

**AGENDA
BOARD MEETING
WA STATE LIQUOR CONTROL BOARD
Wednesday, September 9, 2009
Headquarter Building
3000 Pacific Ave, Olympia WA 98504**

10:00 a.m.

- 1. Public Hearing for Delegation of Authority..... Karen McCall**
- 2. New Business.....Board Members**
- 3. Old Business.....Board Members**

Adjourn

**OFFICE OF THE
WASHINGTON STATE LIQUOR CONTROL BOARD
Board Meeting Minutes – September 9, 2009**

Board Chair Sharon Foster called the regular meeting of the Washington State Liquor Control Board to order at 10:00 a.m., on Wednesday, September 9, 2009 in the Boardroom, 3000 Pacific Avenue SE, Olympia, Washington. Board Member Ruthann Kurose was present via teleconference.

Delegation of Authority (Intent to Deny or not Renew a Liquor License) - Karen McCall

On April 22, 2009, the Board adopted Policy #4-2009 delegating authority to the Licensing and Regulation Division Director to make initial threshold determinations relative to liquor license applicants and renewals where objections have been submitted. This threshold determination is to be made in accordance with the provisions of RCW 66.24.010 as well as all other relevant sections of state law and title 314 WAC. *See attachment.*

The proposed changes are as follows:

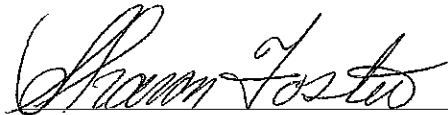
New Section 314-07-121 Board delegation of authority to make initial threshold determinations.

Explains the process the director of licensing and regulation will follow when making threshold decisions on applications or renewals objections have been received, or the applicant/licensee appears to be ineligible for a license due to failure to meet requirements under statute or rule.

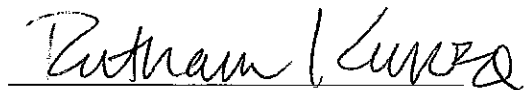
Amended Section WAC 314-09-010 Objection to liquor license applications. Made corrections to current rule. Changed language from "receipt of the denial letter" to "receipt of the intent to deny".

Amended Section WAC 314-09-015 Objections to liquor license renewals. Revised language in section (1)(d) regarding objections to renewals received within 30 days of the expiration date when the license has already been renewed. Clarified language in section (2).

The Board Meeting was adjourned at 10:10 AM.



Sharon Foster
Board Chair



Ruthann Kurose
Board Member

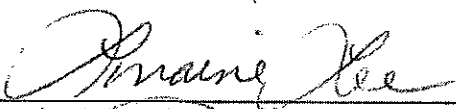
Liquor Control Board Interim Policy #4-2009

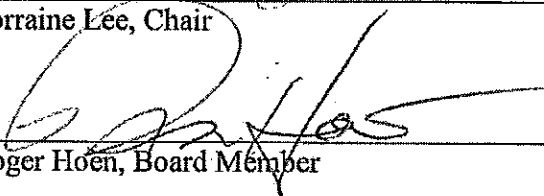
Subject of Policy: Delegation of authority to make threshold decisions related to liquor license applications and renewals where objections have been received or the applicant/licensee appears to not meet eligibility requirements


Effective Date: April 22, 2009

Ending Date: Upon adoption of WACs to implement this change in policy/procedure.

Approved:


Lorraine Lee, Chair


Roger Hoën, Board Member


Ruthann Kurose, Board Member

Purpose and Background:

State law (RCW 66.24.010) governs the issuance of liquor licenses. When either a new license application is received or when a license is pending renewal, state law requires the applicable local government authority to be notified and given the opportunity to object to said issuance. Under current procedure, a pending application or renewal that has had an objection received is forwarded to the Board Members for an initial threshold determination. In making this submission Licensing and Enforcement staff submits recommendations with accompanied justification.

If the initial determination by the Board Members is contested by either the applicant/licensee or the local authority, they must make a final determination in the same case after an adjudicative hearing by an administrative law judge. While not inappropriate under administrative law (RCW 34.05), this process presents an appearance of fairness concern.

Policy Statement:

The Board hereby delegates authority to the Licensing and Regulation Division Director to make initial threshold determinations relative to liquor license applications and renewals where objections have been submitted. This threshold determination is to be

made in accordance with the provisions of RCW 66.24.010 as well as all other relevant sections of state law and title 314 WAC. The Licensing Director shall give substantial weight to objections from a local authority where said objections are based on chronic illegal activity. Further, the Licensing Director will give due consideration to the location of a new liquor license applicant as it relates to its proximity to churches, schools, public institutions as well other considerations raised by the local authority.

The Licensing Director is also granted the authority to make initial threshold determinations where the applicant/licensee appears to be ineligible for a license due to failure to meet requirements under statute or rule. This failure to meet eligibility requirements includes data obtained through a criminal background check or Criminal History Record Information (CHRI) report.

Where the Licensing Director determines that the Liquor Control Board (LCB) will seek denial of a license application or non-renewal of an existing license, an aggrieved applicant/licensee is granted a hearing before an administrative law judge. In a case where the Licensing Director determines that the LCB will seek to license over the objection of a local authority, the local authority may request an adjudicative hearing. The Board Members further delegate the Licensing Director the authority to determine whether said hearing will be granted. The Licensing Director is to grant such a hearing request where the objection is based on alleged conduct which is jurisdictional to the LCB under Title 66 RCW and/or Title 314 WAC.

The following procedure relates directly to an application/renewal which is objected to by a local authority or others. In those circumstances where the applicant/licensee does not appear to meet eligibility requirements, some of these steps will not apply.

Procedure and/or Desired Outcome	Responsible Party
Receive objection from local authority, school or citizen. Evaluate objection for timeliness, subject jurisdiction and whether further supporting documentation is necessary. Acknowledge receipt as appropriate.	LCB Licensing and Regulation Division
Feedback and recommendations requested from Enforcement and Education Division.	LCB Licensing and Regulation Division
Enforcement provides written recommendations to the Licensing Director with justification.	LCB Enforcement and Education Division
Licensing managers evaluate all relevant information and develop DRAFT recommendations on the application/renewal. File submitted to prosecuting AAGs for their review and comment.	LCB Licensing and Regulation Division
Prosecuting AAGs advise licensing managers of their comments on recommended action.	LCB Licensing and Regulation Division
Licensing managers prepare recommendation and submit to Director for action. While the recommendation will be in writing, the presentation may be in person with representatives from Enforcement in attendance.	LCB Licensing Managers

Washington State Liquor Control Board

Issue Paper: Rulemaking on Delegation of Authority (Intent to Deny or Not Renew a Liquor License)

Date: July 29, 2009

Presented by: Karen McCall, Agency Rules Coordinator

Description of the Issue:

The purpose of this issue paper is to request approval from the Board to file the notice of proposed rulemaking (CR 102) to review and amend current rules and/or develop new rules regarding Board policy #4-2009, Delegation of Authority. **WAC 314-07-120** needed to be amended to reflect this policy, as well as **WAC 314-09** – Contested Liquor License Applications and Renewals.

Why is rulemaking necessary?

On April 22, 2009, the Board adopted Policy #4-2009 delegating authority to the Licensing and Regulation Division Director to make initial threshold determinations relative to liquor license applicants and renewals where objections have been submitted. This threshold determination is to be made in accordance with the provisions of RCW 66.24.010 as well as all other relevant sections of state law and title 314 WAC.

What changes are being proposed?

New Section 314-07-121 Board delegation of authority to make initial threshold determinations. Explains the process the director of licensing and regulation will follow when making threshold decisions on applications or renewals objections have been received, or the applicant/licensee appears to be ineligible for a license due to failure to meet requirements under statute or rule.

Amended Section WAC 314-09-010 Objection to liquor license applications. Made corrections to current rule. Changed language from "receipt of the denial letter" to "receipt of the intent to deny".

Amended Section WAC 314-09-015 Objections to liquor license renewals. Revised language in section (1)(d) regarding objections to renewals received within 30 days of the expiration date when the license has already been renewed. Clarified language in section (2).

Attachment: Board Policy #4-2009
WAC 314-09

AMENDATORY SECTION (Amending WSR 05-07-011, filed 3/4/05, effective 4/4/05)

WAC 314-09-010 Objections to liquor license applications.

(1) **How can persons, entities, and governmental jurisdictions object to the issuance of a liquor license or permit?** Per RCW 66.24.010 (8) and (9), the board will notify certain entities of the following types of annual or special occasion liquor license or permit applications. In addition to the following entities, any person or group may comment in writing to the board regarding ~~((f+fant))~~ an application.

Type of Application	Entities the board will notify
<ul style="list-style-type: none"> • Applications for an annual license or permit at a new location that would allow the sale and/or service of alcohol beverage to the public for on-premises consumption or to-go; and • Applications to change the class of an existing annual liquor license or permit that allows the sale and/or service of alcohol beverage to the public for on-premises consumption or to-go. 	<ul style="list-style-type: none"> • Governmental jurisdictions in which the premises is located, and • Schools, churches, and public institutions within 500 feet of the premises to be licensed (as measured according to RCW 66.24.010(9)).
<ul style="list-style-type: none"> • Applications for any annual or special occasion liquor license or permit that allows the sale and/or service of alcohol beverage; and • Changes of ownership at existing licensed premises. 	((f+)) • Governmental jurisdictions only.

(2) **What will happen if a person or entity objects to a liquor license application?** When deciding whether to issue or deny a liquor license application ~~((for permit))~~ or permit, the board will give due consideration to input from governmental jurisdictions in which the premises is located; private schools, churches, and public institutions within 500 feet of the premises (as measured according to RCW 66.24.010(9)); and other persons or groups. Note~~((f+))~~: Per RCW 66.24.010(9), the board shall not issue a new ~~((retail))~~ retail liquor license if a tax-supported public elementary or secondary school within 500 feet of the premises to be licensed objects to the application (500 feet as measured according to RCW 66.24.010(9)).

(a) If the board contemplates issuing a license over the objection of a governmental jurisdiction in which the premises is located, the government subdivision may request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW). If the board, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the licensee

will be notified and given the opportunity to present evidence at the hearing.

(b) If the board denies a liquor license application based on the objection from a governmental jurisdiction; a private school, church, or public institution within 500 feet of the premises (as measured according to RCW 66.24.010(9)); and/or other persons or groups, the applicant(s) may either:

(i) Reapply for the license or permit no sooner than one year from the original denial date; or

(ii) Submit a written request, within twenty days of the date of licensee's receipt ~~((of))~~ of the ~~((denial letter))~~ intent to deny, for an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW).

AMENDATORY SECTION (Amending WSR 05-07-011, filed 3/4/05, effective 4/4/05)

WAC 314-09-015 Objections to liquor license renewals. (1)
How can local governmental jurisdictions object to the renewal of a liquor license?

(a) The board will give governmental jurisdictions approximately ninety days written notice of premises that hold annual liquor licenses in that jurisdiction that are up for renewal.

(b) Per RCW 66.24.010(8), if a governmental jurisdiction wants to object to the renewal of a liquor license in its jurisdiction, it must submit a letter to the board detailing the reason(s) for the objection and a statement of all facts on which the objections are based.

~~((c))~~ (c) This letter must be received by the board at least thirty days before the liquor license expires. The objection must state specific reasons and facts that show issuance of the liquor license at the proposed location or to the applicant business will detrimentally impact the safety, health, or welfare of the community.

~~((d) If the objection is received within 30 days of the expiration date or the licensee has already renewed the license, the objection will be considered as a complaint and possible license revocation by the Enforcement Division.))~~ (d) If the objection is received within thirty days of the expiration date or the licensee has already renewed the license, the objection will be considered as a complaint and possible license revocation may be pursued by the enforcement division.

(e) Objections from the public will be referred to the appropriate governmental jurisdiction for action under subsection (2) ~~((below))~~ of this section. Upon receipt of the objection, the board licensing and regulation division will acknowledge receipt of the objection(s) and forward to the appropriate governmental

jurisdiction. Such jurisdiction may or may not, based on the public objection, request nonrenewal.

(2) **What will happen if a governmental jurisdiction objects to the renewal of a liquor license?** The board will give due consideration to a governmental jurisdiction's objection to a liquor license renewal of a premises in its jurisdiction. Based on the governmental jurisdiction's input and any information in the licensing file, the board will decide to either renew the liquor license, or to proceed with nonrenewal.

<p>((b)) (a) Board decides to renew the liquor license:</p>	<p>((c)) (b) Board decides to ((pursue nonrenewal of)) <u>pursue nonrenewal of</u> the liquor license:</p>
<p>(i) The board will notify the governmental jurisdiction(s) in writing of its intent to renew the license, stating the reason for this decision.</p> <p>(ii) The governmental jurisdiction(s) may contest the renewal and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW).</p>	<p>(i) The board will notify the licensee in writing of its intent to not renew the license, stating the reason for this decision.</p> <p>(ii) The licensee may contest the nonrenewal and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW).</p> <p>(iii) If the licensee requests a hearing, the governmental jurisdiction((s)) will be ((notified)) notified.</p> <p>((v)) (iv) During the hearing and any subsequent appeal process, the licensee is issued a temporary operating permit for the liquor license until a final decision is made.</p>

NEW SECTION

WAC 314-07-121 Board delegation of authority to make initial threshold determinations. (1) The board may delegate to the licensing and regulation division director the authority to make initial threshold determinations on liquor license applications and renewals where:

(a) Objections have been submitted; or
(b) The applicant/licensee appears to be ineligible for a license due to failure to meet requirements under statute or rule. Failure to meet eligibility requirements includes data obtained through a criminal background check or criminal history record information (CHRI) report.

(2) Threshold determinations will be made in accordance with the provisions of RCW 66.24.010 as well as all other relevant sections of state law and Title 314 WAC. The licensing and regulation division director shall:

(a) Give substantial weight to objections from a local authority where objections are based on chronic illegal activity;

(b) Give due consideration to the location of a new liquor license application as it relates to the proximity to churches, schools, and public institutions as well as other considerations raised by the local authority.

(3) If the licensing and regulation director determines that the board will seek denial of a license application or nonrenewal of an existing license, an aggrieved applicant/licensee may request an adjudicative hearing before an administrative law judge (see chapter 314-09 WAC).

(4) If the licensing and regulation director determines that the board will seek to approve a license or renewal over the objection of the local authority, the local authority may request an adjudicative hearing before an administrative law judge (see chapter 314-09 WAC). The licensing and regulation director will determine whether an adjudicative hearing will be granted to the local authority.

An adjudicative hearing will be granted where the objection is based on alleged conduct related to public safety within the jurisdiction of the board under Title 66 RCW.

