



Washington State Liquor Cannabis Board Meeting

Wednesday, January 10, 2018, 10:00 a.m.
LCB Headquarters - Boardroom
3000 Pacific Avenue SE, Olympia WA 98501

Meeting Minutes

1. CALL TO ORDER

Acting Chair Russ Hauge called the regular meeting of the Washington State Liquor and Cannabis Board to order at 10:00 a.m. on Wednesday, January 10, 2018. Member Ollie Garrett was also present. Acting Chair Hauge first acknowledged his fellow Board members and thanked the staff for their efforts in preparing for the Board meeting.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Garrett moved to approve the November 29, 2017, meeting minutes.

SECOND: Member Hauge seconded.

ACTION: Motion passed unanimously.

MOTION: Member Garrett moved to approve the December 13, 2017, meeting minutes.

SECOND: Member Hauge seconded.

ACTION: Motion passed unanimously.

3. PUBLIC HEARINGS (A-B)

PUBLIC HEARING 3A – Public Records Rules

Joanna Eide, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 3A 1-4). She reminded that the CR 102 was presented to the Board on November 15, 2017.

Changes to provisions related to costs of providing public records as required due to the passage of EHB 1595 by the 2017 Legislature. Costs provisions must be in agency rule for an agency to be able to charge costs for producing public records under Chapter 42.56 RCW (Public Records Act). The new provisions require the agency to either (1) calculate the actual costs of providing public records to requesters for each request, or, if calculating actual costs would be unduly burdensome, (2) charge up to the default amounts in section 3 of EHB 1595. The Public Records Act (Chapter 42.56 RCW) requires agencies to establish costs for providing public records in rule to be able to assess those costs.

We have had emergency rules in place for these provisions since the bill became effective last summer. This is the permanent rulemaking process to establish that. So the rules to adopt those default cost provisions that are in section 3 of the bill. In conjunction of this rulemaking we also did a chapter review of the public records rules to ensure they were as up to date as possible. We did a rewrite of the chapter and farmed out some sections to where they needed to go because some of the items made more sense to be in Board operations. Also did some technical changes for clarification and updates to ensure that the chapter functions properly.

Ms. Eide asked if the Board had any questions. There were none.

Acting Chair Hauge opened the public hearing and invited the first citizen to the podium to provide testimony. No one came forward for comment.

Acting Chair Hauge closed the public hearing and thanked everyone for their input.

PUBLIC HEARING 3B – Marijuana Advertising Rules

Joanna Eide, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 3B 1-4). The CR 102 for draft rules was brought to the Board on November 15, 2017. These rule proposals are to implement and change rules due to the change in advertising requirements in the law by the 2017 legislature.

The Legislature made significant changes to advertising restrictions and requirements for marijuana licensees in RCW 69.50.369 which became effective on July 23, 2017. Guidance and information on the upcoming changes to the law was provided to licensees at that time.

What these rule proposals do is incorporate many of those provisions from that statute into our rules as well as provide additional technical and clarifying guidance for licensees and enforcement to ensure the proper functionality of these requirements. This is also to adhere to legislative direction included in those changes within bill 5131.

We do have a separate rulemaking for other changes in cannabis rules needed as a result of changes made in the 2017 legislative session to establish the penalties required for advertising violations on a graduated structure as directed in the bill. I wanted to note that for the record. There are also some definition changes that will be handled in separate rulemaking because those definitions for things like "cartoon" or "especially appealing to children" do not just touch on advertising but also on products and packages and labels.

The issue papers that were submitted to the Board and the public today are the same as the ones that were submitted on November 15, 2017. I would encourage people to review them. We cited out in bullet form each of the clarifying and technical changes and guidance in the rule proposal that are not just purely repeating what is in statute. It does repeat some, but only for clarification purposes.

I would like to emphasize a few items that were raised in public comment. These rule changes are for advertising only. There has been some confusion that these rules apply to packaging and labeling, and that is not necessarily the case. We do have restrictions within the statute and other rules that talk about restrictions for packages and labels. There are some intertwining principles that are a part of that such as

“nothing especially appealing to children” either product-wise or on the package or label, but that is not touched on this rule package. I want to make sure that is clear.

We also received comments and concerns about restricting advertising within the retail location, inside the store. I want to be clear on a few items. Specifically the prohibition of the depiction of marijuana plants or products on outdoor advertising. That is only for outdoor advertising, it is not for other forms of advertising that may be within the retail store or in print or internet media. I wanted to be sure that was clear because there are businesses that have a cannabis leaf or something of that nature included within their logos. For purposes of what the statute requires and also the rules following suit, that is only restricted as far as putting that on a sign or billboard in an outdoor venue. It is not necessarily restricted within the retail store itself or on other forms of advertising.

There have also been comments received regarding advertisements within the retail location visible from the outside. We will be making some technical adjustments to address some of those concerns. I think there was some confusion about what is restricted as far as outdoor advertising and internal advertising. There are restrictions on something that is placed in a window facing outward, but those same restrictions don't necessarily extend themselves to “within the retail store”. There may be some clarification we need to do around that so we will certainly bring that forward. However, due to the technical nature it is unlikely that it will require a supplemental CR 102 in order to make those changes.

We have noticed a couple technical clarifying changes that may be made just to flip some language to make sure it is abundantly clear, but again those are technical in nature and should not require a supplemental CR 102.

For the Board's benefit, we have received quite a mix of comments and concerns that the rule proposals are too onerous, and also concerns that they are not strict enough. So, thus far, it has been quite a potpourri of different approaches that people have sent in.

The implementation timeline for this rules are as follows. The changes in the law became effective July 23, 2017. These rules are meant to supplement and implement those further. It is important that they do become effective soon should the board adopt them so they can provide that additional clarifying guidance to licensees. The remaining schedule is as follows:

January 10, 2018	Public Hearing
January 10, 2018	End of written comment period
January 24, 2018	Board is asked to adopt rules
January 24, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
January 24, 2018	Agency files adopted rules with the Code Reviser (CR 103)
February 25, 2018	Rules are effective (31 days after filing)

This holds true unless we need more time for the Board to adopt. The rules will become effective a minimum of 31 days after whatever date they are adopted.

Because these rules are to provide that additional clarification and guidance, a quicker effective date is advisable. If the Board would like a longer time frame we can look into that, but it may only lead to further confusion.

Ms. Eide asked if there were any questions. Acting Chair Hauge stated that one of the things heard in the comments that has been addressed or will be addressed is the interplay between indoor advertising and outdoor advertising. We are taking a step back to ensure that there is no impression created that we are trying to leverage control over outdoor advertising to step across the threshold into the retail outlet.

Ms. Eide concurred, and said we were looking at that to ensure. The entire principle that we've adopted with these rules, and that we do with each of our rulemakings is to ensure that the intent of the legislature is carried forward as far as any changes to statute that require a change in rule. We are taking a look at those particular issues to make sure that we don't have any bleed-over.

Acting Chair Hauge opened the public hearing and invited the first citizen to the podium to provide testimony. He reminded that each person would have four minutes to make their comments.

Dylan Doty – Lamar Advertising

Mr. Doty stated that he has identified what he hopes is a small issue with the definition of a billboard, pertaining to the size restriction.

Included in the definition, I believe it is 10x20 feet. That does not capture the industry standard for the size of billboards. We would actually prefer to see no size restriction at all. If that is not palatable, we can submit comments forthcoming later this afternoon on what sizes are most appropriate. For instance, in Kitsap where you are, Russ, we have a lot of 5x11s and things like that. The net effect of this if it were to stay the way it currently is written, is that it would eliminate advertising in a lot of jurisdictions that might not have the size that fits the 10x20 range.

We will be submitting comments, and I think you are going to hear from some other folks on this particular topic. Again, from our side, we are talking about the size restriction that we would like to see changed.

Chris Marr - Consultant

Mr. Marr stated that he had reviewed the rules with several of his clients, and that a lot of his comments were going to be about the issue of interior signage visible from the exterior.

I feel like I'm Charlie Brown and Joanna is Lucy and she just pulled the football away. I'll just say that I've offered some written comments that elaborate more, but it sounds like you are moving in the right direction.

There are a couple other areas that I would like to comment on and that is adding some additional exemptions to Section 2e for ancillary business signage and also allowing for the voluntary posting of prevention signage. The current draft language provides an exemption for exterior facing signs which have hours, open/closed, atms, which acknowledges that there are various types of ancillary informational signage that may exist on the premise or the parking lot. We'd request that you allow for

directional parking or warning signs such as “no cannabis consumption allowed in the parking lot”, which is a warning that often has to be given, to be considered also as non-advertising and exempted from limitation or regulation.

Another issue, and this applies to a couple of my clients, but some of them have actually given serious consideration to posting some signage either on the building or elsewhere, interior and exterior, which deals with the issue of drug prevention or education. So “talk to your kids about drugs” or “starttalkingnow.org” hypothetically could be them. Once again, we request that you consider that external signage solely for the purpose of prevention or education similarly be exempted.

The second point would be adding clarifying language to Section 2a(i) stating that logos or artwork are permitted on signage as long it is consistent with the provisions of the following sub addressing marijuana plant depictions. In other words Section 2a(i) is, we think, unnecessarily confusing because it says “only text will be allowed that contains these things”, and then in the subsequent reference it says “no marijuana representation”. So in our mind you should add, within Section 2a(i), state “logos or artwork are permissible consistent with restrictions below”. Again, that is laid out in my comments.

I’m going to close by pointing out that the devil is always in the details, right? On regulatory implementation we are encouraged by the Liquor and Cannabis Board’s intent to create advertising compliance coordinator position. We think that will go a long way to reducing frustration on the part of licensees and allow a prior approval process before people invest a lot of money in signage. There is a lot of confusion out there, I’ll give you one example that may be mentioned by others. One licensee was approached the other day by enforcement officers saying that “your ‘Black Lives Matter’ sign needs to come down”. Is that really where the Board wants to go? It may be, I’m just putting it out there. Also, maybe the process, and that falls along the line of that consideration, maybe taking the effort to monitor warnings and AVNs in the initial phase to make sure your intent is being carried out, and provide feedback in real time.

The last issue has to do with implementation. I think we need a clear communication of lead-times. Some folks have been told that signs need to be covered as of 2/15. Other have been told we don’t have final rules. Once those have been adopted, what is the timeline, and consider the fact that it can take up to 90 days to have a sign designed and manufactured.

Michael Schroeder – Green Owl Media

Mr. Schroeder stated that he works with several farms and retailers in the industry.

I want to talk about a couple specific points in the amendatory section. Section 1a says that “this applies to all marijuana advertising and labels of useable marijuana products”. I want to be certain that, earlier Joanna mentioned that these rules apply only to advertising, but if so the language clearly says labels. So we want that stricken because we are talking about different things. If we are also talking about labels...

Acting Chair Hauge stated that labels were not being discussed

Mr. Schroeder asked for clarification about the labels part of the amendatory Section. Member Hauge asked Ms. Eide to respond.

Ms. Eide stated that there are restrictions as far as what does apply to advertising and labels, but these are not new requirements. The underlying words are changed, but that doesn't have an effect of changing anything. These are requirements that are already in place for all advertising, packages, and labels.

Mr. Schroeder asked for continued clarification, Acting Chair Hauge suggested making an appointment Ms. Eide to further discuss the issue.

Mr. Schroeder continued, noting that the language may be limiting in that it basically describes "what is appealing to youth". That is very very wide, and enforcement in the LCB has had a lot of different interpretations in different regions. I'd hate to see a space where one part of the state can advertise with pink and blue and another can't because of interpretation of enforcement.

Lastly, regarding the posting of information at a retailer, I have encountered at a couple of stores that had text as vision blocking. So, they had text as vision blocking, I wanted to know if that would be addressed as signage as well if they had text that was just their brand name or even iteration of the "no open packaging" or things of that nature.

Logan Bowers - Hashtag

Mr. Bowers stated that he thought Brooke and Chris would cover all of the substantive technical issues that affect retailers with advertising.

I'm the guy that just got fined \$1,000 for having a "Black Lives Matter" and "All Races Welcome" sign in my window at my shop in Redmond. I was not originally going to come and speak today, but I received that fine last night at 6:00 p.m. My LCB officer is on the record saying "those signs have to go" which I think is a little absurd. He did also cite me for a sign that I had in the window that described the nature of the business but not the trade name of the business. I know there has been a lot of confusion over, does a sign have to have literally all of those characteristics or can it be the nature of the business or the trade name of the business.

I think my two points here, one, when you are looking at these rules I think you want take an item and ask do we want to be fighting over 1st Amendment issues non-stop or do we want to be focusing on regulatory issues and issues of keeping marijuana out of the hands of kids.

The other thing is, can we come up with a reasonable mechanism to handle enforcement of these issues. Does the LCB really want to be on the record saying that I can't say all races are welcome in my store? Can we just do that over an email or have a discussion? I get that it's complicated, and it's a grey area, we're going to figure out a solution here, but do we have to jump straight to fines in these kinds of circumstances or can we just have an email discussion. I bring that up specifically because I actually just did this dance in August because I was the one that was fined for the mural on the side of my building painted by a local artist, which was subsequently dismissed on appeal.

I commend the agency for the handling of that one because my enforcement agent gave me very advanced warning, we had a discussion about it, I sent an email saying "here's why I think I'm allowed to have it". They had that discussion internally, ultimately they still decided to issue the citation, but there was a long kind of progression and I think there was a recognition that it was a complicated subject. This time around, I had a different location with a different enforcement officer kind of blackened my experience, where now I just get slapped out of nowhere.

Hopefully as you look over these rules you can focus on what really matters and come up with an enforcement policy that I think recognizes the complexities of the situation.

Brooke Davies – C.O.R.E.

Ms. Davies thanked the Board for the opportunity to comment on the proposed advertising rules.

I'm here today to comment on behalf of C.O.R.E., the Cannabis Organization of Retail Establishments, we are a non-profit trade association that represents licensed 502 retailers in the state of Washington. The organization has had the opportunity to review the proposed rules and I will be submitting written comments in more detail later today.

First I want to thank Joanna and the members of the Board for addressing the interior signage issue. That was a major concern of ours which seems to have already been addressed.

A couple other points I'd like to make which have already been made was expanding the language on Section 2e about the incidental business signage. I believe in the proposed rules it says things like "open signs" and "we have an ATM". Just hoping that could be expanded a little bit as Chris mentioned. "Parking information", we have a couple members that have their business in a strip mall so sometimes there are monumental signs that list all the businesses, so if it's possible to expand that.

The other issue was the size requirement on the billboards which was brought up by Lamar. A lot of our members are in urban areas where the billboards are much smaller, so this restricts that and may also cause some unnecessarily large billboards that could be smaller. Thank you for the opportunity to speak today.

Acting Chair Hauge closed the public hearing and thanked everyone for their input.

4. GENERAL PUBLIC COMMENT

Acting Chair Hauge invited citizens to address the Board regarding any issues related to LCB business.

Jason Gray – Lucky Leaf

Mr. Gray stated that he was an owner of a couple retail locations, one is in Pasco.

There is a ban in Pasco. I know you guys are doing the whole thing of use it or lose it on the licenses issue. I want to have the Board members think about the people that are in the banned sections. We've outlaid a lot of money to open the stores, or get them ready to open, paid the monthly fees for rents and insurance. I wonder if it's an opportunity for us to, when you revoke licenses or when you take licenses back from people that aren't using the licenses, that we have the first opportunity of moving our licenses from a banned location to a revoked location.


ADJOURN

Acting Chair Hauge adjourned the meeting at 10:27 a.m.

Minutes approved this 21 day of FEBRUARY, 2018

Not Present

Jane Rushford
Board Chair



Ollie Garrett
Board Member



Russ Hauge
Board Member

Minutes prepared by: Dustin Dickson, Executive Assistant to the Board

LCB Mission - Promote public safety and trust through fair administration and enforcement of liquor, tobacco and marijuana laws.

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