

**ORDINANCE NO. 2002-1125
PROCESS AND FEES FOR LIQUOR LICENSES**

WHEREAS, the City makes recommendations to the Oregon Liquor Control Commission (OLCC) in the OLCC's granting, denying, modifying, and renewing of liquor licenses, and;

WHEREAS, OLCC rules and Oregon Revised Statutes require that the City prescribe guidelines to be followed in making license recommendations and allowing opportunity for public comment on applications; and;

WHEREAS, OLCC rules and Oregon Revised Statutes specify the types and maximum amounts of fees for liquor license applications;

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1: Purpose. Oregon statutes authorized the Oregon Liquor Control Commission (OLCC) to take into consideration the timely written recommendation of a local governing body concerning approval or denial of initial or renewal licenses and/or imposition of restrictions on license privileges and the conduct of operations at licensed premises. The purpose of this Ordinance is to set forth the process for the review of liquor license applications, to establish the standards and criteria to be considered by the Council in recommending restrictions and/or the approval or denial of such applications, and to provide an opportunity for public comment on certain applications.

Section 2: Application. Applications for a new outlet, a request to change privileges, or a change in location are hereinafter collectively referred to as "Major License Actions". Applications for adding a partner or changing ownership are hereinafter collectively referred to as "Minor License Actions". An application for a license renewals is referred to as such.

The application form for a Council recommendation on a Major License Action or Minor License Action shall consist of a legible copy of the OLCC "Liquor License Application." When the application is for a new outlet, the applicant shall also provide legible copies of the "Individual History" form and "Business Information" form, or other similar forms required by OLCC rules to be submitted with the license application. On license renewal notifications, for which a public hearing is contingent upon a Council request as set forth in section 6(b) of these rules, the Finance Director shall notify Council as soon as possible following City's receipt of the list of renewals from OLCC.

Section 3: Application Review. The Finance Director shall refer each such application to the Police Department and to such other persons or departments designated by the City Manager to review the application. Any person or department receiving an application shall, if appropriate, conduct an investigation, and shall report findings and recommendations, if any, to the Finance Director.

Section 4: Information from Applicant. A person or department designated to review a license application for any License Action, or for a renewal of an existing license, may require the applicant to supply additional information necessary to determine the qualifications of the applicant for the proposed License Action or renewal. If the applicant fails to supply information so required, or submits false or misleading information, the Council may recommend that OLCC deny the application.

Section 5: Staff Report to Council. Upon receipt of the staff review pursuant to Section 3, the Finance Director shall submit a report to the Council for its consideration. The report shall include a copy of the application and staff findings and/or recommendations.

Section 6. Public Hearing Required. A public hearing shall be held on an application for any Major License Action. A public hearing on a minor License Action or renewal notification shall be held at the request of one or more Council members. No recommendation of denial or license restriction on any application shall be made by the Council without a public hearing. Any such unfavorable recommendation must be supported by reliable factual information.

Section 7. Notice of Public Hearing. Notice of public hearing before the Council pursuant to Section 6 shall be given in the following manner:

- a) The notice shall contain the time and place of the hearing, the business name of the applicant, the location of the business, and the nature of the application.
- b) The Finance Director shall mail notice to the applicant or applicant's agent at the address shown on the application by certified mail, return receipt requested, and by first class mail, not less than seven days before the date set for the hearing.
- c) The Finance Director shall mail notice by regular mail to property owners within 200 feet of the outlet.

Section 8. Public Hearing Procedure. The Council shall conduct a public hearing on the license application at the time and place designated in the notice of public hearing. The applicant, or applicant's representative, and all other interested parties shall be given a reasonable opportunity to be heard. After due consideration of all pertinent information and testimony, the Council has the following options: a) take no action; b) recommend approval with or without restrictions; c) recommend restrictions if the application is approved; d) recommend denial. Any recommendation of the Council shall be based upon the standards and criteria set forth below or hereafter established by resolution of the Council.

Section 9. Time Frames for Response.

a. License Actions. Council is required to provide its recommendation, if any, to OLCC within 30 days of receipt of an application for any License Action. Provided, however, that Council may, within that 30 day period, file with OLCC a written request meeting

the requirements of subsection (c) of this rule and seeking an additional 45 days within which to render its recommendation.

b. Renewal Applications. Council is required to provide its recommendation, if any, to OLCC within 60 days of notification by OLCC that an existing licensee is eligible for renewal. Provided, however, that Council may, within that 60 day period, file with OLCC a written request meeting the requirements of subsection (c) of this rule and seeking an additional 45 days within which to render its recommendation.

c. Extension Requests. Council requests for additional time to provide a recommendation shall: 1) set forth the reason additional time is needed; 2) state that the Council is considering making an unfavorable recommendation; and 3) state the specific grounds being considered toward an unfavorable recommendation.

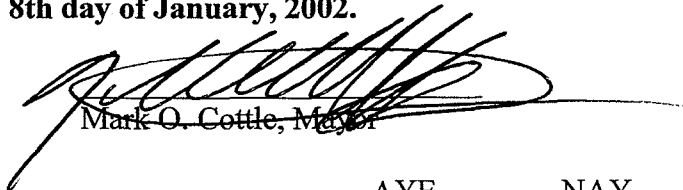
Section 10. Standards and Criteria. The Criteria For Issuance And Maintenance Of Licenses of the OLCC contained in Oregon Administrative Rules 845-005-0308, including state statutes and administrative rules listed therein, are hereby adopted by this reference and incorporated herein as Exhibit A as standards and criteria to be considered by the Council in recommending approval or denial of a license application.

Section 11. Fees. In lieu of the application fee set forth in ORS 471.166 (7), and subject to the approval of the foregoing standards and procedures by OLCC as consistent with its rules, the City of Sherwood shall charge the following processing fees in connection with review and processing of liquor license applications:

- a) \$100.00 Original new outlet application.
- b) \$ 75.00 Change in ownership or licensee, change in location or change in privilege application.
- c) \$ 35.00 Renewal or temporary application.

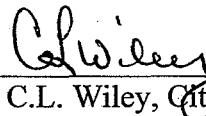
Section 12. Effective Date. This ordinance shall become effective the 30th day after its enactment by the City Council and approval by the Mayor.

Duly passed by the City Council this 8th day of January, 2002.



Mark O. Cottle, Mayor

ATTEST:


 C.L. Wiley, City Recorder

	<u>AYE</u>	<u>NAY</u>
Heironimus	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Durrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Claus	<u>absent</u>	<input type="checkbox"/>
Weeks	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mays	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fox	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cottle	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**ORDINANCE NO. 2002-1125
EXHIBIT A**

OAR 845-005-0308

**Valid Bases for Adverse Local Government Recommendations
and for Commission Use of Information Received from the Public**

(1) ORS 471.166(1) authorizes the Commission to take into consideration the recommendation of the local governing body before granting or denying a license. ORS 471.166(5) requires the Commission to state by rule the valid grounds for a local governing body's unfavorable recommendation on any license application, and requires the Commission to limit valid grounds to those considered by the Commission in making an unfavorable determination on a license application.

(2) For purposes of this rule an unfavorable determination is license refusal or license restriction.

(3) For the unfavorable recommendation of a local governing body to be valid, the grounds must be found in the license refusal bases of ORS 471.313(4), ORS 471.313(5), OAR 845-005-0320, OAR 845-005-0325 or OAR 845-005-0326, or the license restriction bases of OAR 845-005-0355, and must be supported by reliable factual information.

(4) Organizations, facilities, government agencies, or individuals may give the Commission reliable factual information concerning whether there is a basis to grant or deny a license or to impose license restrictions under the laws specified in section (3) of this rule. "Reliable factual information" includes personal observations of activities in or around the proposed licensed location, as opposed to opinion, hearsay, feelings, beliefs or speculation.

ORS 471.313. The Oregon Liquor Control Commission may refuse to license any applicant under the provisions of this chapter if the commission has reasonable ground to believe any of the following to be true:

(4) That the applicant:

(a) Is in the habit of using alcoholic beverages, habit-forming drugs or controlled substances to excess.

(b) Has made false statements to the commission.

(c) Is incompetent or physically unable to carry on the management of the establishment proposed to be licensed.

(d) Has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony.

(e) Has maintained an insanitary establishment.

(f) Is not of good repute and moral character.

(g) Did not have a good record of compliance with the alcoholic liquor laws of this state and the rules of the commission when previously licensed.

(h) Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed.

(i) Is not possessed of or has not demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed.

(j) Is unable to read or write the English language or to understand the laws of Oregon relating to alcoholic liquor or the rules of the commission.

(5) That there is a history of serious and persistent problems involving disturbances, lewd or unlawful activities or noise either in

the premises proposed to be licensed or involving patrons of the establishment in the immediate vicinity of

the premises if the activities in the immediate vicinity of the premises are related to the sale or service of alcohol under the exercise of the license privilege. Behavior which is grounds for refusal of a license under this section, where so related to the sale or service of alcohol, includes, but is not limited to obtrusive or excessive noise, music or sound vibrations; public drunkenness fights; altercations; harassment; unlawful drug sales; alcohol or related litter; trespassing on private property; and public urination. Histories from premises currently or previously operated by the applicant may be considered when reasonable inference may be made that similar activities will occur as to the premises proposed to be licensed. The applicant may overcome the history by showing that the problems are not serious or persistent or that the applicant demonstrates a willingness and ability to control adequately the premises proposed to be licensed and patrons' behavior in the immediate vicinity of the premises which is related to the licensee's sale or service of alcohol under the licensee's exercise of the license privilege.

OAR 845-005-0304

Local Government Recommendations: Requirements for Local Governments and License Applicants

(1) ORS 471.166 provides that the Commission may take into consideration a local government's timely written recommendation on initial and renewing licenses, and allows the Commission to extend by rule the time allowed a local government to render its written recommendation.

(2) If the local government has not provided a written recommendation to the Commission within the time frames allowed by Sections (5) and (6) of this rule, the Commission shall proceed as if the local government has made a favorable recommendation.

(3) The Commission requires each applicant for an initial license to provide to the local government written notice of the filing of the application. The form of the written notification shall consist of a legible copy of the Commission's *Liquor License Application* form for license applications, and legible copies of each *Individual History* form and *Business Information* form submitted with the license application.

(4) The applicant shall submit to the Commission a dated copy of a receipt or other appropriate dated documentation of compliance with subsection (3) of this rule, within ten days of applicant's provision of notification to the local government.

(5) Following notification by the applicant as stated in section (4) of this rule, the Commission shall allow a local government 30 days in which to provide a written recommendation to the Commission on the initial license application. However, if within 30 days of the date the applicant for an initial license gives notice to the local government, the local government files with the Commission a written request that meets the requirements of section (7) of this rule, the Commission shall allow the local government an additional 45 days within which to render its written recommendation on the license application.

(6) The Commission provides written notice to each local government of the annual licenses in the locality that are both due to expire within three months and are subject to local government renewal recommendations. If, within 60 days of the date the Commission has given notice to the local government, the local government files a written request with the Commission that meets the

requirements of section (7) of this rule, the Commission shall allow the local government an additional 45 days within which to render its written recommendation on the application to renew a license.

(7) The local government's written request must set forth the reason additional time is needed, state that the local government is considering making an unfavorable recommendation, and state the specific grounds being considered toward an unfavorable recommendation. Valid grounds for an unfavorable recommendation are stated in OAR 845-005-0308(3).

(8) For the purposes of this rule an unfavorable recommendation is a recommendation to deny a license or to issue a restricted license.

OAR 845-005-0320

License Refusal Reasons that Can Not be Overcome

The following criteria will preclude issuing a license:

(1) The applicant has or would have an interest in another liquor business that ORS 471.313(3), 471.394, or 471.396 prohibits.

(2) The applicant seeks a license or sales authority that requires food service and is unable to show the applicant will comply with the food service requirements set by the rules of the Commission.

(3) The applicant seeks a Full On-Premises Sales license as a commercial establishment as defined in ORS 471.001(2) and will not be open to the public to the extent Commission rules require.

(4) The applicant seeks a Full On-Premises Sales license as an "other public location" as allowed by ORS 471.175(2)(d) and will not allow public access to its premises.

(5) The applicant seeks a Full On-Premises Sales license as a private club as allowed by ORS 471.175(2)(a) and the applicant has fewer than 200 members or has been chartered for less than one year. "Member" means an individual with voting rights and privileges in the private club equal to any other individual in the club whose club dues are fully paid on the date upon which membership is counted.

(6) The applicant is a retail sales agent of the Commission with a contract for an exclusive agency or seeks to exercise the license privileges in an exclusive sales agent's premises.

(7) The applicant fails to successfully complete an approved Alcohol Server Education Program as ORS 471.542 and the Commission rules require.

(8) The applicant has not paid an outstanding fine to the Commission. ORS 471.313(4)(g) allows the Commission to deny a license if the applicant had a poor compliance record when previously licensed. Nonpayment of a fine is one indicator of a poor compliance record.

(9) The applicant who is subject to the bonding requirements of ORS 471.155(1) has failed to post a tax bond or the equivalent as required.

(10) The applicant who is subject to the liquor liability insurance requirements of OAR 845-005-0400 has failed to obtain or maintain liquor liability insurance or bond as required.

(11) The applicant for an initial license has not completed Commission-given law orientation.

OAR 845-005-0325

License Refusal Reasons: Applicant Qualifications

If any of the following criteria apply, the Commission will deny a license unless the applicant shows good cause that overcomes the criterion involved:

(1) The applicant has inadequate financial resources to build or operate the licensed premises as proposed, or has inadequate financial resources to meet the financial obligations of the licensed business. This section does not apply to license renewal applications.

(2) The applicant has not built the licensed premises, or has not operated the licensed business, substantially as proposed by the applicant and previously approved by the Commission.

(3) The applicant can not or will not provide an employee who can communicate effectively with customers and Commission regulatory employees. This person must be on the licensed premises during the licensee's business hours. "Communicate effectively" means:

- (a) Knowing how to lawfully sell and serve alcoholic beverages and communicating this to customers;
- (b) Understanding Commission regulatory employees when the employees explain lawful sale and service of alcoholic beverages and responding in a way the employee understands.

(4) Alcohol or Controlled Substance History or Record:

- (a) The applicant has a recent history or record of using alcohol or controlled substances to excess. Some of the types of records the Commission uses to establish a record of using to excess include court, Motor Vehicles Division, police, or medical records;
- (b) Good cause to overcome this criterion is a showing by the applicant that the applicant no longer uses alcohol or controlled substances to excess and is not likely to do so in the future. Some of the factors the Commission considers in determining good cause are: successful participation in treatment program(s), counselor, employer or probation officer recommendations, severity of the applicant's record, passage of time since last relevant incident and previous record of compliance.

(5) The applicant has been convicted of a felony when there is a relationship between the facts that support the conviction and applicant's fitness to exercise the license privileges. When there is a relationship between the applicant's fitness and the felony, the Commission considers any intervening circumstances since the commission of the crime in determining whether the applicant is an acceptable future compliance risk.

(6) The applicant provides material false or misleading information to the Commission.

(7) The applicant is not at least 21 years old. Good cause to overcome this criterion includes a showing by the applicant that the minor applicant will not participate in the management or control of alcohol-related business decisions or of employees involved in alcoholic beverage sale or service.

OAR 845-005-0326

License not Demanded by Public Interest or Convenience

ORS 471.313(1) allows the Commission to deny a license that public interest or convenience does not demand. The following are some of the public interest or convenience reasons for which the Commission may deny a license unless the applicant shows good cause to overcome the criteria:

(1) Alcohol-Related Problems at Other Licensed Premises:

- (a) The applicant has had repeated problems at another licensed location during the two years preceding this application or has had a license canceled or renewal refused because of problems with disturbances, lewd or unlawful activities or noise. These problems:
 - (A) Must occur on the licensed premises or be caused by patrons in the immediate vicinity of the licensed premises;
 - (B) Include, but are not limited to, obtrusive or excessive noise, music or sound vibrations; public drunkenness; fights; altercations; harassment; unlawful drug sales; alcohol-related litter; trespassing on private property; and public urination; and
 - (C) Must be related to the sale or service of alcohol under the exercise of the license privileges.
- (b) Good cause to overcome this criterion is a showing by the applicant that the applicant will reasonably control all of the applicant's licensed premises to prevent problems described in paragraphs (1)(a)(A), (B), and (C) of this rule. Factors that affect this good cause determination may include, but are not limited to:
 - (A) Applicant is currently licensed at an outlet that has not had the problems described in paragraphs (1)(a)(A), (B), and (C) of this rule in the past year;
 - (B) Applicant successfully regained control of premises that had problems described in paragraphs (1)(a)(A), (B), and (C) of this rule;
 - (C) Applicant has a corrective plan that is likely to be effective;
 - (D) License conditions or restrictions would enable control of applicant's premises; and
 - (E) Applicant did not participate in the daily operation of the problem outlet, and there has not been a pattern of problems described in paragraphs (1)(a)(A), (B), and (C) of this rule at other outlets where applicant has been licensed.
- (c) This criterion does not apply to renewal applications.

(2) Proximity to Facilities:

- (a) The licensed premises:
 - (A) Will be located within 500 feet in urban or suburban areas or within 1,500 feet in

a rural area of the boundary (measured property line to property line) of a licensed child care facility or elementary or secondary school; a church; a hospital, nursing care facility or convalescent care facility; a park or children-oriented recreational facility; and alcohol and other drug treatment or rehabilitation facility; and

(B) Will adversely impact the facility.

(b) Good cause to overcome this criterion includes, but is not limited to, a showing by the applicant that:

(A) The proposed operation is consistent with the zoning where the proposed premises will be located, is consistent with the general character of the area and the adverse impact will not unreasonably affect the facility; or

(B) The size of the proposed premises' community is so small that the proposed location is a reasonable location for the proposed operation.

(c) This criterion does not apply to renewal applications or to changes of ownership with no change in license privileges or operation.

(3) Problem Areas:

(a) The licensed premises will be located in an area that has a history of serious or persistent problems with unlawful activities, noise or disturbances. These problems need not be alcohol-related;

(b) Good cause to overcome this criterion includes, but is not limited to, a showing by the applicant that:

(A) Alcoholic beverage sale or service at the premises will not substantially contribute to the problems; or

(B) The applicant has a plan that demonstrates a willingness and ability to adequately control the proposed premises and patrons' behavior near the licensed premises.

(c) This criterion does not apply to renewal applications or to changes of ownership with no change in license privileges or operation.

(4) Off-Premises Sales License.

(a) The applicant seeks an Off-Premises Sales license in conjunction with a Full On-Premises Sales license. Good cause to overcome this criterion is a showing by the applicant that the community is inadequately served by other Off-Premises Sales licenses or that the Off-Premises Sales license will not detract from the licensee's primary operation as a restaurant;

(b) The applicant seeks an Off-Premises Sales license at an outlet that sells petroleum products and does not or will not maintain a wide variety of grocery items available for immediate sale. "Wide variety" means an inventory at a cost to the applicant of not less than \$5,000 of foods that satisfy the general public's ordinary eating habits and personal and household products. "Wide variety" does not include alcoholic beverages or tobacco products. It also does not include snack food items that exceed ten percent of the inventory's value.

(5) Licensed physician or other professional evaluations of the applicant or any on-premises manager's mental, emotional or physical condition that show incompetence or physical inability to manage the business the applicant wants licensed. ORS 471.313(4)(b) allows the Commission to deny a license if the applicant is incompetent or physically unable to manage the business the applicant wants licensed. These evaluations are some indicators of this incompetence or physical inability.

(6) There is a final order of a court or administrative agency in a criminal or civil proceeding finding that the applicant failed to comply with the liquor laws of this or any other state. ORS 471.313(4)(d) allows the Commission to deny a license if the applicant has violated liquor laws. These final orders are some but not the only indicators of liquor law violations.

OAR 845-005-0355

Restricting License Privileges and Conduct of Operations

(1) The Commission may restrict a license or service permit when:

- (a) In the absence of a restriction, the Commission has a basis to cancel, suspend/fine or deny the license or service permit;
- (b) In addition to all or part of a suspension or fine, a restriction may prevent the recurrence of the problem(s) that caused the violation(s); or
- (c) The Commission determines that a restriction is in the public interest or convenience.

(2) In determining public interest or convenience reasons to restrict a license or permit, the Commission considers factors that include but are not limited to:

- (a) The character or environment of the neighborhood in which the licensed premises operate;
- (b) 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; or
- (c) The need to limit the availability of alcohol to minors, visibly intoxicated persons or street drinkers.

(3) The Commission has determined that it is not in the public interest or convenience to issue or renew:

- (a) A license that allows off-premises sales in an area frequented by street drinkers, unless the Commission restricts the sales of the alcoholic beverages associated with street drinkers;
- (b) A Limited On-Premises Sales license that allows minors on the licensed premises, unless the Commission restricts the sales of kegs;
- (c) A license to a relative or associate of a person whose license was cancelled, surrendered or not renewed because of problems at the premises that involved the person, unless the Commission restricts the relative or associate from permitting the person from being on the premises;
- (d) A license or permit to a person who has a recent history or record of alcohol or drug problems, unless the Commission requires the person to complete an alcohol/drug treatment program and follow the program's recommendations regarding alcohol/drug use or to abstain from alcohol/drug use.