



Washington State Liquor Cannabis Board Meeting

Wednesday, November 29, 2017, 10:00 a.m.
LCB Headquarters - Boardroom
3000 Pacific Avenue SE, Olympia WA 98501

Meeting Minutes

1. CALL TO ORDER

Chair Jane Rushford called the regular meeting of the Washington State Liquor and Cannabis Board to order at 10:00 a.m. on Wednesday, November 29, 2017. Member Ollie Garrett and Member Hauge were also present. Chair Rushford first acknowledged her fellow Board members and thanked the staff for their efforts in preparing for the Board meeting.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Hauge moved to approve the November 15, 2017, meeting minutes.

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

3. SPOKANE TRIBE MEMORANDUM OF AGREEMENT (MOA)

Kyle Smith, Licensing and Regulations Manager, provided a brief background on the Spokane Tribe MOA. Glenn Ford was present to represent the Tribe. The agreement was signed by Mr. Ford, Agency Director Rick Garza, Board Chair Jane Rushford, Board Member Ollie Garrett, and Board Member Russ Hauge.

4. ACTION ITEMS (A-D)

ACTION ITEM 4A - Board Approval of CR 101 for Acceptable Forms of Identification

Karen McCall, Sr. Agency Rules Coordinator, began the briefing with materials (HANDOUTS 4A 1-2). She provided background noting that this rulemaking is the result of a petition for rulemaking submitted by a private citizen. The licensee has requested the board open rulemaking to revise the acceptable forms of identification for verifying a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol. The forms of acceptable identification in rule are all able to be verified by our Enforcement division. NEXUS cards are currently a valid form of identification (it is essentially a passport card) but the rule doesn't state that NEXUS cards are acceptable. Green cards are not an acceptable form of identification since the Enforcement division is not able to verify a green card.

Proposed Changes

The request is to allow the NEXUS card as an additional acceptable form of identification for the purpose of selling, serving, or allowing a person to possess or consume alcohol

Timeline

November 29, 2017	Board is asked to approve filing the pre-proposal statement of inquiry (CR 101)
December 20, 2017	Code Reviser publishes notice, LCB sends notice to rules distribution list
January 20, 2018	End of written comment period
January 24, 2018	Board is asked to approve filing the proposed rules (CR 102 filing)
February 7, 2018	Code Reviser publishes notice, LCB sends notice to rules distribution list
February 28, 2018	Public Hearing held
February 28, 2018	End of written comment period
March 14, 2018	Board is asked to adopt rules
March 14, 2018	Agency sends notice to those who commented both at the public hearing and in writing.
March 14, 2018	Agency files adopted rules with the Code Reviser (CR 103)
April 14, 2018	Rules are effective (31 days after filing)

Ms. McCall then requested approval from the Board to file proposed rules.

MOTION: Member Hauge moved to approve the filing of proposed rules CR 101 for Acceptable Forms of Identification

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

5. PUBLIC HEARINGS (A-C)

Ms. McCall noted that she would be filing a supplemental CR 102 for the 2017 Liquor Legislation to correct the wording for sampling in grocery stores.

PUBLIC HEARING 5A – Public Hearing on Private Label Spirits

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 5A 1-2). She informed that she had received several requests to reiterate language from the RCW in the rulemaking and that she didn't feel it was necessary.

Chair Rushford opened the public hearing and invited the first citizen to the podium to provide testimony.

Holli Johnson – WA Food Industry Association

Ms. Johnson stated that they had previously submitted comments about the CR 101 regarding the language of exclusivity and what is reasonably available.

We still think those are vague comments but understand that in the industry where private label is already being practiced has established a norm for those, so we are able to accept those language issues that we had and move forward as long as there is equal treatment across the board.

We still do have some concern about the copy of the contract and making sure that proprietary information is noted within those requirements.

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

Ms. McCall asked to address Ms. Johnson's concerns about the contract and the exceptions from public records. I checked with the AAG and those contracts would be public record. They are not excluded from records requests.

PUBLIC HEARING 5B – Public Hearing on 2017 Liquor Legislation Implementation

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 5B 1-3). She reminded that she would be filing the supplemental CR 102.

Chair Rushford opened the public hearing and invited the first citizen to the podium to provide testimony.

Cindy Zehnder – Total Wine and More

Ms. Zehnder thanked the Board and Ms. McCall for the response to the issue of a drafting error in the sampling rules in grocery stores and beer and wine specialty shops and spirit licensees.

People were confused so we appreciate the responsiveness that we received from the Board and staff.

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

PUBLIC HEARING 5C – Public Hearing on Non-Retail Rules Review

Karen McCall, Agency Rules Coordinator, began the briefing with materials (HANDOUTS 5C 1-4).

This is reviewing the brewery, winery, and distillery rules. We received several comments from stakeholders on these rules. The actual proposed rules that were sent out had two new sections for wineries. One for alternating proprietorship and one for customer orders, internet sales, and delivery. I met with some stakeholders from the wineries and they had some issues with the language in both of the new sections. The day of the meeting there was no one from enforcement available to join the conversation, but in listening to the concerns over the language I made the decision that since those were two new sections I would remove them. It will not affect us to have to file another CR 102 because they were new sections so it isn't changing the current rules. I did tell them that once these rules were adopted and became effective we would reopen the winery rules and address those two items. With the alternating proprietorships we were putting our policy into rule because it wasn't there. They made a valid

point that it would be easier if our alternating proprietorship rules mirrored what the federal government has. We were already trying to do so in our rulemaking by getting rid of repetitive language.

Chair Rushford opened the public hearing and invited the first citizen to the podium to provide testimony.

Annie McGrath – WA Brewer’s Guild

Ms. McGrath thanked Karen and the people from enforcement and licensing for the inclusive nature in which the rules review was undertaken.

I feel like we had ample time to provide comments and there were proper adjustments made per some of our requests. We support the changes to the educational tasting allowances for beer manufacturers and their employees. We now have consistency with the winery language which we appreciate, and we will now be able to sample near the taps rather than pouring and taking the samples to the production area. There are a number of reasons why our employees need to be knowledgeable about the product for pricing and quality evaluation as well as sales education.

We thank you for clarifications made in the labeling section. We think this matches more closely with what the current practices are and will provide clarity for our brewers. This is a question that comes up a lot as to what kind of approval they need. We would ask that the Board make even further clarifications in that section and provide some direction as to what is required based on where the sale is made because there are differences between selling from a tap room versus across state lines.

We also thank you for the section on internet orders. This will open up avenues for our brewers that they currently don’t have to be able to sell specialty products and reach consumers that they may not be able to reach otherwise.

With Karen’s comments on the alternating proprietorships section for the wineries, I ask that the Board consider doing the same in the brewery section. I don’t feel like we have a good handle on what a lot of breweries that are participating in this business structure are doing, so we’d like time to make sure that the code accurately reflects business practices. I am also interested in tracking TTB on that, I know some brewers are doing that.

Thank you again for the attention, we are happy with the results.

John Bell – WA Family Wineries

Mr. Bell stated that he wanted to discuss the definition of winery.

Part of the problem that we at Family Wineries have with this, and that I as a small winery owner have with this, is that it forces a business model across the winery landscape which we don’t believe is part of the mission of the Board. I don’t think you want to be in the business of determining how the business models are adopted by various businesses. This particular regulation has to do with forcing a winery to make a certain minimum number of gallons per year despite the business landscape.

For instance I know several wineries that have excess inventory so they don’t need to make any more wine, they need to sell through their inventory. The proposed legislation would have us make wine anyway even if it’s something we don’t want to do from a business standpoint. It also forces wineries that have chosen the négociant model where they buy the components for their wine from other people, blend them at the winery and then bottle, as opposed to making everything from scratch. It is a business model that is valid not just in Washington State but around the world and has been for hundreds of years. In fact

some of the most famous wines out there are négociant wines because you can find blending components that you cannot produce in your own winery.

It's a business model issue that we are talking about here with this minimum production and the requirement that we define somehow beforehand how that wine is going to be made. This is not consistent with good business practice, and I really don't think that is the kind of business that we want our regulator to be in.

That is the part of the legislation that I wanted to discuss today, it is a big issue not only for me but other small wineries. The big guys don't have a problem with it, they can do whatever they want, but the small guys don't want to be forced into minimum quantities of wine every year.

Ms. McCall thanked Mr. Bell for bringing this issue up. She stated that she received that request early on and have already removed that requirement. There is no minimum requirement for production.

Paul Beveridge – WA Family Wineries

Mr. Beveridge thanked the Board for the opportunity to comment on these regulations.

We were very excited at the beginning of the year when these regulations were proposed for update and revision. That is because these regulations have not been updated since the passing of 1183 and the legislature approved tied-house reforms. A lot of what is in this regulation is related to tied-house, a lot of it is done with federal law. We see that several of the federal provisions have been removed and we certainly approve and support that. But we find that this regulation rather than modernize and follow the legislature and citizens directions in the initiative and tied-house reform, it actually takes the industry backwards. It reports to give us permission to do things that are normal business activities that we really shouldn't have to ask permission for. We don't see this as a modernization and are very opposed to this. What I'd like to do is have everybody take out a copy of the regulations and I'll walk you through some of what this stuff does, so you know the impacts.

There a couple of themes here. One is that federal law is already adequate, and do we really want to pile on additional state requirements. Even if they are just an exact copy of the federal requirements, is that really a good use of taxpayer dollars for the Liquor Board to make sure the feds are doing their job. My comments are about wine, but they apply to beer and spirits as well. There are people in this room that don't agree with me and want to see these laws protect the industry from competition. They like the fact that it is hard for competitors to enter the market. What these laws really do is they punish the consumer.

Let's take a look and I'll give you some examples. Go to the first page we've got a deletion. Turns out the deletion is because it's already in the statute. Then we add a bunch of definitions, but those definitions just reference the statute. Then we define custom crush and alternating proprietorship. That's new and I'll get to that in a minute. Then we have the next section of the regulations and this we thoroughly applaud. This is the section that shortens the standards of identity of wine and deletes three and a half pages of state regulations.

Chair Rushford informed Mr. Beveridge that he had 20 seconds remaining and asked that he conclude his comments. She confirmed that the Board had received his previous written comments.

Mr. Beveridge continued, noting that he was in the middle of harvest when the comments were written. There is a lot more wrong with the regulation that what they were able to put in the written comments.

Chair Rushford requested that Mr. Beveridge submit anything further in writing to Karen McCall.

Mr. Beveridge requested to state for the record that he had many more concerns and would like to have the public hearing continued.

Chair Rushford thanked Mr. Beveridge for his comments. Director Garza suggested that Mr. Beveridge be as specific as possible in his written comments.

Mr. Beveridge said that there was not anything in the rulemaking that was necessary in protecting public safety. Everything about public safety is already in the enforcement part of the regulations. This does nothing but punish Washington producers that have to compete internationally. Why are we not supporting our industry and removing these regulations and freeing the grapes rather than proposing new requirements?

Chair Rushford requested that Mr. Beveridge provide further comments in writing to Ms. McCall and thanked him for his comments.

Roland Thompson – Wine Institute

Mr. Thompson stated that he was testifying on behalf of Katie Jacoy who was unable to attend the meeting in person today.

I want to thank Karen and staff for meeting with us prior to this meeting to discuss alternating proprietorships and internet sales. We have concerns with the alternating proprietorships language mirroring or following TTB guidance and we find the issue around fulfillment houses problematic in internet sales.

Finally we want to support the WA Wine Institute in their issue with bulk transfer of wine. We transfer wine between wineries and producers a lot and it's not the sale of wine it's the blending of wine that was spoken to earlier. The wine isn't sold, it's moved between facilities so we can make product. We'd like to have that reflected in these rules as well. We will continue to work with Karen and her team on these issues. Thank you.

Josh McDonald – WA Wine Institute

Mr. McDonald stated that the Institute was founded in 1982 and represents 97% of all wine produced in Washington State.

I want to start off by saying thank you to Karen and staff for meeting to talk about these issues, we've been working on this for quite some time. Learning today that two of our main sections that we felt needed significant more work if they even needed to be part of this rulemaking, between alternating proprietorships and internet consumer orders, is for now being removed from this rulemaking is extremely important. We are grateful for that removal.

Also, as we talked about with Ms. McCall, removing the production requirements is really important for our smallest wineries to be able to continue to function. I've been in many wineries across the state that have far less than that and are trying to grow and be more successful. Those types of requirements don't make sense.

I want to talk quickly about one important issue that has yet to be addressed and that is around the transfer of bulk wine. There is a conversation across the industry now with our regulatory partners around what this means for us and how we can transfer bulk wine. This is a really important part of what we do as an industry, for our smallest wineries to be able to have the space to move their wines, as well as medium and large too. We have requested some language changes, just a few words here and there, but they'll make a tremendous difference in WAC 314.24.070. I know when we met with Ms. McCall we talked about this in depth and we are hopeful we can make these changes prior to the CR-103 and this being finished. We need clarity and we need to be sure that as we continue this practice that we will be able to continue to work as we do now, in this realm of moving wine from one facility to another before it gets blended.

I want to mention the definition of custom crush facility. This is a new definition, and an important one to get right. I have my feelers out to make sure that how we are defining this in WAC is being defined so that what we are doing now is at a minimum being held up as well as perhaps finding some new benefits within that if possible. Again, every size winery uses custom crush facilities to be able to make their wine the way that it makes sense for them. Getting this new definition right is extremely important and that may be something that we may want to pull out until everyone is comfortable with it or just make some changes before this finishes.

With that I want to again thank the staff for working with us for these many months. This is important work, there are a lot of new ideas in here and other ways to make sure we understand how to function.

Perry Preston – WA Family Wineries

Mr. Preston stated that most of the items he wanted to touch on were covered already.

We didn't produce 100 gallons this year, for a number of reasons. So my question was that since we didn't produce are we not a winery anymore, and would we be able to produce next year? The other thing that I was going to touch on was the alternating premises. We need the flexibility to have that or we're going to have to move to a much smaller facility. It sounds like that has already been withdrawn, so thank you very much.

Chair Rushford closed the public hearing and thanked everyone for their input. We will be considering them and evaluating what is possible. We appreciate your participation in this important process.

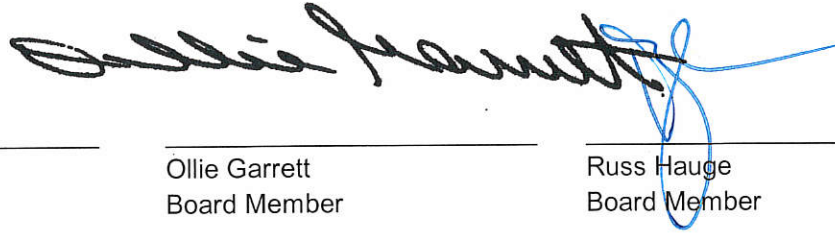
6. GENERAL PUBLIC COMMENT

Chair Rushford invited citizens to address the Board regarding any issues related to LCB business. There were no comments.

7. ADJOURN

Chair Rushford adjourned the meeting at 10:32 a.m.

Minutes approved this 10 day of JANUARY, 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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