PETITION TO AMEND ADMINISTRATIVE RULE
Oregon Liquor Control Commission
of the State of Oregon

In the matter of OAR 845-005-0331 )
) PETITION TO AMEND RULES
) Restricting or Prohibiting the Annual
) Licensing of Outdoor Premises
)

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OLCC
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ADMINISTRATIVE
PROCESS DIVISION

1. The City of Portland, Oregon’s name and address is:

   City of Portland
   Office of Commissioner Fritz, Rm #220
   1221 SW 4th Ave
   Portland, OR 97204

1. The City of Portland, Oregon (Portland) is an existing and duly incorporated municipality
   organized under the laws of the State of Oregon. Portland is the largest municipality in
   the State of Oregon. The most recent population estimates, as determined by Portland
   State University’s Population Research Center, identify the City of Portland’s population
   as being in excess of 580,000.

2. On February 8, 2012, the Portland City Council authorized the filing of this petition with
   the OLCC. Resolution No. 36905

3. Under OAR 845-005-0331, the Oregon Liquor Control Commission (OLCC) has
   acknowledged that licensing of exterior areas is not appropriate under some
   circumstances. Licensing outdoor areas presents a higher likelihood of problems related
   to the interface between the patrons of the location and the surrounding community.
   Neighborhoods within Portland suffer from negative impacts as a result of outdoor alcohol
   service. These include issues related to noise, public urination, trash and disorderly
   behavior. A large amount of resources is expended by the City of Portland to address
   these issues.

4. The Commission recently allowed the licensing of an exclusively outdoor location at 8145
   SE 82nd Ave, where business will be conducted from a canopied area within a pod of
   mobile carts (Cartlandia Liquor License). Support for this application was cited by staff.
   However, this support was based on erroneous conclusions of some community members
   that similar locations with the same outdoor characteristics had been licensed in the past.
   The Commission received letters in opposition from neighbors and Neighborhood
   Associations with similar pods or singular mobile carts that will likely seek licensing in
   outdoor locations, as well.

5. Under OAR 845-005-0413, OAR 845-005-0414, OAR 845-005-0415, and OAR 845-005-
   0440, the Commission allows limited licensing under a temporary status for the purpose of
   events and special circumstances. Limited licenses have been granted to outdoor locations
at Portland’s Waterfront, street fairs, and mobile cart pods, with limited privileges that are more easily enforced in the event that adverse impacts occur to disrupt the community.

6. Portland proposes that the OLCC amend OAR 845-005-133T to clearly prohibit annual licensing at locations in which the proposed licensed premises are not part of an enclosed structure, subject to permit review and approval under the Oregon Structural Specialty Code and related building codes as promulgated by the Oregon Department of Consumer and Business Services, where the business and alcohol service will substantially occur outdoors. Portland further proposes that an exception be created to allow the use of Temporary Licenses where appropriate. A copy of the proposed administrative rule language in full is attached to this petition as Exhibit 1.

7. By statute, the OLCC has exclusive authority over the sale and service of alcohol. Under interpretations of this statutory exclusivity, the OLCC does not consider the application of rules and regulations, whether state or local, when making licensing decisions. Under this statutory interpretation, the OLCC has significant responsibilities for developing rules to mitigate potential harms to Oregon communities potentially associated with the sale and service of alcohol from outdoor premises.

8. This rulemaking process is essential to avoid potentially conflicting or deviating standards of operations at outdoor premises that could lead to complexity and inequity in licensing locations.

9. Mobile food units are limited to vehicles used to sell and dispense food to retail customers, ORS 624.310(8). Mobile food units must obtain and maintain annual licenses from the Oregon Health Authority. ORS 624.320(1); OAR 333-162-0880(1). Under the Oregon Health Authority’s administrative rules, mobile food units must remain mobile during all times of operation. OAR 333-162-0030. Under ORS 471.159(3), the OLCC may not license a premise that is mobile except in some restricted categories of public passenger carriers. The OLCC has recently concluded that the mobility standard does not apply to mobile carts within pods or as single business enterprises, because boundaries can still be defined. ORS 471.159 (1) and (2). As this is a relatively new statutory interpretation from the OLCC, the overlap with other rules and regulations is unexplored.

10. The City of Portland submitted its request that a rule making occur before a decision was rendered by the OLCC in the matter of the Cartlandia Liquor License so that applicants could receive more specific guidance on how to proceed in these instances. While OLCC did not heed the City’s request, the City reiterates its request that the OLCC to avoid potential conflicts with new license requests. This is especially necessary to limit the economic impact on locations that may currently exploring business options, and to ensure that public safety concerns regarding the sale of alcohol outdoors are met.

11. This rule making is essential for the agency to provide guidance to the communities of Oregon regarding the allowable instances of outdoor premises. The significant opposition raised to the Cartlandia liquor license application demonstrates the need for a robust, complete public process to develop enforceable regulations through rulemaking.
12. Under the proposed rule-making language Cartlandia would still be able to acquire a licensing privilege under OAR 845-005-0440. However, there are 796 mobile carts that could potentially seek annual liquor licenses from the Oregon Liquor Control Commission, which further demonstrates the need for haste in this rule making process.

13. Liquor licenses and alcohol establishments have economic benefits as well as adverse impacts to the community. Local police jurisdictions must respond to the added enforcement burden of an entirely new category of licenses. Alcohol related crime is one of the greatest burdens on community infrastructures and police. Portland has seen an unprecedented increase in violence at licensed establishments in recent months. The OLCC must honor its dual mandate and maintain balance between supporting the alcohol industry, while protecting the safety, welfare, health, peace and morals of the people of Oregon. ORS 471.030.

14. The City of Portland believes that adoption of the proposed rules will serve to prevent significant negative impacts on residential neighborhoods and communities and will prevent the unreasonable economic burden required from the use of significant resources from OLCC and the City of Portland to monitor and control permanent outdoor sales of alcohol.

City of Portland, Oregon
Authorized Representative

Name: Amanda Fisher
Title: City Commissioner
City of Portland, Oregon

Date: April 12, 2012
Licensing Exterior Areas

(1) The Commission shall refuse to license an exterior area, and may revoke its approval of an outdoor area previously licensed, for any of the reasons listed in this rule unless the applicant shows good cause that outweighs the refusal basis. The following sections state the refusal reasons that apply to exterior areas.

(2) The applicant or licensee requests licensing of an area controlled by the local governing body, and the local governing body has not approved, or withdraws its approval of, the use proposed by the applicant or licensee.

(3) The exterior area proposed to be licensed is not adjacent to the licensee’s existing or the applicant’s proposed licensed premises.

(4) The applicant or licensee fails to demonstrate there will be adequate supervision of the area so as to prevent violations of the liquor laws.

(5) The applicant or licensee will allow entertainment in the exterior area between 12:00 a.m. and 7:00 a.m.

(6) Licensed Premises are exclusively out-doors.

(a) the proposed licensed premises are not attached to or within an enclosed structure, subject to permit review and approval under the Oregon Structural Specialty Code and related building codes as promulgated by the Oregon Department of Consumer and Business Services. In no case shall good cause be sufficient to overcome this criteria.

(b) An exception to this criteria are locations licensed under OAR 845-005-0413, OAR 845-005-0414, 845-005-0415, 845-005-0440.