; and support or opposition by the community based upon perceived impact of alcohol sales/service. *B Complex*, OLCC-01-L-002, February 2002.

The Commission concluded that applicants did not have a plan that demonstrated ability to control the premises and the behavior of patrons near the premises where insufficient security staff have been committed to patrolling the extended area hundreds of patrons would have to traverse on foot between the premises and available parking, through an unlit area with identified existing problems and a high transient population; and where conditions specific to the location prevent applicants from having the ability to control problems that would arise if applicants' plan to serve alcohol and entertainment to 640 patrons 2-3 nights a week was allowed a license. These unique conditions include the physical constraints of the area; the persistence of high transient, homeless, and the alcohol and/or drug-impacted population in the area; the history of serious and persistent problems of the prior licensee at this premises; the neighborhood's history of serious and persistent problems; the persistence of identified problems, without the addition of large numbers of people several times a week with direct access to alcohol; and the exacerbation of the problems projected from that addition. Applicants' plan for the addition of crowds of patrons the size proposed, when coupled with the service of alcohol, and projected into the area near the premises, given its character and unique conditions, is not a plan demonstrating applicants' ability to adequately control patrons' behavior near the licensed premises. *B Complex*, OLCC-01-L-002, February 2002.

Potential traffic congestion and shortage of parking spaces in the area do not, in themselves, constitute grounds for license refusal under OAR 845-005-0326(3) as unlawful activities, noise, or disturbances. *B Complex*, OLCC-01-L-002, February 2002.

While the fact that a premises is located in an alcohol impact area is not, by itself, a basis to deny a license, the fact that an area has been so designated is evidence to show that the area has the kind of problems identified in the underlying criteria establishing the alcohol impact area designation.
B Complex, OLCC-01-L-002, February 2002.

B.1.a.3.

B. LICENSING/RENEWAL

B.1.a.3. Problem Areas (OAR 845-005-0326(3)) (continued) [OAR 845-05-026(3)]

The Commission found that the area where the premises will be located had a history of serious and persistent problems which provided a basis to deny a license to Applicant, as evidenced by: unlawful activities; noise, and disturbances, including loud and threatening behavior; drinking in public; public urination; panhandling; loud music; drug activity; arguments and fights; and excessive litter (broken glass). The Commission concluded there was good cause to overcome the denial basis where Applicant had a comprehensive plan, and agreed to restrictions, which, together, demonstrated a willingness and ability to adequately control the proposed premises and patrons' behavior near the licensed premises. *Civic Food Mart*, OLCC-99-L-014, December 2000.

The Commission concluded that the proposed premises would be located in an area that has a history of serious and persistent problems pursuant to OAR 845-005-0026(3), where the record showed the following: the Milton-Freewater Police Department received more calls for service to this area than other areas of town – approximately 1,000 calls for service concerning unlawful activities and disturbances within an approximately one and one-half year period; youth gangs, gang fights, graffiti, and vandalism had been reported in the area; and 18 incidents involving illegal controlled substances had been reported in the one year prior to the hearing at liquor establishments located across the street.

However, the Commission concluded that Applicants showed good cause to outweigh the problem area refusal basis because Applicants showed that they had a willingness and ability to control the premises. The Commission accepted as evidence of willingness, the Applicants' involvement in the community as demonstrated by his purchase of the real property the premises is located upon, the operation for a period of time of a bakery, his active participation in the local chamber of commerce, and providing jobs for others at his premises. The Commission accepted as evidence of ability to control the premises the fact that problem incidents have decreased at the premises at Applicants' initiative, and that Applicants have a plan for operating the premises that will enable them to control the premises in the future. The Commission granted a license with restrictions regarding how the premises are to be operated. *Lourdes Family Bakery*, OLCC-97-L-016, July 1998.

Despite an applicant's willingness to control problems, the Commission denied package store license after concluding that the sale of alcohol will substantially contribute to the neighboring area's problems with disturbances and unlawful activities based upon: the market's proximity to a park and a parking lot, the history of problems in the park and parking lot when alcohol was sold at this market in the past, the absence of such problems near the store since after the preceding owner's license was canceled, and the current gatherings and gang activity near other alcohol outlets in the neighborhood that are associated with the sale of alcohol at those outlets. *Fast Market*, OLCC-94-L-006, May 1995.

B.1.a.3.

B. LICENSING/RENEWAL

B.1.a.3. Problem Areas (OAR 845-005-0326(3)) (continued) [OAR 845-05-026(3)]

The Commission concluded that the premises would be located in a problem area and, therefore, there was a basis to deny the license. In reaching this decision, the Commission determined to give more weight to the view of the city where the city's view was supported by facts in the record. Such facts included: business owners in the downtown area formed walking patrols to discourage drug activity in the area; the city council passed an ordinance in response to and for the purpose of controlling drug activity in the area; and law enforcement officials for surrounding jurisdictions identified the area as a main problem area for drug activity. The Commission concluded that there was not sufficient good cause to outweigh the problem areas refusal basis, in spite of the applicants' good compliance record at a premises they currently operate and where the applicants had a compliance plan for the proposed premises. The Commission concluded that the applicant did not have the ability to adequately control the premises because he had a record of using alcohol to excess and was involved in a gun incident at his other premises. *Jammers West, Inc.*, OLCC-94-L-005, March 1995.

The Commission granted a license with restrictions where the applicants showed good cause to overcome the license denial basis of being located in an area with serious and persistent problems. Applicants were able to show that alcoholic beverage sales at the premises would not substantially contribute to the problem and that applicants had the willingness and ability to adequately control the premises and patron's behavior near the premises. *Dekum Food Market*, OLCC-90-L-005, May 1991.

When the Commission adopted OAR 845-05-026(3) it intended to provide a reason for denial based solely on a premises' location in an area with serious and persistent problems. The problems do not need to be alcohol-related. The Commission determined that it did not want the conduct of the applicant to be a factor in proving a prima facie case for denial under this rule. *Dekum Food Market*, OLCC-90-L-005, May 1991.

B.1.a.3.

B. LICENSING/RENEWAL

B.1.a.4. Off-Premises Sales License (OAR 845-005-0326(4))
[Package Stores (OAR 845-05-026(4))]

B.1.a.5. Local Government Recommendation (ORS 471.166(1), OAR 845-005-0308)
[(ORS 471.210(3); [OAR 845-05-025(1)])]

The Commission has previously determined that former ORS 471.210(3) (recommendation from local governing body) does not provide a separate basis for denying or canceling a liquor license. Similarly, chronic nuisance warning letters would not provide a basis for canceling a liquor license. *Balzer's Pub & Grill*, OLCC-99-V-019, March 2001.

The Commission has previously received legal advice from the Attorney General's office that ORS 471.210(3) (recommendation from local governing body) does not provide a separate basis for denying a license. Nevertheless, the Commission can examine the factual information provided by the local governing body. *Pink Pearl East*, OLCC-89-L-004, December 1989. Reversed and remanded on other grounds, *Martini v. OLCC*, 110 Or App 508 (1992).

The Commission concluded that the City Council's negative recommendation was not a persuasive basis to refuse the license when weighed against the more fully developed facts in the record of the hearing. The record of the hearing contained information that was favorable to the licensee that was not considered by the City Council and there was no opportunity to question witnesses at the City Council meeting. *Sandy Jug*, OLCC-88-L-010, October 1988. (OAR 845-05-025(1)).

Adverse city council recommendation was not entitled to weight as an indicator of public opinion because it could not be determined what information the city considered and, thus, whether the information the city considered was liquor-related. *Seven Star Market*, OLCC-88-L-003, July 1988. (OAR 845-05-025(1)).

Good cause may be shown to overcome a local government recommendation where the recommendation is founded on reasons which conflict with the Commission's own criteria on the same subjects. *Fleetwood Bar & Buffet*, OLCC-87-L-005, November 1987; *ARCO AM/PM Mini-Market*, OLCC-85-L-048, October 1986; *Brownsboro Tavern*, OLCC-85-L-009, December 1985. (OAR 845-05-025(1)).

City council's concern that licensees did not cooperate with the neighborhood organization was not a persuasive basis for a negative city recommendation because the lack of cooperation did not, in this case, involve the effects of a liquor license. *El Paso*, OLCC-86-L-021, March 1987. (OAR 845-05-025(1)).

A local government official who makes a quasi-judicial decision must disclose a business relationship with one of the affected parties to the other affected parties. Failure to do so renders the local government's decision void. *1,000 Friends of Oregon v. Wasco Co. Court*, 80 Or App 532, 723 P2d 1034 (1986). (OAR 845-05-025(1)).

Little weight should be given to local government recommendations against an application for reasons that have little to do with the effects of the liquor license. *ARCO AM/PM Mini-Market*, OLCC-85-L-048, October 1986. (OAR 845-05-025(1)).

B.1.a.4.
B.1.a.5.

B. LICENSING/RENEWAL

B.1.a.5. Local Government Recommendation (ORS 471.166(1), OAR 845-005-0308) (continued) [(ORS 471.210(3); [OAR 845-05-025(1)])]

Good cause is not shown to overcome a negative local endorsement where the applicants have corrected some of the problems cited by the local government body, but other important problems remain uncorrected. *Dimitri's Grocery*, May 1985. (OAR 845-05-025(1)).

A local government endorsement is based on due consideration where the local government's proceedings allowed the applicants and interested members of the public a thorough opportunity to present their views. Ioannis and Stavros Karakasis, *Dimitri's Grocery*, May 1985. (OAR 845-05-025(1)).

A local government's reasons for a refusal recommendation on a license application may be inferred from the discussion at the proceedings where the recommendation was made. *Dimitri's Grocery*, May 1985. (OAR 845-05-025(1)).

Although city council, in voting to deny application as reconsideration of its first action to deny, did not state reasons for second vote, Commission inferred that reasons stated at the first consideration were continuing basis for second vote. Commission also concluded that city council's finding of "sufficient outlets" was reasonable and that the applicant failed to show good cause to overcome this basis for the city council's negative endorsement. Paul D. Hartwell, *Rainbow Tavern*, November 1984. (OAR 845-05-025(1)).

The Commission granted renewal of a license despite a negative local endorsement because applicants had no notice of the County Commission meeting and thus did not have a reasonable opportunity to be heard. Lee R. and Etta S. Hale, *Wapato Store*, January 1984. (OAR 845-05-025(1)).

Court affirmed denial of license based upon City Council recommendation although part of information considered by council was false. *Rotten Roberts, Inc. v. OLCC*, 65 Or App 351, 671 P2d 753 (1983). (OAR 845-05-025(1)).

Unexplained city refusal recommendation held insufficient as basis for denial, citing *Morishige v. OLCC*, 29 Or App 651, 659, 564 P2d 1359 (1977). Sharon Ann Stopyak, *Elk City Tavern*, April 1983. (OAR 845-05-025(1)).

Specially concurring opinion argued that the Commission may not deny a license based solely on an unreasoned city recommendation. To do so would be an unqualified delegation of the Commission's licensing power and would, therefore, exceed the Commission's authority. *Morishige v. OLCC*, 29 Or App 651, 564 P2d 1359 (1977). (OAR 845-05-025(1)).

B.1.a.5.

B. LICENSING/RENEWAL

B.1.a.6. Public Opinion (OAR 845-005-0308(4)) [(OAR 845-05-035)]

The Commission may not use "public opinion," in the sense of popular sentiment, as a basis upon which to deny a license application. This includes public opinion related to the exercise of the license privileges. The Commission may use citizen testimony, relevant to the grounds for denial established by statute and rule, as evidence to support a denial on one or more of those grounds. No category of citizen testimony uniformly warrants special weight. The OLCC must weigh the persuasiveness of testimony on a case-by-case basis. Attorney General Opinion OP-6171-B.

The Commission has held that it will not refuse an application because of public opinion based on reasons where the result under the Commission's criterion on those same reasons is that the license should be granted. Specifically, where public opinion opposed the license because of illegal activities and noisy activities at the premises, but where the Commission determined that the applicant had shown good cause to overcome illegal activities and noisy activities, the Commission concluded that the public opinion did not establish a basis to refuse the license. *Sandy Jug*, OLCC-88-L-010, October 1988.

Adverse city council recommendation was not entitled to weight as an indicator of public opinion because it could not be determined what information the city considered and, thus, whether the information the city considered was liquor related. *Seven Star Market*, OLCC-88-L-003, July 1988.

The Commission should not deny an application due to public opinion on an aspect of an application, where the result under a Commission license criterion that deals with same subject is that the license should be granted. *Fleetwood Bar & Buffet*, OLCC-87-L-005, November 1987; *ARCO AM/PM Mini-Market*, OLCC-85-L-048, October 1986.

Local opposition to nude entertainment was not, in itself, a persuasive basis to deny a liquor license. Edward and Sharon MacGregor, *El Paso*, OLCC-86-L-021, March 1987.

Local opposition to nude dancing was a potentially persuasive concern where the nude dancing could attract problems, such as crime, noise and other disturbances, that directly affect the livability of a neighborhood. However, licensee had exerted strong management control to the extent that such problems were not pervasive and, consequently, were not a persuasive basis for denial. Edward and Sharon MacGregor, *El Paso*, OLCC-86-L-021, March 1987.

The smaller the minority of persons opposed, the more compelling their reasons must be to allow the conclusion that public opinion weighs against license issuance. Prestige Stations, Inc., *ARCO AM/PM Mini-Market*, OLCC-85-L-048, October 1986.

The objection that competition from the applicant would financially hurt a nearby pharmacy was not given any weight because the Commission does not have any authority to regulate competition between licensees and non-licensees. Plaid Pantries, Inc., *Plaid Pantry Market No. 144*, OLCC-85-L-042, September 1986.

B.1.a.6.

B. LICENSING/RENEWAL

B.1.a.6. Public Opinion [(OAR 845-005-0308(4))] (continued) [(OAR 845-05-035)]

Opposition based on likely health and safety dangers related to effect of proposed outlet on nearby recovering alcoholics carried greater weight than support based on convenience. Plaid Pantries, Inc., *Plaid Pantry Market No. 144*, OLCC-85-L-042, September 1986.

Telephone survey of public opinion held more reliable than mail survey. Plaid Pantries, Inc., *Plaid Pantry Market No. 134*, April 1986.

Professional survey of 300 persons held more reliable evidence of public opinion than city council recommendation based on testimony of 20 persons because of the larger number of persons expressing opinion in the professional survey. Plaid Pantries, Inc., *Plaid Pantry Market No. 134*, April 1986.

It is beyond the Commission's authority to deny an application based solely on public objections to the consumption of alcohol. Plaid Pantries, Inc., *Plaid Pantry Market No. 134*, April 1986.

Objections that license would cause traffic and parking problems were found to be within control of the city, and thus entitled to lesser weight. Southland Corporation, *7-Eleven Food Store*, OLCC-84-L-014, May 1985.

Objections relating to the effect of the enterprise itself, rather than the effect of the liquor license, not considered by the Commission. Southland Corporation, *7-Eleven Food Store*, OLCC-84-L-014, May 1985.

Objections based upon claim that patrons and employees of the licensed premises would engage in criminal or antisocial behavior found unpersuasive because based on speculation. Southland Corporation, *7-Eleven Food Store*, OLCC-84-L-014, May 1985.

A local government recommendation based on extensive public testimony is itself an indication of public opinion. Ioannis and Stavros Karakasis, *Dimitri's Grocery*, May 1985.

Public opinion that has little to do with the effects of a liquor license, such as concerns about the applicant's short changing customers, should be given little weight under OAR 845-05-035. Ioannis and Stavros Karakasis, *Dimitri's Grocery*, May 1985.

Adverse public opinion based on speculation is entitled to little weight. David L. and Paula D. Stribling, *Dave's Cozy Corner*, July 1984.

Opposition based on health and safety dangers related to teenage drinking carried greater weight than support based on the convenience of having another place to buy beer and wine in the community when there was an existing Package Store outlet only .25 miles away. Robert W. Lindell, *Corbett Cow*, June 1984.

B.1.a.6.

B. LICENSING/RENEWAL

B.1.a.6. Public Opinion [(OAR 845-005-0308(4))] (continued)
[(OAR 845-05-035)]

Application was denied because protestors lived closer to the premises than the supporters, and because the bases for objection were entitled to more weight than the bases for support. Patrick H. Burrington, *Leaburg Tavern*, January 1983.

B.1.a.6.

B. LICENSING/RENEWAL

B.1.b. Applicant's Personal Qualifications

B.1.b.1. False Statements (ORS 471.313(4)(b), ORS 471.380(1)(b), OAR 845-005-0325(6)) [(ORS 471.295(4)(b), ORS 471.380(2), [ORS 472.160(4)(b)], OAR 845-05-025(6); [OAR 845-05-015(3)], ORS 471.425(1)]]

Husband held himself out as the owner and manager of the restaurant; he testified in court that he was a shareholder, the corporate president, and owned the business. This is contrary to the written statement he provided to OLCC. He had and was intended to have a significant role in management and the daily operations. He intentionally told OLCC he would not have a role in order to get a license when he believed he was unlicensable. This was a material misstatement because it amounted to putting a false name on the application. *Zeba Bistro*, OLCC-05-L-003, June, 2007.

Filing for divorce is not the same as being divorced. In applying for a license while in the process of divorce, the applicant's negligent withholding of his wife's name is a material false statement because it may have impeded the investigation into the licensability of his wife. *Longhorn Bar & Grill*, OLCC-06-L-007, October, 2006.

Beginning with *Star Sushi*, OLCC-01-L-015, December, 2001, the Commission has, in the licensing context, effectively required only that a misrepresentation be material. Intentionality is just one means of proving materiality. There was no evidence in this case that the applicant's failure to mention the misdemeanor conviction was intentional and it did not inhibit the investigation. A false statement regarding a misdemeanor is not a material misrepresentation, and therefore not a basis to refuse a license. *Shan Creek Café*, OLCC-05-L-005, February, 2006.

False statements by son of licensee denying the bank depository agreement, denying an ownership interest in the business, and denying his involvement in the management or control of the business were material false statements, providing a basis to refuse to renew the license. *La Gran Cantina*, OLCC-00-V-024/-L-009/-L-010, June 2002.

Applicant denied cheating on the server education test. That denial is evidence of untruthfulness, but is not material to a license refusal basis. It is not a material false statement unless intentionally made. The statement was made with the intent of misleading OLCC into granting the license application, and is "material" on that basis. *Star Sushi*, OLCC-01-L-015, December 2001.

Applicant provided false information on the application when he denied use of any other names. Applicant has used a different first name in the past, but OLCC did not establish that this omission inhibited its ability to investigate his eligibility for licensure, or would have resulted in evidence of another ground for license refusal, or that it was willful. It is not a material omission. *Star Sushi*, OLCC-01-L-015, December 2001.

The false statement on the history form of Applicant's son (to become manager) was not made by Applicant and is not attributed to Applicant as to materiality or intent. *Star Sushi*, OLCC-01-L-015, December 2001.

B.1.b.
B.1.b.1.

B. LICENSING/RENEWAL

- B.1.b.1. False Statements (ORS 471.313(4)(b), ORS 471.380(1)(b), OAR 845-005-0325(6)) (continued)
[(ORS 471.295(4)(b), ORS 471.380(2), [ORS 472.160(4)(b)], OAR 845-05-025(6); [OAR 845-05-015(3)], ORS 471.425(1)]]

Applicant's omission of a prior misdemeanor conviction on his application and his denial of same when confronted are not material to a license denial basis and, consequently, not a material false statement unless intentionally made. Applicant's statement was deliberately made with the intention of misleading the Commission, and is "material" on that basis. *Star Sushi*, OLCC-01-L-015, December 2001.

Applicant's denial that he had been drinking at the time of a prior crime (and the existence of a prior citation for drinking on duty while licensed in Hawaii), is material to a determination of whether Applicant is in the habit of drinking to excess, a refusal basis. This denial is a material false statement, independent of intentionality. *Star Sushi*, OLCC-01-L-015, December 2001.

Applicant's denial of prior action taken against his license in Hawaii is not material to a license refusal basis. ORS 471.313(4)(g) does not include or refer to the license compliance history in another state. It is not a material false statement unless intentionally made. The statement was made with the intent of misleading OLCC into granting the license application, and is "material" on that basis. *Star Sushi*, OLCC-01-L-015, December 2001.

The Commission has concluded that the test for whether an intentional false statement has been made is whether the person making it intended to mislead the Commission when the statement was made. Where the applicant provided the Commission with his Oregon conviction records, which showed his more recent criminal and driving convictions, but failed to disclose five California convictions (the most recent of which was 16 years prior to the application), the failure to provide information about the California convictions did not prove an intent to mislead the Commission. *Thomas Creek Steak and Seafood*, OLCC-00-L-008, April 2001.

Co-licensees, husband and wife, applied for renewal of their PS license. The Regulatory Program proposed to refuse to renew the license based upon the husband's false statements (omission of several of husband's convictions) on the current renewal application and prior renewal applications for the same premises. The Commission conclude that the omissions were material and intentional, even though the applications were filled out by his wife or bookkeeper and husband did not review the applications before they were submitted to OLCC. The Commission found an absence of good cause to outweigh the refusal basis in that: husband had been cautioned in the past about false statements with regard to convictions and was on notice to provide full and truthful disclosure; reliance on another to fill out the application does not provide a good cause excuse, particularly when filled out by a co-licensee or co-applicant; and husband was aware he had an extensive conviction record and should have made affirmative efforts to learn the extent of those convictions and to report them accurately as required by the Commission. *Yesenia Bakery*, OLCC-97-L-011, March 1998.

B.1.b.1.

B. LICENSING/RENEWAL

- B.1.b.1. False Statements (ORS 471.313(4)(b), ORS 471.380(1)(b), OAR 845-005-0325(6)) (continued)
[(ORS 471.295(4)(b), ORS 471.380(2), [ORS 472.160(4)(b)], OAR 845-05-025(6); [OAR 845-05-015(3)], ORS 471.425(1)]]

OAR 845-05-025(6). The Commission concluded that the evidence failed to prove that licensee made a false statement when she denied that she was consuming a drink containing alcoholic liquor. In the case, the Regulatory staff charged that licensee made a false statement when she told them that she was drinking a non-alcoholic drink and the evidence failed to prove that her statement was false because the evidence failed to prove by a preponderance that she was drinking alcoholic liquor. *Two by Six*, OLCC-96-L-006, March 1997.

The Commission decided to not deny applicants license for false statements, where the applicants material false statements were not intentional and were the result of applicants being illiterate in English and reasonably relying upon the good faith but flawed translation of their son. *Royal Inn Restaurant*, OLCC-96-L-018, May 1997.

Applicants are husband and wife. Husband does not read or write English well and wife wrote answers to relevant Commission questions about husband's criminal background on husband's behalf. Husband contends he did not review the application before he signed it. Applicants claim the omissions were inadvertent and that they did not intend to mislead the Commission.

With respect to arrests and convictions, Applicants disclosed 2 traffic violations, but omitted 2 criminal convictions and an arrest resulting in diversion (Disorderly Conduct, Assault IV, and Patronizing a Prostitute (diversion)). The Commission concluded that Applicants intentionally omitted these convictions and arrest as wife was the victim of the assault and had personal knowledge of its existence; 2 traffic matters of little significance were listed, but serious charges relevant to assessing character were omitted. The Commission adopted an additional test of materiality, concluding that an intentional false statement is a material false statement. The Commission must be able to rely upon licensees' honesty in dealing with the Commission and enforcing alcoholic liquor laws and rules. An applicant who deliberately withholds information cannot reasonably be relied upon to effectively enforce Commission laws and rules as a licensee. An intentional false statement provides a basis to refuse this license because an intentional false statement is a material false statement. *AM/PM Market No. 756*, OLCC-95-L-031, July 1996.

The Commission determined to change its policy with regard to what it considers to be a material false statement. The Commission determined that an applicant's use of a false name indicates that he would not be a good risk for compliance with alcoholic liquor laws. The Commission determined that in the future it will consider as material those false statements which inhibit the Commission's ability to conduct an investigation into a person's eligibility for a license. *Punjab Tavern*, OLCC-91-L-015, April 1992.

A false statement with regard to a misdemeanor conviction was not material because a misdemeanor conviction is not a basis to refuse to grant the license under ORS 471.295(4)(d) unless it is a conviction of an alcoholic liquor law. *Kevin Boyd Shuler*, OLCC-90-S-001, September 1990.

B.1.b.1.

B. LICENSING/RENEWAL

- B.1.b.1. False Statements (ORS 471.313(4)(b), ORS 471.380(1)(b), OAR 845-005-0325(6)) (continued)
[(ORS 471.295(4)(b), ORS 471.380(2), [ORS 472.160(4)(b)], OAR 845-05-025(6); [OAR 845-05-015(3)], ORS 471.425(1)]]

Public demand for a license and a lease agreement limiting the co-licensees' involvement in the licensed premises do not establish good cause to overcome intentional, material false statements made by the co-licensees. *Junction Inn*, OLCC-89-L-009, December 1989.

Licensee's false statement that his son was 21, when in fact he was under 21, was a basis to refuse to renew the license because the false statement was both material and intentional. The false statement was material because the statement was made to hide the presence of a minor on the premises. False statement was intentional because the licensee intended to mislead the Commission when he made the statement. *Sparkles Tavern*, OLCC-88-V-107, September 1989.

A false statement that the applicant decided to make the evening before was intentional. *Kim Hong Restaurant*, OLCC-88-L-015, November 1988.

An applicant's family and financial hardships do not overcome intentional, material false statements as a refusal ground under OAR 845-05-015(3). *Kim Hong Restaurant*, OLCC-88-L-015, November 1988.

False statement on the application was not intentional and, thus, not a basis for service permit refusal where the applicant did not intend for her employer to submit the application to the Commission with the incomplete information. The five days between the Commission's receipt of the application and the mailing of the refusal letter was too short a period to infer that the applicant's failure to contact the Commission before they contacted her proved an intentional false statement. *Cathy Jo Burgholzer*, OLCC-87-SP-011, August 1987.

An applicant's false statement was not material, although it was logically connected to an issue in the case, where the issue was insubstantial. *Gary Ray Burkhart*, OLCC-87-SP-008, August 1987.

Applicant's failure to list convictions on his application was not the result of an intent to mislead the Commission and, thus, was not a basis for refusal. Applicant had informed the Commission on a previous application of some of the convictions. Applicant did not understand that he needed to list the remainder of the convictions because they were traffic offenses. *Albert Diss II*, OLCC-86-SP-019, March 1987.

Commission concluded an applicant's false statement was not a material false statement and therefore not a basis to refuse to issue a license under the following circumstances. Applicant failed to list that he had been convicted two times of misdemeanor of Theft II. There is no Commission rule or statute which makes a conviction of Theft II a basis for license denial. Staff did not identify the nature of the materiality of the convictions. *David Duane Beck*, OLCC-86-S-001, December 1986.

B.1.b.1.

B. LICENSING/RENEWAL

- B.1.b.1. False Statements (ORS 471.313(4)(b), ORS 471.380(1)(b), OAR 845-005-0325(6)) (continued)
[(ORS 471.295(4)(b), ORS 471.380(2), [ORS 472.160(4)(b)], OAR 845-05-025(6); [OAR 845-05-015(3)], ORS 471.425(1)]]

Applicant's failure to list non-alcohol-related driving convictions on her application was material where she did not to appear at her hearing to present evidence to outweigh the Commission staff's argument that the driving convictions showed a likelihood applicant would not follow the Commission's rules. *Linda Joyce Goodell*, OLCC-86-SP-024, February 1987.

Material evidence is defined as that which has a "logical connection" with an issue in the case. *7455 Incorporated, Jiggles*, OLCC-85-L-013, February 1987, affirmed *7455 Inc. v. Oregon Liquor Control Commission*, 94 Or App 780, 767 P2d 116 (1989); affirmed on other grounds, 310 Or 477, 800 P2d 781 (1990).

Where applicant failed to list all of her prior convictions, but did list her more recent and more serious convictions, the Commission concluded that applicant's failure to list all of her convictions did not prove an intent to mislead the Commission. *David Duane Beck*, OLCC-86-S-001, December 1986; *Kimberly Carol LaBare*, OLCC-86-SP-017, October 1986.

Failure to list a violation for which there is a separate statutory basis for license refusal is a material omission. *Kimberly Carol LaBare*, OLCC-86-SP-017, October 1986.

The Commission has commonly considered unintentional inaccuracies to be insufficient grounds to refuse a service permit or license application. *Gerold L. Hodges and Marcia R. Buck, Maynard's Place*, OLCC-85- L-012, November 1985; *James C. Pearson and Thurman O. Martin, Hale's Tavern*, OLCC-85-L-010, June 1985; *Emilio Gutierrez*, OLCC-85-SP-002, May 1985; *National Sports Organization, Inc., Medford A's*, May 1984; *Michael Manuel Ramon*, March 1984; *Norma Mae Gallagher*, February 1984; *Richard and Sunya Porter, Porterhouse*, October 1983; *Yvonne J. Blassingame*, June 1983.

B.1.b.1.

B. LICENSING/RENEWAL

B.1.b.2. Tied-House (ORS 471.313(3), OAR 845-005-0320(1))
[(ORS 471.295(3), [ORS 472.160(3)], OAR 845-05-020(1))]

Franchisee of corporation owned by liquor manufacturer and distributor held to have prohibited relationship with the manufacturer, which justified non-renewal of franchisee's license. *Speck Restaurant v. OLCC*, 24 Or App 337, 545 P2d 601 (1976).

B.1.b.2.

B. LICENSING/RENEWAL

B.1.b.3. Applicant is a Retail Sales Agent (OAR 845-005-0320(6))
[(OAR 845-05-020(6))]

Applications for Package Store licenses were denied under OAR 845-05-020(6) where applicants were exclusive liquor agents of the Commission. *Judy L. Soper, Robert E. Barber, Eugene Sherwood, James L. Comini*, December 1984.

B.1.b.3.

B. LICENSING/RENEWAL

B.1.b.4. Failure to Complete Alcohol Server Education (OAR 845-005-0320(7)) [(OAR 845-05-020(7))]

Permittee's lengthy good compliance record, her knowledge and experience in responsible alcohol service, and the fact that she served only about eight drinks per week in her job were not persuasive reasons to waive the alcohol server education requirements. *Pamela K. Roth*, OLCC-89-SP-140, November 1989.

A request for an extension to complete an ASE course and examination is untimely where the request is filed after the 45-day period and any extension has run, and the Commission has issued its proposed refusal letter. *Shauna Butler*, OLCC-89-SP-036, May 1989.

When the applicant requested that the Commission reopen the record to add a statement that he had completed an ASE course and examination after the Proposed Order was issued, the Commission declined to reopen the record for this purpose. *Christopher Hall*, OLCC-89-SP-010, May 1989.

A Service Permit application was granted when the applicant completed an Alcohol Server Education (ASE) course and examination after the end of the extension granted by the Service Permit Section, but prior to the applicant's hearing, based on Service Permit Section policy. *Mary Limbrunner*, OLCC-89-SP-003, April 1989.

B.1.b.4.

B. LICENSING/RENEWAL

- B.1.b.5. Insufficient Financial Responsibility (ORS 471.313(4)(i),
OAR 845-005-0325(1))
[(ORS 471.295(4)(I), [ORS 472.160(4)(I)], OAR 845-05-025(1) [OAR
845-05-025(3)]]]

Applicant did not have sufficient financial responsibility under ORS 472.160(4)(I) where applicant recently commingled charitable church monies with his own personal funds. Bruce Williams, *Bruce's Bar and Grille*, OLCC-85-L-052, October 1986. (OAR 845-05-025(3))

B.1.b.5.

B. LICENSING/RENEWAL

- B.1.b.6. Unable to Communicate in English (ORS 471.313(4)(j))
OAR 845-005-0325(3))
[(ORS 471.295(4)(j)), [ORS 472.160(4)(j)], OAR 845-05-025(3), [OAR 845-05-025(5)]]

ORS 471.295(4)(j) will provide a basis to refuse a license because the applicant had substantial difficulty communicating in English without the aid of an interpreter; however, the statute should not provide a refusal basis if the license is conditioned upon the applicant having an English-speaking employee on duty at all times. *Seven Star Market*, OLCC-88-L-003, July 1988.

B.1.b.6

B. LICENSING/RENEWAL

- B.1.b.7. Conviction History (ORS 471.313(4)(d), ORS 471.380(1)(d), OAR 845-005-0325(5), ORS 670.280) [(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3), [OAR 845-005-0326(6)], ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020]]]
(See also, C.1.i.)

A conviction for not following laws regarding the amount of pseudoephedrine that can be sold makes it reasonable to infer that the individual is likely to fail to follow the laws regarding the sale of another legal substance--alcohol. *Swan Mart*, OLCC-05-L-008, October, 2006.

Applicant had over four years since his drug conviction, but during that time he violated his wife's license and its restrictions at least three times. Both his conviction and his violations of his wife's license established that he was a poor risk for compliance with Oregon liquor laws and there was no good cause to overcome the refusal. *Garcia's Gas & Mini Mart*, OLCC-05-L-007, April, 2006.

Although the term "violent crime" is not specifically defined in the context of criteria for license refusal, it is reasonable to employ the same definition used in the context of service permits to determine whether a felony conviction involved violence or threat of violence to another person. The Commission has determined for service permits that rape is a violent crime, whether or not forcible compulsion is an element. In rape the act of penetration, even if consensual, causes or threatens to cause physical injury or harm to the victim. *Under the Bridge Cigarettes*, OLCC-05-L-002, February, 2006.

License applicant's two controlled substance felony convictions, one conviction for attempting to elude police, and Rape III conviction over a 13 year period show a lack of respect for law that makes it likely the applicant is unlikely to fail to follow the laws regarding the sale of alcohol. *Under the Bridge Cigarettes*, OLCC-05-L-002, February, 2006.

Applicant had a recent felony conviction record of "Carry/Use of a Dangerous Weapon" and "Felon in Possession of Firearm." Both convictions involved a shotgun; the first involved the use of the weapon, the second involved prohibited possession within Applicant's home. The first felony involved violence and the threat of violence to another person, and, via prior precedent, is related to Applicant's fitness to hold a liquor license. The second felony shows Applicant's deliberate disregard for the terms of his probation and for law; it is related to Applicant's fitness to hold a liquor license because the Commission expects its licensees to follow statutes and rules.

Applicant was unable to show good cause to overcome the refusal basis where intervening circumstances since the commission of the crimes show repeated violation of liquor laws while previously licensed at the same establishment. Applicant is not an acceptable risk for future compliance. *Swan Song Inn*, OLCC-01-L-004, November 2001.

The Commission has concluded that it will not question or retry the underlying facts involved in a conviction. *Kimmel's Little Giant*, OLCC-95-V-028, June 1996.

B.1.b.7.

B. LICENSING/RENEWAL

- B.1.b.7. Conviction History (ORS 471.313(4)(d), ORS 471.380(1)(d), OAR 845-005-0325(5), ORS 670.280) (continued)
[(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3), [OAR 845-005-0326(6)], ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020]]]
(See also, C.1.i.)

The Attorney General advises the Commission that a licensee's compliance with a restriction (prohibiting the consumption of alcoholic beverages) is not determinative of whether or not a restriction should be removed. In order to make a case for eliminating the restriction, a licensee would have to establish that the reasons for establishing the restriction no longer exist or are less compelling. *The Peacock Tavern*, OLCC-95-L-024, August 1996.

A conviction of Felony in Possession of a Firearm where the record does not establish that the underlying incident involved any threat of violence or use of drugs or alcohol is not a relevant felony conviction for purposes of refusing a license based upon felony convictions. *Buff N Brew*, OLCC-94-L-019, July 1995.

Although every conviction and every failure to follow a court order demonstrates an unwillingness or inability to comply with the law, the Commission does not view every such infraction as relevant to an applicant's fitness to be licensed by the Commission. In the absence of any evidence that alcohol, drugs, or violence were involved in an applicant's failure to report to a probation officer or failure to appear in court concerning a traffic accident, the Commission gave no weight to such incidents. *Buff N Brew*, OLCC-94-L-019, July 1995.

The Commission of a violent crime and the resultant danger to public safety are related to and weigh against finding that an applicant is fit to serve and sell alcoholic liquor. *Christi R. Boatner*, OLCC-93-SPR-136, May 1994 (robbing a person at gunpoint and conspiring to assault another were violent crimes; *Gary W. Treadway*, OLCC-94-SPR-049, August, 1994 (rape, was a violent crime).

Delivery and possession of a controlled substance which results from a single transaction should merge into one conviction for delivery of a controlled substance. Combining the two convictions into one is called "merger." The Oregon Courts have held that "merger exists 'when the completion of one offense necessarily includes commission of acts sufficient to constitute violation of another statute.'" (Citations omitted.) When there is a merger, a judgment of conviction on only one of the charges is proper." (Citation omitted.) *State v. Finn*, 79 Or App 439, 441, 719 P2d 898 (1986). *Cynthia D. Knighton*, OLCC-94-SPR-027, June 1994.

The Commission granted applicant a service permit in spite of his one felony conviction, where applicant showed significant good cause and the permit was granted with a restriction that applicant abstain from using illegal controlled substances. *Christopher K. Chambers*, OLCC-93-SPR-102, January 1994.

Two of the applicant's felony convictions, Burglary II and Ex-Convict in Possession of a Firearm, were not a basis for refusing the service permit. The record did not indicate that these felony convictions involved the use of alcohol or illegal drugs. The applicant's other convictions were related to the use of alcohol and illegal drugs and provided a basis for service permit refusal. *Walter R. Rodriguez*, OLCC-93-SPR-089, November 1993.

B.1.b.7.

B. LICENSING/RENEWAL

B.1.b.7. Conviction History (ORS 471.313(4)(d), ORS 471.380(1)(d), OAR 845-005-0325(5), ORS 670.280) (continued)
[(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3), [OAR 845-005-0326(6)], ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020]]]
(See also, C.1.i.)

Although applicant had two recent alcoholic liquor law violations, there was good cause to grant a restricted permit because of applicant's participation in a treatment program and abstinence from drinking alcoholic liquor. *Kelly R. Lawson*, OLCC-93-SPR-020, July 1993.

The Commission determined that applicant's one felony conviction three years ago was not sufficient to deny a service permit. There was good cause to grant the permit because applicant had only one felony conviction, three years had passed without incident, and applicant had been abstinent from drugs for approximately four years. *Martin A. Getzinger*, OLCC-92-SPR-159, June 1993.

ORS 670.280's requirement that a felony conviction be related to an applicant's fitness to hold a service permit was met where a felony was:

- committed while applicant was under the influence of alcohol. *Gary Ray Burkhart*, OLCC-87-SP-008, August 1987, and/or
- committed to support an applicant's use of a controlled substance. *William M. Bacon*, OLCC-90-SP-234, March 1991 (illegal drugs); *Henry W. Bohannon Jr.*, OLCC-91-SP-112, February 1992 (alcohol and illegal drugs).

The Commission concluded that, just as the underlying facts of a felony conviction must bear a relationship to the specific occupational standards which determine an applicant's fitness to hold a service permit, the intervening circumstances used to determine an applicant's eligibility must also bear a relationship to the specific occupational standards before those intervening circumstances may be used as a basis for denial. The Commission determined that the applicant's probation violation for failure to pay court ordered fees required as a condition of probation should not weigh against finding good cause because the failure to pay fees does not bear a relationship to the applicant's ability to serve or sell alcoholic liquor. *Martin A. Getzinger*, OLCC-92-SPR-159, June 1993.

"Convicted of a felony" means not only a determination of guilt but also an entry of judgment. *State v. Dintelman*, 112 Or App 350, 829 P2d 719 (1992).

Just as the underlying facts of a felony conviction must bear a relationship to the specific occupational standards which determine an applicant's fitness to hold a service permit, before those facts may form the basis for a denial of the permit, intervening circumstances must also bear a relationship to the specific occupational standards before those intervening circumstances may be used as a basis for denial. *Christine M. Lund*, OLCC-91-SP-139, March 1992.

Applicant's two felony convictions provided a reason to refuse to issue a service permit. The applicant's drug-related felony conviction one year ago was too recent in time to be outweighed and the applicant's felony conviction for DWS, where the suspension was the result of a DUll conviction, showed that applicant voluntarily failed to follow instructions. *Terri Lynn Runft*, OLCC-90-SP-237, August 1991. (But see Stay of Final Order in Section A.2.q.)

B.1.b.7.

B. LICENSING/RENEWAL

- B.1.b.7. Conviction History (ORS 471.313(4)(d), ORS 471.380(1)(d), OAR 845-005-0325(5), ORS 670.280) (continued)
[(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3), [OAR 845-005-0326(6)], ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020]]]
(See also, C.1.i.)

The Commission has concluded that a person's felony conviction should be treated as a conviction until such time as it is reversed or set aside. *A.J.'s Homestead Restaurant*, OLCC-90-V-021, December 1990; *Terri Lynn Runft*, OLCC-90-SP-237, August 1991.

Where applicant had four alcoholic liquor law convictions, the Commission determined to grant a permit where the record showed applicant had ceased drinking over one and one-half years ago, and the permit was conditioned on applicant completing alcohol treatment and remaining abstinent. *Marc R. Babb*, OLCC-91-SP-002, July 1991.

Convictions of DUI and an open container in a motor vehicle are convictions of alcoholic liquor laws for purposes of ORS 471.380(4). *Marc R. Babb*, OLCC-91-SP-002, July 1991.

Where applicant had two drug-related felony convictions, the most recent of which was four years ago, and one drug-related probation violation occurring one and one-half years ago, the Commission concluded that with conditions and restrictions on the license, there was good cause to grant the service permit. The applicant in this case had a previous good record of compliance and recommendations from his employer. *James Ray Steele*, OLCC-90-SP-087, June 1991.

The Commission concludes, based on the nature of the offense of Driving Under the Influence of Intoxicants, that the conviction is related to the applicant's fitness to dispense alcoholic liquor. The applicant's failure to follow laws related to the consumption of alcoholic liquor, such as Driving Under the Influence of Intoxicants, shows that the applicant fails to comply with alcoholic liquor laws, which are central to the license privileges. *Marlys McLaury*, OLCC-90-SP-238, August 1991.

Despite the applicant's 16 year history of compliance with alcoholic liquor laws and strong recommendations from her current and past employers, the Commission found that the applicant failed to show that she had reformed and was not a poor risk for compliance with alcoholic liquor laws. The applicant had three prior DUI convictions; she had not completed an alcohol treatment program; and she continued to consume alcoholic beverages despite a treatment program's recommendation that she abstain. *Marlys McLaury*, OLCC-90-SP-238, August 1991.

The Commission found that a felony conviction for robbery was related to the applicant's fitness to dispense alcoholic liquor due to the circumstances surrounding this particular conviction. The conviction involved the applicant hindering a fire inspector who came to his home during an investigation. A service permittee must be able to cooperate with Commission inspectors during the investigation of possible liquor law violations. *Ronald J. Chavez*, OLCC-90-SP-211, July 1991.

B.1.b.7.

B. LICENSING/RENEWAL

- B.1.b.7. Conviction History (ORS 471.313(4)(d), ORS 471.380(1)(d), OAR 845-005-0325(5), ORS 670.280) (continued)
[(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3), [OAR 845-005-0326(6)], ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020]]]
(See also, C.1.i.)

The passage of three and one-half years since the felony conviction did not weigh in favor of good cause where the applicant was not out in the community during much of this time period. *Ronald Chavez*, OLCC-90-SP-211, July 1991.

Applicant showed good cause to overcome felony drug conviction with strong recommendation from current employer and passage of nearly three years since applicant's conviction, probation violation, and flight from prosecution of the probation violation. *Diane L. O'Hotto (Choate)*, OLCC-91-SP-051, October 1991.

Particularly strong and well-articulated recommendations from applicant's employer and probation officer gave applicant sufficient good cause, despite probation violation within past year, to overcome denial based on felony drug conviction. *Juanita Lee Ray*, OLCC-90-SP-189, May 1991.

Felony conviction for sodomy of minor male was not related to service permit applicant's fitness to serve alcohol, where there was nothing in the record to indicate that the circumstances surrounding the crime involved the use of alcohol or drugs. *James E. Estes*, OLCC-90-SP-009, June 1990.

The Commission must show a relationship between the felony conviction and the fitness of the person to dispense alcoholic liquor. ORS 670.280; *John O. Myshak*, OLCC-88-V-002, May 1988. The Commission concluded that it was reasonable to infer that because the applicant had engaged in illegal acts involving one controlled substance (cocaine), the applicant would be a poor risk for complying with laws concerning another controlled substance (alcoholic liquor). *Loretta J. Clayton*, OLCC-88-SP-002, September 1988.

The Commission concluded that the Commission's Final Order in a previous case against the same licensee did not provide a basis under OAR 845-05-025(3) for nonrenewal of the license because the Commission had already determined that the appropriate sanction for the violations committed in the Final Order was a fine or suspension of the license. *Sandy Jug*, OLCC-88-L-010, October 1988.

The applicant showed good cause to overcome a 1981 felony burglary conviction where the applicant voluntarily gained control over his alcohol problems and had a favorable report from the probation counselor who had known him for four years. *Gary Ray Burkhart*, OLCC-87-SP-008, August 1987.

A felony conviction for driving while suspended that was later reduced to misdemeanor status was not considered a felony conviction for purposes of bar disciplinary proceedings. *In re Sonderen*, 303 Or 129, 734 P2d 348 (1987).

Misdemeanor driving while suspended is not a crime involving moral turpitude. *In re Sonderen*, 303 Or 129, 734 P2d 348 (1987).

B.1.b.7.

B. LICENSING/RENEWAL

- B.1.b.7. Conviction History (ORS 471.313(4)(d), ORS 471.380(1)(d), OAR 845-005-0325(5), ORS 670.280) (continued)
[(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3), [OAR 845-005-0326(6)], ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020]]]
(See also, C.1.i.)

Where licensee has a record of DUI convictions, good cause for license renewal may be shown if the renewal is subject to the condition that the licensee not serve, sell, or consume alcohol on the licensed premises. *Alder Tree Inn*, OLCC-87-L-006, August 1987.

Two misdemeanor convictions for negotiating bad checks are not a basis for license refusal under ORS 471.380(4), and should not be considered because they are not alcohol-related convictions or felony convictions under that statute. *Madoline Sue Bray*, OLCC-87-SP-006, June 1987.

Good cause for overcoming felony convictions consists of evidence that the service permit applicant will not be a poor risk for complying with alcoholic beverage laws. Applicant was not a poor risk because, although she was convicted of two felonies, the felonies were not alcohol related and she had been a service permittee for 25 years, during which time she had never been cited for a liquor violation. *Madoline Sue Bray*, OLCC-87-SP-006, June 1987.

The Commission does not have authority to suspend or fine a service permittee who is off duty for actions that would be a violation of his service permit if he were on duty when the violations occurred. *Ivan Smith*, OLCC-86-V-075, May 1987; Rita Arlene King, *The Sportsman Club*, OLCC-87-V-002, May 1987.

Good cause was shown to overcome applicant's record of three felony convictions where the convictions were 27 years old and the applicant had held a service permit continuously from 1951 through 1984. *Albert Diss II*, OLCC-86-SP-019, March 1987.

Applicant was considered a poor risk to comply with the laws forbidding sale of alcoholic beverages to minors, where applicant was still receiving mental health counseling for his sexual abuse problem that led to a felony conviction for sexual abuse of a minor. *Delbert Dean McLachlan*, OLCC-86-SP-026, February 1987.

The Commission concluded that applicant has shown good cause to overcome convictions for violating alcoholic beverage laws (ORS 471.380(4)) where: (1) there has been a sufficient length of time (three years), since applicant's last convictions, to conclude that he has changed his behavior; (2) applicant completed an alcohol treatment program and attended Alcoholics Anonymous meetings for one year thereafter; (3) applicant has a good work record; and (4) applicant occasionally consumes a drink, but no longer has a drinking problem. *Stanley Wren Case*, OLCC-86-SP-025, January 1987.

The Commission will issue a service permit under ORS 471.380(4) despite a record of Oregon liquor law convictions where the applicant demonstrates good cause by showing that the applicant would not present "a poor risk as to compliance with alcoholic beverage laws." *Raymond H. Horn*, OLCC-85-SP-017, February 1986.

B.1.b.7.

B. LICENSING/RENEWAL

- B.1.b.7. Conviction History (ORS 471.313(4)(d), ORS 471.380(1)(d), OAR 845-005-0325(5), ORS 670.280) (continued)
[(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3), [OAR 845-005-0326(6)], ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020]]]
(See also, C.1.i.)

Two DUIL convictions should not prevent issuance of a service permit under ORS 471.380(4), where the convictions are four years old and there is evidence that applicant has worked responsibly as a bartender since the convictions. *Kelly Joe Miller*, OLCC-85-SP- 016, December 1985.

Application for RMB license granted despite applicant's recent conviction history. Commission found good cause to overcome three prior DUIL convictions in spite of fact that they were recent where applicant showed that he successfully completed an alcohol treatment program and exhibited self control by abstaining while tending bar at the premises. Roger H. Lehl and David Deering, *Rip City Pub*, OLCC-85-L-023, October 1985.

Service permit granted despite conviction in the United Arab Emirates because the evidence established neither that the conviction was a felony in the U.A.E. nor that the crime involved would be a felony in Oregon. *Ira David Zunin*, OLCC-85-SP-010, August 1985.

Commission granted renewal of PS license in spite of applicant's recent conviction history for DUIL and DWS where applicant agreed to condition restricting him from working on the licensed premises, had ceased alcohol consumption, and had participated in an alcohol treatment program. James Bloom and Michael Earley, *Mt. Hood College Texaco*, OLCC-85-L-004, June 1985.

Good cause may be shown to overcome history of alcohol convictions where the applicant has successfully completed a treatment program and where sufficient time has passed since the last conviction. James C. Pearson and Thurman O. Martin, *Hale's Tavern*, OLCC-85-L-010, June 1985.

Applicant's participation in alcoholic treatment program did not prove good cause to overcome conviction history where convictions occurred after the participation in the treatment program. *Leonard L. Moore*, OLCC-84-SP-002, September 1984.

Applicant's good record of compliance as a prior licensee did not show good cause to overcome extensive conviction history as refusal ground. *Leonard L. Moore*, OLCC-84-SP-002, September 1984.

Commission is not estopped from denying application because of past convictions, a list of which was submitted to License Division five years previously, even though applicant's license had been routinely renewed each year since the record was submitted. Robert D. Hoblit, *Family Zoo Tavern*, July 1984.

The Commission concluded that the application should be granted despite applicant's two felony convictions because one of the convictions is no longer a crime, because 11 years had passed since the convictions, and because the applicant had no other convictions. Talent Plus, Inc., *Slabtown*, July 1984.

B.1.b.7.

B. LICENSING/RENEWAL

- B.1.b.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))
[(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(4), OAR 845-05-030(3),
ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020]]]

Consumption to excess is not automatically a blood alcohol content of 0.08. Regardless of blood alcohol content a person may be “under the influence of intoxicating liquor if his or her mental or physical abilities are affected to a perceptible degree.” *State v. King*, 316 OR 437 (1993). Therefore, even if using alcohol to excess is the legal equivalent of being under the influence, the concept of “excess” would not necessarily be tied to a particular blood alcohol content. *Paola’s Corner*, OLCC-06-L-011, December, 2007.

A case decided after *Longhorn* does not use the *Longhorn* presumption of continued use in accordance with a recent history or record of using alcohol to excess only because licensee’s refusal was mailed at the same time as the final order in *Longhorn*. Had this case been decided using that presumption this licensee would not have overcome the presumption. *Paola’s Corner*, OLCC-06-L-011, December, 2007.

Consumption against the recommendation of treatment counselors, in violation of probation conditions, or against a diagnosis of alcoholism are all examples of consumption to excess. *Paola’s Corner*, OLCC-06-L-011, December, 2007.

While not legally required to be abstinent, licensee’s choice not to do so, given his history, weighs against good cause. Licensee had seven incidents of using alcohol to excess in a thirteen year period including two incidents in the year of the license denial. *Paola’s Corner*, OLCC-06-L-011, December, 2007.

Letters from other business owners regarding the town’s need for a licensed premises are not recommendations for purposes of good cause to overcome a recent history or record of using alcohol to excess. *Longhorn Bar & Grill*, OLCC-06-L-007, October, 2006.

Where an applicant states that he intended to remain abstinent while on probation, but refuses to accept a restriction on the license requiring abstinence at all times there is insufficient evidence to give weight to abstinence as a good cause factor. *Longhorn Bar & Grill*, OLCC-06-L-007, October, 2006.

Once it is established that an applicant has had a habit of using alcohol to excess, the Commission will presume that the applicant has continued to act according to his habit and continues through the present to have a habit of using alcohol to excess. An applicant can overcome this presumption by providing evidence that demonstrates that the applicant’s habit is not current. In general, it will help the applicant’s case when there is no evidence that the applicant has used alcohol to excess in the year preceding the applicant’s hearing. Absence of evidence is not sufficient by itself to overcome the presumption. *Longhorn Bar & Grill*, OLCC-06-L-007, October, 2006.

B.1.b.8.

B. LICENSING/RENEWAL

- B.1.b.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)) (continued)
[(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3),
ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020]]]

The Commission will consider factors in the rule (including passage of time; jail time; severity of habit; successful completion of treatment; record of compliance; abstinence; dependence on Antabuse; participation in Alcoholics Anonymous; and recommendations of treatment counselors, probation officers, and employers who know and address the history or record of abuse) to determine whether the presumption of continuing use according to habit is overcome. *Longhorn Bar & Grill*, OLCC-06-L-007, October, 2006.

Good cause proved for a grant of service permit where applicant's felony convictions were over ten years old and applicant had shown sufficient evidence of reform since the convictions. *Michael Manuel Ramon*, March 1984.

Where Licensee has a record of 5 DUILs, the most recent of which was 2 years before the hearing, and a probation violation for consuming alcohol in violation of a condition of probation on one occasion within 6 months of the hearing, Licensee has a recent record of using alcohol to excess. *Windy River Restaurant & Lounge & Fireside Inn*, OLCC-02-L-016 & 017, October 2003.

Licensee has not demonstrated good cause to overcome the refusal basis of having a recent record of using alcohol to excess under the *Landmark Saloon* factors where he consumed a drink in violation of a probation condition, which represents a failure to abstain from consuming alcoholic liquor, unsuccessful participation in treatment programs, and a lack of passage of a year since the last relevant incident. Because applicant's record of DUILs and probation violation was severe, factors weighing against good cause significantly outweighed neutral or favorable factors. *Windy River Restaurant & Lounge & Fireside Inn*, OLCC-02-L-016/017, October 2003.

An add-partner application was refused where partner had current record or history of using alcohol and controlled substances to excess and was unable to demonstrate good cause to overcome the refusal basis. In determining absence of good cause, the Commission applied the factors set out in *Landmark Saloon*, OLCC-91-L-005, January 1992:

- a. The applicant's abstinence from consuming alcoholic liquor;
 - b. Successful participation in treatment programs;
 - c. Severity of the applicant's record;
 - d. The applicant's previous record of compliance with OLCC laws;
 - e. Passage of time since the last relevant incident;
 - f. Recommendations of counselor, employer or probation officer; and
 - g. Conditions and restriction on the license (this factor to be used only if, after weighing a - f, presence or absence of good cause is closely balanced).
- Lariat Lanes & Convenient Services*, OLCC-03-L-001, October 2003.

B.1.b.8.

B. LICENSING/RENEWAL

B.1.b.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)) (continued) [(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3), ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020)]]

The Commission concluded that the evidence failed to show Applicant had a current habit of using alcohol to excess where: Applicant drank only occasionally after completing an alcohol treatment program; there was no evidence that Applicant was expressly instructed to abstain from all alcohol consumption at the conclusion of treatment; Applicant signed no agreement to abstain from all alcohol consumption for life; and Applicant had not abused alcohol or drunk alcohol to excess in the two years prior to hearing. *Goble Tavern*, OLCC-98-L-016, September 1999.

The license was renewed where licensee had a record of using alcoholic liquor to excess (two DUII arrests which resulted in diversion agreements, one incident of being visibly intoxicated in a licensed premises, and an evaluation as a Level III drinker) but was able to show good cause to overcome her record. The good cause included completion of two alcohol treatment programs, the recommendation of her alcohol treatment counselor, a record of using alcohol that was not severe, and a good record of compliance at the premises with no warnings and no tickets since she obtained her license over ten years ago. *Two by Six*, OLCC-96-L-006, March 1997.

For purposes of proving a violation of “being in the habit of using alcoholic liquor to excess,” the Commission concluded that the habit need not be present or current at the time of the hearing, as long as it existed at the time the licensee was licensed by the Commission. The Commission concluded that it has an interest in sanctioning a licensee for having a habit of using alcohol to excess while the licensee was licensed by the Commission. Otherwise, the Commission’s performance standards would be mere hollow threats. *The Homestead*, OLCC-94-V-074, August 1996.

The Commission concluded the applicant had a record of using alcohol to excess and denied the license where the applicant had two DUII convictions and one recent arrest for DUII within a 13 year period. The Commission concluded there was not good cause to outweigh the refusal basis and that applicant was not a good risk for compliance because the applicant failed to show that he was taking steps, such as participation in a treatment program, to control his drinking problem. *Jammers West, Inc.*, OLCC-94-L-005, March 1995.

The Attorney General advises that the Federal Americans with Disabilities Act applies to the Commission’s licensing activities. Alcoholism is a disability covered under the ADA. The Attorney General advises that there are additional considerations under the ADA that the Commission’s contested case precedent and the Commission’s rules interpreting ORS 471.295(4)(a) do not address. The Commission should consider: 1. whether there are reasonable accommodations that can be made for the disabled applicant; and 2. whether the continued licensing of a licensee would constitute a direct threat to public health and safety. The Attorney General advises that the Commission’s determination must be based on an individualized assessment, based on reasonable judgment that relies on current medical evidence or on the best available objective evidence. The direct threat determination may not be based on generalizations or stereotypes about the effects of a particular disability. *7-Eleven Store No. 14495*, OLCC-92-L-014, April 1994.

B.1.b.8.

B. LICENSING/RENEWAL

- B.1.b.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)) (continued)
[(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3),
ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020)]]

Because the record did not establish that the applicant was diagnosed to be an alcoholic, the Commission concluded that the applicant did not have a current habit of using alcoholic liquor to excess. The record indicated that the applicant was diagnosed as a "problem drinker." *K.C.'s*, OLCC-93-L-007, March 1994.

The Attorney General has advised the Commission that the Americans with Disabilities Act applies to the Commission's licensing activities. If the Commission bases a decision on a diagnosis of alcoholism, which is a protected disability, the Commission should consider the following: an individualized assessment of whether the particular applicant poses a direct threat to the public health and safety; and whether there are reasonable accommodations for the applicant. *K.C.'s*, OLCC-93-L-007, March 1994.

There was good cause to overcome a record of abuse where the license was restricted to prohibit the applicant from serving alcoholic beverages at the licensed premises. The applicant was allowed to continue performing building and equipment maintenance work at the licensed premises. *K.C.'s*, OLCC-93-L-007, March 1994.

The Commission concluded that applicant has a habit of using alcoholic liquor to excess and denied the application. Applicant was convicted of DUII on two occasions, was evaluated a problem drinker, and her treatment counselor recommended that she remain abstinent and attend support-group meetings. Even though applicant's employer gave her a strong recommendation and applicant's job involves only minimal service of alcoholic liquor, applicant continues to consume alcoholic liquor on a regular basis, routinely consuming two to three drinks after work. *Diana Langendoerfer*, OLCC-92-SP-033, November 1992.

The fact that an applicant is currently taking Antabuse does not establish that the applicant has a current habit of using alcoholic beverages to excess where the applicant does not depend upon Antabuse to remain abstinent. *Greg S. Scheller*, OLCC-92-SP-022, October 1992.

The Commission found there was no current habit of abuse where the applicant had no alcohol-related incidents for two years prior to the hearing, the applicant had not been diagnosed as an alcoholic, and the applicant's current alcohol consumption was not excessive. *April I. Neely*, OLCC-92-SP-019, June 1992.

Commission allowed applicant, who continued to drink up through the date of his hearing after his alcohol treatment counselor of two years prior had advised him to completely abstain, to supplement the record with current evidence of alcohol use, diagnosis, and treatment. Applicant showed good cause with a strong employer recommendation, good history of compliance, abstinence following his initial hearing, a favorable diagnosis and prognosis from his current treatment counselor, and a restriction that he abstain completely from drinking alcohol. *George A. Morrow*, OLCC-91-SP-011, February 1992.

B.1.b.8.

B. LICENSING/RENEWAL

B.1.b.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)) (continued) [(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3), ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020]]]

Applicant has a habit of using alcoholic liquor to excess where the evidence showed that applicant drinks until refused further service; over consumed and became involved in fights; had been "86ed" from premises in his town because of his behavior while drinking; disregarded his treatment counselor's recommendation that he cease consuming; denied that he has a drinking problem; and consumes alcoholic liquor at the present time. *Landmark Saloon*, OLCC-91-L-005; January 1992.

The Commission concludes that a history of using alcohol to excess can be defined as a pattern of incidents showing excessive use of alcoholic liquor over a period of time. Applicant's nine incidents of excessive drinking constituted a recent history of using alcoholic liquor to excess pursuant to OAR 845-05-025(4)(a). *Landmark Saloon*, OLCC-91-L-005; January 1992.

Licensee failed to show good cause to outweigh a recent history of using alcoholic liquor to excess where applicant continued to drink up to the present time and continued to drink in spite of the fact that both his psychiatrist and alcohol-treatment counselor recommended that he abstain. *Landmark Saloon*, OLCC-91-L-005; January 1992.

Applicant's dependence on Methadone to abstain from using heroin demonstrated a present habit of using controlled substances to excess. Applicant's complying with probation conditions; abstaining completely from using alcohol and unauthorized controlled substances for the year and one-half preceding the hearing; participating successfully in Methadone treatment during that same period of time; and four years good compliance record were not sufficient good cause to outweigh denial based on past heroin addiction. Sufficient good cause was shown and a service permit granted after adding a restriction requiring continued Methadone treatment and regular reporting of urinalysis and breathalyzer tests to the Commission. *Deborah K. Orleans*, OLCC-91-SP-050, August 1991.

ORS 471.380(1) did not provide a basis to refuse to issue a service permit. Although the applicant continues to drink one glass of beer or wine on occasion with meals, there was no evidence that applicant has abused alcohol by over consumption since 1986. *Terri Lynn Runft*, OLCC-90-SP-237, August 1991.

The evidence failed to establish that applicant had a current habit of using controlled substances to excess where the applicant had not used illegal controlled substances for one and one-half years. *James Ray Steele*, OLCC-90-SP-087, June 1991.

Evidence which established that applicant had not used alcohol or illegal controlled substances in the year preceding her hearing proved that applicant did not have a current habit of using alcohol or illegal controlled substances to excess. That the test results of a twice-weekly, random, urinalysis over the past six months were all negative was particularly convincing evidence on this point. *Juanita Lee Ray*, OLCC-90-SP-189, May 1991.

B.1.b.8.

B. LICENSING/RENEWAL

- B.1.b.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)) (continued)
[(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3),
ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020)]]

The Commission granted a salesman's license in spite of applicant's record of abuse of alcoholic liquor where applicant showed good cause to outweigh the record of abuse. Applicant showed that he was unlikely to consume to excess in the future because he had ceased drinking, was doing well on his job and had the support of his employer, and agreed to have a restriction on the license that he would not drink. *Richard Robitalle*, OLCC-90-S-002, March 1991.

The Commission concluded that licensee failed to show good cause to overcome a habit of use to excess where licensee: did not have a good record of compliance, had not sought treatment for her drinking, did not offer to abide by any conditions or restrictions, and continues to consume alcoholic liquor. *The Hide Out*, OLCC-89-L-019, September 1990.

The Commission concluded that licensee had a habit of using alcoholic beverages to excess where licensee consumed alcoholic beverages to the point of intoxication on approximately eight occasions over three years, and each of these incidents resulted in disturbances to which the police responded. *The Hide Out*, OLCC-89-L-019, September 1990.

The evidence failed to show a prima facie case that licensee had a record of abuse where the records showed that licensee had one diversion and one acquittal of DUII after jury verdict. *The Hide Out*, OLCC-89-L-019, September 1990.

The preponderance of the evidence did not establish that the applicant had a current habit of using alcoholic liquor to excess where although the applicant had previously been diagnosed to be an alcoholic and currently consumes alcoholic beverages, the record did not indicate that the applicant was instructed to cease drinking alcoholic beverages by a treatment expert. The record did not indicate that an expert familiar with the applicant stated that he could not adequately control his drinking without remaining abstinent. There was no evidence that the applicant was currently using alcoholic liquor to excess. *High Tech Cafe & Deli*, OLCC-89-L-014, March 1990.

The Commission refused to renew a salesman's license when the applicant had a current habit of using alcohol to excess shown by his continuing to drink alcoholic liquor after he had been diagnosed as an alcoholic and had been advised to stop drinking by his treatment program. Applicant failed to show good cause to outweigh the denial criterion. *Ronald DiNucci*, OLCC-88-S-001.

When a co-licensee resigned as a corporate officer, divested his stock and was no longer an applicant or licensee, the Commission could not impose a License restriction barring him from the licensed premises under ORS 471.295(4)(a) and OAR 845-05-025(6). Both establish a license refusal grounds based on the eligibility of an applicant, that is, the applicant's habit and record of abuse of alcoholic liquor. Neither lists as a refusal grounds the habit or record of abuse of other persons. *Log Cabin Restaurant & Lounge*, OLCC-88-L-020, May 1989.

B.1.b.8.

B. LICENSING/RENEWAL

- B.1.b.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)) (continued)
[(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3),
ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020]]]

Where the record presented a close call on whether there was good cause to overcome the applicant's record of abuse of alcohol, the Commission granted the license subject to the following restrictions: abstaining from alcohol; completion of any court-ordered alcohol treatment; make treatment results available to the Commission; comply with treatment program recommendations. *Point After*, OLCC-88-L-017, December 1988.

Applicant had a present habit of consuming alcohol to excess where applicant was an alcoholic, applicant's attendance at treatment programs had not been effective in preventing further alcohol abuse, and applicant continued to drink as of the date of the hearing. *Lloyd's of Bandon Restaurant & Lounge*, OLCC-88-L-007, November 1988.

A licensee had not gained sufficient control of his drinking to be other than a poor compliance risk unless he was restricted from selling, serving, consuming, or being under the influence of alcoholic beverages on the licensed premises, or he agreed to obtain further alcohol treatment, abstain from consuming alcohol until completing such treatment, and follow any recommendations of the treatment program, including abstinence, that were reasonably necessary to maintain acceptable control of his alcohol consumption. *Lloyd's of Bandon Restaurant & Lounge*, OLCC-88-L-007, November 1988.

There was good cause shown to overcome a licensee's record of abuse of alcohol where licensee had a 15-year record of good compliance with the Commission's rules, licensee's abuse of alcohol was intermittent, rather than chronic, and where licensee's alcohol problem could be overcome by further treatment. The Commission imposed conditions that the licensee abstain from alcohol until completion of an intensive treatment program, and that licensee continue to abstain if the treatment program so recommended in order for the licensee to maintain acceptable control of his drinking. *7-Eleven Food Store No. 144950*, OLCC-88-L-004, June 1988.

The Commission has considered the following factors when determining whether there is good cause to outweigh a record of abuse:

1. previous record of compliance;
2. participation in alcohol treatment programs;
3. whether person continues to drink or has stopped;
4. recommendations from counselors, employers, probation officers;
5. severity of person's record;
6. how much time has passed since last relevant incident.

The Commission concluded that applicant showed good cause where factors 1-5 above weighed in her favor and, in addition, applicant agreed to having conditions placed on the license. *Oceanside Restaurant & Lounge*, OLCC-87-L-014, February 1988.

B.1.b.8.

B. LICENSING/RENEWAL

B.1.b.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)) (continued) [(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3), ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020)]]

The Commission concludes that in order for an applicant to show that he does not have a present habit, he must show that he is able to refrain from consumption of alcoholic liquor without the aid of substances such as Antabuse. The Commission overrules any cases that may have concluded that the use of Antabuse precludes a present habit of using alcoholic beverages to excess. *Oceanside Restaurant & Lounge*, OLCC-87-L-014, February 1988.

Applicant was not shown to have a present habit of using alcoholic beverages to excess where there was no evidence to show the applicant became intoxicated or had alcohol-related problems in the preceding four years. Service permit was granted even though the applicant did not appear because the Commission failed to prove a prima facie case. *Dale Weslie Cobb*, OLCC-87-SP-009, September 1987.

The evidence did not show a present habit where the applicant had three prior DUILs but only one instance of drinking in the preceding two-year period. *Cathy Jo Burgholzer*, OLCC-87-SP-011, August 1987.

The Commission has concluded that there is evidence of a habit of using alcoholic beverages to excess where the licensee has been diagnosed as an alcoholic; has been instructed to cease drinking, and in spite of this, continues to consume alcoholic liquor. *Stafford's on Broadway*, OLCC-86-SP-020, November 1986.

Evidence that applicant is unable or unwilling to cease drinking was found where applicant failed to complete an alcohol treatment program and failed to stop drinking, although he was under court order to do so. *David Walter Kile*, OLCC-86-SP-020, November 1986.

A habit is defined as a manner of behavior that a person does with frequent repetition and is unwilling or unable to stop. The mode of behavior may become nearly or completely involuntary. *Beavers Inn*, OLCC-86-L-009, September 1986; *Falls View Tavern*, OLCC-85-L-015, September 1986.

Good cause not shown to overcome record of alcohol abuse shown by liquor law convictions where applicant drank to excess up until six months before his hearing and where applicant had not completed all of his alcohol counseling. *Robert Gordon Reed, Jr.*, OLCC- 86-SP-002, July 1986.

Good cause may be shown for issuance of a service permit under ORS 471.380(1) in spite of a habit of using alcoholic beverages to excess if evidence shows applicant would not present a poor risk of compliance with alcoholic beverage laws. *Violet Darlene Dodds*, OLCC-85-SP-024, March 1986; *Oceanside Restaurant & Lounge*, OLCC-87-L-014, February 1988; *7-Eleven Food Store No. 144950*, OLCC-88-L-004, June 1988.

B.1.b.8.

B. LICENSING/RENEWAL

- B.1.b.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)) (continued)
[(ORS 471.295(4)(d), ORS 471.380(4), OAR 845-05-025(5), OAR 845-05-030(3),
ORS 670.280, [ORS 472.160(4)(a)], [OAR 845-09-020]]]

ORS 471.295(4)(a) requires that the applicant have a present habit of using alcoholic beverages to excess. Applicant's use of Antabuse for the past five months precludes any present habit of using alcoholic beverages. *Nemo's Pizza & Spaghetti House*, OLCC-85-L-028, December 1985.

Good cause for overcoming a record of alcohol abuse consists of evidence that the applicant is not a poor risk as to compliance with alcoholic beverage laws. The purpose of OAR 845-05-025(6) is not to punish an applicant for wrongdoing but to prevent problems associated with the sale of alcoholic beverages. David P. Jardine, *Nemo's Pizza & Spaghetti House*, OLCC-85-L-028, December 1985.

The Commission must prove that the use of alcoholic beverages to excess is current in order to prove a habit of use to excess. *Barbara Helen Thompson*, OLCC-85-SP-011, July 1985. The Commission has concluded that an applicant does not have a habit of using alcoholic beverages to excess where there was no evidence that the applicant had used alcohol to excess for the past year. *Donna C. Watkins*, OLCC-85-SP-005, April 1985.

B.1.b.8.

B. LICENSING/RENEWAL

B.1.b.9. OLCC Compliance History (ORS 471.313(4)(g), OAR 845-005-0320(8) [(ORS 471.295(4)(g), OAR 845-05-030(3), [OAR 845-005-0326(6))]] [ORS 472.160(4)(g))]]

Evidence fails to demonstrate that the applicant is a good candidate for future compliance because she 1) divides her time with another business she owns; 2) failed to appreciate the seriousness of the restrictions on her Temporary Letter of Authority; 3) is unfamiliar with liquor products and has difficulty identifying appropriate products; and 4) improperly relied on the former licensee and the distributor to stock the store in compliance with restrictions. *JR's Convenience Store*, OLCC-06-V-084, December, 2007.

Licensee's previous history of compliance at a different location is not worthy of as much weight in determining her risk for future compliance with liquor laws, including restrictions, where the previous history comes from a different type of operation, clientele, and location. Licensee had previously run a Chinese restaurant where alcoholic beverages were available but not a significant part of the business, and the new business was a bar in a different part of town. *Dad's Restaurant & Lounge*, OLCC-06-V-029, December, 2007.

The Commission properly proposed to refuse to renew Licensee's Full On-Premises Sales license because Licensee did not show good cause to overcome a poor record of compliance. Licensee has not shown that future violations are unlikely because although Licensee has offered explanations as to how or why some of the prior violations occurred, he did not demonstrate that he is a good risk for future compliance. Licensee's unwillingness to assist the inspectors in locating his minor sister after she fled the premises and his false claims in connection with the investigation show a disregard for the liquor laws. So does the fact that his minor sister was permitted on the premises, and retained a master key to access the premises, even after an OLCC inspector counseled Licensee in October and November 2004 about not allowing minors inside. Under these circumstances, Licensee's claim that he will comply with the law is not sufficient to establish good cause. *H2O Martini Bar & Restaurant*, OLCC-05-V-012, December 2005, *affirmed without opinion*, *Capital Asset Holdings, Inc., et al v. OLCC*, 213 Or. App. 240 (2007).

Serious and persistent problems that led to a prior settlement agreement with licensee were not a poor record of compliance for purposes of license renewal where there has been a de facto renewal since the settlement was reached. A February 2001 Proposed Refusal of License Renewal letter based on a history of serious and persistent problems was settled in December 2001 with resolution of violation and license issues. In April 2003 the Commission sent another Proposed Refusal of License Renewal letter based on more recent serious and persistent problems, an inability to control the premises, and a record of poor compliance when previously licensed. The history of serious and persistent problems was mitigated by the licensee's actions and the old history of serious and persistent problems was not treated as a record of poor compliance. *Cabana Club Café & Grill*, OLCC-03-L-010, April 2005.

B.1.b.9.

B. LICENSING/RENEWAL

B.1.b.9. OLCC Compliance History (ORS 471.313(4)(g), OAR 845-005-0320(8) (continued) [(ORS 471.295(4)(g), OAR 845-05-030(3), [OAR 845-005-0326(6))] [ORS 472.160(4)(g)]]

Where, during a 90-day temporary authority, Applicant was found to be responsible for a failure to verify the age of a minor and for permitting her nine-year-old daughter to sell alcohol, arising out of the same incident, the Commission concluded that Applicant's personal supervisory involvement in the two serious violations provided reasonable grounds to believe that Applicant did not have a good record of compliance during the term of her temporary license (90 day authority). *Quincy Store*, OLCC-02-V-008/L-001, February 2004, affirmed at *Ban v. OLCC*, 196 Or App 545, 102 P.3d 744 (2004).

Applicant was unable to overcome a poor record of compliance by demonstrating she would not be a poor risk for future compliance with the alcoholic beverage laws where: (1) when confronted with the violation she displayed an intentional lack of candor and attempted to hide the violation by denying recognizing the minor, gave inaccurate and inconsistent explanation for her conduct and role in the sale; and (2) by her reluctance to bother her customers by asking for identification when she had previously done so, it is reasonable to conclude she would not be vigilant in verifying the age of persons who appear under age 26, particularly as she has demonstrated that her recall of those persons whose age she has, or has not, verified may not be reliable. *Quincy Store*, OLCC-02-V-008/L-001, February 2004, affirmed at *Ban v. OLCC*, 196 Or App 545, 102 P.3d 744 (2004).

Remote location of a licensed premises, making it difficult for staff to monitor future compliance with the liquor laws is not a legitimate basis for license refusal and is not a factor that may be used to defeat good cause to overcome a poor record of compliance. *Quincy Store*, OLCC-02-V-008/L-001, February 2004, affirmed at *Ban v. OLCC*, 196 Or App 545, 102 P.3d 744 (2004).

The Commission did not refuse to renew Applicant's license based on ORS 471.313(4)(g) (poor record of compliance when previously licensed) where Applicant had held five OLCC licenses with a total of 3 NVTs in 7 years. Of the NVTs, one was a category I and two were Category V violations. *Lariat Lanes & Convenient Services*, OLCC-03-L-001, October 2003.

Where Applicant four times violated the restrictions of her temporary authority to operate (no sale of malt liquor in containers of 32 ounces or larger; no sale of single cans or bottles of malt liquor in 16-ounce size), had restricted products in her cooler available for purchase, and her employee sold alcohol to a minor without verifying age, such violations constitute a poor record of compliance with the alcoholic liquor laws and the Commission's rules when previously licensed, and justify refusing the application for a permanent Off-Premises Sales license by Applicant. *Ann's Grocery*, OLCC-02-L-008/V-024, December 2002.

B.1.b.9.

B. LICENSING/RENEWAL

B.1.b.9. OLCC Compliance History (ORS 471.313(4)(g), OAR 845-005-0320(8) (continued) [(ORS 471.295(4)(g), OAR 845-05-030(3), [OAR 845-005-0326(6))] [ORS 472.160(4)(g)]]

Standards interpreting the ORS 471.315 cancellation criteria may be applied by analogy to interpret refusal criteria. Consequently, the standards utilized to determine whether the violations of license conditions or restrictions are substantial enough to justify cancellation apply with equal force to refusals. Those standards were announced in *Oceanside Restaurant & Lounge*, OLCC-88-V-123, August 1989. Application of those standards to this case demonstrates that the violations were substantial:

- (a) The violations occurred within the first 12 weeks of the temporary authority to operate;
- (b) Even if the violation was unintentional, applicant should have known that she was restricted from selling the products clearly marked as malt beverages;
- (c) There were four sales of single 16-ounce cans of malt liquor made over the course of seven days and applicant had in her inventory the other category of products that she was restricted from selling;
- (d) The violations established go directly to the heart of the restrictions placed on the temporary authority (the product restrictions were imposed for the specific purpose of mitigating street drinking and public intoxication in an area with an established history of such problems).

The violations of the restrictions placed on the temporary license were substantial and provide grounds for a license cancellation. They formed the basis for the revocation of Applicant's temporary authority. By analogy, these violations also provide grounds for refusing to issue a permanent license to Applicant. These substantial violations of the restrictions placed on the temporary authority, combined with the violation of sale to a minor constitute a poor record of compliance with the alcoholic liquor laws and the Commission's rules for purposes of ORS 471.313(4)(g). *Ann's Grocery*, OLCC-02-L-008/V-024, December 2002.

The Commission granted an application for a new license with restrictions where the licensee had a prior license that had an immediate license suspension and letter of reprimand due to illegal drug sales, where it was determined that applicant would not be a poor risk for future compliance. That applicant would not be a poor risk was based on: (1) Applicant has a lengthy history of operation of 5 licensed premises over 10 years without a violation, suggesting that non-compliance for eighteen days at *Tequila Peppers* was an anomaly; and (2) the drug problems encountered at *Tequila Peppers* were the product of a set of circumstances unlikely to occur at *Pepita Express* (different locale with no history of drug sales, family style restaurant versus lounge, absentee management versus full-time involvement of licensee.) *Tequila Peppers Bar & Grill & Pepita Express*, OLCC-99-V-011-ES & OLCC-99-L-012, December 1999.

B.1.b.9.

B. LICENSING/RENEWAL

B.1.b.9. OLCC Compliance History (ORS 471.313(4)(g), OAR 845-005-0320(8) (continued) [(ORS 471.295(4)(g), OAR 845-05-030(3), [OAR 845-005-0326(6))] [ORS 472.160(4)(g)]]

The Applicant's previous PS license was canceled because his agent violated a license restriction while the applicant was out of the country. The Commission determined that the Applicant had a poor record of compliance when previously licensed, but that the Applicant had shown good cause to overcome the refusal basis for a new license. Two years had passed since the Applicant's agent had violated the license restriction on the previous license and the Applicant did not commit the previous violations. *Costless*, OLCC-99-L-015, November 1999.

Husband and wife were originally co-licensed at the licensed premises in Salem, which the wife solely operated. Husband was removed from the license prior to the renewal application of wife (Applicant). Husband and wife had also been co-licensed at a premises in Eugene which husband solely operated. The Eugene license was cancelled by the Commission. The Regulatory Program proposed to refuse wife's Salem renewal application based upon poor compliance when licensed at the Eugene premises.

The Commission concluded that Applicant had a poor record of compliance in Eugene, when previously licensed, but concluded that Applicant had demonstrated good cause to overcome a poor record of compliance. Applicant showed that, despite the poor record, she would not be a poor risk for future compliance in that the types of businesses in Eugene and Salem differed significantly, husband solely operated the Eugene business and Applicant had no role in its operation, and Applicant was willing to accept a restriction that husband not be allowed to work in the Salem business. The Commission renewed the license of Applicant with the restriction. *A Taste of Thai Restaurant*, OLCC-98-L-003, August 1998.

The Commission decided that it can count as evidence of a poor record of compliance those charges that are only charged and proved for the first time during the immediate contested case, as long as the Commission gives reasonable notice of the charges and gives the applicant an opportunity to contest the charge. *Riverside Restaurant & Lounge*, OLCC-94-L-008, December 1996.

Where licensee had three prior violations, the violations all had mitigating circumstances, and licensee had paid a fine or served a suspension for each, the Commission concluded that the violations were not sufficient in number or severity to constitute a basis to refuse to renew the license under ORS 472.160(4)(g) (poor record of compliance). *Reflections Bar & Grill*, OLCC-91-L-023, June 1992.

Where the Commission's penalty schedule recommended a fine or suspension for licensee's prior violations rather than license cancellation, and the licensees had already received a sanction of a fine or suspension for those violations, the Commission concluded that ORS 471.295(4)(g) did not provide a basis to refuse to renew the license. *Wolf Den Tavern*, OLCC-89-L-005, November 1989.

B.1.b.9.

B. LICENSING/RENEWAL

B.1.b.9. OLCC Compliance History (ORS 471.313(4)(g), OAR 845-005-0320(8) (continued) [(ORS 471.295(4)(g), OAR 845-05-030(3), [OAR 845-005-0326(6))] [ORS 472.160(4)(g)]]

ORS 471.295(4)(g), which provides for license refusal where applicant did not have a good record of compliance when previously licensed, does not pertain to a renewal applicant's violation record at the premises at which the applicant seeks renewal. *214 Tavern*, OLCC-87-L-010, December 1987.

In a request to remove a license restriction, good cause was not shown to overcome the licensee's poor record of compliance with the Commission's rules as the basis to refuse the request. The licensee had a number of recent violations on her record that showed a pattern of disobeying the liquor laws. This record proved that the licensee would be a poor risk for compliance with the alcoholic beverage laws. *First Avenue Market*, OLCC-87-L-007, November 1987.

An applicant may show good cause to overcome a poor record of compliance with Oregon's liquor laws and the Commission's rules where the applicant shows that, despite the poor record, the applicant would not be a poor risk for future compliance with the alcoholic beverage laws. *First Avenue Market*, OLCC-87-L-007, November 1987.

Commission noted, in granting an application, that the applicant's violation record, when formerly a licensee, arose through applicant's responsibility for the acts of his employees. *James Pearson*, OLCC-85-SP-013, September 1985.

Prior record of violations may be overcome by evidence establishing that future violations not likely and that area had need for the license. Linda A. McHargue, *Crane Supply Tavern*, OLCC-85-L-019, August 1985.

OAR 845-05-030(4) is not an absolute bar to license issuance. An application should be refused where the nature and number of the applicant's violations as a licensee create sufficient question whether applicant would follow the liquor laws if issued a license again. James C. Pearson and Thurman O. Martin, *Hale's Tavern*, OLCC-85-L-010, June 1985.

Violation history of corporate licensee not given substantial weight against former minority shareholders who were not active in the corporation and who now seek license as individuals. The Newell Family Corporation, Inc., *Wes's Prime Rib*, September 1983.

B.1.b.9.

B. LICENSING/RENEWAL

B.1.b.10 Unfavorable Evaluation of Mental, Emotional or Physical Condition
(OAR 845-005-0326(5))
[(OAR 845-05-030(2))]

B.1.b.11. Lack of Good Repute and Moral Character (ORS 471.313(4)(f))
[(ORS 471.295(4)(f), [ORS 472.160(4)(f))]]

The total number of judgments against an applicant is not persuasive, but the number of unpaid judgments may be evidence used in determining poor moral character based on a disregard for the law. *Zeba Bistro*, OLCC-05-L-003, June, 2007.

License applicant's two controlled substance felony convictions, one conviction for attempting to elude police, and Rape III conviction over a 13-year period show a lack of respect for law that makes it likely that the applicant will fail to follow the laws regarding the sale of alcohol. *Under the Bridge Cigarettes*, OLCC-05-L-002, February, 2006.

Reading *Tony's Tavern* together with *Sparkle's Tavern* and *Punjab Tavern*, to find the definition of moral turpitude, the Commission requires that the acts at issue be knowing and intentional and involve two or more of the following elements: fraud, deceit or dishonesty; harm to a specific individual; or illegal activity undertaken for personal gain. Applicant's rape of his 15 year old adopted daughter constitutes moral turpitude. He acknowledged the sex, he knew her age, and that the act was illegal therefore his action was knowing and intentional. The act of penetration caused or threatened to cause physical injury or harm to the daughter, and she could not consent. The applicant's acts were for personal gain. Fraud and deceit were not necessary. *Under the Bridge Cigarettes*, OLCC-05-L-002, February, 2006.

An add-partner application was denied based on ORS 471.313(4)(f) (poor moral character) where partner had a misdemeanor conviction for marijuana possession, two game violations, two incidents of harassment, six noise disturbances and admitted long-term illegal marijuana use. This history demonstrated to the Commission prior law violations of sufficient magnitude or frequency to show a lack of regard for the law. *Lariat Lanes & Convenient Services*, OLCC-03-L-001, October 2003.

The nature of Applicant's four violations of laws governing professional conduct while licensed as a real estate agent, and her two periods as a non-complying employer by not providing workers' compensation coverage, establishes a pattern of disregard for law sufficient to establish a lack of good moral character. Applicant, however, demonstrated good cause to overcome the lack of good moral character in this instance where she showed she would be a good risk for compliance with OLCC laws in that: five years have elapsed since the Real Estate Agency order revoking Applicant's real estate license and seven years since the acts which violated the Real Estate Agency laws; Applicant held a liquor license for four and a half years subsequent to the real estate violations without incident; three years have elapsed since failing to comply with workers' compensation (a period more recent and of sufficient duration to predict that Applicant would be a good risk for compliance); and where Applicant has no criminal record. *Tollgate Mountain Chalet*, OLCC-02-L-004, September 2002.

B.1.b.10.
B.1.b.11.

B. LICENSING/RENEWAL

B.1.b.11. Lack of Good Repute and Moral Character (ORS 471.313(4)(f)) (continued) [(ORS 471.295(4)(f), [ORS 472.160(4)(f)]]

Over the nine-year period preceding application, Applicant's driving record showed: four convictions for Driving While Suspended; one conviction for Driving Uninsured; a license suspension for failing a breath test; two license suspensions for failing to provide proof of insurance; and one license suspension for having an uninsured accident. The Commission determined that the number of prior law violations demonstrated disregard for law, resulting in denying the license based on poor moral character. *T-Mini Mart*, OLCC-02-L-007, October 2002.

Licensee's and son's misrepresentations concerning son's entitlement to profits and concealment that son managed the licensed premises showed a lack of honesty in dealing with the Commission that constitutes a lack of good moral character, providing a basis to refuse to renew the license and to refuse to approve the son as manager. *La Gran Cantina*, OLCC-00-V-024/-L-009/-L-010, June 2002.

The Commission has used two different, but related, standards in evaluating whether an applicant is not of good repute and moral character under former ORS 471.295(4)(f). Stated in the aggregate, the Commission has concluded that "not of good moral character" may be proved by prior violations of the law, which, based on their (a) "nature," or (b) "number," indicate either (1) "turpitude," or (2) "disregard for law." To determine whether a crime involves moral turpitude, the Commission has applied the elements adopted by the Oregon Supreme Court in *In re Chase*, 299 Or 391, 402 P 2d 1082 (1985): intent or knowledge; fraud, deceit, or dishonesty; harm to a specific victim; and illegal activity undertaken for personal gain.

The Commission concluded that conviction for attempted theft by receiving a stolen construction vehicle, located on applicant's property and about which Applicant lied to police, was a crime of moral turpitude. The receipt of the stolen vehicle was intentional; it was dishonest of Applicant to aid the theft by concealing the vehicle on the property and deceitful to lie about how it came into his possession; there was harm to a specific victim, the owner of the vehicle; and this was illegal activity undertaken for personal gain. *Thomas Creek Steak and Seafood*, OLCC-00-L-008, April 2001.

Where three years had passed since applicant's conviction of a crime involving moral turpitude, it was not a sufficient passage of time to weigh in favor of good cause, in light of applicant's other convictions (multiple driving and criminal convictions spanning 20 years), which themselves show a disregard for the law. Weighing against good cause were applicant's threat of harm to a grocery store clerk (who refused to sell applicant alcoholic beverages when applicant was intoxicated) and applicant's receipt of stolen property and attendant lies to police. Applicant has not demonstrated that he would be a good risk for compliance with OLCC rules. *Thomas Creek Steak and Seafood*, OLCC-00-L-008, April 2001.

In re Starr, 326 Or 328, 342, 952 P2d 1017 (1998) OSB disciplinary hearing discusses fraud, deceit, misrepresentation, dishonesty.

B.1.b.11.

B. LICENSING/RENEWAL

B.1.b.11. Lack of Good Repute and Moral Character (ORS 471.313(4)(f)) (continued) [(ORS 471.295(4)(f), [ORS 472.160(4)(f)]]

The Commission concluded that there were two separate reasonable grounds to refuse the applicant's license for applicant not being of good moral character. Applicant demonstrated a lack of simple honest dealing (the *Schmitz v. OLCC*, 30 Or App 563, 567, 567 P2d 591 [1977] test for poor moral character) when he intentionally provided the Commission with two material false statements. Applicant also demonstrated a disrespect for the law with his numerous liquor law violations (serving alcohol to a minor, encouraging and allowing patrons to consume "b.y.o." wine and beer on an unlicensed premises, and numerous instances of drinking on duty), which is the *McCann v. OLCC*, 27 Or App 487, 491, 556 P2d 973 (1976) test for poor moral character. *Bistro Gardens*, OLCC-96-L-003, February 1997.

The Commission concluded that an applicant's convictions for theft, forgery, and fraudulent use of a credit card met the test for poor moral character (moral turpitude) where the crimes involved the use of money and a credit card stolen from a patron at an OLCC licensed premises. *Corey W. Beyerlin*, OLCC-96-L-012, October 1996.

The Commission concluded that an applicant's two convictions (one a felony) for theft, two probation violations, and four Driving While Suspended infractions (not related to driving under the influence) met the test for poor moral character based upon a "lack of respect for the rights of others and for the laws of the State and Nation." *Corey W. Beyerlin*, OLCC-96-L-012, October 1996.

The Commission concluded that an applicant's multiple, intentional, material, false statements met the test for poor moral character based upon not dealing honestly with the Commission and attempting to thwart the Commission's investigation of the application. *Corey W. Beyerlin*, OLCC-96-L-012, October 1996.

The Commission concluded that repeated, knowing illegal sales of alcohol by an applicant met two separate tests for poor moral character: 1) intentional, deceitful, illegal activity undertaken for personal gain (the "moral turpitude" test under *In re Chase, supra*), and 2) prior law violations of a sufficient magnitude or frequency to show a lack of respect for the laws of the state (the test cited in *McCann v. OLCC, supra*). *County Cork Public House*, OLCC-95-L-025, October 1996.

When the agency proposes an action under ORS 471.295(4)(f) based on fraud or misrepresentation, the standard of proof is proof by clear and convincing evidence. *Fast Market*, OLCC-90-L-004, May 1991.

B.1.b.11.

B. LICENSING/RENEWAL

B.1.b.11. Lack of Good Repute and Moral Character (ORS 471.313(4)(f)) (continued) [(ORS 471.295(4)(f), [ORS 472.160(4)(f)]]

The AG has advised that the Commission and Oregon's Appellate Courts have developed several tests or standards for establishing that an applicant or licensee is not of good moral character. Poor moral character can be proved by any of the following circumstances:

- a. Statements of intent to commit a crime of dishonesty. *Schmitz v. OLCC*, 30 Or App 563, 567 P2d 591 (1977).
- b. Lack of simple honesty and fairness. *Campbell v. Bd. of Medical Examiners*, 16 Or App 381, 390, 518 P2d 1042, (1974), and *Schmitz v. OLCC*, *supra*.
- c. Prior law violations of a sufficient magnitude or frequency to show a lack of "respect for the rights of others and for the laws of State and Nation." *Campbell v. Bd. of Medical Exam.*, *supra*, cited in *McCann v. OLCC*, 27 Or App 487, 491, 556 P2d 973, (1976).
- d. moral turpitude. *In re Chase*, 299 Or 391 (1985); *McCann v. OLCC*, *supra*; see, *Tony's Tavern*, OLCC-86-L-012, February 1987. The AG advised that in order to constitute a crime of moral turpitude under *In re Chase*, *supra*, the crime must be a knowing and intentional crime and involve one or more, but not necessarily all, of the following three elements:
 - (1) Fraud, deceit, or dishonesty.
 - (2) Harm to a specific individual.
 - (3) Illegal activity undertaken for personal gain.

The evidence failed to establish by clear and convincing evidence that applicant was not of good moral character as alleged, arising from an alleged fraudulent claim for unemployment benefits. In applying the standard used in *Tony's Tavern*, OLCC-86-L-012, February 1987, the Commission concluded that:

intent, or knowledge - proved
fraud, deceit, dishonesty - not proved
harm to a specific victim - not proved
illegal activity for personal gain - not proved.

Jammers West, Inc., OLCC-94-L-005, March 1995.

The evidence failed to show that the applicant was not of good moral character where the applicant intentionally lied to the Commission about his use of an assumed name, but where the evidence failed to show that there was harm to a specific victim or that the act was an illegal activity undertaken for personal gain. *Punjab Tavern*, OLCC-91-L-015, April 1992.

Licensee acted with intent and was deceitful and dishonest when he misrepresented his identity and age to the Commission. However, because there was no harm shown to a specific victim and the activity was not undertaken for personal gain, the Commission concluded that there was not sufficient evidence to prove that licensee was not of good moral character. *Sparkles Tavern*, OLCC-88-V-107, September 1989.

B.1.b.11.

B. LICENSING/RENEWAL

B.1.b.11. Lack of Good Repute and Moral Character (ORS 471.313(4)(f)) (continued) [(ORS 471.295(4)(f), [ORS 472.160(4)(f)]]

Applicant did not have good moral character where he committed OLCC violations that were intentional, that caused harm to a specific victim, and that were undertaken for personal gain. The violations involved providing liquor to minors to gain sexual favors. Vince Hart and Fay E. Ladd, *Tony's Tavern*, OLCC-86-L-012, February 1987.

In *Tony's Tavern*, OLCC-86-L-012, February 1987, the Commission applied the test adopted by the court for moral turpitude in *In re Chase*, 299 Or 391, 402, 702 P2d 1082 (1985) to determine whether an applicant is not of good moral character. The Commission determined that there is evidence of poor moral character where commission of an offense includes the following elements:

intent or knowledge,
fraud, deceit, or dishonesty,
harm to a specific victim, and
illegal activity undertaken for personal gain.

Applicant's intentional false statements to the Commission that concealed a hidden owner showed a lack of honest dealing with the Commission that related significantly to the proper exercise of the license. Thus, applicant lacked good moral character. 7455 Incorporated, *Jiggles*, OLCC-85-L-013, February 1987, affirmed *7455 Inc. v. Oregon Liquor Control Commission*, 94 Or App 780, 767 P2d 116 (1989); affirmed on other grounds, 310 Or 477, 800 P2d 781 (1990).

Applicant lacked good moral character because he established a charitable, nonprofit church as a sham for running a bingo game, and he misappropriated "church" funds for his personal use. Bruce Williams, *Bruce's Bar & Grille*, OLCC-85-L-052, October 1986.

Statements by applicant that he would "go under the table and buy a license" were evidence of immoral character. *Schmitz v. OLCC*, 30 Or App 563, 567 P2d 591 (1977).

Proof of bad character based on foreign law violations must involve violations of a nature or number sufficient to show turpitude or disregard for law; the evidence must be specifically relevant to the issue of good character or some other statutory ground. *McCann v. OLCC*, 27 Or App 487, 556 P2d 973 (1976).

B.1.b.11.

B. LICENSING/RENEWAL

B.1.c. Operation or Location of Premises

B.1.c.1. Hidden Ownership (ORS 471.313(4)(h), OAR 845-005-0311) [(ORS 471.295(4)(h), [ORS 472.160(4)(h)], OAR 845-05-011(4)]

B.1.c.1.a. Receipt of Profits (OAR 845-005-0311(3)(a)) [(OAR 845-05-011(3)(a))]

Note: see cases under C.1.g.1.

Where Licensee personally filled out the business account authorization card and listed both her husband and herself as owners, Licensee admitted her husband's ownership interest. As an owner, husband was entitled to receive the profits of the business. Husband's ownership interest was also demonstrated by the fact he held himself out in the community as an owner; he spoke for and answered questions about the licensed business at a critical meeting with OLCC, despite his wife's presence; he performed work at this premises without compensation; employees contacted husband for instructions; he and Licensee are married, share joint finances, file income taxes jointly, and joint assets were used to purchase the business. Husband had an interest in the business because of his right to receive profits as an owner. Because Licensee allowed him to have an interest in the business without Commission approval, the Licensee's renewal application was denied. *Lariat Lanes & Convenient Services*, OLCC-03-L-001, October 2003.

Licensee's son obtained an interest in the business pursuant to OAR 845-005-0011(3)(a) (receipt of profits) where he was entitled to profits to be collected from the cover charge, as "entertainment consultant," over and above his entitlement to profits as a 5% shareholder. As "entertainment consultant," the son performed management or ownership functions which included hiring and firing employees, making decisions about premises' trade name and type of entertainment, conducting weekly employee meetings, supervising premises' managers, receiving all money collected at the premises, determining employee salaries, and incurring and paying the expenses of the business. The son performed more duties, had greater authority, and exercised greater control than someone with the status of a 5% shareholder would be entitled to exercise. His role at the business was much more consistent with that of a sole or majority owner. The Commission concluded the son had an interest in the business because he received or was entitled to receive profits for his management and control of the licensed premises over and above his entitlement to profits as a 5% shareholder. His entitlement to 5% of the profits as a shareholder was based on his investment of property and equipment, and was exclusive of any work performed on behalf of the business. *La Gran Cantina*, OLCC-00-V-024/-L-009/-L-010, June 2002.

B.1.c.
B.1.c.1.
B.1.c.1.a.

B. LICENSING/RENEWAL

B.1.c.1.b. Compensation Out of the Ordinary (OAR 845-005-0311(3)(b))
[(OAR 845-05-011(3)(b))]
Note: see cases under C.1.g.2.

B.1.c.1.c. Contract to Manage (OAR 845-005-0311(3)(c))
[(OAR 845-05-011(3)(c))]
Note: see cases under C.1.g.3.

The requirement that there be evidence of an agreement or contract does not necessarily require a written contract. (See, e.g., *Woahink Landing*, OLCC-86-V-052, January 1987; *Columbia Café & 3C's Club*, OLCC-86-V-034, January 1987.) *La Gran Cantina*, OLCC-00-V-024/-L-009/-L-010, June 2002.

B.1.c.1.d. Investment in Licensed Business (OAR 845-005-0311(3)(d))
[(OAR 845-05-011(3)(d)), (OAR 845-05-011(4)(b))]
Note: see cases under C.1.g.4.

Where son of primary licensee invested equipment and property in order to become a 5% stockholder in the corporation holding the liquor license at the licensed business, he did not obtain an interest in the business which requires prior Commission approval. *La Gran Cantina*, OLCC-00-V-024/-L-009/-L-010, June 2002.

The Commission concluded that a person who is a co-signor on a loan to the licensed business and who is a guarantor of the licensed business's lease has a financial interest in the licensed business. *County Cork Public House*, OLCC-95-L-025, October 1996.

Where the cook at the applicant's premises was the son-in-law of the applicant and where the son-in-law, cook, provided approximately \$900 to the premises for the purpose of paying employee wages when the business did not have sufficient funds to pay employee wages and did not have the expectation of being repaid the money, the Commission concluded that this person had an interest in the business, and therefore, needed to qualify as an applicant before the Commission would grant a restaurant license to the applicant. *El Tumbleweed*, OLCC-95-L-004, January 1996.

The applicant's husband, who loaned money to the applicant to start the business, had a recent record of using alcohol to excess. The Commissioners restricted the license to limit the hours the husband could perform maintenance work at the licensed premises. The husband's DUI record was severe (7 DUI convictions, with the most recent conviction within the last year) and only 8 months had passed since the husband quit drinking. *Rumors Cabaret*, OLCC-94-L-018, June 1995.

B.1.c.1.b.
B.1.c.1.c.
B.1.c.1.d.

B. LICENSING/RENEWAL

B.1.c.1.e. Contract Purchaser (OAR 845-005-0311(3)(e))
[(OAR 845-05-011(3)(e))]
Note: see cases under C.1.g.5.

The record did not prove that a change of ownership of a licensed business involved a contract purchase where the evidence did not prove either that the transaction involved a sale or was pursuant to a contract. *Whaler Restaurant & Lounge*, OLCC-88-V-119, March 1989. (OAR 845-06-010(3)(e))

B.1.c.1.e.

B. LICENSING/RENEWAL

B.1.c.1.f. Unlicensable Person with a Financial Interest (OAR 845 005 0311(4))

As in *Swan Mart*, the Commission found the husband of an applicant to be a person with a financial interest where the application was filed on behalf of a corporation. The corporate exception to OAR 845-005-0311(4) refers to a corporation who has a financial interest, not situations in which the corporation is the applicant. (This case was heard before *Swan Mart*, but the final order was not adopted by the Commission until after *Swan Mart*). *Zeba Bistro*, OLCC-05-L-003, June, 2007.

The Commission can deny a license based on the unlicensability of someone who has a financial interest but is not an applicant or licensee under OAR 845-005-0311(4). If the “person” with the financial interest is a corporation then concern is only about officers, controlling owners, or managers. That exception did not apply where wife’s corporation was the owner of the business and the Commission found the husband was unlicensable. *Swan Mart*, OLCC-05-L-008, October, 2006.

Applicant and his wife have debts and business assets in both of their names; they’re both registrants of the assumed business name. They transferred ownership of the property without a financial exchange; therefore, even though they live separately they share an interest in the business and applicant’s wife still is considered to have an interest in the business under ORS 471.757. Wife was unlicensable due to her poor record of compliance when she was previously licensed and her license was canceled after violating the license and its restrictions three times within the first six months of having the license. *Garcia’s Gas & Mini Mart*, OLCC-05-L-007, April, 2006.

B.1.c.1.f.

B. LICENSING/RENEWAL

B.1.c.2. Failure to Operate as Proposed (ORS 471.405(1), OAR 845-005-0325(2), OAR 845-005-0355(5)) [(OAR 845-05-025(1) [OAR 845-05-025(3)])]

Where a fire destroyed the licensed premises, and the premises had not been restored for a period exceeding three years, the Commission declined to refuse to renew the license for failure to operate as proposed because it concluded that Licensee established a good cause to overcome the refusal basis in that the local government had refused to approve his remodeling plans and grant a building permit; Licensee was without funds to restore the building until a recent insurance settlement, and Licensee would be subjected to different and more difficult licensing criteria for a new license application than for a renewal application. *Lowell Market*, OLCC-99-L-019, August 2000.

OAR 845-05-025(1). The Commission concluded that licensees failed to operate as proposed and denied license renewal where licensees: failed to achieve the dinner show format and the food sales percentages that they projected, and did not emphasize the sale of food as they said they would do in their proposal which included providing uniforms for servers and setting tables with tablecloths and utensils. *The Bank, Division Branch*, OLCC-96-L-005, March 1997.

A permittee who consumes alcoholic liquor in violation of a restriction on his permit that he not consume commits a violation of ORS 471.405(1) for selling alcoholic liquor in a manner other than the license permits. *John E. Schuberg*, OLCC-94-V-064, April 1995.

The Commission canceled the permit of a permittee who drank alcoholic liquor in violation of a restriction prohibiting him from consuming, in spite of significant good cause factors which included two years of abstinence and recommendation from his alcohol treatment counselor, employer and probation officer. In making the decision to cancel the permit, the Commission concluded that the violation was substantial because the service permit would not have been granted to permittee in the first place without the restriction that he abstain from consuming alcoholic liquor and that the requirement of abstinence went to the heart of the restriction. The Commission also considered the fact that persons were injured by permittee in a traffic accident that resulted when permittee drove after drinking the alcoholic liquor. *John E. Schuberg*, OLCC-94-V-064, April 1995.

A previous Final Order imposed a condition on the license. There was no continuing restriction placed on the license. Because of this, the requirements expired at the end of the license year. There was no evidence that the licensee violated the condition while it was in effect. *7-Eleven, Store No. 14495*, OLCC-92-L-014, April 1994.

The Commission refused to renew licensee's DA license based upon OAR 845-05-025(1) (not operating as proposed) after determining that licensee failed to show good cause to explain his violation of the restriction on 16 occasions that required him (or an approved manager) to be on the premises during the hours it was open to the public. Licensee did not show good cause where he claimed that he was too tired to be on the premises all of the time and that he was unable to trust or afford managers to take his place. *Lung Fung*, OLCC-92-V-012, February 1993.

B.1.c.2.

B. LICENSING/RENEWAL

B.1.c.2. Failure to Operate as Proposed (ORS 471.405(1), OAR 845-005-0325(2), OAR 845-005-0355(5)) (continued) [(OAR 845-05-025(1) [OAR 845-05-025(3)])]

Applicant failed to show good cause to outweigh the refusal basis of not operating as proposed because applicant failed to show that he searched for someone to provide lunch service or that he took any other steps to provide lunch service. *Reflections Bar & Grill*, OLCC-91-L-023, June 1992.

Applicant was not operating as proposed where premises was closed for business on 33 occasions over a nine-month period during hours when the premises was proposed to be open. *Reflections Bar & Grill*, OLCC-91-L-023, June 1992.

The Commission has found that the licensee showed good cause to outweigh the refusal basis of not operating as proposed where the licensee came into compliance with her proposals to operate as of the date of the hearing. The Commission concluded that although the licensee was tardy in completing some of her proposals with regard to hours of operation, seating, and menu, she eventually did follow through on them to the point where she was able to achieve a 25% food sales ratio. *Hack's*, OLCC-85-L-029, February 1986.

OAR 845-05-025(3) provides a basis to deny a future renewal application if the applicants fail to comply with a condition imposed on the current renewal. Donald and Anita Lawhead, *Strawberry Fields*, OLCC-85-L-022, December 1985.

Licensee has not failed to operate as proposed for failing to meet sales projections, where license issuance was not conditioned on licensee meeting these projections. Gerold L. Hodges and Marcia R. Buck, *Maynard's Place*, OLCC-85-L-012, November 1985.

Renewal may be denied for failure to build or operate as proposed only for proposals that the applicant made when licensed or previously renewed. Van's Olympic Room, Inc., *J.B.'s Paradise Room*, OLCC-85-L- 005, July 1985.

Failure by licensee to add to menu items approved by Commission is not basis for denial of renewal under OAR 845-05-015(6), if licensee did not need Commission's approval to add the items under OAR 845-06-100(6). Van's Olympic Room, Inc., *J.B.'s Paradise Room*, OLCC-85-L-005, July 1985.

OAR 845-05-025(3) (failure to operate substantially as proposed) is not a proper refusal ground in a request for approval of a menu change where the request did not arise in a renewal application. OAR 845-05-025(3) only applies to renewal applications. Grace Restaurant Company, Inc., *Baxter's Corner*, June 1984.

Licensee failed to operate substantially as proposed because of the emphasis the outlet placed on the sale of alcohol in contrast to the licensee's original plans to emphasize food. The food sales percentage, the menu and the dining room hours were all substantially less than proposed. The licensee is responsible, even though the direction of the business was set to a degree by the preferences of the applicant's customers. Stansby Way Corporation, *Willey's Restaurant and Dance Hall*, March 1984.

B.1.c.2.

B. LICENSING/RENEWAL

B.1.c.3. Illegal Activities or Recent History of Altercations, Noisy Conduct or Disturbances ([ORS 471.295(4)(e)], [ORS 472.160(4)(e)], [OAR 845-05-025(10)])

The Commission concluded that a license should not be renewed under OAR 845-05-025(10) where there has been a persistent pattern of serious incidents. The Commission concluded that noisy conduct created by a live band was not serious compared to other types of incidents because no physical contact occurred, no violence was involved, and there was no danger to the public. *Don Juan's Mexican Cuisine*, OLCC-89-V-169, September 1990.

Where licensee had been licensed for less than three years, all incidents which occurred under licensee's ownership or control could be considered to show a recent history of disturbances. More recent incidents are entitled to more weight. *The Hide Out*, OLCC-89-L-019, September 1990.

Licensee argued that the Commission should not be able to use prior OLCC violations as a basis for license refusal because the licensee had already been sanctioned for the violations. The Commission concluded that prior OLCC violations can be used to show a recent history of illegal activities as a refusal basis under OAR 845-05-025(10). *The Hide Out*, OLCC-89-L-019, September 1990.

The Commission concluded that OAR 845-05-025 (10) provided a basis to refuse to renew the license because licensee failed to offer a corrective plan and did not present evidence to show how she will maintain reasonable control over the premises. *The Hide Out*, OLCC-89-L-019, September 1990.

Previous good faith efforts to control noise and to follow previous license restrictions, plus the fact that licensee was operating essentially the same business prior to the time that the complaining neighbors moved into the neighborhood, were all entitled to weight. However they were insufficient to find good cause, where substantial noise problems still existed. Good cause to renew the license was found only after adding restrictions related to the noise problems. *Goldie's*, OLCC-89-L-011, March 1990.

Where two neighbors with property adjacent to the licensed premises were disturbed by noisy conduct of licensee's patrons on occasion and there were a few isolated instances of illegal activities, the problems did not rise to the level that the Commission had previously determined were sufficient to establish a denial basis under OAR 845-05-025(10). *Portway Tavern*, OLCC-89-L-015, April 1990.

The renewal of the license was not in the best interests of the community where there were numerous and persistent illegal activities around the licensed premises associated with the sale of alcoholic beverages at the licensed premises and the licensees' plan to control the premises and its patrons was inadequate. *Old Town Grocery*, OLCC-89-L-008, February 1990.

The Commission interprets ORS 471.295 (4)(e) to authorize it to refuse a license if a licensee has previously maintained a noisy or disorderly establishment at another licensed premises. *Pink Pearl East*, OLCC-89-L-004, December 1989. Reversed and remanded on other grounds, *Martini v. OLCC*, 110 Or App 508 (1992).

B.1.c.3.

B. LICENSING/RENEWAL

B.1.c.3. Illegal Activities or Recent History of Altercations, Noisy Conduct or Disturbances ([ORS 471.295(4)(e)], [ORS 472.160(4)(e)], [OAR 845-05-025(10)]) (continued)

The Commission modified its interpretation of the good cause standard under OAR 845-05-025(10) and concluded that the persistent disturbing noisy conduct of patrons in the immediate vicinity of a licensed premises may be sufficiently serious to warrant license refusal. The Commission will not require that licensees eliminate all problems that patrons cause outside the licensed premises. The Commission will consider the number of neighbors affected, the frequency of the disturbances, and the extent to which the neighbors are disturbed. The Commission concluded that the licensee did not show good cause when despite licensee's efforts to control the premises and its patrons, neighbors from six households were awakened or disturbed as often as two or three times per week by the noisy conduct of licensee's patrons. *Pink Pearl East*, OLCC-89-L-004, December 1989. Reversed and remanded, *Martini v. OLCC*, 110 Or App 508 (1992).

Where there were illegal activities, altercations, noisy conduct and other disturbances at the premises of a violent nature that caused apprehension and physical harm to numerous persons, and the licensees did not offer evidence of a plan to control these activities, the Commission found that licensing would not be in the best interests of the community. *Wolf Den Tavern*, OLCC-89-L-005, November 1989.

There must be some nexus or connection between the activity complained about and the licensed premises. Where there was no connection shown to the licensed premises and no evidence that the incidents involved patrons of the premises or that the sale of alcoholic liquor at the premises played any role in attracting or contributing to the incidents, the Commission gave little weight to incidents of illegal activities occurring close to the licensed premises. *Wolf Den Tavern*, OLCC-89-L-005, November 1989.

Violations of Commission rules constitute "illegal activities" for purposes of OAR 845-05-025(10) (not in the best interests of the community because of illegal activities). *Sparkles Tavern*, OLCC-88-V-107, September 1989.

The Division (Employment Division) may interpret the term "good cause" either by rulemaking or by issuing an order in a contested case. *Redman Homes, Inc. v. Employment Div.*, 97 Or App 653, 777 P2d 414 (1989).

ORS 471.770 confers automatic immunity from subsequent criminal prosecutions for witnesses who testify pursuant to an OLCC subpoena on a matter that is the subject of the criminal prosecution. *State v. Strance*, 95 Or App 488, 769 P2d 793 (1989).

Applicant showed good cause to outweigh serious, numerous and persistent problems under the former licensee because applicant's experience and plan of operation would result in a significant change in the business and applicant could maintain reasonable control of the premises. *Handy Food Mart*, OLCC-88-L-018, March 1989.

B.1.c.3.

B. LICENSING/RENEWAL

B.1.c.3. Illegal Activities or Recent History of Altercations, Noisy Conduct or Disturbances ([ORS 471.295(4)(e)], [ORS 472.160(4)(e)], [OAR 845-05-025(10)]) (continued)

An illegal activity is relevant under OAR 845-05-025(10) even if it is not liquor-related and does not threaten or disturb the community. However, these issues affect the weight that the Commission gives the activities in determining whether a refusal basis exists. *Handy Food Mart*, OLCC-88-L-018, March 1989.

An illegal activity is liquor-related if the sale of alcohol at the premises attracted or contributed to the activity or the activity involved the abuse of alcohol. *Handy Food Mart*, OLCC-88-L-018, March 1989.

Shopliftings and robberies involving alcoholic beverages are entitled to significant weight in determining whether an application should be refused under OAR 845-05-025(10), while shopliftings and robberies of non-alcoholic items are not entitled to significant weight. *Handy Food Mart*, OLCC-88-L-018, March 1989.

The Commission concluded that OAR 845-05-025(10) did not provide a basis for denying the license because the licensee has made a reasonable and effective effort to control problems at the premises which include implementing a compliance plan with the OLCC staff. *Sandy Jug*, OLCC-88-L-010, October 1988.

The Commission renewed a license despite a history of disturbances at the premises where the licensee had taken successful efforts to control the problem. The Commission imposed a number of conditions on the renewal. *Sportsman Tavern*, OLCC-87-L-013, June 1988.

The Commission has not clearly identified what differences there are between the "best interests of the community" and "good cause" issues under OAR 845-05-025(10). The Commission's underlying standard under both issues has been whether the licensee will maintain reasonable control of the premises to prevent illegal activities, altercations, noisy conduct, and disturbances. *Sportsman Tavern*, OLCC-87-L-013, May 1988.

In a renewal case, the licensee proved good cause to overcome a record of illegal activities and disturbances because serious problems had not been typical of the overall operation, because the licensee made extensive, reasonable efforts to control the premises, and because many of the immediate neighbors who were disturbed by the premises moved into their homes after the license began in business there. *Fleetwood Bar & Buffet*, OLCC-87-L-005, November 1987.

Unique entertainment was not a factor to be given any weight in determining whether good cause existed to overcome the application of OAR 845-05-025(10). *Fleetwood Bar & Buffet*, OLCC-87-L-005, November 1987.

Application was granted because instances of illegal activities and disturbances were not as serious, substantial, numerous, or have as great an impact on the public interest, as with other premises that were denied liquor licenses under 845-05-025(10). Those other premises included Mercedes Inn, Charlie's Tavern, The Pink Pearl Lounge, and Undecided Trade Name. Edward and Sharon MacGregor, *El Paso*, OLCC-86-L-021, March 1987.

B.1.c.3.

B. LICENSING/RENEWAL

B.1.c.3. Illegal Activities or Recent History of Altercations, Noisy Conduct or Disturbances ([ORS 471.295(4)(e)], [ORS 472.160(4)(e)], [OAR 845-05-025(10)]) (continued)

Licensees demonstrated good cause to overcome a possible finding of disorderly premises because they hired additional employees and took other appropriate and effective measures to ensure that illegal activity, noise, and disturbances did not occur in and around the premises. Edward and Sharon MacGregor, *El Paso*, OLCC-86-L-021, March 1987.

Renewal application was denied under OAR 845-05-025(10) where there was a history of OLCC violations involving minors at the premises and the applicant had a sexual disorder involving an attraction to minor youths, for which he was still under treatment. Vince Hart and Fay E. Ladd, *Tony's Tavern*, OLCC-86-L-012, February 1987.

History of altercations still considered recent even though last incident occurred one year before, when applicant's previous license terminated one year before. Mary Peterson, *Undecided Trade Name*, OLCC- 86-L-005, October 1986; Constance McKee, *Red Lantern Restaurant*, August 1984.

The applicant did not show good cause to overcome a history of illegal activity and disturbances because she did not prove that her plan for operation and her experience would result in a significant change in the business. Mary Peterson, *Undecided Trade Name*, OLCC-86-L-005, October 1986.

Reasonable inference may be drawn that noisy conduct was coming from area in or around licensed premises even though complaining witnesses did not actually see the persons making the noise exit the premises, where circumstances exist to connect the disturbance to the premise. Inference could be drawn from the direction the sound was coming from, the fact that the noises were not being made by neighborhood residents, the lack of any other likely source of the disturbing behavior, and the time that the disturbances occurred. *The Pink Pearl Lounge*, OLCC-85-L-044, August 1986, *Marracco, Inc. v. OLCC*, 85 Or App 648, rev den 304 Or 186 (1987).

Good cause for license issuance not shown where serious incidents had continued at the premises for at least 17 months, where the Commission and the police had given the applicant numerous warnings, and where applicant failed to hire reliable employees to address the problems. Vernon L. Lynch, *Charlie's Tavern*, OLCC-85-L-040, July 1986.

Application was not in the best interests of the community because, when the premises was formerly in operation, there were numerous reports of drug dealing and related crimes, and because there were numerous confrontations between tavern patrons and area residents over drug dealing, illegal parking, noisy conduct, vandalism and trespass. Robert Roland Catlett, *Mercedes Inn*, OLCC-85-L-043, June 1986.

Whether illegal activities or recent history of disturbances and altercations make licensing not in the best interest of the community is determined by the circumstances of the activities, their frequency, their remoteness in time, and other factors. Robert F. Mix, *The Gangplank*, OLCC-84-L-030, June 1985.

B.1.c.3.

B. LICENSING/RENEWAL

B.1.c.3. Illegal Activities or Recent History of Altercations, Noisy Conduct or Disturbances ([ORS 471.295(4)(e)], [ORS 472.160(4)(e)], [OAR 845-05-025(10)]) (continued)

Eight incidents in which disturbances, altercations, or other illegal activities occurred inside the premises and two other incidents in which such activities occurred nearby, all within two years prior to the application for renewal, established a "recent history" of such activities. Richard D. Harris, *Ace Hi Tavern*, February 1984.

B.1.c.3.

B. LICENSING/RENEWAL

- B.1.c.4. Lewd Establishment ([ORS 471.295(4)(e)], [ORS 472.160(4)(e)])
[[([ORS 471.295(4)(e)], [ORS 472.160(4)(e))]]
Note: see cases under C.1.k.

Oregon law which makes it a crime to direct, manage, finance, or present a live public show in which participants engage in sexual conduct violates the free expression rights guaranteed by Article I, section 8 of the Oregon Constitution and does not fall under a well-established historical exception to the constitutional prohibition on enactment of such laws. *State v. Ciancanelli*, 339 OR 282, 121 P.3d 613 (2005).

A law is unconstitutional on its face if it is directed, by its terms and its actual focus, on restraining a particular variety of expression and does not fall within a well-established historical exception to the prohibition against such laws in Article I, section 8 of the Oregon Constitution. The court will continue to use the *Robertson* framework to analyze restrictions on expression. The city ordinance that was struck down in this case prohibited nude dancers from being within four feet of patrons. *City of Nyssa v. Dufloth*, 339 OR 330, 121 P.3d 639 (2005).

The Commission concluded that although licensees maintained a lewd establishment, this was not a basis to refuse the license because licensees showed that they were able to maintain reasonable control over the lewd activities. *Sparkles Tavern*, OLCC-88-L-021, September 1989.

B.1.c.4.

B. LICENSING/RENEWAL

B.1.c.5. Insanitary Establishment (ORS 471.313(4)(e)) [(ORS 471.295(4)(e), ORS 472.160(4)(e))]

"Sanitary" and "insanitary" have a common and quite precise connotation when applied to an eating establishment. They give persons of common understanding adequate notice of what is proscribed. Thus, these terms were held not void for vagueness. *Taylor's Coffee Shop v. OLCC*, 28 Or App 701, 560 P2d 693 (1977).

B.1.c.5.

B. LICENSING/RENEWAL

B.1.c.6. Insufficient Demand (ORS 471.313(1), OAR 845-005-0326)) [(ORS 471.295(1), [ORS 472.160(1)], OAR 845-05-030(1))]

ORS 471.295(1) alone does not provide a basis to refuse to issue a license because it fails to provide a standard against which the evidence is to be measured. *Sun Ray Dairy v. OLCC*, 16 Or App 63, 517 P2d 289 (1973); *Paradise Bar Lodge*, OLCC-86-L-006, August 1986.

The population and sales trends within ten miles of applicant's premises were not proved by population and sales trends in the surrounding four-county area, or in incorporated areas within ten miles. *Durk, Inc., The Saucy Chicken*, OLCC-84-L-015, October 1984.

The record did not establish that there were sufficient licensed outlets in the community under OAR 845-05-030(1), where there was no evidence showing declining or static population, declining business or industrial development, or decreasing sales or patronage at other similarly licensed outlets in the applicant's community. *Oregon Care, Inc., Hershey's Place*, OLCC-84-L-010, September 1984.

Sufficient outlets not a strong negative factor where applicants would be trading their existing DC license for the DA license applied for. *Achim and Arlette Bassler, Chez Nous Restaurant*, August 1984.

Simply counting the number of outlets in the city does not prove that the outlets are sufficient. *Ray and Patricia Miller, La Burrita - The Little Donkey*, August 1984.

Sufficient outlets shown by the closure of two department stores, population decline and decline in sales at existing licensed outlets. *Jack and Linda Piazzini, Edelweiss Restaurant*, July 1984.

Testimony that the residential and transient population in the general area of applicant's premises indicated a potential catchment of less than 2,000 people in the "trading community" at any given time constituted evidence of insufficient demand to justify denial of the license under the constraint of the statutory quota. *Cottrell v. OLCC*, 27 Or App 525, 556 P2d 982 (1976).

The Commission's conclusion that there were sufficient outlets was not rational. The Commission had reasoned there were sufficient outlets because the applicant had lower sales than the four nearest outlets and higher sales than the two farthest outlets. *McCann v. OLCC*, 27 Or App 487, 556 P2d 973 (1976).

Where a city was continuously oversubscribed in relation to the one-per-2,000 quota, and had nevertheless been issued additional licenses, the oversubscription becomes the Commission's policy. Thus, the oversubscription does not support a conclusion that the area contains sufficient outlets. *McCann, supra*.

Commission order was deficient because it said nothing as to why the existing outlets were sufficient for the area. *Home Plate, Inc. v. OLCC*, 20 Or App 188, 530 P2d 862 (1975).

B.1.c.6.

B. LICENSING/RENEWAL

B.1.c.6. Insufficient Demand (ORS 471.313(1), OAR 845-005-0326)) (continued) [(ORS 471.295(1), [ORS 472.160(1)], OAR 845-05-030(1))]

The fact that a tavern's business declined is evidence of "insufficient need for such a license." The Commission has the power to issue a license to one establishment while denying a license to a nearby applicant on the grounds that the license would not be "demanded by public interest or convenience." *Howard v. Ore. Liquor Cont. Comm.*, 13 Or App 83, 508 P2d 819 (1973).

B.1.c.6.

B. LICENSING/RENEWAL

B.1.c.7. History of Serious and Persistent Problems (ORS 471.313(5)) [(ORS 471.295(5); [ORS 472.160(5)]]

Licensee had nine serious problems and one non-serious incident in a period of six and a half months. All of the incidents occurred after midnight, and licensee closed at 2:30 a.m. These serious problems establish a history of serious and persistent problems that led to license cancellation. *Helena's Place*, OLCC-04-V-024, June, 2005.

OLCC need not prove the combatants in an incident were actually drinking at the licensed premises to establish that the problems that occurred were serious. The licensee has some responsibility for controlling the behavior of non-drinking patrons when they threaten or harm other patrons. Furthermore, problems on the premises need not be "related to the sale or service of alcohol" as problems in the immediate vicinity must be. *Helena's Place*, OLCC-04-V-024, June, 2005.

The Commission's presumption that problems caused by persons visiting a licensed premises are related to the service of alcoholic beverages is within its discretion and accepted, at least in regard to the specific problems listed in ORS 471.315(1)(c). *Helena's Place*, OLCC-04-V-024, June, 2005.

The Commission's involvement in wrongful death litigation in which the Commission is named as a defendant relates to the Commission's immunity for licensing and enforcement decisions and does not relate to the licensee's accountability for a history of serious and persistent problems. Both the Commission and the licensee had been sued following a stabbing on the licensed premises. The licensee claimed the lawsuit motivated enforcement action to cancel the license. The investigation of the history of serious and persistent problems predated the lawsuit and the Notice of Cancellation, so the claim of improper intent was rejected. *Helena's Place*, OLCC-04-V-024, June, 2005.

When the licensee did not implement all the measures of its compliance plan or implemented measures that were inadequate to control the problems that arose after midnight and there were serious problems still occurring while the compliance plan was in place the licensee demonstrates a lack of willingness and ability to control the premises. The licensee's failure to follow a compliance plan even after a threat of immediate suspension of the license further proves a lack of willingness to consistently control the premises. Licensee followed some parts of the compliance plan, but unilaterally decided others were too onerous despite continuing serious problems. Licensee also cannot establish that a serious incident was unavoidable when it was not providing the level of on-site security that was specified in the compliance plan. *Helena's Place*, OLCC-04-V-024, June, 2005.

Licensee had five serious incidents in one year as well as three non-serious incidents. The five serious incidents are a history of serious and persistent problems. The seriousness of the incidents is not determined by the degrees or extent of physical contact; where there is contact involving violence or a threat of violence the incident is serious. *Cabana Club Café & Grill*, OLCC-03-L-010, April 2005.

B.1.c.7.

B. LICENSING/RENEWAL

B.1.c.7. History of Serious and Persistent Problems (ORS 471.313(5)) (continued) [(ORS 471.295(5); [ORS 472.160(5)]]

Where a license refusal or renewal refusal is premised on ORS 471.313(5), and the applicant/licensee has chosen not to attempt to overcome the alleged history by asserting a willingness and ability to adequately control the premises, the ALJ may exclude, as irrelevant, evidence offered by OLCC to show applicant/licensee is unwilling and/or unable to adequately control the premises. *The Hydrant*, OLCC-00-L-006, Amended Final Order, October 2001.

The Commission further disavowed the rationale in *La Linda's*, OLCC-95-L-021ES, June 1996, to the extent the rationale relies upon precedent (i.e., *Dublin Pub*, OLCC-88-V-068, December 1988) related to the compliance violation of permitting disorderly activities, to determine which incidents should be counted to establish a history of serious and persistent problems. *The Hydrant*, OLCC-00-L-006, Amended Final Order, October 2001.

The Commission concluded that ORS 471.295(5) (history of serious and persistent problems) is not a basis to deny a license where the premises had approximately 44 problem incidents in a two year period, but the incident occurred under different ownership, over a year ago, and there was evidence in the record to show that the type of operation the applicants planned to have was different from the operation of the prior owner. *Jammers West Inc.*, OLCC-94-L-005, March 1995.

An applicant's history of serious and persistent problems was established by:

- a prior settlement that acknowledged that over 50 incidents (more than two dozen involving physical harm or the threat of physical harm) in a 21-month period constituted a history of serious and persistent problems, and
- problems that continued in the following 17 months that included unilateral modification and non-compliance with restrictions, non-compliance with service permit requirements, and twelve additional disturbances or fights.

The continuing fights, licensee's poor compliance with service permit requirements, and licensee's unilateral modification and failure to comply with restrictions, demonstrated that licensee lacked the willingness and ability to adequately control serious problems. *Gabi's Restaurant & Lounge*, OLCC-92-L-011, March 1994.

The application was refused because the premises was located in an area that has a history of serious and persistent problems as evidenced by the following: the two-block area around the premises averages 16 problem incidents a month; when the premises was previously licensed it was closed by emergency suspension because of drug-related problems and fights; the area is frequented by transients and persons with substance-abuse problems. Applicants were not able to prove that the sale of alcoholic beverages at their premises would not contribute to the problems in the area, nor were they able to show that they had the ability to adequately control the premises. *C & A Place*, OLCC-93-L-005, December 1993.

The Commission found a history of serious problems where the number of incidents was not inordinately large but most of the incidents involved fights. The severity of the incidents distinguished this history from other contested cases where the Commission found there was no history of serious and persistent problems. *Headless Horseman*, OLCC-92-L-016, June 1993.

B.1.c.7.

B. LICENSING/RENEWAL

B.1.c.7. History of Serious and Persistent Problems (ORS 471.313(5)) (continued) [(ORS 471.295(5); [ORS 472.160(5)]]

The willful and repeated violation of a restriction that was important to securing the licensee's compliance with alcoholic liquor laws, was a "serious" problem for purposes of ORS 472.160(5) (history of serious and persistent problems). *Lung Fung*, OLCC-92-V-012, February 1993.

Licensee's DA renewal was refused under ORS 472.160(5) for history of serious and persistent problems and their inability and unwillingness to adequately control such problems in the future. The Commission considered the following as showing a basis for refusal: the licensee had entered a settlement agreement less than a year before that resolved a charge of serious and persistent problems, since the settlement the licensee committed 16 willful violations of a restriction (that he or his manager be on the premises) that was important to his compliance with alcoholic liquor laws, and since the settlement there had been six other incidents that were similar to the ones involved in the settlement. *Lung Fung*, OLCC-92-V-012, February 1993.

The Commission concluded that there was a history of serious and persistent problems where there were 24 incidents occurring over a two-year period of time including 12 fights, three thefts, four verbal disturbances, one car accident in the parking lot, three incidents of public urination, and one incident of shots fired in the parking lot. *La Brisa*, OLCC-91-L-037, December 1992.

Licensee showed good cause to grant the license in spite of a history of serious and persistent problems by showing that she had the willingness and ability to control the problems. *La Brisa*, OLCC-91-L-037, December 1992.

For purposes of determining whether there is a history of serious and persistent problems, the Commission will consider as being related to the exercise of the license privilege, those incidents where the Commission can tie the persons involved to their desire to go into the licensed premises so that the licensee can serve them. The Commission will count these incidents whether the persons consumed alcoholic liquor or not. The Commission will assume that the persons are coming to the premises for the purpose of consuming alcoholic liquor. *La Brisa*, OLCC-91-L-037, December 1992.

The Commission affirmed that, with the statute and the Commission's precedents as guides, it would continue to analyze the nature and circumstances of the incidents involved in each case to determine whether there was a history of serious and persistent problems and if so whether a licensee had demonstrated a willingness and ability to adequately control such problems in the future. The Commission rejected, as unwarranted, a licensee's argument that it should adopt a different standard for a history of serious and persistent problems that would look at such factors as: the premises' crime experience under prior owners, the level of crime one would expect given the demographics of the neighborhood, the background level of crime actually experienced in the neighborhood, the level of crime experienced by similar stores in the neighborhood, county, and state, the under reporting of relevant crime by store operators, and the tolerance of a neighborhood for crime which may vary from neighborhood to neighborhood and reflect issues of neighborhood livability and survival. *Handy Food Mart*, OLCC-91-L-020, December 1992.

B.1.c.7.

B. LICENSING/RENEWAL

B.1.c.7. History of Serious and Persistent Problems (ORS 471.313(5)) (continued) [(ORS 471.295(5); [ORS 472.160(5)]]

Thirty-four relevant (under the statute) problems over three years, where twelve of the problems were robberies or involved violence or the threat of violence, demonstrated a licensee's history of serious and persistent problems. *Handy Food Mart*, OLCC-91-L-020, December 1992.

Licensee demonstrated a willingness to control future problems by inventing effective problem-control measures, implementing most of the reasonable measures suggested to him, and only rejecting a few of the suggestions after careful study and sincere disagreement over their benefit. *Handy Food Mart*, OLCC-91-L-020, December 1992.

Since problems continued, licensee was only able to demonstrate an ability to adequately control future problems, after more restrictions were added to those already in place. The existing restrictions dealt with the store's physical layout, peak-hour staffing, locking the alcohol cooler's during off-hours, and the elimination of video games and a pay phone able to receive incoming calls. The additional restrictions required licensee to not sell wine with alcohol content greater than 13.8 percent, malt liquors with alcohol content greater than four percent, or beer in containers that were larger than 16 ounces; to maintain an "86" list; and to have a security guard present Monday through Saturday from 10:30 at night until 2:30 the following morning. *Handy Food Mart*, OLCC-91-L-020, December 1992.

Where the charge was a history of serious and persistent problems, the Commission determined that incidents occurring inside the licensed premises did not have to be alcohol related to be relevant. In assessing a licensee's "history of serious and persistent problems" the Commission decided that it would not weigh all incidents occurring inside a licensed premises equally. The Commission stated that it would give significant weight to severe crimes, such as those involving violence or the threat of violence, unless the circumstances show that the incident was isolated and happenstance. The Commission added that it would give little weight to less severe crimes, such as shoplifting, unless they were shown to be alcohol related. *Handy Food Mart*, OLCC-91-L-020, December 1992.

The Commission did not give much adverse weight in its evaluation of a licensee's history of serious and persistent problems to the purchase of alcohol by minor with convincing false ID, where such incidents were not a frequent problem. *Handy Food Mart*, OLCC-91-L-020, December 1992.

Shoplifting of alcoholic beverages was not given much adverse weight in evaluating a licensee's history of serious and persistent problems, where the licensee's intervention resulted in the surrender of the alcohol before it was consumed and where the licensee's intervention did not raise the level of violence of the incident. *Handy Food Mart*, OLCC-91-L-020, December 1992.

B.1.c.7.

B. LICENSING/RENEWAL

B.1.c.7. History of Serious and Persistent Problems (ORS 471.313(5)) (continued) [(ORS 471.295(5); [ORS 472.160(5)]]

While two beer garden/rock concerts in the premises' parking lot that produced noise that interfered with the normal living activities (sleeping, conversing, reading) of the licensees' neighbors and four patrons publicly urinating associated with the second concert were serious problems for purposes of ORS 471.295(5), they did not constitute a "history of serious and persistent problems" under ORS 471.295(5) when the events were separated by a year. *Good Times Cafe & Bar*, OLCC-91-L-019, February 1992.

The applicant did not show good cause to overcome the refusal basis. Applicant failed to show that alcohol-related problems were no longer serious and persistent. There were three incidents of patrons drinking alcoholic beverages where prohibited and one alcohol-related assault within the two and one-half months just prior to the hearing. The applicant also failed to show she adequately controlled the premises and patrons' activity in the immediate area. The applicant and her employees committed crimes in the licensed premises. Adequate control of the premises includes not committing crimes there. *Fast Market*, OLCC-90-L-004, May 1991.

B.1.c.7.

B. LICENSING/RENEWAL

B.1.d. Incomplete Application (OAR 845-005-0314, OAR 845-005-0315) [(OAR 845-05-015(1))]

The Commission cannot process the application of a business for a WMBW license where the applicant has no Oregon premises. The applicant's status as a winery in its home state and/or the foreign business registration with Oregon's Secretary of State do not create a right to apply for and obtain an Oregon liquor license and then conduct the privileges of that license from outside of Oregon. While the plain wording of the statute authorizing WMBWs does not include the requirement for an Oregon location the Commission construes the statute and rules to require an Oregon premises. Because the applicant did not have an Oregon location to accept imported alcoholic beverages it would only be an exporter from Washington, and not an importer in Oregon. Retailers in Oregon do not have statutory authority to import, and thus could not receive the product from the Washington exporter. *Morchella Wine Cellars, LLC*, OLCC-06-L-003, December, 2006.

The Regulatory staff failed to meet the burden of proving that the application was not complete because the reason given by staff for alleging the application is not complete does not fit the definition of an incomplete application as set forth in OAR 845-05-015(2). *Punjab Tavern*, OLCC-91-L-015, April 1992.

Where applicants no longer had possession of the building in which the business was located and applicants did not intend to reopen the business at that address, the fact that the applicants no longer had possession of the building did not render the applicants' application "incomplete." *Punjab Tavern*, OLCC-91-L-015, April 1992.

Where the applicant failed to provide information to the Commission, and subsequently furnishes the information at her hearing, the Commission should process and make a decision on the application. Jolene Niemoth, *Cultus Lake Resort*, OLCC-84-L-038, February 1985.

The phrase in ORS 471.290(1) that a person applying for a liquor license may be compelled to provide "such other pertinent information as the Commission may require" is not void for vagueness. *Von Weidlein/N.W. Bottling v. OLCC*, 16 Or App 81, 96, 517 P2d 295 (1973).

B.2 Criteria Relating to Specific Licenses

B.2.a. On-Premises Sales

B.2.a.1. General Requirements for all Full and Limited On-Premises

B.2.a.1.a. Off-premises Use of License

B.1.d.
B.2
B.2.a.
B.2.a.1.
B.2.a.1.a.

B. LICENSING/RENEWAL

- B.2.a.1.b. Insurance
- B.2.a.2. Specific Requirements for Types of Full On-Premises
 - B.2.a.2.a. Food Service Requirements
 - B.2.a.2.b. Days and Hours of Operation
- B.2.b. Off-Premises Sales
- B.2.c. Temporary Sales
- B.2.d. All Other License Types
 - B.2.d.1. [PS Licenses]

The Commission found good cause to grant a PS license even though the applicant did not have a "wide variety" of grocery items where the Commission had not applied the grocery requirement on a consistent basis and there was public demand shown for the PS license. *Staff Jennings*, OLCC-87-L-009, February 1988.

Applicant's desire to avoid risk of loss and a reduction of spoilage by storing part of the required \$5,000 inventory on dry land, away from the dock where the store is located, is reasonable and complies with OAR 845-05-025(9). *Staff Jennings*, OLCC-87-L-009, February 1988.

Where applicant had 240 items available to customers, but the items were less diverse than the inventory in *Wintz's*, and where the items consisted mostly of snack items, rather than basic food stuffs, applicant failed to meet the requirement of having a "wide variety" of grocery items. *Staff Jennings*, OLCC-87-L-009, February 1988.

The Commission found good cause for the issuance of a PS license to a DA outlet because applicant would serve late-night demand for PS services not met by other outlets nearby. Richard Oja, *The Logger*, OLCC-85-L-039, May 1986.

B.2.a.1.b.
B.2.a.2.
B.2.a.2.a.
B.2.a.2.b.
B.2.b.
B.2.c.
B.2.d.
B.2.d.1.

B. LICENSING/RENEWAL

B.2.d.1. [PS Licenses] (continued)

RMB licenses should not be issued to PS outlets to allow the sale of kegs to go because of potential adverse impact on drinking drivers and drinking by minors. Marvin and Susan Van Wey, *Your Party Shoppe*, OLCC-84-L-040, June 1985.

Criteria concerning the public health and safety found to be of greater weight than criteria concerning public convenience. Marvin and Susan Van Wey, *Your Party Shoppe*, OLCC-84-L-040, June 1985.

The Commission found good cause for the issuance of PS license at a DA outlet because of the short hours at the one existing PS outlet nearby and the great distance (ten miles) to the next nearest PS outlet. Gordon and Beverly Johnson, *Circle H Restaurant and Lounge*, February 1984.

Although the licensees did not sell fresh meat or many dairy products, their selection of grocery items was extensive and constituted a wide variety under OAR 845-05-025(9). The licensees' dairy products included milk, cheese and cottage cheese. Other inventory included dried and canned meats, canned seafood, canned fruit, canned vegetables, stews, chili, soups, flour, shortening, margarine and personal and household goods. The licensees' food inventory was more than just a selection of snack items, which would be inadequate. David and Betty Wirtz, *Wirtz's Gifts & Sporting Goods*, April 1983.

A "wide variety" of grocery items under OAR 845-05-025(9) means a wide variety of articles for human consumption which are customarily served as food or substances entering into the preparation of foods in the home. This includes foods that satisfy the ordinary eating habits of the general public, and not merely snack items for freeway travelers. True Value Oil Company, *Bingo Gas*, November 1981.

Regulation which stated that "Package Store licenses shall not be issued . . . to an outlet which primarily sells petroleum products if there are other outlets with package liquor privileges within a reasonable distance" held to be neither vague nor over broad. *Sun Ray Drive-In Dairy v. OLCC*, 20 Or App 91, 530 P2d 887 (1975).

B.2.d.1.

B. LICENSING/RENEWAL

B.2.d.2. [RMB/Brewery - Public House]

The Commission refused to grant an exemption from OAR 845-006-0028 (prohibits same day delivery of alcoholic beverages with food orders unless the price of food is at least 75% of the retail cost of the delivered order). Licensee sought exemption, as it wished to deliver expensive wines with the pizza, exceeding the 25% allowable expense for the alcohol. The Commission concluded that an exemption is allowable only if all 3 criteria of OAR 845-006-0028(4) are met. The Commission found that licensee, holder of a Retail Malt Beverage license, primarily offers pizza, a fast food, and was, therefore, ineligible for the exemption. *Viva La Pizza*, OLCC-98-L-004, December 1999.

B.2.d.3. Wholesale Malt Beverage and Wine

The Commission cannot process the application of a business for a WMBW license where the applicant has no Oregon premises. The applicant's status as a winery in its home state and/or the foreign business registration with Oregon's Secretary of State do not create a right to apply for and obtain an Oregon liquor license and then conduct the privileges of that license from outside of Oregon. While the plain wording of the statute authorizing WMBWs does not include the requirement for an Oregon location the Commission construes the statute and rules to require an Oregon premises. Because the applicant did not have an Oregon location to accept imported alcoholic beverages it would only be an exporter from Washington, and not an importer in Oregon. Retailers in Oregon do not have statutory authority to import, and thus could not receive the product from the Washington exporter. *Morchella Wine Cellars, LLC*, OLCC-06-L-003, December, 2006.

B.2.d.2.
B.2.d.3.

B. LICENSING/RENEWAL

B.3. Service Permits (SP)

B.3.a. Miscellaneous SP Refusal Bases (ORS 471.380)

Applicant failed to list a conviction for Burglary I on her application. The definition of Burglary I includes as a possible element that the perpetrator causes or attempts to cause harm to the victim or uses or threatens to use a dangerous weapon. If a conviction for Burglary I included one of these elements, then the conviction would qualify as a felony conviction for the commission of a violent crime and might qualify as a violent crime where alcohol or controlled substances were involved, which is a refusal basis under OAR 845-009-0020(5)(a)(A). Applicant's failure to list her felony Burglary I conviction inhibited the commission's investigation into whether it constituted a refusal basis. Consequently, failure to report that conviction constituted failure to report a material fact and is a basis to deny the application pursuant to ORS 471.380(1)(b). *Tammy L Freeman*, OLCC-03-SPR-017, October 2003.

ORS 471.380(1)(b) does not require that a material false statement made in a service permit application be made intentionally in order to refuse the service permit. *Jaimee R. Dallavis*, OLCC-01-SPR-017, August 2001.

Service permit application was refused where the application was endorsed by another licensee than the one at which applicant intended to work. *Albert Diss II*, OLCC-86-SP-019, March 1987.

B.3.
B.3.a.

B. LICENSING/RENEWAL

B.3.b. Failure to Complete Alcohol Server Education (ASE) (ORS 471.542; OAR 845-009-0100) [(ORS 471.542; OAR 845-09-100)]

Where applicant met ASE requirements by taking the class and passing the examination, but did so four days after the deadline stated in OAR 845-09-100(2), the Commission determined not to grant the service permit. The Commission concluded that it would not grant any extensions of time to meet ASE requirements beyond the 90 days allowed for in OAR 845-09-100(2). *Gloria J. Wagenblast*, OLCC-92-ASE-109, February 1993.

Hardship or family illness did not provide a reason to extend the time allowed for meeting the alcohol server education requirement in OAR 845-05-100. The Commission concluded that this rule did not provide for an extension for any reason. *Teri Lynn Overbay*, OLCC-91-SP-159, May 1992.

Commission granted a service permit applicant an extension of 360 days from the date of her application to take and pass the alcohol server education course, after she was prevented by injuries from taking the course within the period of time initially extended to her and thereafter until sometime after the hearing. *Alva Robirts*, OLCC-89-SP-168, March 1990.

Commission denied application for a service permit application where in his exceptions to the Proposed Order, applicant requested that the Commission reopen the record to add a statement that he had completed an Alcohol Server Education course and examination after the hearing was held and the Proposed Order was issued. The Commission declined to reopen the record for this purpose. *Christopher Hall*, OLCC-89-SP-010, May 1989.

Notwithstanding that ORS 471.542(1) and OAR 845-16-110(2) provide that the Commission may refuse a service permit application where the applicant does not complete an ASE course and examination within 45 days after signing the application or within the extension that the Commission grants, the Commission concludes that the application should be granted where the applicant subsequently completes a course and examination prior to the hearing. *Michael G. Etzel*, OLCC-89-SP-093, August 31, 1989.

Where the service permit applicant fails to complete an ASE course and examination within 45 days after signing the application, or within the extension that the Commission grants, the application should be denied. ORS 471.542(1); OAR 845-16-110(2); *Sam L. Moore*, OLCC-89-SP-073, July 1989.

B.3.b.

B. LICENSING/RENEWAL

B.3.c. Service Permit Denial Criteria Rule OAR 845-009-0020 [(OAR 845-09-020)]

Applicant was convicted of a Class C Felony for Assault in the Third Degree and Driving Under the Influence of Intoxicants stemming from an incident that occurred one year before he applied for a service permit. Applicant did not appear at the hearing. Thus, he did not establish good cause to overcome the denial criteria, but the case is noteworthy because applicant's felony assault involved his vehicle. *Daniel J. Beecher*, OLCC-07-SPR-060, April 2008.

In order to qualify for the good cause exception to a felony conviction service permit disqualification the applicant must establish that she had a drug or alcohol addiction disability. Applicant had an evaluation as part of probation and was not ordered to attend rehabilitation; therefore, an addiction disability was not established and the applicant did not qualify for the good cause exception. *Cynthia Banzer*, OLCC-07-SPR-031, January, 2008.

Commission's conclusion in two prior contested cases that convictions for DWR were similar enough to DWS convictions to be considered the same for purposes of service permit refusal under OAR 845-009-0020(6), was not improper rulemaking. Permittee argued that because the Commission was changing the clear language of the rule, it could not do so through a contested case final order, but was required to do so by amending the rule through the rulemaking process. The Commission determined that OLCC could interpret its validly promulgated rules through the contested case process and had properly done so. *Shelly May Wilder*, OLCC-01-V-073, June 2002.

Sexual Abuse in the First Degree is not a violent crime for purposes of OAR 845-009-0020(5)(c) unless it involves the element of sexual touching resulting from forcible compulsion (as defined in ORS 163.305(2)) of the victim. OAR 845-009-0020(5)(c) defines "violent crime" as crimes that cause, attempt to cause, or threaten physical injury or harm to another person. *Andrew J. Lockwood*, OLCC-01-SPR-051, April 2002.

Applicant argued that conviction of two counts of Delivery of Controlled Substance were not two convictions, but one conviction of two counts. The Commission concluded there were two convictions. The deliveries alleged in the two counts occurred on different dates and no other recognized basis for merging the convictions existed. *Shelley L. Vance*, OLCC-01-SPR-029, December 2001.

One of the requirements for establishing good cause to overcome denial of a permit under OAR 845-009-0020 is completion of all parole and probation requirements. This requirement is strict and includes inactive supervision or bench probation. *Rita Vannatta*, OLCC-01-SPR-018, July 2001.

In order to establish good cause to overcome the refusal basis of OAR 845-009-0020(4) (felony drug conviction), as amended November 3, 1999, an Applicant must have completed the parole or probationary term or have been discharged from parole or probation pursuant to the language, "completed all parole or probation requirements" of OAR 845-009-0020(4)(b)(C). *Karen L. Ortiz*, OLCC-00-SPR-002, October 2000.

B.3.c.

B. LICENSING/RENEWAL

B.3.c. Service Permit Denial Criteria Rule OAR 845-009-0020 (continued) (OAR 845-09-020)

Applicant was denied a service permit due to having three or more felony drug convictions, at least one of which was within 6 years of the application. The Commission concluded good cause to overcome the refusal basis had not been established where Applicant had repeatedly violated the terms of probation for the drug convictions, thereby not complying with all probation requirements for purposes of OAR-845-009-0020(4)(b)(C). [Temporary rule in effect from 4/26/99 through 10/22/99]. *Michael G. Belkin*, OLCC-99-SPR-061, May 2000.

Where two counts of a Robbery III indictment merged into a third count, Applicant was convicted of one felony for the commission of violent crime. Because the permit refusal rule requires two convictions of this type to refuse a permit, the Commission granted the application for a service permit. *Lyndee M. Goette*, OLCC-99-SPR-009, March 2000.

The Commission found that permittee had violated ORS 471.385(1)(b) in that she had been simultaneously convicted of three felonies for delivery of controlled substances. Commission rules provide that the service permit should be cancelled unless permittee shows circumstances in her favor that would weigh in favor of mitigating the penalty to less than cancellation (OAR 845-006-0200(7)(c)). The Commission used the criteria set out in OAR 845-009-0020 for weighing good cause for service permit applicants who have had felony drug convictions, to determine that permittee had not shown factors in her favor that would outweigh cancellation of the service permit. *Gail M Wescom*, OLCC-99-V-013, September 1999.

Under the temporary amendment to OAR 845-009-0020(4)(a)(D) effective April 26, 1999, through October 22, 1999, applicant demonstrated good cause reasons to outweigh the drug conviction refusal basis for a service permit where she proved she had a drug addiction disability at the time of the felony drug convictions, that she had not used controlled substances within eighteen months, that she was actively involved in or had successfully completed a drug treatment program, and that she had complied with or was complying with all parole or probation requirements. *Patricia L Welton*. OLCC-98-SPR-025, July 1999.

Where Applicant provided documentary evidence that one of two controlled substance felony convictions was ordered to be treated as a misdemeanor on the successful completion of probation, and ultimately was so treated, the Commission granted a service permit to Applicant, concluding that Applicant had not been convicted of two controlled substance felonies for purposes of OAR 845-009-0020(3)(c). *Robyn E. Mayse*, OLCC-97-SPR-80, June 1998.

The Commission has concluded that OAR 845-09-020(5)(b) (two felony DWS convictions, one within 3 years) also applies to convictions for felony driving while revoked. The Commission denied a permit to an applicant who had one conviction for felony driving while suspended and another conviction for felony driving while revoked. *Ernest M. Rawlins, Jr.*, OLCC-97-SPR, 059, January 1998.

B.3.c.

B. LICENSING/RENEWAL

B.3.c. Service Permit Denial Criteria Rule OAR 845-009-0020 (continued) (OAR 845-09-020)

The Commission concluded that there was a basis to deny the Applicant a service permit pursuant to OAR 845-09-020(3)(b) (one drug-related felony conviction within two years) where the Applicant had a drug related felony conviction 13 months prior to applying for a service permit. The Commission further concluded that the Applicant failed to show good cause to outweigh the denial basis because, although the Applicant submitted a sworn statement on a Commission supplied form saying that she had abstained from using controlled substances for 18 months, had completed a drug treatment program, and was complying with all parole or probation requirements, the record showed that the Applicant had provided conflicting information to Regulatory staff prior to submitting the sworn statement. The Commission concluded that there was a reason to doubt the veracity of the Applicants' sworn statement and concluded that the Applicant failed to show good cause. The service permit was denied. *Brenda L. Gunter*, OLCC-97-SPR-024, December 1997.

OAR 845-09-020(2) defines the relevant time period for convictions as ending on the date the Commission receives the application. The Commission may also consider any felony convictions occurring between the date the application is received and the date the Commission makes a determination on the application. *Lisa M. Pfeffer*, OLCC-96-SPR-115, July 1997.

OAR 845-09-020(3)(a). The Commission denied applicant a service permit where the applicant had a drug related felony conviction within 12 months of the application. *Heather Averett*, OLCC-96-SPR-102, April 1997.

OAR 845-09-020(3)(d) provided a basis to deny the applicant a service permit where the applicant had three controlled substance felony convictions, one of which was within six years, and the applicant's good cause reasons did not outweigh the reason to refuse the permit. *Lucy Mashia*, OLCC-96-SPR-091, April 1997.

OAR 845-09-020(3)(c). The Commission denied a service permit where the applicant had two controlled substance felony convictions, one of which was within three years. The Commission was not persuaded by applicant's arguments that she was being denied equal protection under the law because the rule allows some applicants to show good cause, but does not consider good cause under this particular section of the rule. The Commission also concluded that applicant's arguments that denying her a service permit based on her felony conviction is unconstitutional because it contravenes Article I, sections 15 and 20 of the Oregon constitution which prohibit vindictive justice and double jeopardy respectively, were not persuasive. The Commission concluded that the service permit criteria is to assure that only qualified individuals are allowed to serve alcoholic beverages to the public and, therefore, denial was not a punishment. *Shannon Murry*, OLCC-96-SPR-031, March 1997.

The Commission denied the service permit where the applicant had been abstinent for 12 months, but the rule required, among other things, 18 months of abstinence to show good cause sufficient to outweigh the refusal basis. *Cynthia K. Kennedy*, OLCC-95-SPR-115, June 1996.

B.3.c.

B. LICENSING/RENEWAL

B.3.c. Service Permit Denial Criteria Rule OAR 845-009-0020 (continued) (OAR 845-09-020)

The Commission denied a service permit where the applicant had been convicted of two controlled substance felonies and one of the convictions was within three years of the date the Commission received the application. *Antoine L. Moore*, OLCC-95-SPR-117, May 1996.

The Commission denied a service permit where the applicant had a combination of three diversions or DUII convictions within 7 years and one of the diversions/convictions was within 18 months. OAR 845-09-020(6)(b). *Debra A. Wing*, OLCC-95-SPR-074, February 1996.

The Commission denied a service permit to the applicant who had three felony convictions for driving while suspended (DWS), one of which was within six years. OAR 845-09-020(5)(c). The Commission concluded that an applicant's failure to abide by the rules and regulations with regard to driver's license privileges may result in similar disregard for following liquor license rules and regulations and, therefore, for purposes of ORS 670.280, the Commission finds that there is a relationship between a felony conviction for felony DWS and an applicant's fitness to serve and sell alcoholic liquor. *Vickie A. Erickson*, OLCC-95-SPR-046, January 1996.

The Commission clarified its interpretation of OAR 845-09-020(3)(c). The Commission will treat two felonies as a single conviction for the purposes of OAR 845-09-020(3)(c) when the applicant can show there is a single incident that includes more than one controlled substance. Examples are possession of one "speed ball" including both cocaine and heroin and both possession and sale of a single controlled substance. *Christine M. Scott*, OLCC-95-SPR-063, December 1995.

Out-of-state DUII convictions count against service permit applicants under OAR 845-09-020(6). *Carolyn A. White*, OLCC-94-SPR-112, November 1995.

The relevance of a diversion is the successful completion of it rather than the act of entering into such an agreement. Therefore, for purposes of the service permit refusal rule OAR 845-09-020(6)(a), the relevant date for diversion is the date the applicant completed diversion, not the date on which she entered it. *Tamara L. Cardenas*, OLCC-94-SPR-122, March 1995.

OAR 845-09-010(6)(a) was applied to deny a service permit to the applicant where, within three years, the applicant had one diversion and one DUII conviction, one of which was within 12 months of the application for a service permit. *Kathryn A. Leany*, OLCC-94-SPR-044, August 1994.

The Commission denied a service permit where the applicant had a felony conviction for Driving While Revoked within 12 months of the date of his application for a permit. The applicant's license was revoked as the result of prior DUII convictions. OAR 845-09-020(5)(a). *Alan L. Kenworthy*, OLCC-94-SPR-037, August 1994.

The Commission concluded that applicant should not be granted a service permit because applicant committed felonies involving "violent crimes" where applicant robbed one person at gunpoint and conspired to assault another. OAR 845-09-020(4)(b). *Christi R. Boatner*, OLCC-93-SPR-136, May 1994.

B.3.c.

B. LICENSING/RENEWAL

B.3.c. Service Permit Denial Criteria Rule OAR 845-009-0020 (continued) (OAR 845-09-020)

The Commission declined to create an exception for extenuating circumstances or other good cause where the rule, OAR 845-09-020(3)(a), does not specifically provide for exceptions to refusing a service permit application when the applicant has a felony drug conviction for possession of a controlled substance during the 12 months preceding the Commission's receipt of the application. *Faith Victor*, OLCC-93-SPR-149, April 1994.

A cancellation of a service permit for liquor law violations involving illegal drug activity, committed by the applicant when she was on duty as a bartender, disqualified her for five years from holding another service permit because such violations involved a threat to public safety and demonstrated that the applicant would be a poor compliance risk. OAR 845-09-020(6)(d). *Kimberly Rennings*, OLCC-93-SPR-097, March 1994.

The service permit was denied where the applicant had a total of two DUI convictions or diversions within the last three years and where one of these was within the last 12 months of the Commission's receipt of the application. OAR 845-09-020(6)(a). *Daniel A. Jacobs*, OLCC-93-SPR-101, January 1994.

B. LICENSING/RENEWAL

B.4. Change of Operation

B.4.a. Remodeling (OAR 845-006-0480(2), (3)(a)) [(OAR 845-06-100(2), (3)(a))]

Commission approved remodeling that would result in no net change in two licensing criteria (the overall emphasis on the sale of alcoholic beverages, and the menu or atmosphere was unique compared to other dispenser outlets within 20 mile radius), but would lead to an improvement in a third criterion (greater services: sales, seating, banquet facilities and amenities), with the overall effect being a net improvement in the licensee's qualifications. *Westward Ho*, OLCC-89-L-016, January 1990.

OAR 845-06-100(3) provides that a dispenser licensee must request and receive approval before the licensee changes the number of seats by ten percent or more. Where licensee showed that proposed increase in seating would be less than a ten percent increase from seating originally approved, the rule did not provide a basis to refuse the licensee's request to remodel. *El Toucan*, OLCC-88-L-019, March 1989.

The Commission denied a licensee's request to take down a rope that defined an exterior portion of the licensed premises where there had been a recent history of patrons unlawfully leaving the licensed premises with open containers. *Captain Ankeny's Well*, OLCC-87-L-008, December 1987.

OAR 845-05-040(3)(e)(A)(B) may be applied to remodeling requests. Lyman L. Keisecker, *Lyman's Purple Clown*, OLCC-85-L-036, December 1985.

Where Commission policy was to approve remodeling that improved a licensed premises' qualifications under the Commission's license criteria, the applicant's request for remodeling leading to improvements was granted in the absence of precedent or reasoning for any exception in the applicant's case. Zack's Restaurant Establishment, Inc., *Zack's Restaurant*, OLCC-84-L-026, December 1984.

Extension of RMB privileges into ballpark stands granted to ball club when there was no evidence that the extension would result in sales to minors and applicant had adequate plan to control against alcohol-related offenses. National Sports Organization, Inc., *Medford A's*, May 1984.

Dispenser licensee's request to remodel part of restaurant into a gift shop was approved because the remodeling was not likely to affect dining service or food sales since the restaurant business was slow and space not needed for restaurant purposes. The Abbey, Inc., *The Abbey*, April 1983.

The Commission may apply its criteria for the issuance and maintenance of licenses to a request for expansion of licensed premises. *Red Robin Enterprises v. OLCC*, 55 Or App 720, 639 P2d 710 (1982).

Application to extend a licensed premises was denied where the additional area to be licensed was in a different building and was not physically connected to the existing licensed premises, except by a long, sidewalk. Milton and Carol Korgan, *The Chase Restaurant & Lounge*, August 1981.

B.4.
B.4.a.

B. LICENSING/RENEWAL

B.4.b. Menu (OAR 845-006-0480(3)(c)) [(OAR 845-06-100(3)(d))]

The licensee's proposed menu change constituted a substantial change requiring approval under OAR 845-06-100(6) where the licensee proposed to change from a varied menu of standard American entrees plus specialty items to a limited menu of prime rib and four seafood and barbeque entree specials. Grace Restaurant Company, Inc., *Baxter's Corner*, June 1984.

The criteria for issuance and maintenance of licenses may be used to decide whether to approve or deny menu change requests under OAR 845-06-100. Grace Restaurant Company, Inc, *Baxter's Corner*, June 1984.

A failure to operate substantially as proposed is not a proper refusal ground of a request for approval of a menu change where the request did not arise in a renewal application. OAR 845-05-025(3) only applies to renewal applications. Grace Restaurant Company, Inc., *Baxter's Corner*, June 1984.

The Commission approved the licensee's request to reduce the number of items on its menu despite the issue of lesser services. The issue of lesser services was outweighed because the menu change would help strengthen the business, would make the premises into more of a dinner house, would boost average monthly sales at the premises, would increase the food percentage at the premises, and because the licensee had operated for a considerable time with the more extensive menu and had suffered significant losses. Grace Restaurant Company, Inc., *Baxter's Corner*, June 1984.

B.4.b.

B. LICENSING/RENEWAL

B.4.c. Hours (OAR 845-006-0480(3)(b)) [(OAR 845-06-100(3)(c))]

The Commission may apply its criteria for licensing and maintenance of licenses to request for change of hours of operation. *El Paso*, OLCC-87-L-011, February 1988.

Where licensee requested change of operation to eliminate lunch service, the Commission gave licensee unfavorable consideration based on the one meal a day rule because licensee failed to show that he had taken reasonable steps to continue lunch service. *El Paso*, OLCC-87-L-011, February 1988.

Licensees' argument to discontinue lunch operations because of unprofitability was unpersuasive where the licensees failed to show that there was no reasonable lunch presentation that would have been profitable. Daniel P. Gallagher, and Mau and Cloutier, Inc., *Crab Pot*, OLCC-85-L-003, June 1985.

The Commission is not estopped from disapproving a change in hours, even where the licensee has operated with the unapproved hours for two years and the Commission has renewed the license since the unapproved hours took effect, where there is no evidence that the Commission was specifically aware of, considered and approved the change in hours. Daniel P. Gallagher, and Mau and Cloutier, Inc., *Crab Pot*, OLCC-85-L-003, June 1985.

B.4.c.

B. LICENSING/RENEWAL

B.5. Minor Postings (OAR 845-006-0340) [(OAR 845-06-040)]

The "primary activity" at a premises is not the sale and consumption of alcoholic beverages under OAR 845-06-040(6)(d) where 62 percent of the floor space is prohibited to drinking. GHT, Inc., *Satyricon*, OLCC-85-L-032, May 1986.

Evidence did not prove that licensee failed to comply with Oregon's liquor laws and rules under OAR 845-06-040(6)(h), even though a minor was convicted of possession of marijuana at the premises, where the evidence did not show that the licensee "permitted" these illegal activities. GHT, Inc., *Satyricon*, OLCC-85-L-032, May 1986.

Substantial public demand shown for minor posting change under OAR 845-06-040(6)(f), where several hundred minors desired to see the unique type of musical entertainment featured by the licensee. GHT, Inc., *Satyricon*, OLCC-85-L-032, May 1986.

Good cause shown for allowing a temporary change in minor posting under OAR 845-06-040(2) where the temporary nature of the posting change would not cause any special administrative or enforcement burdens for the Commission. GHT, Inc., *Satyricon*, OLCC-85-L-032, May 1986.

Commission approved extension of a No. IV-A Minor Posting by one hour to 11 p.m. in a partially separated portion of licensee's lounge. The approval was based on four issues: a) maximizing the opportunity for minors to dine; b) conduciveness to family dining; c) adequate separation of minors from areas primarily used for drinking; and d) sufficient control to prevent abuses and violations. Citing these same issues, the Commission denied the licensee's additional request to expand the No. IV posted area to seats directly across from the bar. Molatore's Motel, Inc., *Molatore's Restaurant*, September 1984.

The Commission denied a No. IV Minor Posting for a lunch buffet in a lounge where the primary activity in the lounge during the buffet was drinking. Red Lion Inn/Lloyd Center, Inc., and Thunderbird Enterprises, Inc., *Red Lion Inn/Lloyd Center*, February 1984.

Commission approved a No. IV Minor Posting in a lounge for Sunday brunch. The primary activity in the lounge during the brunch was the consumption of food. In addition, there were a number of other features which reduced the lounge orientation during the Sunday brunch. Red Lion Inn/Lloyd Center, Inc., and Thunderbird Enterprises, Inc., *Red Lion Inn/Lloyd Center*, February 1984.

B.5.

B. LICENSING/RENEWAL

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

Where there are two separate violations charged, *Oceanside* factors must be applied to each violation because the substantiality of the separate restriction violation directly impacts the penalty to be imposed. *Dad's Restaurant & Lounge*, OLCC-06-V-029, December, 2007.

Where restrictions prohibited license applicant from selling certain products and licensee removed those products from the cooler and shelves but left them in boxes on the floor and customers were allowed to take them out of the boxes and purchase them license applicant made the products available for purchase. Keeping the items in the store was a willful act as was making them available for sale. While license applicant did not intentionally and knowingly sell the products in violation of the restriction, she willfully failed to prohibit those sales from taking place. The violation of the restriction was then willful in the analysis of factors described in *Oceanside Restaurant & Lounge*, OLCC-87-L-014, February 1988. *JR's Convenience Store*, OLCC-06-V-084, December, 2007.

In applying the *Oceanside* factors to determine whether a violation is substantial, the violation of restrictions, even if they were the result of negligence rather than willful conduct, would still weigh against licensee and cancellation would be the appropriate penalty. Here the violation occurred after licensee received notice of prior violations which goes towards willfulness. *Bettie Ford's*, OLCC-06-V-021, OLCC-06-L-006, June, 2007. Amended Final Order on Reconsideration *Bettie Ford's*, OLCC-06-V-021, OLCC-06-L-006, August, 2007.

The Commission cannot issue a license with restrictions if it does not have the authority to issue any license or even to process the application. *Morchella Wine Cellars, LLC*, OLCC-06-L-003, December, 2006.

Potential sanctions and further restrictions described in a settlement agreement are not a condition precedent to cancellation or non-renewal of a license. The potential sanctions and further restrictions are merely one of the tools at the Commission's disposal. The licensee had filed a motion to dismiss the Proposed Refusal of License Renewal because the settlement of a previous Proposed Refusal of License Renewal included potential sanctions and further restrictions if the serious and persistent problems continued. The motion to dismiss was denied and the new history of serious and persistent problems was litigated. *Cabana Club Café & Grill*, OLCC-03-L-010, April 2005.

Licensees were issued a license with three restrictions. One restriction was deferred on the condition that no category III or higher violation was committed within nine months. Within nine months, Licensees committed a category I violation through violation of another of their restrictions (pursuant to ORS 471.405(1)). Licensees' category I violation gave OLCC the authority to cancel the Agreement to Defer Enforcement of Restriction because Licensees did not meet the conditions in the Agreement. *Cheers*, OLCC-03-L-011/03-V-023, December 2003.

B.6.

B. LICENSING/RENEWAL

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

While OAR 845-005-0355(6) provides that a licensee may request that the Commission remove or modify a restriction, the rule does not address the criteria to be used in determining whether a restriction should be removed. Clearly, a restriction may be removed (upon challenge immediately following imposition) where the basis justifying its imposition is not supported by fact or law. *E.g., A.J.'s Homestead Restaurant*, OLCC-90-V-021, December 1990; *Peacock Tavern*, OLCC-93-L-001, July 1993. When challenged at imposition, the Commission has the burden of justifying the imposition of a restriction. Where a justified restriction or one unchallenged at imposition is sought to be removed, the Commission has concluded that in order for a licensee to make a case to eliminate a restriction, the licensee has to demonstrate that the reasons for establishing the restriction no longer exist or are less compelling. *Peacock Tavern*, OLCC-95-L-024, August 1996. In that instance, licensee has the burden of proving the reasons why the restriction should be removed. *Café Thivu*, OLCC-02-L-005, October 2002.

In determining public interest or convenience reasons to restrict a license, the Commission considers factors that include, but are not limited to, the need to eliminate or prevent conditions that have contributed to, or that the Commission reasonably believes will contribute to, liquor or criminal law violations by the licensee, patrons of the licensed premises, or the public. The restrictions in this case were imposed because there was a fight that the Commission considered serious and for the reason that the Licensee is new to operating with a liquor license. Based on these reasons, imposition of restrictions one through five were justified under 845-006-0355 (2)(b) to prevent conditions that will contribute to liquor or criminal law violations by the licensee, patrons or the public. The Commission concluded that imposition of Restriction 6, prohibiting a named individual from participating in the management or ownership of the business, could not be justified under 845-006-0355 (2)(b), as the condition to be prevented (management of the business by a manager with two bank fraud convictions) is not a condition that will contribute to the liquor or criminal law violations feared (managing patrons and liquor law violations) where financial fraud was expressly excluded as a basis for concern and the individual was not restricted from handling money or performing the bookkeeping functions related to management. *Café Thivu*, OLCC-02-L-005, October 2002.

The Commission determined that one year without problems related to the basis of a restriction is a sufficient interval to demonstrate that prior problems which justified imposing the restriction are no longer problems and that the reasons for imposition of the restriction no longer exist. Removal of the restriction for good cause was allowed. *New Star*, OLCC-01-L-007/V-075, June 2002.

The specific license restrictions applicants offered to accept, and which the Commission considered under OAR 845-005-0355(1)(a), were insufficient to provide good cause to overcome the problem area refusal basis. *B Complex*, OLCC-01-L-002, February 2002.

B. LICENSING/RENEWAL

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

Licensee challenged the Commissions ability to impose a 35 percent food restriction on the license. Licensee argued that the Commission had no authority to impose the restriction without first adopting a rule, and because the Commission had not followed proper rulemaking procedures, the restriction could not be placed on the license. The attorney general provided legal advice which drew a distinction between “an intra-agency memorandum or an internal management directive” and a rule. The attorney general advised that the restriction was “an intra-agency memorandum or an internal management directive” and not a rule. The Commission concluded that based upon advice from the attorney general's office, the policy regarding a 35 percent restriction is not a rule and that failure to follow rulemaking procedures did not make the restriction invalid. The Commission concluded that it could impose the 35 percent food sales restriction and restricted the license for a period of 12 months. *The Table*, OLCC-96-L-011, June 1997.

The Commission granted a DA license on the condition that licensees construct a wall separating the game machines from a dining room seating at least 40 persons. *Bushwackers*, OLCC-96-L-016, March 1997.

Based upon the advice of the AG, the Commission restricted an initial license to deal with an unlicensable person who had an interest in the business to be licensed even though the rule authorizing license restrictions only provides that the Commission may restrict a license when in the absence of a restriction, the Commission has a basis to cancel, suspend, fine, or deny the license. The AG advised that if an unlicensable person had an interest in the business, as soon as an initial license was issued the Commission would immediately have grounds to cancel or suspend the license pursuant to ORS 471.757 and OAR 845-05-011(4). The AG advised that although the Commission could take two steps, first to issue the license and then secondly to immediately commence a proceeding to cancel, suspend, or restrict the license, it would be much more efficient, and the Commission would be authorized, to impose the restriction upon initially issuing the license. *County Cork Public House*, OLCC-95-L-025, October 1996.

The Attorney General advises the Commission that a licensee's compliance with a restriction (prohibiting the consumption of alcoholic beverages) is not determinative of whether or not a restriction should be removed. In order to make a case for eliminating the restriction, a licensee would have to establish that the reasons for establishing the restriction no longer exist or are less compelling. *The Peacock Tavern*, OLCC-95-L-024, August 1996.

Licensee challenged the Commission's authority to impose a restriction prohibiting him from consuming alcoholic liquor while a licensee of the Commission. Licensee argued that, while the Commission might have authority to regulate whether he drank while on duty, serving, selling and supervising the sale of alcoholic liquor, the Commission did not have authority to restrict him from drinking while he was not on duty. Based on advice from the Assistant Attorney General, the Commission concluded that the Commission's authority over licensees is not limited only to on-duty, on-premises activities. Therefore, the Commission does have authority to restrict a licensee from consuming alcoholic liquor even while off duty. *Idle Hour Tavern*, OLCC-94-V-085, January 1996.

B.6.

B. LICENSING/RENEWAL

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

The Commission concluded that with a restriction (that applicant work in a premises where food service is emphasized), there was good cause to issue a service permit to an applicant who had a felony conviction. *Robin G. Steege*, OLCC-92-SPR-155, July 1993. Similarly, the Commission concluded that with a restriction (that applicant abstain from consuming alcoholic liquor), there was good cause to issue a service permit to applicant who had alcoholic liquor law convictions. *Kelly R. Lawson*, OLCC-93-SPR-020, July 1993.

Where the prior licensee at this location closed early (10 to 11:30 at night) during the last six years, the Commission concluded that a restriction that required licensees to stop the sale, service, and consumption of alcohol at 11 p.m., except for Friday and Saturday nights, was in the public interest or convenience based upon the character and environment of the neighborhood in which the licensed premises operates. OAR 845-05-055(2)(a). *Club Cabos*, OLCC-93-L-004, October 1993.

Commission concluded that it was in the public interest or convenience to impose a restriction that applicant abstain entirely from drinking alcohol where applicant had a record of alcohol problems and applicant's drug treatment programs recommended that he never drink alcohol again. OAR 845-05-055(3)(d). *The Peacock Tavern*, OLCC-93-L-001, July 1993.

Licensees requested that a restriction imposed pursuant to OAR 845-05-055(2)(a)(character or environment of the neighborhood) be modified. The Commission modified the restriction by requiring licensees to request that their patrons park in the off-street mall parking lot and that licensee make reasonable efforts to inform their patrons of the requirement. *T. J.'s Venture Inn*, OLCC-93-L-002, July 1993.

Where licensees' manager was involved in an altercation with OLCC inspectors and licensee was present and did not intervene, the Commission imposed a restriction on the license prohibiting the manager from working on the premises and prohibiting the licensee from being the new manager. *Sao-Mai Restaurant*, OLCC-91-V-136, August 1992.

Although applicant agreed to a restriction proposed by the Regulatory staff, the Commission concluded that it could not impose any restrictions when it did not have a basis to deny the application. OAR 845-05-055(1)(a). *Prime Country*, OLCC-91-L-012, December 1991.

The Commission concluded that applicant's showing of good cause was not adequate to overcome the felony convictions and alcoholic liquor law violations as a reason to deny the permit. However, with conditions and restrictions on the license mandating alcohol treatment, aftercare, and abstinence, there is good cause to outweigh the refusal basis. *James Ray Steele*, OLCC-90-SP-087, June 1991; *Marc R. Babb*, OLCC-91-SP-002, July 1991.

B.6.

B. LICENSING/RENEWAL

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

The Commission concluded that with restrictions on the license, applicants showed good cause to overcome a history of serious and persistent problems as a refusal basis. The restrictions included no fortified wine, no containers larger than 16-oz., no sale after 7 p.m., and that applicants would have a security guard on duty. *Dekum Food Market*, OLCC-90-L-005, May 1991.

The Commission concluded that the licensee should not be restricted from employing a former licensee as a chef on the premises, where the former licensee had lost his license due to a felony conviction, but the felony was not connected to the licensed premises, and the job as chef would not involve the sale or service of alcoholic liquor. *A. J.'s Homestead Restaurant*, OLCC-90-V-021, December 1990.

Where the Commission granted a license subject to conditions including applicant's abstinence from alcohol for the duration of the license and subject to license cancellation upon a violation of the conditions, violation of the conditions warrants license cancellation. *P.G. Enterprises, Inc. v. OLCC*, 103 Or App 132, 796 P2d 1212 (1990).

The Commission has authority to impose conditions on a license. The authority comes from the Commission's broad authority under ORS 472.060 to grant, refuse, suspend or cancel licenses. If the Commission "may" refuse to grant a license, it can also place conditions on the issuance of the license. *Oceanside Restaurant & Lounge*, OLCC-88-V-123, August, 1989.

The Commission has authority to cancel a license due to the breach of a condition on the license. The authority lies in the Commission's authority to grant, refuse, suspend, or cancel liquor licenses under ORS 472.060. *Oceanside Restaurant & Lounge*, OLCC-88-V-123, August, 1989; affirmed *P.G. Enterprises, Inc. v. OLCC*, 103 Or App 132, 796 P2d 1212 (1990).

Contract law applies to license conditions. The violation of a contractual condition, if substantial, may render the granting of the license void from its inception. Where there is a material breach of a condition subsequent to the issuance of a license, the Commission actually denies, rather than cancels, the application. *Oceanside Restaurant & Lounge*, OLCC-88-V-123, August, 1989; affirmed on other grounds *P.G. Enterprises, Inc. v. OLCC*, 103 Or App 132, 796 P2d 1212 (1990).

The Commission has authority to enforce restrictions on a license and the licensee is bound by the terms of an agreement imposing the restrictions where the terms are clear and the licensee voluntarily agreed to the agreement. This is true whether or not the licensee read or understood the agreement. *Oceanside Restaurant & Lounge*, OLCC-88-V-123, August, 1989; affirmed *P.G. Enterprises, Inc. v. OLCC*, 103 Or App 132, 796 P2d 1212 (1990).

In determining whether a licensee has substantially complied with a condition placed on the issuance of the license, the Commission considered the following factors: the timing of the violation; whether the violation was willful; the number of violations; and whether the hardship on the licensee outweighs the importance of the conditions in ensuring completion of the agreement. *Oceanside Restaurant & Lounge*, OLCC-88-V-123, August 1989.

B.6.

B. LICENSING/RENEWAL

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

A prior Final Order imposed a "condition" on the license and not a "restriction." Therefore, the licensee did not violate ORS 471.405(1) because the condition prohibiting licensee from bartending at the premises had expired at the end of the license year in which it was imposed. *Wolf Den*, OLCC-89-V-021, July 1989.

The Final Order imposed a "condition" and not a "restriction" where the Final Order referred to the requirement as a "condition" and the Commission did not follow any of the procedures that it normally follows where a restriction has been imposed, such as notifying the licensee at license renewal of the existence of a restriction. *Wolf Den*, OLCC-89-V-021, July 1989.

The Commission concluded it does not have authority to impose a restriction barring a former licensee from working on the licensed premises in a job that does not involve the sale or service of alcoholic liquor when the former licensee has divested himself of interest in the licensed corporation and is no longer a licensee. *Log Cabin Restaurant & Lounge*, OLCC-88-L-020, May 1989.

A licensee's failure to comply with restrictions constitutes the sale of alcohol in a manner other than the license permits, in violation of ORS 471.405(1). *Strawberry Fields*, OLCC-85-L-022, December 1985; *Lloyd's of Bandon Restaurant & Lounge*, OLCC-88-L-007, November 1988; *Union Gap*, OLCC-89-V-005, April 1989.

Licensee violated ORS 471.405(1) by selling or offering for sale alcoholic liquor in a manner other than the license permits because at a time when the premises was open for business, licensee was performing an act that was prohibited by a restriction on the license. The restriction prohibited licensee from drinking alcoholic beverages on the premises. *Union Gap Tavern*, OLCC-89-V-005, April 1989.

OAR 845-05-055 allows the Commission to impose license restrictions at any time during a license year, and not just at the time of issuance or renewal of a license. Consequently, the Commission's unconditional issuance of a license did not constitute a decision that the Commission would not impose restrictions during the course of the license year. *Lloyd's of Bandon Restaurant & Lounge*, OLCC-88-L-007, November 1988.

The Commission applied the licensing criteria in determining whether to impose license restrictions during the course of a license year. *Lloyd's of Bandon Restaurant & Lounge*, OLCC-88-L-007, November 1988.

The issuance of a license subject to a "condition" means that the Commission grants a license subject to compliance with a specified requirement. A condition is in effect until the license expires at the end of the license year. The imposition of a "restriction" on a license means that the Commission places a limitation on the license privileges. A restriction may be effective until the Commission lifts it. *Lloyd's of Bandon Restaurant & Lounge*, OLCC-88-L-007, November 1988.

In determining whether cancellation was appropriate in a violation case, the Commission imposed restrictions along with a lesser penalty than cancellation where the restrictions saved the licensee from being a poor risk for compliance. *Frenchie's Tavern*, OLCC-88-V-015, June 1988.

B.6.

B. LICENSING/RENEWAL

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

The Commission may consider its licensing criteria in deciding requests to modify license restrictions. *First Avenue Market*, OLCC-87-L-007, November 1987.

Where an applicant who had a recent habit of excessive use of alcoholic liquor was able to show strong support from his endorsing employer, the Commission granted a service permit on the condition that the permit was good only with the endorsing employer. *Adam Craig Manning*, OLCC-85-SP-027, June 1986.

Where service permit applicant made false statements on application, Commission granted permit subject to restrictions that the permit's use be limited to applicant's present employer. *Robert Ernest Reed*, OLCC-85-SP-002, February 1986; and *Victor LeRoy Byrd*, February 1983.

Since the Commission has discretion to deny an application for false statements, the Commission may choose instead to grant with restrictions. *Robert Ernest Reed*, OLCC-85-SP-022, February 1986; *Arturo Gonzalez*, April 1984.

In setting a condition on grant of an application, the Commission specified that the licensee would have to make written application to the Regulatory staff to seek removal of the condition, and that the licensee would have an opportunity for a contested case hearing should the Regulatory staff deny the request. *Strawberry Fields*, OLCC-85-L-022, December 1985.

In declining to place a condition on a service permit that it be automatically or immediately canceled if the applicant is arrested on any charge, the Commission held that arrests are of no significance under liquor laws or regulations and that a service permittee cannot be denied the usual right to contest a proposed penalty through a hearing. *Victor LeRoy Byrd*, February 1983.

B. LICENSING/RENEWAL

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

Determining a reasonable period for an authority to operate must consider the effect of terminating the authority on a particular date, as well as the notice provided to the authorized party of the termination date. The Estate of Dolores Diss, Albert L. Diss II, Agent, Bruce L. Kinnison, Agent for Personal Representative, *Stop Inn Dine & Dance*, OLCC-84-L-025, April 1985.

The purpose of ORS 472.141(2)(b) is to protect those with interests in licensed outlets where the licensees have died or become insolvent. The Estate of Dolores Diss, Albert L. Diss II, Agent, Bruce L. Kinnison, Agent for Personal Representative, *Stop Inn Dine & Dance*, OLCC-84-L-025, April 1985.