

Olympia Downtown Alcohol Impact Area

Public Comments Opposing Request for Mandatory Recognition

I own a shop in downtown Olympia, Hot Toddy. It is located on Capitol between 4th and 5th Avenues. I often work very late and quite early. I frequently clean up poop and vomit and ask drunk, passed out bodies to vacate. I've had my windows smashed several times and am regularly sexually harassed, if not downright groped by the homeless/drunk community. I have a vacant shop across from the convenience store on Capitol between 5th and Legion, I sit in there and watch no end of shenanigan go on between the store and the alley.

You'd think I'd be the first in line supporting banning high-alcohol beverage sales.

But I AM NOT!

What we need is greater police presence downtown. NOT further infringement upon PRIVATE business. Don't penalize private business because of city financial shortfalls. Criminalizing legal behavior from a business only hurts all of us. Olympia is already known as being very unfriendly to small business, don't make it worse by doing this.

Sincerely,
Sydney Hann

May 24, 2013

Honorable Sharon Foster
Honorable Ruthann Kurose
Honorable Chris Marr
3000 Pacific Ave SE
Olympia, WA 98501

Subject: City of Olympia's Request to Recognize a Proposed Downtown Alcohol Impact Area (AIA)

Dear Honorable Members of the Liquor Control Board:

The Washington Beer & Wine Distributors Association was founded in 1934 as a trade association for the state's beer and wine distributors. Our members include approximately 17 companies, representing nearly 50 distributor licensees, and 3,424 jobs in our state. It is a distributor's responsibility to collect and remit state taxes and ensure that alcoholic beverages are delivered in an accountable and efficient manner from the breweries and wineries that produce them to the grocery stores, restaurants, convenience stores and other retail outlets that are properly licensed to sell them to the general public.

On behalf of my members, we appreciate the opportunity to comment on the City of Olympia's proposed Downtown AIA. We are writing today to express our concerns with the proposed product ban list approach, and to explain why we believe this proposal does not comply with several Washington Administrative Code provisions governing the creation of AIAs, and why we advocate a peer-to-peer, distributor-to-retailer voluntary single-serve ban approach. It is with this in mind that we respectfully ask you to postpone the Board's recognition of Olympia's proposed Downtown AIA until the issues and concerns are addressed.

By way of background, please know we understand that we are late to Olympia's process. Having said that, however, we still believe an alternative exists, in the form of a voluntary single-serve ban, and that it should be given a fair chance and the opportunity to work. If it does not, then the LCB is always able to recognize the proposed AIA as requested. Being late to the party, in this instance and under these circumstances, is not a sufficient reason to forego an alternative approach – one in fact that multiple cities like Seattle, Vancouver and Kent have employed. This strategy has shown that voluntary programs between the distributor and retailer can and have been successful. Ultimately, delaying decision on the proposed AIA will not affect the current situation. There is nothing to lose by continuing the proposal/request to a later date.

The following are various facts we would like to make you aware of:

- Over the past few weeks, WBWDA has come before the Olympia City Council to discuss our single-serve ban program that has reaped success in Vancouver, Seattle and Kent.
- As we testified before the City Council this past Tuesday, to date, we have secured four signatures on the attached Memorandum of Understanding. In the coming weeks we will be working towards and expect to obtain more (our goal being to obtain all) of the off-premise retailers within the proposed AIA.
- We have testified at the last two Olympia City Council meetings regarding our interest and commitment to a MOA. Although we have reached out to Olympia City Council Members and staff, we have had only limited success in meeting with them. The majority of the Council is unwilling under these circumstances to give a voluntary single-serve program a chance - as evidenced by an approved motion at the tail end of their last meeting reaffirming their commitment to their already passed ordinance.
- Furthermore, we do not believe that asking whether a retailer "wants to stop selling particular products now or in six months" constitutes the good faith requirement for voluntary measures as required by WAC.

We believe the proposal fails to meet several of the substantive and procedural/process requirements of WAC 314.12.210 - .215.

Specifically, the regulations require the City to:

- Designate the AIA by ordinance. The ordinance must explain the rationale for the boundaries and describe them so the Board can determine which liquor licensees are in the AIA, and the public can understand where the AIA begins and ends.
- Submit findings that demonstrate a public need for the AIA. Such findings must show how chronic public inebriation threatens the welfare, health, peace, or safety of people within the AIA.
- Submit findings illustrating a “pervasive pattern of public intoxication or public consumption of liquor” from crime statistics, police reports, emergency medical responses, etc.
- Submit documentation demonstrating the City’s good faith efforts to control the problem with voluntary measures.
- Explain why past voluntary measures failed to sufficiently resolve the problem.
- Request additional restrictions and explain how these restrictions will reduce chronic public inebriation or illegal activity associated therewith.

WAC 314-12-215(2)(a)-(c)

Ultimately, the burden of proof is on the City. Under the AIA rules adopted by the Board, every city asking for recognition of a proposed AIA has the burden to show, by “substantially and extensively documented evidence” that reasonably links a specific product to the negative impacts associated with chronic public inebriation.

First, the evidence and data submitted by the City of Olympia in support of their request does not meet the requirements contained in WAC 314-12-215(3)(c). This Section requires that AIA proponents demonstrate to the Board that the proposed product bans can be “reasonably linked” to problems associated with chronic public inebriation or illegal activity before product restrictions can be imposed and that the evidence and data be “substantially documented...to determine whether a product is associated with the chronic public inebriation or illegal activity.”

WAC 314-12-215(3)(c) does not allow a city to ban an entire list of products without evidentiary support. Moreover, it allows bans of specific products only where specific evidence and data exists, which illustrates that product’s link to chronic public inebriation. The statute allows products that can be “reasonably linked” to the chronic public inebriation problem that is supported by substantially documented evidence. The evidence presented by the City on page five of their submittal does not meet this standard – it is very high level and lacks the needed product specific information.

The City’s proposed banned product list was taken from the Tacoma and Spokane lists (see page two of the City’s submittal) and does not appear to be reasonably linked to police, fire, or emergency medical response statistics, etc. as required under the regulations. The City must show how the 82 cans it found in the two month period break down by individual product. From there, the analysis can proceed. Neither the City’s ordinance nor its petition reasonably links the banned products to public inebriation or illegal activity in the downtown AIA. The City’s findings from its “Beer Can Alleyway Audit” to support its banned beverage list is provided. However, the audit merely indicates that, of the cans found, 79% were products on the banned beverage list. This approach is problematic for two reasons.

First, the audit does not indicate the range of products found, meaning that all 65 discovered cans could be the same product or a small range of 2-3 products. Currently, the proposed banned list contains 50 products. Thus, the City does not link the audit to any specific banned product. Second, and more importantly, this approach is the reverse of what the regulations contemplate (intend?). LCB regulations require the City to request product restrictions based

on evidence it accumulates, and it must support the request with substantial and extensive documented evidence. Here, the City created the banned list irrespective of any evidence specific to the proposed AIA and subsequently sought to justify the list using the audit. Both the City's approach and justification are insufficient under the AIA rules.

The city cannot rely upon the medical response data on page three of their submitted materials due to its lack of specificity. The data merely illustrates that medical responses increased between 2011 and 2012.¹ There is no mention that these medical responses were related to "chronic public inebriation." The City's additional evidence, such as page 3 that "medical calls are the type of calls most correlated with intoxication" and "the rate of crimes with inebriated suspects did not vary," remains unsupported by the submitted data. In fact, the data does show is that the aggregate number of alcohol related incidents actually decreased in 2012.

Second, because it relied upon banned product list(s) from other jurisdictions, the City's proposal also does not comply with WAC 314-12-215(3)(e). Specifically, the City cannot rely upon the first provision of this WAC (lists from another board-recognized AIAs) because to do so would mean that the proposed restricted product list must be substantially similar to "products already restricted in its own AIA." The City does not have an existing AIA, so it cannot rely upon other lists and the Board, therefore, is not authorized to recognize the proposed Downtown Olympia AIA banned product list under this code provision.

Third, the City's proposal does not comply with the last sentence of WAC 314-12-215(3)(e). Specifically the provision that requires any city, in proposing a banned product list, to submit "extensive documented evidence" as described in WAC 314-12-215(3)(c) when it proposes its first AIA. The evidence submitted does not meet this standard. It is not extensive and only provides the Board with broad brushed, high level data that is not product specific. Without such specific evidence and data, the City does not meet the "reasonably linked and substantially documented" test noted above.² Therefore, the Board cannot recognize the City's proposed AIA.

Fourth, we do not believe the City has made the required "good faith efforts" called for by WAC 314-12-215(2)(iii)-(iv). As noted in the first footnote, the approach the City took, as we understand it from the retailers, should not be deemed sufficient good faith efforts by the Board. The standard of engagement between distributors and retailers in each and every proposed AIA should be very high. The Board should require that all proponents show that they've engaged in good faith efforts that have been genuine efforts of engagement with the retailers and distributors throughout any process.

It is important for the Board to know that the members of WBWDA have been supportive of all efforts to control chronic public inebriation in other parts of the state, and have in fact taken the initiative in bringing specific products to the attention of local police departments so those products could be informally added to the banned product list in existing AIAs. However, we believe that these existing AIAs have resulted in moving some of the CPI related problems out to other neighborhoods. We believe this is not good policy. Rather than dealing with the problem at its roots and providing the necessary treatment and services to CPIs, Alcohol Impact Areas merely shuffle the problem to other locations. It is this movement of CPI associated problems from neighborhood to neighborhood that has generated the current push for additional AIAs – such Tacoma's proposed West End. We also believe that the current AIA approach of banning products outright is less effective, and in the end, penalizes legitimate retailers and consumers. Instead, we recommend an approach that restricts the hours during which specific products can be sold. This is the approach taken in the voluntary AIAs in Seattle, Vancouver and Kent – programs we'd like the

¹ We would also note here that the City states, also on page 3, that Olympia Fire responded to more calls downtown in 2012 "after the AIA was implemented with voluntary compliance." It is our understanding that the retailers were approached by City staff and were basically told that they could stop selling now or in six months. In our view, a more true or genuine effort at voluntary compliance is required under the code. Asking retailers to stop selling now or stop selling later isn't giving them any choice whatsoever. You are really asking for voluntary compliance with a hammer and this should not be allowed to be the allowed standard for implementing voluntary compliance measures for this or any other proposed AIA.

² From a statistical standpoint, the 2012 alcohol related incidents data on page 3 has four additional days in the sample, which should be statistically accounted for in any analysis. The Board should also ask the City what constitutes and how "alcohol related incidents" are defined to be sure this sort of data is well defined and relevant.

opportunity to replicate here in Olympia.

The Board may question why the distributors are raising this issue now, after not objecting to use of the first Tacoma list in Spokane or use of the Spokane list in the second Tacoma AIA. The reason is simple: we have come to the conclusion that the AIA process is becoming complacent and is being utilized to the detriment of responsible consumers of these products and the responsible businesses (retailers, distributors and suppliers) that make them available.

In sum, we ask that the Board hold in abeyance the City's request or remand this matter to the City for further and more specific documentation and a genuine engagement with affected stakeholders (distributors and the retailers) regarding voluntary measures other than simply asking retailers to stop selling a large list of products. While the regulations grant the Board wide discretion in recognizing an AIA, the regulations only permit the adoption of product restrictions that are reasonably linked by extensive and substantial data to chronic public inebriation within a proposed AIA. The regulations place a very high burden on the municipality and, in the first AIA adoption context in any municipality, establishes a rigorous process for them to follow before requesting recognition. The WAC uses very strong words and deliberate phrases like "significantly substantially similar," "extensive and substantially documented evidence," "material similarities," "pervasive pattern," and "clearly demonstrate." Furthermore, WAC 314-12-215(2) states local authorities "must meet these conditions to achieve recognition." Taken together, the words of the relevant WACs place a very high burden of proof on the City - a burden which we believe it has failed to meet.

Thank you for the opportunity to provide this information.

Kind Regards,

Michael Transue
Executive Director
Washington Beer & Wine Distributors Association

Good afternoon, JoAnn.

As Executive Director of the Association of Washington Spirits & Wine Distributors, I want to express our concerns about the proposed Alcohol Impact Area in downtown Olympia. We are in general agreement with the comments submitted by Michael Transue on behalf of the Washington Beer & Wine Distributors Association. We believe that the proposed banned product list the City has prepared does not meet the standards created by the Liquor Control Board regulations. There is not sufficient evidence to tie products on the list to any problems encountered by Olympia. Consequently, we believe the petition for creation of a new AIA should be rejected by the Board

Beyond that, we have come to believe that the use of a banned product list may not be the most effective approach to minimizing the impact of chronic public inebriates. Rather, the voluntary limits on single-serve sales adopted in Kent and Seattle appear to be more effective. We hope that the City of Olympia will be willing to give that option further consideration if the pending petition is rejected.

I apologize for not getting these comments to you on Friday. If you have any questions, or if we can provide any additional information, please do not hesitate to contact me at your convenience.

John C. Guadnola

May 24, 2013

Honorable WSLCB Chairwoman Foster, WSLCB Member Kurose, and WSLCB Member Marr:

Wine Institute ("WI") is a public policy association representing 963 California wineries and associated businesses. Mandatory Alcohol Impact Areas ("AIA") are authorized by rule of the Washington State Liquor Control Board ("WSLCB") as one tool for cities to try to address proven problems with chronic public inebriation in parts of cities. The WSLCB AIA Rule ("Rule") is designed to require local evidence and documentation of the problems, and local evidence and documentation of the need for specific product restrictions. The problems of chronic public inebriation are different in each city and are reflected in the differing product restrictions in each city. The wine products banned in Tacoma are different than those banned in Seattle, whereas Spokane bans NO wine products.

The Petition for a mandatory AIA filed with the WSLCB by the City of Olympia ("Olympia") does not provide the needed local evidence and documentation for banning any wine products. WI, therefore, respectfully requests that the WSLCB not recognize as mandatory Olympia's AIA as proposed in the Petition because Olympia has not met the evidentiary standards required by the Rule for product bans. The Petition provides: "The City of Olympia created a banned beverage list based on Tacoma and Spokane's lists. . . ." (Exhibit 1, page 5) It is not permissible under the Rule for Olympia to simply create a banned product list by combining the lists from two other cities. The Banned Beverage List ("List") includes 11 wine products but there is no evidence, as required under the Rule, in the Petition or its Exhibits to support such bans.

The Rule provides: "Product restrictions must be reasonably linked to problems associated with chronic public inebriation or illegal activity. Reasonable links include, but are not limited to: Police, fire or emergency medical response statistics; photographic evidence; law enforcement, citizen or medical-provider testimonial; testimony by current or former chronic public inebriants; litter pickup; or other **statistically documented evidence that a reasonable person may rely upon to determine whether a product is associated with chronic public inebriation or illegal activity.** (Emphasis added) (WAC 314-12-215(3)(c)) There is NO such documented evidence in the Petition or its Exhibits relating to the wine products on the Banned Beverage List.

In addition, it does not appear that Olympia's List originated from its law enforcement agency or public health authority as required in the Rule (WAC 314-12-215(3)(b)). This requirement recognizes the seriousness of banning legal alcohol beverage products by not simply allowing a city council to ban products.

Olympia may have relied upon WAC 314-12-215(3)(e), providing a different evidentiary standard when a city asks for additional products to be banned in an **EXISTING** AIA that are significantly materially similar to products restricted in other AIAs or a product currently banned in that City's AIA. This subsection, however, does NOT apply when an AIA is not yet recognized as mandatory by the WSLCB. Subsection (e) was added to the Rule several years ago (it was not part of the original rule) to capture those instances when a substitute for a banned product was introduced into an AIA.

Due to Olympia's failure to provide the evidence and documentation to support banning each of the wine products on its Banned Beverage List as required by the Rule, the WSLCB should not recognize Olympia's AIA as mandatory.

WI appreciates the opportunity to provide comments. If you have any questions, please do not hesitate to contact me by email or at (360) 790-5729.

Sincerely,
Katie Jacoy

Western Counsel
WINE INSTITUTE
www.wineinstitute.org

Good Morning All,

I'm writing to clarify the proposed banned products list entries. The original submission did include Boone's Farm, however it was removed by the city before the list was finalized. The current proposed list can be viewed at <http://www.liq.wa.gov/licensing/alcohol-impact-areas-existing-locations>.

Thank you for submitting your comments regarding the city of Olympia's request for mandatory recognition of the downtown alcohol impact area. Your comments will be shared with the board for their deliberation.

Jo Ann Sample, Management Analyst

Licensing and Regulation Division

Washington State Liquor Board

Phone: (360) 664-9888

E-Mail: josa@liq.wa.gov

From: Larry Martin [<mailto:laurencehmartin@gmail.com>]

Sent: Saturday, May 25, 2013 7:59 AM

To: LIQ DL AIA

Cc: dan.plunkett@ejgallo.com; 'Katie Jacoy'; Delgado, Maribel; Richard.Grey@ejgallo.com

Subject: RE: Olympia AIA

Correction—The referenced Boones product is one that is 6% or lower—not in the 12% range previously indicated. Sorry for the misstatement. In all events, it is not an appropriate target for the AIA process.

Also, we at Gallo wish to express support for and advance the opposition comments made by the California Wine Institute regarding the Petition process to create the Olympia AIA—as well as the basic product listing procedure—submitted yesterday—5/24.

Regards

From: Larry Martin [<mailto:laurencehmartin@gmail.com>]

Sent: Friday, May 24, 2013 8:10 PM

To: aia@liq.wa.gov

Cc: dan.plunkett@ejgallo.com; Katie Jacoy; maribel.delgado@ejgallo.com; Richard.Grey@ejgallo.com

Subject: Olympia AIA

To whom it may concern:

Be advised that we at Gallo Winery are told that our Boones product may be on the proposed Olympia AIA banned list. Since it is 12% or over alcohol, it is not appropriate to include it on the AIA list—please remove it. Please confirm its removal.

Regards

May 24, 2013

Ms. JoAnn Sample
Management Analyst
Licensing & Regulation Division
Washington State Liquor Control Board
3000 Pacific Avenue S.E.
Olympia, Washington 98501

Re: Proposed Banned Product List for City of Olympia Downtown Alcohol Impact Area

Dear Ms. Sample:

The Washington Wine Institute (the "WWI") objects to the inclusion of Precept Brand's Six Prong Red Wine ("Six Prong") on the Proposed Banned Products List for the City of Olympia Downtown Alcohol Impact Area (the "Olympia AIA") dated May 17, 2013 (the "List"). The WWI believes that the proposal to include Six Prong on the List does not comply with the requirements of WAC 314-12-215, compliance with which is necessary in order to include an individual liquor product on the List.

1. Restrictions Under WAC 314-12-215(3) are not Permitted.

WAC 314-12-215(2) requires first that the Liquor Control Board (the "LCB") "*must recognize an alcohol impact area before any unique review process, condition or restriction described in this rule may be applied.*" The LCB has not recognized the City of Olympia Downtown AIA, so accordingly, no action to include specific liquor products under Section 3 of this rule is permitted.

In addition, the local Olympia law enforcement and public health authorities (the "Local Authorities") have not provided the evidence required under Section 2(c) to prove why additional restrictions, permissible under Section 2(c)(B)(v), are necessary. The Local Authorities are required under Section 2(c) to "*explain how the conditions or restrictions will reduce chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption.*" The submission does not address how or why including any wine, including Six Prong, on the List accomplishes this task.

2. No Analysis Was Made as Required Under WAC 314-12-215(3)(c).

Once the LCB recognizes the Olympia AIA, in order to include an individual liquor product on the List, WAC 314-12-215(3)(c) requires the Local Authorities to conduct an analysis of the product and determine that it is "*reasonably linked to problems associated with chronic public inebriation or illegal activity*". The analysis requires hard facts, not simple conjecture. Section 3(c) provides that reasonable links include:

*Police, fire or emergency medical response statistics; photographic evidence; law enforcement, citizen or medical-provider testimonial; testimony by current or former chronic public inebriants; litter pickup; or other **statistically documented evidence** that a reasonable person may rely upon to determine whether a product is associated with chronic public inebriation or illegal activity.* [Emphasis Added].

There has been no evidence presented in this circumstance that the Local Authorities have conducted any such analysis with respect to Six Prong, and the WWI does not believe that evidence actually exists which would support such a conclusion.

3. Even if Streamlined Analysis were Permissible, the Local Authorities Cannot Comply With the Requirements for Streamlined Analysis Under Section 3(e).

Section 3(e) permits the Local Authorities to include individual liquor products on the List under a more streamlined analysis if the products fit into certain defined categories; even if the LCB somehow were to find that streamlined analysis were permissible (though contrary to the clear language of the regulation), in this circumstance, Six Prong does

not fall into any of these categories. Therefore, even the streamlined analysis fails to support including Six Prong on the List.

On an individual product by product basis, the Local Authorities may list products that are:

already restricted in another board-recognized alcohol impact area provided that a product is significantly materially similar . . . to products already restricted in its own alcohol impact area.

The Local Authorities may not list Six Prong under this portion of Section 3(e) because it is not currently restricted by another alcohol impact area (an “AIA”).

In addition, on an individual product by product basis, the Local Authorities may list products that are “*significantly materially similar to products already restricted in its own alcohol impact area.*”

Six Prong is not “*significantly materially similar*” to any product now restricted in the Olympia AIA. Six Prong is a Washington table wine, and as such, it is fundamentally different from the “*flavored*” wines on the List—which are the **only** other wines on the List.

If Six Prong is “*significantly materially similar*” to anything, it is other Washington table wines. Six Prong uses grapes from well-known Washington vineyards (Zephyr, Frenchman’s Hill, Heintz) and is available in many local restaurants. It was favorably reviewed by Sean Sullivan in The Washington Wine Report on August 27, 2012 (www.wawinereport.com/2012/08/five-wines-under-15-august-2012.html), in the same group as wines from prominent Washington table wine producers Chateau Ste. Michelle and Columbia Crest.

Like most Washington red table wines, it is between approximately 13 and 14.5 percent alcohol by volume (“ABV”). In The Washington Wine Report feature, Six Prong was listed at 13.5 percent ABV, while the other wines reviewed ranged from 12.5 to 14.5 percent ABV (few, if any, Washington red table wines are less than 12 percent ABV).

Six Prong is packaged in a traditional Bordeaux style wine bottle, unlike many of the “*flavored*” wines, whose bottles mimic traditional spirits containers (e.g.: MD 20-20, Wild Irish Rose, etc.). Six Prong also uses a screw cap closure as do many other fine Washington table wines. By every evaluation metric, Six Prong is in absolutely no way “*significantly materially similar*” to the other wines on the List.

In both of these analyses under Section 3(e), the Local Authorities “*must demonstrate to the board, in writing, the material similarities and need for product inclusion.*” The WWI does not believe, given the nature of Six Prong described above, that any reasonable person could determine that there are “*significant material similarities*” between Six Prong and any of the other wines on the List. We also do not believe it is the intent of the LCB or the City of Olympia potentially to prohibit the sale of table wines in a downtown business corridor.

The WWI believes that the requirements of WAC 314-12-215 have not been met with respect to Six Prong and believes that it should be removed from the proposed list should the Olympia AIA move forward.

Thank you for the opportunity to submit these comments.

Sincerely,
Mark A. Maghie
Counsel, Washington Wine Institute

cc: Marty Clubb
Jean Leonard