

OREGON LIQUOR CONTROL COMMISSION

MINUTES

June 27, 2013

Thursday June 27, 2013

9:00 a.m. The Commissioners present were Michael Harper, Rob Patridge, Bob Rice, Pamela Weatherspoon and Chair Cassandra Skinner. Interim Executive Director Merle Lindsey attended along with members of staff.

MINUTES

Commissioner Harper moved to approve the minutes of the May 10, 2013 commission meeting.

Passed 5/0

Commissioner Harper moved to approve the minutes of the June 6, 2013 special commission meeting.

Passed 5/0

Commissioner Harper moved to approve the minutes of the June 12, 2013 special commission meeting.

Passed 5/0

RETAIL SALES AGENT UPDATE

Denny Stoll, Liquor Agent 1141 from North Salem appeared before the board to say he has continued to work with lobbyist Marshall Coba at the capital to find a solution to fund agents without allowing others to take a portion of the monies. Mr. Stoll's idea was to ask a member who voted against the 25 cent surcharge at the June 12, 2013 meeting to amend the surcharge to 5¢, earmark it for agent's compensation, and to add the item to the June 28, 2013 commission agenda, which would allow for a 24 hour notice period. Chair Skinner asked members who voted against the surcharge at the June 12, 2013 meeting to weigh in on Mr. Stoll's request. Commissioner Patridge stated, he voted no last time and would vote no again because, it is not an equitable tax to raise revenue. He asked staff to report back to the board at the July 12, 2013 meeting with recommendations on how to best form a formal work group to engage with the agents. Once formed, this work group should discuss the level of agent compensation and brainstorm ideas to create additional revenue without adding a tax per bottle. Commissioner Patridge would like the results brought back to the Commission before the February 2014 legislative session begins so they could make a decision on raising compensation levels.

Commissioner Harper and Commissioner Rice agreed that no action should be taken at the June 28, 2013 meeting to add a surcharge but were supportive of Commissioner Patridge's request. Commissioner Rice volunteered to participate on the work group.

Commissioner Patridge made a motion to instruct staff to engage with agents in a formal group to develop ideas to raise compensation levels and to bring those ideas back to the board before the February 2014 legislative session.

Passed 5/0

COMMISSION MEMBERS:

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COMPLIANCE

Stipulated Settlement Agreements

Becky Voelkel, Administrative Policy and Process Division presented.

There were fourteen stipulated settlement agreements before the Commissioners for ratification; Spring Street Market, Viking Inn, Buggy's, Shedd Market & Deli, Solstice Brewing Company, El Rodeo, Bayshore Chevron, Gresham Inn, Marcello's, Piedmont Place, The Anchor Bar #35, The Vault Bistro & Lounge, Everybody's Market, Voodoo Martini.

Commissioner Patridge motioned to ratify the fourteen settlement agreements as listed.

Passed 5/0

Service Permit Refusals

Becky Voelkel, Administrative Policy and Process Division presented.

There were seventeen service permit refusals and two permit revocation before the Commissioners for ratification.

Commissioner Harper asked why there were so many service permit refusals this meeting. Ms. Voelkel explained in the spring there are more applications building up for the summer season and the timing of the past two commission meetings also created a larger group.

Commissioner Harper asked if the requirements for refusal are stated on the application in regards to past personal convictions. Ms. Voelkel said the application does state that information. Commissioner Harper stated, for the record, service permits are refused if you have two or more violations within a three year period. Ms. Voelkel agreed and clarified, passage of time clears a person's record and they can re-apply.

Commissioner Rice moved to ratify the service permit refusals.

Passed 5/0

LICENSE MATTERS

License Applications

Dan McNeal, License Services Manager presented.

THE BEER PORCHES, 2231 NE Alberta Street, Portland.

The application was for a limited on premises sales license. Applicant Suzanne Moodhe appeared before the board. Mr. McNeal stated for clarity the proposed license would cover the entire lot, excluding the three other food carts located on the lot. The reason staff is proposing this instead of a designated and enclosed consumption area is because this is a very small lot with clear lines of site to all areas where alcohol would be consumed. The applicant has operated this cart since approximately April 2010 under a variety of temporary licenses issued to Captured by Porches, LLC which the applicant is a member of. The City of Portland gave an unfavorable recommendation stating there is no public demand. The application meets the commission's requirements for best practices of food carts. Commissioner Rice reminded the licensee of the consequences of violating license restrictions and asked if she had read and understood the restrictions. Commissioner Harper stated his concern about pedestrian crossing and asked if the City plans to install a light at the cross walk. Ms. Moodhe said she has not heard of any plans to install a traffic light. Commissioner Patridge noted for the record, there were no representatives from the City of Portland at the meeting.

Commissioner Rice moved to grant the license with listed restrictions.

Passed 5/0

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CAPTURED BEER BUS, 137 SE 28th Ave, Portland

The application was for a limited on premises sales license. Applicant Brian White appeared before the board. The proposed license would cover the entire lot with alcohol consumption limited to a confined area within the lot. The City of Portland gave an unfavorable recommendation stating there is no public demand. The application meets the commission's requirements for best practices of food carts. Commissioner Harper asked the applicant if he owns the lot. Mr. White said he did not. Mr. White asked the board if they would be open to amending his control plan to remove the confined consumption area, similar to The Beer Porches. Commissioner Rice advised Mr. White to proceed with his current control plan and then amend it through the standard process.

Commissioner Rice moved to grant the license with restrictions.

Passed 5/0

RULES

Annabelle Henry, Administrative Policy & Process Division presented.

INITIAL ACTION

OAR 845-005-0311 True Name on Application; Interest in Business

This rule identifies which persons must be included on a license application due to their "interest in the business." It also identifies which persons may be evaluated due to their "financial interest" in the business and what, if any, result that evaluation may have on the license. The proposed amendments revise and clarify the definitions of these two distinct interests.

Commissioner Harper asked if this rulemaking discussion will include clarifying ownership. Ms. Henry said there would be an advisory committee that would include discussions regarding ownership.

Commissioner Harper moved to initiate rulemaking to amend OAR 845-005-0311 and to hold a rulemaking hearing at staff's discretion.

Passed 5/0

OAR 845-006-0345 Prohibited Conduct (Self-Service)

This rule prohibits, among other things, a licensee or a permittee from serving himself or herself an alcoholic beverage for on-premises consumption. The proposed amendments expand the prohibition against self-service to all persons.

Commissioner Rice stated the commission already has the authority to sanction an individual for this type of violation as a result of not being a service permittee and the authority to sanction a licensee for the same; he is unsure why this rulemaking is necessary. Ms. Henry explained when HB2443 was revised, it affected ORS 471 and a whole was created. The original language in the bill included any person, patrons included. When the bill was revised, the language was changed to apply only to employees. Ms. Henry stated this rulemaking is proactive to clarify to the stakeholders that the prohibition still exists for all persons.

Commissioner Weatherspoon moved to initiate rulemaking to amend OAR 845-006-0345 and to hold a rulemaking hearing at staff's discretion.

Passed 5/0

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OAR 845-009-0020 Service Permit Denial Criteria

This rule describes the grounds under which the Commission may refuse to grant a service permit and the good cause, if any, that overcomes those refusal bases. The proposed amendments restructure this rule and revise some of its substantive provisions.

Commissioner Rice moved to initiate rulemaking to amend OAR 845-009-0020 and to hold a rulemaking hearing at staff’s discretion.

Passed 5/0

RETAIL SERVICES

Brian Flemming, Retail Services Director, presented.

Permanent Agent Appointment – Portland Eastport

In September 2012, liquor agent John Feuerstein suddenly passed away. John was appointed in March of 1997, he was dedicated to doing a good job for the Commission. His son, Joe Feuerstein was appointed as the temporary agent after John’s passing. Following the process regarding preference of spouse or child of deceased or disabled agent in OAR 845-015-0125(2), staff reviewed application documents, conducted an interview and reviewed the temporary agents experience in the business operation of Portland Eastport liquor store. Staff recommends Joe Feuerstein as the permanent agent for store A-1186, Portland Eastport.

Chair Skinner expressed her condolences on behave of the board.

Commissioner Harper moved to approve Joe Feuerstein as the permanent agent for store A-1186, Portland Eastport.

Passed 5/0

Mr. Lindsey stated for the record that he had the pleasure of working with John. He described Mr. Feuerstein as a fiery and passionate individual who was always working to move the agent community forward.

RECESSED 9:54 AM

RECOVERED 10:15 AM

PUBLIC FORUM

Tyler Johnston appeared by phone. Mr. Johnston has shared ownership of an Italian alfresco eatery called, Artigiano, which he described as very small and operating on a “shoe string budget”. Mr. Johnston told the board that the additional step which requires every food cart applicant to go before the board at an in person commission meeting before granting a liquor license seems to be unnecessary and unfair. Mr. Johnston stated he is in the process of acquiring a liquor license for Artigiano. His application received a favorable recommendation from the Portland Police and he was granted the recommendation of the Portland Office of Neighborhood Involvement. He has been told by OLCC staff that Artigiano is a simple case but his application must still go before the board at the August meeting for approval. Mr. Johnston stated the delay of his license will result in the loss of sales during his busiest two months of the year which is a financial burden to his small business. Mr. Johnston requested that the board reconsider and amend their position to allow food cart licenses to be issued in the same process as brick and mortar establishments.

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Chair Skinner said Mr. Johnston raised a very good point and she would like the board to re-evaluate the process for food carts. Commissioner Rice said, two years ago, when the first food cart applications were being submitted to the commission he asked staff to bring all applications before the board. Since then, best practice guidelines have been developed, and the commission has successfully applied those practices to several food carts. Commissioner Rice has discussed this matter with Licensing Director, Farshad Allahdadi, and believes there is now a template for staff to grant standard food cart applications. Chair Skinner agreed but wants to be cautious with regards to the City of Portland's stance on food carts. Jesse Sweet noted the Delegation Policy was recently revised by Commissioners and staff however, food carts are outside of the policy and the board has the ability to make a change in their position for delegation at anytime. He also noted for the record, if a future food cart application meets the criteria listed in section I (a-d) of the Delegation Policy, the application would come before the board for approval.

Commissioner Rice made a motion to delegate the approval of standard food cart licenses to staff.

Passed 5/0

ADMINISTRATION

Redemption Center Application

Jesse Sweet, Administrative Policy & Process Division presented.

Mr. Sweet said Oregon Beverage Recycling Center (OBRC) currently operates three redemption centers in the state of Oregon. A report submitted by OBRC to the commission shows these centers provide a convenient service to the public and consumers are increasingly opting to redeem containers at the centers rather than at non participating locations. In April 2013, the commission approved a fourth redemption center in Portland which is scheduled to open in July 2013.

In 2013, the legislature approved a change in statute to allow more than one redemption center in a city which has a population less than 300 thousand.

OBRC is requesting a fifth center to be located in North Salem Oregon.

Commissioner Rice stated since the first redemption center was approved, several years ago, they have been very successful. He stated if they take action to stay in compliance with the new statutory requirements to be statewide capable by 2015, he believes the board could delegate authority to approve standard redemption center applications to staff. Mr. Sweet said staff is currently researching delegation on this matter and urged the board to hold off until they have an answer.

Commissioner Rice moved to approve the new redemption center located at 1917 Lancaster Dr NE, Salem, Oregon.

Passed 5/0

CONTESTED CASE HEARINGS

Mt. Angel Market, OLCC 12-V-003

A Proposed Order was issued on March 22, 2013. Case Presenter, Anna Davis, represented the OLCC at the administrative hearing and submitted staff comments.

Case Presenter, Becky Voelkel presented staffs comments on behalf of Ms. Davis to the commissioners. Attorney Michael Mills appeared to present exceptions to the Proposed Order and was joined by licensee, Charanjit Singh.

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US Market #130, OLCC 12-V-017

A Proposed Order was issued on May 10, 2013. Case Presenter, Becky Voelkel , represented the OLCC at the administrative hearing and presented staffs comments to the Proposed Order to the commissioners. Attorney Michael Mills appeared to present exceptions to the Proposed Order and was joined by licensee, Feroz Mohammed.

RECESS IN CHAMBERS DELIBERATION OF CONTESTED CASES

Continued Deliberations

Cindy Parker, OLCC 12-SPR-016R

RECONVENE 2:15 PM

CONTESTED CASE HEARINGS- Decisions on contested cases

Mt. Angel Market

Commissioner Patridge moved to amend the Proposed Order of the ALJ pursuant to the list which will accompany the minutes and adopt the amended order as a Final Order.

Passed 4/1 Commissioner Harper, no

US Market #130, OLCC 12-V-017

Commissioner Patridge moved to amend the Proposed Order of the ALJ pursuant to the list which will accompany the minutes and adopt the amended order as a Final Order.

Passed 4/1 Commissioner Harper, no

Cindy Parker, OLCC 12-SPR-016R

Commissioner Weatherspoon moved to adopt the Proposed Order of the ALJ as the Final Order of the Commission.

Passed 5/0

EXECUTIVE SESSION PER ORS 192.660(2)(f)

Lions Room

To consider records exempt by law from public inspection.

RECONVENE 4:10 PM

Decision for tie vote procedures

Commissioner Patridge moved that a 2/2 vote would result in a not due pass and that the default vote would be no.

Passed 5/0

RECESS 4:15 PM

Cassandra Skinner, Chair

Michael E Harper, Sr., Commissioner

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Rob Patridge, Commissioner

Bob Rice, Commissioner

Pamela Weatherspoon, Commissioner

Merle Lindsey, Interim Executive Director
and Secretary to the Commissioners

NOTE: The next Commission Meeting is by phone, July 12, 2013

For more information, please telephone Toll Free 1-800-452-6522 or
Portland 503-872-5006

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