

OREGON LIQUOR CONTROL COMMISSION
MINUTES
April 16, 2009

Thursday, April 16, 2009

9:00 A.M. The Commissioners present were Christine Lewandowski and Bob Rice and Chairman Phil Lang. Others present were Executive Director Steve Pharo, and members of staff.

Minutes – Commissioner Lewandowski moved to approve the minutes of the March 9 and March 16 Commission Meetings. Passed 3/0.

PUBLIC FORUM

Nicholas Yanerello, Hawthorne Theater owner came forward to defend the reputation of his establishment as he knew that a group of neighbors was planning to appear before the Commissioners to complain about his establishment. Commissioner Lewandowski asked Mr. Yanerello if he knew why the neighborhood group feels the way they do. Mr. Yanerello said he thought he did. He has worked closely with his immediate neighbors to address their various concerns, but these other neighbors are still unhappy with his business. Chairman Lang clarified that this business was the former Masonic Temple on the corner of SE 39th & Hawthorne. Mr. Yanerello confirmed.

Dwight Holton, Hawthorne Neighborhood Watch came forward to express concerns about the Hawthorne Theater and ask that the Commissioners refuse to renew the Hawthorne Theater's license when it is up for renewal in the next few months. He submitted written materials about the incidents that have occurred in or around the Theater over the years. He noted that they have made repeated attempts to work with Mr. Yanerello, through the neighborhood association or through phone calls and are looking to OLCC to 'speak his language' by taking away his liquor license.

Commissioner Rice asked what the relationship was between the Hawthorne Neighborhood Watch and the Richmond Neighborhood Association. The two groups are not related, but they have worked with the Office of Neighborhood Involvement. Commissioner Rice asked if there was a reason that the group chose not to work with their Neighborhood Association. Mr. Holton said that they are working through them and asked the Richmond Association to oppose renewal of the Hawthorne Theater's liquor license, which they did. He stated their experience has been that Mr. Yanerello does not respond to the neighborhood association.

Liana Corliss shared her personal experiences with the Hawthorne Theater and how she has dealt with them as a neighbor.

Tim Clark, another neighbor, has corresponded with other local businesses about their experiences with the Hawthorne Theater, none of which was favorable.

Chairman Lang commented on the limitations of the Commission for reasons to not renew licenses. He asked that Regulatory Services Director Linda Ignowski take the material they submitted and listed to the testimony and come back to the commissioners with a report. Mr. Holton referenced Representative Kotek's bill before the legislature and how that might give the Commissioners more ability to deny or refuse licenses. Chairman Lang said it would but it was up to the legislature.

Commissioner Rice commented on the March 9th meeting which resulted in a temporary surcharge on distilled spirits, cuts at the agency, and also cuts in agent's compensation. The actions occurred in result of an appeal from the legislature to help with the budgetary shortfall in the current biennium. He said that he supported the surcharge on a temporary

basis with the hope and expectation that there would be a broader conversation outside of this agency relative to a broader sharing of the pain in budgetary considerations, and, if necessary, a broader sharing of additional revenue opportunities to help shore up the budgetary situation relative to our existing biennium and the much larger one looming in the next one. He is personally disappointed that he has seen limited evidence of that and that pain is going to be prospectively shared. He noted that he does not speak for his fellow commissioners but that at this point he wanted to get out early in indicating that he is not predisposed to consider further revenue enhancements and administrative cuts either for agency staff or agents' compensation until he sees a broader sharing of the pain from the greater community.

Chairman Lang echoed Commissioner Rice's comments that he is reluctant to entertain an idea of an increase in the markup for distilled spirits in Oregon until the legislature visits the taxation of both the beer and the wine tax. He noted that the wine tax is probably about where it should be in relation to the other states. The beer tax in the third lowest in the nation and hasn't been increased in 32 years. Every time a supplier of distilled spirits raises their price the amount of money that Oregon receives from distilled spirits goes up because we have a percentage mark up on the product rather than a statutory tax. The legislature and only the legislature can deal with the beer and the wine tax. It has been historically the position of the commission to remain neutral. However it has gotten to the point that every time they need a little more money, they are going to be coming to us. He said that he will not be in favor of increasing the revenue stream from distilled spirits until the legislature does something about an increase in the beer tax. He feels that if there ever was a time to address the taxes, it would be during this session.

He recommended that the Commission pass a motion to the legislature to consider the beer tax.

Commissioner Lewandowski noted that the current proposal is perhaps too large and would want them to consider a more moderate increase.

Commissioner Rice expressed hope that the legislature would consider an increase that would strike a balance on the system and not single out a particular item.

Chairman Lang agreed with Commissioner Rice's comment, but found it ludicrous to have the legislature only support increases in distilled spirits markup and not taxes on wine and beer.

Commissioner Lewandowski asked Commissioner Rice to clarify from what other areas he would consider raising revenue.

Commissioner Rice said he didn't think it was his job to tell the legislature how to raise additional revenue, but he found it indefensible to single out distilled spirits for taxation as opposed to other similar consumer products.

Chairman Lang moved to urge the legislature to review the wine and beer tax we levy in Oregon rather than relying solely on the markup of distilled spirits. Passed 3/0.

COMPLIANCE

Becky Voelkel, Administrative Process Program presented.

There were 7 items for including 5 settlement agreements; Sushiville, Split, and settlement agreements; Hood River Restaurant, Mudai Ethiopian Restaurant, District, H Mart and Alberta Cooperative Grocery. Commissioner Rice asked if on item 3, someone with a suspended license was operating and he wondered why we were agreeing to a light sanction for this. Ms. Voelkel said that the alcohol wasn't sold by the licensee, it was given away to friends who had done work in his establishment as a thank you; and also the licensee wasn't open at the time.

Commissioner Lewandowski asked on the same item, regarding the rule language cited, the licensee allowed the sale, delivery, service, consumption and receipt of alcoholic beverages on the premises, during the time the license was suspended. Ms Voelkel said that the rule includes all of those items, and in this case, he only served. Commissioner Lewandowski moved to ratify the 7 items including the 5 settlement agreements. Passed 3/0.

LICENSE MATTERS

Dan Croy, Administrative Process Program presented.

Brown's Bar and Grill- SE Foster, Portland. Change in owner, Full On-Premises, Commercial. The City of Portland provided an unfavorable recommendation on the license. Applicant Renato Beorchia appeared before the Commissioners. Commissioner Lewandowski asked if the applicant had been licensed before. Mr. Croy said that he has not been licensed before. Commissioner Lewandowski asked the applicant to comment on the City's report. Mr. Beorchia said that he had mis-worded information on the city's application, but had worked closely with his OLCC inspector and provided more complete information as he had more assistance. Chairman Lang advised the applicant to be very careful in his future correspondence to be truthful to the Commission. Commissioner Lewandowski moved to grant the license. Passed 3/0.

San Felipe Restaurant- SE Milwaukie, Portland. Change in owner, Full On-Premises. Applicant Luna Aguirre-Cordero appeared before the Commissioners. Commissioner Lewandowski spoke with the applicant about the importance of following the restrictions as proposed. Commissioner Lewandowski moved to grant the license with the two restrictions on licensee's spouse. Commissioner Rice reinforced Commissioner Lewandowski's comments to the applicant. Passed 3/0.

Stars Cabaret Bridgeport- SW McEwen Rd., Tigard. Change in owner, Full On-Premises, commercial. Applicant Randy Kaiser and attorney Jim Neill appeared before the Commissioners.

Commissioner Rice asked why there was a restriction on Sunday. Executive Director Pharo clarified that the intent was to include Sunday on the restrictions. Mr. Croy said that the proposal was for Sunday also. Commissioner Lewandowski asked why the Bend establishment has more problems. Mr. Kaiser said that the clientele in Bend are different, also he thinks that many people leave other establishments early and come to Stars on their way home.

Linda Brown, neighbor and School Board member came forward to express opposition to Stars as it would be close to Rivergrove Elementary where children are present 7 am through 8 pm. She expressed concerns for children's safety as well as its location being difficult for law enforcement to access. She cited Star's poor record of compliance at the Bend location.

Tom Krueger, Lake Forest Neighborhood Association, came forward to express the overwhelming opposition from his neighborhood to this application.

Peter Klæbe, Chairman of the Rosewood Neighborhood Association came forward to comment on his concerns based on the content of the staff report and if the commissioners would be willing to come to the neighborhood and explain why they approved the license. Commissioner Rice said that however he voted today, he would be happy to attend the neighborhood association meeting if the group wanted him to come.

Ann Martin, a resident of the Rosewood Neighborhood Association came forward in opposition to the application and the effect it would have on her neighborhood. Monique Beikman, Tualatin City Council came forward and read a letter from Representative Scott Bruun into the record as he was unable to attend due to unforeseen legislative commitments. She pointed out that Senator Devlin has also send correspondence in opposition the license.

Kent Barker, Tualatin Police Chief came in to express his concerns about the application and asked the Commissioners to consider the record of the Bend location as a record of serious and persistent problems. He pointed out the problems that the area had with the Wichita Pub, which did not have its licensed renewed. He found the items on the staff report to be even worse that the Wichita Pub.

Commissioner Rice thanked the chief for coming in to the office. He asked the chief to address the law enforcement convergence issue for this area and explain how it works. Chief Barker said that if there was an incident, it would clearly be handled by Tualatin, but if there was an incident outside of the area, other jurisdictions would be called in.

Marie Morel Seytoux, owner of the Little Gym came in and asked to clarify items in the staff report about her business: the hours of operation-last class ends at 7:35..sometimes people are there until 8pm. Parties go later on the weekends than indicated. Currently aren't offering Friday evening parties, but have in past. Parent survival night is offered on Saturday night from 6-9pm, children are there until 9:30 pm for these occasions. She noted that the peak hours are morning as well as evenings due to many families having two working parents. Also, the sign is clearly visible from their parking lot as well as the lobby of the Little Gym. She believes that there will be a significant negative impact to her business.

Lou Ogden, Tualatin Mayor, came forward to express opposition to the license. He wanted to comment on the licensee's history and not the entertainment offered.

Jeff Kleinman, Northwest Textbook Depository Company representative, which is a neighboring business, came forward to ask commissioners to deny the license based on a recent history of serious and persistent problems at the licensee's other licensed premises.

Gail Earle, a Lake Oswego resident and member of a neighboring fitness club came forward to express her opposition to strip clubs.

Lisa Volpel, a neighbor, came forward to ask commissioners to deny the license based on the lack of a police presence in the neighboring county area and the impact that it could have on an already stressed force.

Steve Lawhead, a neighbor, came forward and asked the commissioners to carefully consider all of the testimony that it has pulled the community together in opposition to this license.

Clay Werts, a neighbor, former local business owner and free speech proponent encouraged commissioners to vote against the license.

Commissioner Rice moved to grant the license with four restrictions: 1) Licensee shall limit each patron to possessing no more that one container of alcohol at a time; 2) from 12:00 am to 2:30 am, licensee shall limit the amount of alcohol in a container to no more than only 16 oz. malt beverage, 6oz wine or 1.5 oz distilled spirits; 3) Licensee shall have at least two DPSST certified security people on the premises and on duty on Fridays and Saturdays from 9:00 pm to the close of business; 4) Licensee will ensure that the parking lot and the outside areas adjacent to the premises are patrolled at least every half-hour from 10:00 pm to closing Thursday through Sunday to discourage loitering and illegal activity. Chairman Lang reminded everyone that we are very restricted to the reasons we can deny a license and that there have been several Supreme Court decisions about protecting free speech.

There have also been several referrals on this subject by the legislature that have been turned down by Oregon voters. Passed 2/1, Commissioner Lewandowski, no.

Service Permit Refusals- There were 2 service permit refusals before the Commissioners for ratification.

Commissioner Rice moved to ratify the service permit refusals under tab 2A. Passed 3/0.
Recessed 11:10

Reconvened 11:25

RULES

Jennifer Huntsman, Rules Coordinator, presented.

PETITION FOR RULEMAKING/POSSIBLE INITIAL ACTION

OAR 845-010-OXXX Small Winery Privilege Tax – Monthly Reporting and Tax Liability

We have received a petition from the Oregon Winegrowers Association (OWA) requesting the adoption of a new rule in Division 10. This new rule would waive the requirement for small wineries to report monthly, even when their wines have been removed from Federal bond.

Ted Farthing, Executive Director of the Oregon Wine Grower's Association came forward in support of the petition.

Jesse Lyon, attorney for Oregon Winegrower's Association, came forward and urged Commissioners to still consider opening rulemaking on this item, even though the matter is under consideration by DOJ and the rule has not yet been determined.

Chairman Lang said that he didn't see any difference between whether or not the Commission accepted the petition and initiating rulemaking once the answered by DOJ as the issue would be in limbo until the DOJ resolved the questions posed to them.

Terry Castillo, Bethel Heights winery, came forward and advised that he is totally confused by the changes. He has been following the procedures for the past 25 years and now if unsure what is required to comply with the new procedure. He asked that the Commission work to rectify this as soon as possible.

Chairman Lang offered his assurances that we will address the issue as soon as we receive direction from DOJ on whether we can address this by rulemaking or if a statute change is necessary.

Doug Tunnell, Brickhouse Winery, came forward to urge Commissioners to do all they could to resolve this issue as soon as possible, whether it be rulemaking or legislatively. Commissioner Lewandowski suggested that we call a special meeting to address this rule if we receive the advice that we can address this by rulemaking.

Lynn Penner-Ash asked for the Commission's help to address this issue.

David Adelsheim came forward to ask commissioners to advise staff to resume past practices until the issue is resolved.

Chairman Lang said that he would talk to counsel about Mr. Adelsheim's request.

Commissioner Rice commented on the decision whether to start rulemaking as he understood that the 'rulemaking clock' would start ticking.

Commissioner Rice moved to accept the petition for rulemaking to adopt a new rule in Division 10 and to initiate rulemaking on this matter and to hold a rulemaking hearing at staff's discretion Passed 3/0.

FINAL ACTION

OAR 845 Two-Year Licensing Renewal Package

We had received a petition from the Oregon Restaurant Association (ORA) requesting amendment of 3 rules in order to add language which would institute a two-year renewal

licensing option for certain liquor licensees. ORA has since withdrawn their petition so staff recommends dropping rulemaking on this matter.

Commissioner Lewandowski asked if we knew why the petitioner dropped their petition. Ms. Huntsman said they did not explain this in their letter. Executive Director Pharo said that staff will be reviewing this idea again in the future as we review the entire licensing process.

Commissioner Lewandowski moved to drop rulemaking on OAR 845-004-0022, OAR 845-005-0302, OAR 845-005-0304, and OAR 845-005-0360. Passed 3/0.

OAR 845-006-0500 Suspensions and Civil Penalties

This rule describes the various sanctions the Commission imposes on licensees, including cancellation or suspension of a license, and civil penalties. Staff proposes amendments which would raise Financial Assistance violations to a Category III violation and would also modify the list of possible aggravation and mitigation reasons.

Commissioner Rice moved to amend OAR 845-006-0500 and revise Exhibit 1, effective May 1, 2009. Passed 3/0

OAR 845-006-0345 Prohibited Conduct

This rule describes a variety of acts which both licensees and service permittees are prohibited from engaging in. Staff is proposing amendments to strengthen and clarify prohibitions throughout this rule, and in particular, prohibitions against drinking contests and free-pouring alcohol.

Commissioner Rice thanked staff for their response in dealing with this issue and the previous issue as it addressed Commissioners' specific enforcement and regulatory concerns and gave the Commissioners the room to deal with issues that have concerned them in the past.

Commissioner Rice moved to amend OAR 845-006-0345, effective May 1, 2009. Passed 3/0.

OAR 845 – Division 13 – Financial Assistance Package

These two rules describe the point of sale materials and items of nominal value that suppliers are allowed to provide to a retailer under our "tied-house" prohibitions. Based on industry advertising concerns and subsequent Business Partner work group discussions, staff proposes amendment of these two rules to reflect more closely the Federal standards for point of sale advertising materials and consumer take-aways.

Commissioner Rice commented that he feels that these adjustments will not make any meaningful changes to the concerns Commissioners had about some of these issues.

Commissioner Lewandowski moved to amend OAR 845-013-0050 and OAR 845-013-0060, effective May 1, 2009. Passed 2/1, Commissioner Rice no.

Chairman Lang addressed Commissioner Rice's comments and said he thinks that this matter will be back before the Commission once there is a fully appointed commission board.

Recessed 12:20 pm

Reconvened 1:30 pm

ADMINISTRATION

Tom Erwin, Government Affairs and Communications Director presented a series of bills for an update and to ask for their consideration to take an agency position.

HB 3343 - Chairman Lang said he would like to see the proposed amendment to the bill.

Commissioner Rice asked for clarification on the sanctions. Commissioner Rice asked

about the option of going through a server ed course or becoming a service permittee. Executive Director Pharo commented on the desire to include smaller stores in the picture. Chairman Lang asked if there was any objection to supporting the amended version of the bill. There was none and it was so ordered.

HB 3428 Chairman Lang asked if there was any objection to taking a neutral position on the bill. There was none and it was so ordered.

SB 352 & SJR7 Chairman Lang asked if there were any objections to supporting these bills. There was none and it was so ordered.

Inspector Swearing In-

Three new inspectors: Christina Gittins, Chad Gray, Matthew Roberts; appeared before the Commissioners. Chairman Lang preformed the oath of office.

RETAIL SERVICES

Jim MacAlistaire, Retail Services Director, presented

Relocation of A-1107, Portland- Cedar Mill

Agent Randy Guerra is requesting approval to relocate A-1107, Portland- Cedar Mill from 13571 NW Cornell St to 13520 NW Cornell St.

Commissioner Rice moved to approve the relocation. Passed 3/0.

CONTESTED CASE HEARINGS

Judith Bracanovich, Administrative Process Division, presented.

Corrine Mosher- OLCC -09-SPR-001. A proposed order was issued on February 24, 2009.

Ms. Mosher did not appear staff rested on their comments as they were only a request to correct a date in the record.

Bing's Restaurant Inc., Sue Joe, President, Director, Stockholder; Paul Joe, Stockholder; Rosemary Joe, Stockholder; Lisa Joe, Stockholder dba - OLCC-08-V-057, -057A, -057B, -057C, -057D. A proposed order was issued on March 4, 2009. Paul Joe and his attorney David Williamson were present before the commissioners. Kelly Rutt, Administrative Policy and Process Division, appeared to address comments.

Lotsa Luck, ERB, Inc., Robert RC Greenough, President, Director; Lynn Greenough, Secretary, Treasurer, dba- OLCC-08-V-054, -054A, -054B. A proposed order was issued on March 17, 2009. Ms. Grenau and attorney Mike Mills were present before commissioners. Kelly Rutt, Administrative Policy and Process Division, appeared to address comments.

Recessed to deliberate contested case items: 2:25 p.m.

Reconvened: 3:00 p.m.

DECISIONS ON CONTESED CASES

Corrine Mosher

Commissioner Lewandowski moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order. Passed 3/0.

Bing's

Commissioner Rice moved to amend the proposed order per the list that will accompany the minutes and adopt the amended proposed order as the final order. Passed 3/0.

Lotsa Luck

Commissioner Lewandowski moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order. Passed 3/0.

Recessed: 3:05 p.m.

April 17, 2009

Reconvened: 10:30 a.m.

Commissioner Bob Rice and Chairman Phil Lang were present in person. Commissioner Christine Lewandowski appeared by phone. Others present were Executive Director Steve Pharo and members of staff.

Informational Discussion With Liquor Agents

Liquor agents participated on the phone and in person in a question and answer session as well as brainstorming on ideas of ways to overcome the predicted budget shortfall for the coming biennium. Items discussed included satellite stores, raising the rate for non-exclusive stores, expanding the related items list, dispenser discounts, non-limited budget funding for agents compensation.

Adjourned 12:55 p.m.

Phil Lang, Chairman

Christine Lewandowski, Commissioner

Bob Rice, Commissioner

Stephen A. Pharo, Executive Director
and Secretary to the Commissioners