

OLCC Handbook



Oregon Liquor and Cannabis Commission



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LICENSEE'S HANDBOOK

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I. INTRODUCTION

The following pages summarize those statutes and rules which are relevant to most OLCC proceedings. This includes several sections of the Administrative Procedure Act, which governs the administrative process for OLCC cases.

Lesson One: The OLCC issues licenses and therefore can take them away.

Lesson Two: Resisting the OLCC's process can be successful.

Lesson Three: The time deadlines to respond are very short. The time period for a license to respond to an accusation is very short.

II. EMERGENCY CHECK LIST

If you are confronted by a law enforcement agency:

1. Cooperate.
2. Don't talk.
3. Gather names of witnesses.
4. Don't obstruct the officers.
5. Gather statements of employees.
6. Note evidence seized.
7. Don't talk.
8. Seek assistance from your OLCC lawyer.
9. Don't talk.
10. Allow law enforcement officers to search or inspect, even without a search warrant.
11. Don't say anything.

III. OLCC AND POLICE RESPONSIBILITIES

THE OREGON LIQUOR AND CANNABIS COMMISSION

In Oregon, the Oregon Liquor and Cannabis Commission (the "OLCC") has the exclusive power to license and regulate the manufacture, possession, sale, purchase, transportation, importation, and delivery of alcoholic liquor and to grant, refuse, suspend, or cancel any alcoholic liquor license. Oregon Revised Statutes ("ORS") §471.730. This means that the OLCC has the power to regulate and control your liquor license.

RESPONSIBILITIES OF POLICE AGENCIES

Police officers are required to enforce state liquor laws and other laws at licensed establishments and to report any violations to the district attorney. ORS §471.605. This means that police officers share jurisdiction with the OLCC Inspectors to enforce liquor laws.

THE DECOY PROGRAM

The decoy program is one way the OLCC and the police handle complaints of sales to minors. The police send a decoy, who is an underage person acting as an agent of the police, into a licensed establishment to see if the establishment will sell alcohol to the decoy.

Decoy programs are conducted throughout Oregon by the OLCC and law enforcement agencies. A licensee in a city with a population of 20,000 or more may be selected for a decoy operation randomly or based upon a documented compliance problem. The OLCC is charged with developing uniform standards for conducting a minor decoy operation. While a failure to follow these uniform standards cannot be grounds to challenge any complaint, citation, or conviction for violation of laws prohibiting sale of alcoholic liquors to minors, the OLCC may not consider any sale to a minor that results from a decoy operation that did not follow the uniform standards.

IV. LIABILITY

The liability of licensees and their employees may fall into three areas of law: criminal, administrative, and civil.

1. CRIMINAL LIABILITY

An owner/licensee, manager, or employee who violates the law, for example, by selling to minors or intoxicated persons, may be guilty of a Class A misdemeanor and could face arrest, fines and/or a county jail sentence. ORS §471.410

If a person is convicted of providing alcohol to a minor, then that person would be guilty of a Class A misdemeanor. The mandatory minimum sentence is: 1) at least a \$500 fine for first conviction; 2) at least a \$1,000 fine for a second conviction; or 3) at least a \$1,500 fine and not less than 30 days of imprisonment for a third or subsequent conviction.

However, if a person did not knowingly or intentionally provide alcohol to a minor and is either licensed or an employee of a licensee with a valid service permit, then a lesser penalty scheme exists: 1) a first conviction is a Class A violation (presumptive fine of \$435); 2) a second conviction is a specific fine violation (presumptive fine of \$860); 3) a third conviction is a Class A misdemeanor with a mandatory minimum fine of at least \$1,000; and 4) a fourth or subsequent conviction is a Class A misdemeanor with a mandatory minimum fine of not less than \$1,000 and at least 30 days of imprisonment.

2. ADMINISTRATIVE LIABILITY

Violations of law, rules, or regulations by employees may also result in the OLCC

taking disciplinary action against the establishment's OLCC license. For instance, the sale of alcohol to a minor by an employee can result in the OLCC taking disciplinary action against your license even if the licensee was not personally involved in the sale.

For the licensee, this could mean:

- a. A fine, suspension, or cancellation of the OLCC license;
- b. A damaged reputation in the community;
- c. A loss of customers;
- d. A forced sale of the OLCC license; or
- e. An outright revocation of the OLCC license.

For the employee, this could mean:

- a. Being laid off during the period when the OLCC license is under suspension;
or
- b. Being terminated.

3. CIVIL LIABILITY

In Oregon, a licensee is liable for civil damages when a visibly intoxicated person or a minor (visibly intoxicated or not) is sold or furnished an alcoholic beverage and that service of the alcoholic beverage is the proximate cause of the death or injury to a third party. ORS §471.565 and 471.567. If a lawsuit is brought against a licensee for damages incurred as the result of a sale to a visibly intoxicated person or a minor, the costs of litigation can be very high even if the licensee prevails in the lawsuit.

V. DISCIPLINARY PROCESS

1. OLCC Inspectors and police officers are charged with enforcing Oregon's liquor laws. While any licensed establishment may be investigated, OLCC Inspectors and police officers usually tend to frequent locations and areas that receive the most complaints.

2. Where do complaints come from?

- a. Your ex-employees
- b. Your competitors
- c. Your neighbors
- d. Parents of minors who find them in possession or under the influence of alcohol
- e. People who see underage persons buying alcohol

3. When an OLCC Inspector or law enforcement officer walks into your

establishment, what should you do?

- a. First, do nothing. Let the inspector or the officer go about his or her business. The inspector or officer will talk to you if he or she wants to. It's your choice whether to talk (see Emergency Checklist).
- b. If the inspector or officer contacts you, be courteous and helpful. That does not mean admitting to any violations. If the inspector or officer does not find any violations in your establishment, he or she most likely will go somewhere else and is less likely to return to your establishment. Remember your Emergency Checklist.

ORS §471.385 Grounds for revoking or suspending permit or imposing civil penalty.

(1) The OLCC may revoke or suspend a service permit, or impose a civil penalty in lieu of or in addition to suspension as provided by ORS 471.322, if it finds or has reasonable grounds to believe any of the following to be true:

- (a) That the permittee has made false statements to the commission.
- (b) That the permittee has been convicted of a felony, of violating any of the liquor laws of the state, general or local, or any misdemeanor or violation of any municipal ordinance committed on the licensed premises.
- (c) That the permittee has performed or permitted any act which would constitute a violation of any provision of this chapter or any rule of the commission, if the act were performed or permitted by any licensee of the commission.

(2) The issuance, suspension or revocation of a permit under ORS 471.360 to 471.390 does not relieve a licensee from responsibility for any act of an employee on the licensee's premises.

(3) When there has been a violation of this chapter or any rule adopted thereunder upon any premises licensed by the commission, the commission may revoke or suspend either the service permit of the employee who violated the law or rule or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(4) The commission may revoke or suspend any license issued by the commission if the licensee knowingly indorses a person's application for a permit when the person has been refused a permit or has had a permit suspended or revoked, or when the licensee fails to comply with any provision to be performed by the licensee under ORS 471.360 to 471.390.

(5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

VI. SALES TO MINORS

ORS §471.410 Provision of liquor to person under 21 or to intoxicated person: mandatory minimum penalties.

(1) A person may not sell, give or otherwise make available any alcoholic liquor to any person who is visibly intoxicated.

(2) No one other than the person's parent or guardian may sell, give or otherwise make available any alcoholic liquor to a person under the age of 21 years. A parent or guardian may give or otherwise make alcoholic liquor available to a person under the age of 21 years only if the person is in a private residence and is accompanied by the parent or guardian. A person violates this subsection who sells, gives or otherwise makes available alcoholic liquor to a person with the knowledge that the person to whom the liquor is made available will violate this subsection.

(3)(a) A person who exercises control over private real property may not knowingly allow any other person under the age of 21 years who is not a child or minor ward of the person to consume alcoholic liquor on the property, or allow any other person under the age of 21 years who is not a child or minor ward of the person to remain on the property if the person under the age of 21 years consumes alcoholic liquor on the property.

(b) This subsection:

(A) Applies only to a person who is present and in control of the location at the time the consumption occurs;

(B) Does not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual unit in which the owner or agent resides; and

(C) Does not apply to a person who exercises control over a private residence if the liquor consumed by the person under the age of 21 years is supplied only by an accompanying parent or guardian.

(4) This section does not apply to sacramental wine given or provided as part of a religious rite or service.

(5) Except as provided in subsections (6) and (7) of this section, a person who violates subsection (1) or (2) of this section commits a Class A misdemeanor. Upon violation of subsection (2) of this section, the court shall impose at least a mandatory minimum sentence as follows:

(a) Upon a first conviction, a fine of at least \$500.

(b) Upon a second conviction, a fine of at least \$1,000.

(c) Upon a third or subsequent conviction, a fine of at least \$1,500 and not less than 30 days of imprisonment.

(6)(a) A person who violates subsection (2) of this section is subject to the provisions of this subsection if the person does not act knowingly or intentionally and:

(A) Is licensed or appointed under this chapter; or

- (B) Is an employee of a person licensed or appointed under this chapter and holds a valid service permit or has attended a program approved by the Oregon Liquor and Cannabis Commission that provides training to avoid violations of this section.
- (b) For a person described in paragraph (a) of this subsection:
- (A) A first conviction is a Class A violation.
- (B) A second conviction is a specific fine violation, and the presumptive fine for the violation is \$860.
- (C) A third conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000.
- (D) A fourth or subsequent conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000 and a mandatory sentence of not less than 30 days of imprisonment.
- (7) For an employee of an off-premises sales licensee who violates subsection (2) of this section while operating a checkout device and does not act knowingly or intentionally, a first conviction is a Class A violation.
- (8) The court may waive an amount that is at least \$200 but not more than one-third of the fine imposed under subsection (5) of this section, if the violator performs at least 30 hours of community service.
- (9) Except as provided in subsection (8) of this section, the court may not waive or suspend imposition or execution of the mandatory minimum sentence required by subsection (5) or (6) of this section. In addition to the mandatory sentence, the court may require the violator to make restitution for any damages to property where the alcoholic liquor was illegally consumed or may require participation in volunteer service to a community service agency.
- (10)(a) Except as provided in paragraph (b) of this subsection, a person who violates subsection (3) of this section commits a Class A violation.
- (b) A second or subsequent violation of subsection (3) of this section is a specific fine violation, and the presumptive fine for the violation is \$1,000.
- (11) Nothing in this section prohibits any licensee under this chapter from allowing a person who is visibly intoxicated from remaining on the licensed premises so long as the person is not sold or served any alcoholic liquor.

ORS 471.346 Uniform standards for minor decoy operations: rules.

(1) The Oregon Liquor and Cannabis Commission shall by rule develop uniform standards for minor decoy operations used to investigate licensees and agents operating stores on behalf of the commission under ORS 471.750 for violations of the laws of this state prohibiting sales of alcoholic beverages to minors. Uniform standards established by the commission under this section apply to all investigations conducted by the commission that use minor decoys. The commission shall encourage all law enforcement agencies of this state to use the uniform standards established under this section for minor decoy operations conducted by the law enforcement agencies.

(2) To the greatest extent possible, the uniform standards established by the commission under this section:

(a) Shall be the same for minor decoy operations conducted by the commission and for minor decoy operations conducted by law enforcement agencies of this state; and

(b) Shall provide for coordination between the commission and law enforcement agencies of this state in conducting minor decoy operations.

(3) The uniform standards established by the commission under this section shall provide that minor decoy operations must be conducted on either a random or a targeted basis in cities with populations of 20,000 or more. Random minor decoy operations shall cover a range of retail outlets. Targeted minor decoy operations may be conducted for a single licensee or agent, but may be used only if there is a documented compliance problem with the specific licensee or agent that is the target of the operation. For the purpose of implementing standards for random minor decoy operations under this subsection, the commission shall by rule adopt a methodology that produces, to the greatest extent possible, an equal chance that any licensee or agent will be subject to a minor decoy operation.

(4) Except as provided in subsection (5) of this section, the failure of the commission or of a law enforcement agency to follow uniform standards established by the commission under this section is not grounds for challenging any complaint, citation or conviction for violation of the laws prohibiting the sale of alcoholic beverages to minors.

(5) In determining whether to impose sanctions based on multiple violations of the laws of this state prohibiting sales of alcoholic beverages to minors, the commission may not consider any complaint filed against a licensee for selling alcoholic beverages to a minor, citation issued to a licensee for selling alcoholic beverages to a minor or conviction of a licensee for selling alcoholic beverages to a minor if the complaint, citation or conviction arose out of a minor decoy operation that was not conducted pursuant to the uniform standards established by the commission under this section.

(6) Notwithstanding any other provision of this chapter, the commission may not consider any sale of alcoholic beverages to a minor that results from a minor decoy operation that is not conducted in compliance with the standards established under this section for the purpose of imposing any civil penalty against a licensee, making a decision on the renewal, suspension or cancellation of a license issued under this chapter or otherwise sanctioning a licensee for the sale of alcoholic beverages to a minor.

(7) The commission shall give notice of the uniform standards established under this section to all law enforcement agencies of this state that conduct minor decoy operations.

ORS §471.130 Requiring statement of age or identification from certain purchasers.

(1) Before selling or serving an alcoholic beverage to any person about whom there is any

reasonable doubt of the person's having reached 21 years of age, a licensee or permittee shall require such person to produce one of the following pieces of identification:

- (a) The person's passport issued by the United States or a foreign government.
- (b) The person's motor vehicle operator's license issued by this state or another state of The United States or a province or territory of Canada.
- (c) An identification card issued under [ORS 807.400](#).
- (d) A United States military identification card.
- (e) An identification card issued by a federally recognized Indian tribe.
- (f) Any other identification card issued by a state or territory of the United States or province or territory of Canada that bears a picture of the person, the name of the person, the person's date of birth and a physical description of the person.
- (g) Proof of the person's participation in the Secure Electronic Network for Travelers Rapid Inspection program operated by United States Customs and Border Protection, the NEXUS program jointly operated by the agency and the Canada Border Services Agency, or a successor to either of those programs that is recognized by the Oregon Liquor and Cannabis Commission.
- (h) Any other form of identification as defined by the commission by rule.

(2) If a person does not have identification as described in subsection (1) of this section, the permittee or licensee shall require the person to make a written statement of age and furnish evidence of the person's true age and identity. The written statement of age shall be on a form furnished or approved by the commission, including but not limited to the following information:

Date

I am 21 years of age or over.

Signature

Description of evidence in support of age and identity:

____ Identification No. (if any)____

____ Identification No. (if any)____

(Fill in information pertaining to any two or more pieces of evidence submitted by the person.)

I hereby certify that I have accurately recorded identification of the evidence submitted to complete this form.

Signature of permittee or licensee

A person under 21 years of age who knowingly misrepresents the person's true age with the intent of obtaining alcohol in violation of ORS chapter 471 may be subject to criminal penalties under ORS 165.805.

PENALTIES FOR A SALE TO A MINOR VIOLATION

FOUR SALES TO A MINOR = CANCELED LICENSE

- 1st Violation – 10-day suspension or \$1,650 fine
- 2nd Violation – 30-day suspension or \$4,950 fine
- 3rd Violation – 30-day suspension
- 4th Violation – Canceled License

BUT, IF IN THE RESPONSIBLE VENDOR PROGRAM:

- 1st Violation -7-day suspension or \$1,155 fine
- 2nd Violation – 10-day suspension or \$1,650 fine
- 3rd Violation –20-day suspension or \$3,300 fine
- 4th Violation – 30-day suspension or \$4,950 fine
- 5th Violation – 30-day suspension and \$4,950 fine
- 6th Violation - 60-day suspension
- 7th Violation - 90-day suspension

WHAT IS THE RESPONSIBLE VENDOR PROGRAM?

Purpose: The purpose of the program is to reduce underage drinking, encourage licensees to adopt specific best practices to prevent sales to minors, and provide licensees with an incentive to give their employees on-going training in responsible alcohol sales and service.

Elements: The program is free, voluntary, and self-monitoring. To participate in the program, licensees must submit an application form to the OLCC. If the application verifies that the licensee meets the qualifications to join the program, the OLCC will send the licensee a membership certificate.

Requirements: The basic requirements of the program are that the licensee: (1) provide on-going training to employees, (2) accept only certain forms of ID for alcohol sales, (3) adopt house policies on alcohol sales and checking ID, (4) post specific signs in the business, and (5) keep records verifying compliance with the program's requirements.

PURCHASE OF AN AGE VERIFICATION DEVICE IN LIEU OF A PENALTY

Pursuant to OAR 845-009-0140, a licensee charged with a sale to a minor may purchase an age verification device to avoid serving the standard suspension or paying the standard fine for a sale to a minor. If a licensee is in the Responsible Vendor Program, then the licensee may purchase an age verification device and on one occasion avoid serving the standard suspension or paying the standard fine on its first or second violation for sale to a minor within a two-year period. However, the licensee is responsible for serving any suspension and paying any fine above the standard penalty.

If a licensee is not in the Responsible Vendor Program, then a licensee may purchase an age verification device in lieu of serving the standard suspension or paying the standard fine for a first violation for sale to a minor. However, the licensee is responsible for serving any suspension and paying any fine above the standard penalty. For a second violation, the licensee can purchase an age verification device in lieu of serving up to ten days of suspension or paying up to \$1,650 in a fine.

Requirements to Purchase an Age Verification Device:

- 1) Notify the OLCC within 15 days of receiving a Notice of Violation that it wishes to purchase an age verification device.
- 2) Must have equipment in place, operative, and being used at every point of sale at the licensed premises within 30 days of receiving the Notice of Violation.
- 3) Must continue using the age verification device for as long as the licensee owns the license.

BEWARE: If a failure to use the age verification device results in a sale to a minor, then the OLCC can increase your suspension or fine.

VII. IDENTIFYING MINORS

It is important to know how minors may look and act in order to keep from selling to them. A minor may look like he or she is in his or her mid-twenties. Under OAR 845-006-0335, a licensee is required to request identification of any person who appears under the age of 26. The following are some, but not all, characteristics that may be observed:

1. PHYSICAL CHARACTERISTICS

- a. Face (acne, pimples, complexion, peach fuzz, baby face)
- b. Eyes (lack of wrinkles, no eye contact, downcast eyes)
- c. Hands (girlish nails and polish, absence of prominent veins)
- d. Body type (undeveloped, skinny, plumpish)
- e. Voice (high pitched, effort made to be deep, nervous, stuttering, whispering)
- f. Sweating

2. BEHAVIOR

- a. Verbal (giggling, loud, arguing)
- b. Demeanor (immature, nervous, childish, inconsiderate, insecure, confused, silly)
- c. Lack of confidence
- d. Trying too hard

3. MANNERISMS

- a. Look (uncoordinated, sheepish)
- b. Sound (vocabulary, talking “cool” or “hip”)
- c. Your impression (furtiveness, guarded, sneaky, evasive)

4. DRESS STYLE

- a. The fashion look (trendy, over-dressed, faddish)
- b. Type of clothes (jeans, gym shoes, rock T-shirts)

5. ACCESSORIES

- a. Hair (unusual length, unusual style)
- b. Jewelry (class ring, friendship ring, cheap-looking imitations)
- c. Make-up (too much, unevenly applied)
- d. School logos

6. COMPANIONS

- a. Young-looking group
- b. Discussion outside before entering
- c. Whispering in the group
- d. Older person in group orders

7. I.D. EXCUSES

- a. “I lost it.”
- b. “I left it in the car.”
- c. “My dog ate it.”
- d. “It got stolen.”
- e. “It got ruined in the washing machine.”
- f. “Come on, don’t I look old enough?”
- g. “I can’t believe you’re asking for my I.D.”
- h. “So-and-so always sells to me.”

However, any given minor may have the appearance of a much older person. This is especially true of minor decoys who may appear much, much, much older. They may appear to be in their mid-twenties both physically and by behavior. Beware.

VIII. PROCEDURES FOR CHECKING IDENTIFICATION

1. Be familiar with the standard Oregon driver's license and identification card formats.
2. Use the "I.D. Checking Guide" booklet to help you to identify out-of-state documents. After looking up the format in the booklet, be sure to take the extra step of scrutinizing the information on the document just as you would with an Oregon I.D. The I.D. Checking Guide is available from: www.driverslicenseguide.com.
3. Ask for I.D. from anyone who appears 30 years of age or younger. By law you must ask for the I.D. of anyone about "whom there is reasonable doubt of the person's having reached 21 years of age." When in doubt, *always* ask.
4. Have the person remove the I.D. from his or her wallet or any plastic holder.
5. Using a flashlight or a "Retro-reflective viewer," look at the I.D. for:
 - a. Oregon holograms;
 - b. Alterations, erasures, mismatched type, information cut-out or pasted on; or
 - c. Fuzzy or dark photos.
6. Compare to see whether the following things reasonably match:
 - a. The photograph with the person. Keep in mind that photos may be old on passports and driver's licenses with extensions. In comparing the person to the photograph, focus your attention on the nose and chin because these features are not changed as easily as are hairstyle and makeup.
 - b. The physical description on the I.D. (height, weight, eye and hair color) with the person's actual appearance.
 - c. The age the I.D. shows the person to be with the age the person appears to be.
7. Feel the I.D. for alterations such as information cut out or pasted on.
8. Question the person about the information on the I.D.:
 - a. Name;
 - b. Date of birth;
 - c. Height and weight; and
 - d. Driver's license number.
9. Have the person sign their name and compare signatures. You can use an "I.D. Register" for this purpose. Minors who get arrested for carrying false I.D.s often claim that their I.D.s were never checked. By keeping a register, you can help prove that they were checked.

10. Request two forms of I.D., one primary, which meets the criteria for being bona fide, and one secondary. The secondary I.D. can be something with the person's name on it such as a credit card, which will help verify he or she is not lying.

11. Do the math! Figure out how old the person is. In many decoy programs the server is "cited" because they asked for I.D., but failed to calculate the person's age. Pre-printed age charts can be helpful.

12. Be aware that minors buy very accurate looking I.D.s from nearby college campuses.

13. Manufactured IDs can fool anyone. Ask questions if the presenter of the ID looks young.

14. The most expensive manufactured IDs have **functioning magnetic strips** on the back. (Re-read 13 above).

IX. SALES TO A VISIBLY INTOXICATED PERSON

The sale of alcohol to a visibly intoxicated person can result in the OLCC filing a disciplinary proceeding against the licensee. A person is visibly intoxicated when the average person in his or her presence can plainly determine intoxication by:

- a. Staggering gait;
- b. Thick tongue or muttering;
- c. Ineffective muscular coordination;
- d. Falling against bar or off stool;
- e. Inability to pick up change;
- f. Uncontrollable voice pitch;
- g. Loud and boisterous behavior;
- h. Blood-shot eyes; or
- i. Disheveled condition of clothes and hair.

Additional signs of intoxication include a person who is:

- a. Overly friendly;
- b. Loud;
- c. Changing volume of speech;
- d. Annoying others; or
- e. Using foul language.

Impaired judgment may be demonstrated by:

- a. Argumentative attitude (e.g., altercations, confrontations or heated arguments);
- b. Carelessness with money;
- c. Irrational statements;
- d. Belligerence;
- e. Loss of train of thought; or
- f. Argumentative with uniformed police.

Signs that the person's reactions are affected include:

- a. Slurred speech;
- b. Slow and deliberate movement;
- c. Decreased alertness; or
- d. Quick, slow or fluctuating pace of speech.

Signs of loss of coordination (muscle control) include:

- a. Fumbling with money;
- b. Swaying or drowsy;
- c. Stumbling;
- d. Bumping into things; or
- e. Falling.

Aspects of physical appearance that may indicate intoxication include:

- a. Red, watery eyes;
- b. Disheveled clothing;
- c. Sweating;
- d. Smell of an alcoholic beverage on person;
- e. Droopy eyelids;
- f. Lack of eye focus; or
- g. Flushed face.

FOUR SALES TO A VISIBLY INTOXICATED PERSON = CANCELED LICENSE

1st Violation – 10-day suspension or a \$1,650 fine

2nd Violation – 30-day suspension or a \$4,950 fine

3rd Violation – 30-day suspension

4th Violation – Canceled License

Receiving a citation or accusation for the sale of alcohol to a visibly intoxicated person seems hopeless. It is not. This is a defensible charge if handled properly from the beginning. The first step is to get names of witnesses, including the person who is allegedly intoxicated,

and his or her friends and employees who witnessed the events and observed the alleged visibly intoxicated person. These witnesses can provide vital information to support your defense.

X. HISTORY OF SERIOUS AND PERSISTENT PROBLEMS

ORS §471.315(c) Grounds for cancellation or suspension of license or imposition of civil penalty.

(1) The Oregon Liquor Control Commission may cancel or suspend any license issued under this chapter, or impose a civil penalty in lieu of or in addition to suspension as provided by ORS 471.322, if the commission finds or has reasonable ground to believe any of the following to be true:

(c) That there is a history of serious and persistent problems involving disturbances, lewd or unlawful activities or noise either in the premises or involving patrons of the establishment in the immediate vicinity of the premises if the activities in the immediate vicinity of the premises are related to the sale or service of alcohol under the exercise of the license privilege. Behavior that is grounds for cancellation or suspension of a license under this section, where so related to the sale or service of alcohol, includes but is not limited to obtrusive or excessive noise, music or sound vibrations; public drunkenness; fights; altercations; harassment or unlawful drug sales; alcohol or related litter; trespassing on private property; and public urination. Mitigating factors include a showing by the licensee that the problems are not serious or persistent or that the licensee has demonstrated a willingness and ability to control adequately the licensed premises and patrons' behavior in the immediate vicinity of the premises which is related to the licensee's sale or service of alcohol under the licensee's exercise of the license privilege.

COULD THE OLCC FIND THAT YOU HAVE A HISTORY OF SERIOUS OR PERSISTENT PROBLEMS?

Look for the following:

1. Frequent police visits;
2. Frequent drunk in public or drinking in public arrests around your area; or
3. Problems in your parking lot or surrounding sidewalks.

When the OLCC gets residential complaints of disturbances either directly from the premises, such as loud music, loud boisterous talk, etc., or from patrons leaving or congregating around the premises and creating a disturbance, it will normally do two things:

1. Explain to the residents to keep logs as to what disturbed them, the date and time they were disturbed, and how they knew the disturbance came from the premises or patrons of the premises.

2. Call the licensee(s) in and give a written warning that the OLCC received complaints.

If the disturbance is not stopped, both of the above will be used against the licensee at a later hearing.

While the police are compiling reports and the neighbors are making log entries, you should be preparing logs yourself, inside and outside, so that you can refute the allegations which may be brought against you six months to a year after the fact.

WHAT CONSTITUTES HISTORY OF SERIOUS AND PERSISTENT PROBLEMS?

1. Too many visits by the police.
2. Too many visits by the sheriffs.
3. Too many calls for service.
4. Too many incident/arrest reports sent to the OLCC.
5. Too many patrons taken away in handcuffs.

XI. THE ADMINISTRATIVE PROCESS

OAR §845-003-0270(1)(a) requires a response to a charging document to be filed within thirty (30) days after mailing of the charging document for violation matters, except for violations of ORS §471.315(1)(c) (History of Serious and Persistent Problems), which response must be filed within twenty (20) days.

OAR §845-003-0270(1)(c) requires a response to a charging document to be filed within sixty (60) days after mailing of the charging document for license or certification refusal or non-renewal, except for non-renewal of a license under ORS §471.313(5) (History of Serious and Persistent Problems), the time limit shall be twenty (20) days.

OAR §845-003-0460(1) & (2) allows the accused licensee to obtain information concerning the OLCC investigation including proposed exhibits and a list of witnesses. Unless ordered by an administrative law judge, copies of exhibits and a list of witnesses must be exchanged no later than 14 days before the hearing date.

Per OAR §137-003-0550, corporations must be represented at a hearing by an attorney.

XII. RESTRICTIONS ON A LICENSE

OAR §845-005-0355(1) defines the instances in which the OLCC can impose restrictions to include when:

- (a) In the absence of a restriction, the Commission has a basis to cancel, suspend/fine or deny the license or service permit;
 - (b) In addition to all or part of a suspension or fine, a restriction may prevent the recurrence of the problem(s) that caused the violation(s);
 - (c) The Commission determines that a restriction is in the public interest or convenience; or
 - (d) The Commission has a basis to refuse the license and the applicant or licensee has submitted a qualifying control or operating plan as good cause to overcome the refusal basis. In these circumstances the Commission shall impose as restrictions those elements of the control or operating plan that the Commission determines are essential to overcoming the refusal basis.
- (2) In determining public interest or convenience reasons to restrict a license or permit, the Commission considers factors that include but are not limited to:
- (a) The character or environment of the neighborhood in which the licensed premises operate;
 - (b) The need to eliminate or prevent conditions that have contributed to or that the Commission reasonably believes will contribute to liquor or criminal law violations by the licensee, patrons of the licensed premises or the public, including conditions that have or are likely to contribute to noise, music or sound vibrations from inside or outside the premises that a reasonable person would consider excessive or obtrusive; or
 - (c) The need to limit the availability of alcohol to minors, visibly intoxicated persons or street drinkers.
- (3) The Commission has determined that it is not in the public interest or convenience to issue or renew:
- (a) A license that allows off-premises sales in an area frequented by street drinkers, unless the Commission restricts the sales of the alcoholic beverages associated with street drinkers;

- (b) A license to a relative or associate of a person whose license was cancelled, surrendered or not renewed because of problems at the premises that involved the person, unless the Commission restricts the relative or associate from permitting the person from being on the premises;
- (c) A license or permit to a person who has a recent history or record of alcohol or drug problems, unless the Commission requires the person to complete an alcohol/drug treatment program and follow the program's recommendations regarding alcohol/drug use or to abstain from alcohol/drug use.

XIII. OREGON LIQUOR CONTROL COMMISSION
PENALTY SCHEDULE
 OAR 845-006-0500 (7)
 (Effective May 1, 2009)

Category	1st	2nd	3rd	4th	5th	6th	7th
I	Cancel						
II	30 days	Cancel					
II(a)	10 days	30 days	Cancel				
III	10 days or \$1,650	30 days or \$4,950	30 days	Cancel			
III(a)	7 days or \$1,155	10 days or \$1,650	20 days or \$3,300	30 days or \$4,950	30 days and \$4,950	60 days	90 days
IV	7 days or \$1,155	10 days or \$1,650	20 days or \$3,300	30 days	Cancel		
V	3 days or \$495	7 days or \$1,155	10 days or \$1,650	20 days or \$3,300	30 days	Cancel	

SANCTIONS

-- These are guidelines only. The Commission can impose a different sanction where appropriate.

-- Amounts are retail, wholesale, and manufacturer licensee civil penalties (\$5000 maximum per violation). Service permittees: multiply days by \$25 (\$500 maximum per violation).

CATEGORIES FOR MOST COMMON VIOLATIONS

CATEGORY I

Statute	Administrative Rule	Violations
471.155		Failed to maintain a bond (manufacturer/wholesaler)
471.315(1)(a)(F)		Habit of using to excess
471.315(1)(a)(I)		Convicted of a felony (Licensee)
471.385(1)(b)		Convicted of a felony (Service Permittee)
471.315(1)(c)		History of serious and persistent problems
471.365(2)		Allowed use of service permit by another
471.405(1)		Sale of alcohol other than as license permits
	845-005-0355(5)	Restriction violation
	845-005-0400	Failed to maintain liquor liability insurance or bond (On-premises consumption)
	845-006-0475	Failed to notify prior to complete change of ownership/Allowed interest in business without prior Commission approval
	845-006-0481	Failed to notify when permanently ceased Full On-Premises Sales operation
	845-006-0498(3)	Operating while suspended

CATEGORY II

Statute	Administrative Rule	Violations
471.315 (1)(a)(B)		Made false statement or representation to induce or prevent Commission action
471.385(1)(a)		
471.425(1)		
471.675		Interfered with investigation
	845-006-0345(1)	Under the influence of intoxicants while on duty
	845-006-0345(2)	Failed to call police at inspector's request
	845-006-0345(4)(a)	Denied inspector/police officer access to premises (during regular business hours)
	845-006-0345(4)(b)	Failed to promptly admit inspector / police officer (premises is or appears closed)

CATEGORY IIa

Statute	Administrative Rule	Violations
471.316	845-006-0348	Unlawful drug activity on the licensed premises

CATEGORY III

Statute	Administrative Rule	Violations
471.315(1)(a)(I)		Convicted of a crime other than a felony (Licensee)

471.385(1)(b)		Convicted of a crime other than a felony (Service Permittee)
471.360(1)(b)		Permitted mixing/selling/serving, or supervising those who do, without a service permit
471.410(1)		Knowingly sold/made alcohol available to a visibly intoxicated person (VIP)*
471.410(2)		Knowingly sold/made alcohol available to a minor
	845-006-0335(1)	Failed to verify the age of a minor (sale/service)
	845-006-0335(3)(a)	Permitted minor to consume alcohol
	845-006-0340(8)(b)	Failed to follow minor control plan
	845-006-0345(1)	Drinking on duty
	845-006-0345(3)	Destroyed or concealed evidence
	845-006-0345(7)	Drive-up window
	845-006-0345(10)	Prohibited conduct: promotions
471.425(2)	845-006-0347(2)	Permitted disorderly activity; Permitted noisy activity
	845-006-0347(3)	Permitted unlawful activity
	845-006-0347(5)	Drinking alcohol in parking lot
471.394	845-006-0370	Accepted or provided financial assistance
471.398	845-013-0001-0110 & 845-006-0426	Failed to effectively communicate
471.478	845-006-0441	Failed to comply with keg law (minors or VIPS involved)
	845-006-0459-0469	Food service violation
	845-009-0145(3), (4)	Off-Premises Sales clerk/liquor agent's

		employee did not complete required training and continued to sell alcohol
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CATEGORY IIIa

Statute	Administrative Rule	Violations
471.410(2)		Knowingly sold/made alcohol available to a minor (Responsible Vendors only)
	845-006-0335(1)	Failed to verify the age of a minor (sale/service) (Responsible Vendors only)

CATEGORY IV

Statute	Administrative Rule	Violations
	845-006-0335(1)	Failed to verify the age of a minor (minor in prohibited area)
471.351(1)		Failed to permit premises or records inspection
471.305		Brewery or Wholesale Malt Beverage and Wine Licensee delivered malt beverages to an unlicensed location
	845-006-0335(3)(b)	Permitted minor to enter or remain in a prohibited area
	845-006-0335(4)	Permitted minor to work in prohibited area
	845-006-0335(6)	Permitted minor entertainer in a prohibited area
	845-006-0340(8)(c)	Failed to make available minor control plan
	845-006-0347(5)	Failed to evict patron

	845-006-0400	Wine Self-Distribution Permittee delivers wine or cider to a non-endorsed retail licensee
	845-006-0425(1)	After hours operation (retail licensees)
	845-015-0140	After hours operation (retail sales agents)
	845-006-0435	Failed to keep required records
	845-010-0170	Retail On-Premises Malt Beverage or Wine Sampling
	845-013-0001(4)	
	845-006-0450	
	845-006-0498(1), (2)(b)	Removed, altered, or covered suspension notice sign
	845-007-0015	Advertising media, coupons
	845-009-0130(2), (5)	Failed to meet training brochure requirements for off-premises employees
	845-009-0145(5)(b),(c)	Failed to notify whether Off-Premises Sales Clerk/liquor agent's employee completed clerk training course
471.480(1)		Sale of alcohol by juvenile (Off-premises sales license)
471.482(1)		Sale of alcohol by juvenile (all other sales licenses)

CATEGORY V

Statute	Administrative Rule	Violations
	845-006-0340 (9)(c)	Failed to post or replace minor postings
	845-006-0345(5)	Unlawfully permitted an open container of alcohol to leave premises
	845-006-0345(6)	Permitted unauthorized

		liquor on premises
	845-006-0345(8)	Gave or permitted liquor as a prize
	845-006-0365	NSF check (licensee used or wholesaler failed to report)
	845-006-0475	Corporate licensee failed to advise of change (other than stock)
	845-006-0480(2),(3)	Changes in premises without prior Commission approval or notice
	845-006-0480(4)	Change of trade name without timely notification
	845-006-0481	Failed to notify Commission of temporary closure
	845-007-0020	Advertising restrictions
	845-007-0025	Advertising signs on licensed premises
	845-007-0035	Failed to remove objectionable and nonconforming advertising
	845-008-0045(2)	Private club sold to nonmember