

W. 12. b.

AGENDA COVER MEMO

Date: March 2, 2005

To: Board of County Commissioners

From: Legal Counsel (D. Williams, Asst. Co. Counsel)

Title: IN THE MATTER OF AMENDING CHAPTER 16 OF THE LANE MANUAL TO REVISE PROCEDURES FOR APPLICATION OF COUNTY RECOMMENDATION TO OLCC FOR LIQUOR LICENSE (LM 16.100-16.130)

I. MOTION:

MOVE APPROVAL OF Order No. _____, IN THE MATTER OF AMENDING CHAPTER 16 OF THE LANE MANUAL TO REVISE PROCEDURES FOR APPLICATION OF COUNTY RECOMMENDATION TO OLCC FOR LIQUOR LICENSE (LM 16.100-16.130)

II. ISSUE OR PROBLEM.

The key substantive issue is whether, in the face of statutory limits on fees the county may charge to process a recommendation on an OLCC license application, to continue a local appeals process of the County recommendation when the appeals process is rarely used and the County's recommendation is not binding on OLCC.

There is also a housekeeping issue as to land use review. Under state rules, land use is not one of the valid criteria for a county recommendation, but it is included in our local recommendation process as if it were a relevant criterion to the recommendation. Where applicable, OLCC requires, apart from the local government's recommendation process, that the applicant obtain a statement from the planning department of land use compatibility. Land Management charges a fee for that service.

III. DISCUSSION

Statutes and OLCC's rules provide for local governments' recommendations to OLCC on license applications. ORS 466.471(7) limits the fee that the county may charge to \$25. A county may adopt a more complex review process than is provided by OLCC rule, but the process requires OLCC approval and the fee charged by the local government may not exceed \$100.

Lane County presently charges \$25 for the processing of an application for a recommendation. The initial decision is made by the Sheriff. The Lane Manual includes a local appeal process from the Sheriff's recommendation. The statutes and rules do not require any type of local appeal of the local government's recommendation, but our procedures provide for an appeal to the board or a designee. The county's recommendation is not binding on OLCC.

The statutes and rules set out the criteria for what the rules call valid grounds for an unfavorable recommendation, i.e., a recommendation to deny an application. The present Lane Manual process includes land use criteria as a factor for the county to consider, but land use compliance is not a criteria listed by OLCC for a valid recommendation. When there are land use issues, OLCC requires the applicant to obtain a statement of land use compatibility from the affected planning department. That process is separate from the local government recommendation process provided by statute. Inclusion of land use compliance as a required factor in the Lane Manual procedure created some citizen confusion in, for example, the Florence casino case by suggesting the need for local application of a criterion that OLCC did not consider.

The proposed amendment would delete the local appeals process and delete the reference to land use review as a criteria for a recommendation on a license application. Deletion of the land use criterion would not affect the need, where required by OLCC, for the applicant to obtain a statement of land use compatibility from the planning department.

Alternatives/options

1. Leave the County's review process for OLCC licenses as it presently is;
2. Amend the process so as to (a) make the Sheriff's recommendation on the application the final county recommendation by deleting the local process for appeal of the Sheriff's determination, and (b) deleting reference to land use criteria.
3. Discontinue review of OLCC applications. Under OLCC's rules, a failure to respond to OLCC will be treated as a favorable recommendation to OLCC.

RECOMMENDATION. Alternative 2. Amend the Lane Manual to delete the local appeal process.

The local recommendation is not binding on OLCC. The statutory fee of \$25 barely covers our costs when there is no significant record to review and a favorable recommendation is sent to the OLCC. If an applicant's record is

extensive, or if there is an appeal of the Sheriff's recommendation, the statutory fees do not cover costs of personnel time required. In the approximately 12 years that this Lane Manual process has been in place, staff can recall only three appeals of a recommendation of the Sheriff, one of which involved the casino in Florence where OLCC issued the license before any action was taken by Lane County.

If the Lane Manual is amended as recommended, the OLCC licensing process will still require, when applicable, that the applicant obtain a statement from the planning department of land use compatibility.

TIMING. There are no unusual timing issues.

IV. IMPLEMENTATION/FOLLOW-UP. Publication of new Lane Manual provisions.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF AMENDING CHAPTER 16 OF
LANE MANUAL TO REVISE PROCEDURES FOR
APPLICATION OF COUNTY RECOMMENDATION
TO OLCC FOR LIQUOR LICENSE (LM 16.100-
16.130)

The Board of County Commissioners of Lane County orders as follows:

Lane Manual Chapter 16 is hereby amended by removing the following sections:

REMOVE THESE SECTIONS

16.100 through 16.130
as located on pages 16-1 through 16-2
(a total of 2 pages)

INSERT THESE SECTIONS

16.100 through 16.130
as located on pages 16-1
(a total of 1 page)

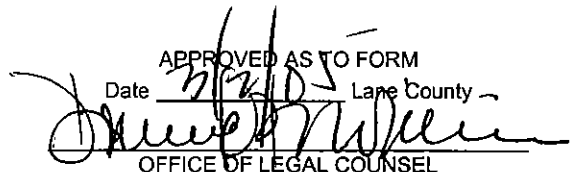
Said sections are attached hereto and incorporated herein by reference. The purpose of these substitutions is to revise procedures for application to County for recommendation to the Oregon Liquor Control Commission (LM 16.100-16.130).

Adopted this _____ day of _____ 2005.

Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 5/2/05 Lane County


OFFICE OF LEGAL COUNSEL

Chapter 16

LICENSES AND PERMITS

LICENSE FOR SALE OF ALCOHOLIC LIQUOR

16.100 Definitions.

As used in this subchapter:

Sheriff means the Lane County Sheriff.

License means a license issued by the Oregon Liquor Control Commission (OLCC) as described or referred to in ORS 471.155, and includes _____ new and renewed licenses. *(Revised by Order 92-11-25-2; Effective 11.25.92)*

16.110 Authority and Delegation.

Pursuant to the authority of ORS 471.166, the provisions of this subchapter shall govern the application, investigation, and and recommendation to OLCC or OLCC license applications, provided however, that these provisions are not applicable to any determination of land use compatibility that may be required by OLCC as part of a license application. *(Revised by Order 92-11-25-2; Effective 11.25.92)*

16.120 Application, Investigation, Approval and Appeal.

(1) All applications for Lane County's recommendation to OLCC or a license application shall be made to the Sheriff, who may prescribe any Lane County form in addition to those required by the Oregon Liquor Control Commission..

(2) Any interested person may submit comments, in writing, to the Sheriff for consideration in the review process.

(3) After review by the Sheriff, and after the Sheriff has reviewed any public comments submitted in conjunction with or related to a license application, the Sheriff shall forward a recommendation on whether a license should be issued or renewed to the Oregon Liquor Control Commission. The Sheriff may also forward to OLCC any public comments received by the Sheriff.

(4) The Sheriff may recommend denial of a license application on any of the valid grounds for an unfavorable recommendation as those valid grounds are defined by statute or OLCC rule.

(5) Nothing in a recommendation by the Sheriff shall constitute land use approval for property affected by the OLCC application. *(Revised by Order 92-11-25-2; Effective 11.25.92)*

16.130 Fees.

By authority of ORS 471.166(7), a nonrefundable investigative service fee in connection with the application for original or renewed licenses shall be paid to the Sheriff, prior to acceptance of the application, according to the following schedule:

Initial Application or Renewal \$ 25.00

(Includes Investigative Fee)

(Revised by Order 92-11-25-2; Effective 11.25.92)

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Sheriff means the Lane County Sheriff.

License means a license issued by the Oregon Liquor Control Commission (OLCC) as described or referred to in ORS 471.215~~155~~, and includes _____ new and renewed licenses.

~~_____ Board means the Board of County Commissioners. (Revised by Order 92-11-25-2; Effective 11.25.92)~~

16.110 Authority and Delegation.

Pursuant to the authority of ORS 471.210~~(4)~~166, the provisions of this subchapter shall govern the application, investigation, approval and appeal and recommendation to OLCC or OLCC license applications, provided however, that these provisions are not applicable to any determination of land use compatibility that may be required by OLCC as part of a license application of license recommendations. (Revised by Order 92-11-25-2; Effective 11.25.92)

16.120 Application, Investigation, Approval and Appeal.

(1) All applications for Lane County's recommendation to OLCC or review of a license request application shall be made to the Sheriff, who may prescribe any Lane County form in addition to those required by the Oregon Liquor Control Commission. ~~Applications for renewal of a license shall be processed according to the procedures developed by the Oregon Liquor Control Commission.~~

(2) ~~Upon receipt of a new application, the Sheriff shall refer that application to the Land Management Division of the Public Works Department for a land use and zoning conformance review. If the location for which the license is sought is also within the Urban Growth Boundary of an incorporated city, the Sheriff shall also refer the application to the city for a land use and zoning conformance review. Any interested person may submit comments, in writing, to the Sheriff for consideration in the review process.~~

(3) ~~After sufficient review by both the Sheriff, and when required by LM 16.120(2) above, Land Management Division and the City of Eugene, and after the Sheriff has reviewed any public comments submitted in conjunction with or related to a license application, the Sheriff shall forward a recommendation on whether a license should be issued or renewed to the Oregon Liquor Control Commission. The applicant will be responsible for submitting the application to the Liquor Control Commission. The Sheriff may also forward to OLCC any public comments received by the Sheriff.~~

(4) The Sheriff may recommend denial of a license application if on any of the following factors exist valid grounds for an unfavorable recommendation as those valid grounds are defined by statute or OLCC rule.:

~~_____ (a) Failure to meet applicable land use requirements.~~

~~_____ (b) A felony conviction of the applicant, or any officer or director of the applicant.~~

~~_____ (c) Two or more misdemeanor convictions within the preceding 10 years of the applicant, or any officer or director of the applicant.~~

~~_____ (d) A history of involvement by the applicant, or any officer or director of the applicant, in incidents involving drugs or alcohol.~~

~~_____ (e) Any other factor identified and explained in the Sheriff's recommendation as a risk to the public health and safety.~~

~~_____ (5) A person aggrieved by the recommendation of the Sheriff to the Oregon Liquor Control Commission may make a written request to the Board, within 10 days of the date of the Sheriff's recommendation, for a hearing before the Board or a designee to be held in accordance with this subsection. The request for hearing shall state the reasons why the person making the request for hearing believes the Sheriff's recommendation is erroneous.~~

~~_____ (a) Written notice of the time and place of a hearing shall be served upon the applicant at the applicant's home or business address at least 10 days before the date set for the hearing. If the person requesting the hearing is not the applicant, notice of the time and place of a hearing shall also be served on the person requesting the hearing at that person's home or business address at least 10 days before the date set for the hearing. In the case of a recommendation by the Sheriff against issuance or renewal of a license, the notice shall contain a brief statement of the grounds alleged as the basis for the refusal to recommend issuance or renewal of the license. In the case of an appeal of a recommendation to issue or renew a license, the notice shall contain a copy of the request for hearing.~~

~~_____ (b) At the hearing on a recommendation against issuance or renewal of a license, the applicant shall be given an opportunity to address the reasons for the negative recommendation and present responsive evidence. At a hearing on a recommendation to issue or renew a license, the person requesting the hearing shall present evidence as to the reasons why the recommendation should be changed, and the applicant shall have an opportunity to respond. After due deliberation, the Board may recommend approval or denial of the issuance or renewal of the license to the Oregon Liquor Control Commission, and the Board's recommendation, unless it affirms the recommendation of the Sheriff, shall supersede any prior recommendation of the Sheriff.~~

(5) Nothing in a recommendation by the Sheriff shall constitute land use approval for property affected by the OLCC application. *(Revised by Order 92-11-25-2; Effective 11.25.92)*

16.130 Fees.

By authority of ORS 471.210(4)166(7), a nonrefundable investigative service fee in connection with the application for original or renewed licenses shall be paid to the Sheriff, prior to acceptance of the application, according to the following schedule:

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