

PETITION TO ADOPT RULE
Oregon Liquor Control Commission
Of the State of Oregon

In the matter of OAR 845-005-0303) PETITION TO AMEND RULES
) Alcohol Impact Area Restricting Sales
) of Certain Types of Alcohol in a Specified Area
) Around Downtown Portland, Oregon

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

City of Portland
Portland City Commissioner Amanda Fritz
1221 SW 4th Ave
Portland, OR 97204

2. 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, with a population in excess of 300,000. Areas within Portland suffer from serious alcohol-related problems of public intoxication and street drinking. It would require extraordinary resources to identify the particular licensed businesses whose customers contribute to these problems.

3. Under OAR 845-005-0303, the Oregon Liquor Control Commission (OLCC) has acknowledged that rulemaking may be necessary to address such alcohol-related problems by designating an Alcohol Impact Area, establishing uniform limitations and requirements on licensed businesses within the Area. Portland is proposing that the OLCC undertake to adopt such an administrative rule. Portland is proposing that the OLCC restrict the sales of specific types of alcohol within a designated portion of the city where problems of street drinking and public intoxication are particularly acute.

Portland City Council authorized the above representative to present this petition to the OLCC on behalf of Portland on September 15th, 2010 Resolution No. 36815 attached to this petition in Exhibit 16.

4. Portland asks that the Commission adopt an Alcohol Impact Area encompassed by the boundaries set forth below. A copy of the proposed administrative rule language in full is attached to this petition as Exhibit 1.

The area bounded by the Highway 26 and Highway 405 on the South, the Willamette River on the East; and South of NW Lovejoy Street from the Willamette River to NW 9th Ave; West of 9th Ave from NW Lovejoy to Burnside St; South of west Burnside to the 405 freeway; East of 405 and South of Everett until 22nd Avenue on the North Side of Burnside and West of Vista Rd on the South side of Burnside.

5. Portland asks that the Commission adopt an administrative rule limiting the sales of specific types of alcoholic beverages within the Alcohol Impact Area set forth above, to address problems of street drinking and public intoxication within the proposed Area. A copy of the proposed administrative rule language is attached to this petition as Exhibit 1.

The following restrictions and requirements apply to businesses that hold an Oregon Liquor Control Commission (OLCC) off premises sales liquor license except the following; premises that a) operate as a gift shop with no street entrance, that also hold a full on premises or limited on premise license, or operate as a wine store where wine represents over 50% of inventory.

1. With regard to Malt Beverages, a licensee;
 - a. Will not sell single containers of malt beverages, except beverages in 22-24 ounce glass bottles brewed by breweries that fall under the Federal Definition of a Small Brewery for tax purposes under Section 5051(a) (2) of Title 26 U.S.C.
 - b. Will not sell malt beverages over 5.75% alcohol by volume, except beverages produced by breweries that fall under the Federal Definition of a Small Brewery for tax purposes under Section 5051(a) (2) of Title 26 U.S.C.
 - c. Will not sell packages of multiple malt beverages that are larger than 12 ounces per container, or packaged in less than 4 items per package.
2. With regard to Wine and Cider, licensee;
 - a. Will not sell fortified wine or cider over 14 % ABV, except port, sherry, madeira, marsala and vermouth.
 - b. Will not sell wine packaged in a removable bladder or flexible soft package.
 - c. Will not sell wine in quantities greater than 2 liters per package.
3. Employees of licensees located in the alcohol impact area must receive annual training on the responsible service of alcohol by an OLCC approved educator regarding the sale of alcohol.

6. There is a lengthy and pervasive history of street drinking, public intoxication and related problems associated with off premises sales within the proposed Alcohol Impact Area. Street drinking is a chronic problem within Downtown Portland, Oregon; as illustrated by statistics regarding drinking in public and detox-civil holds related to this area.

7. Portland City Code 14A.50.010 makes drinking in public an unlawful activity. In 2009, over 58% of citations for drinking in public given out city-wide were issued within the proposed Alcohol Impact Area. The proposed Alcohol Impact Area itself makes up only 1.2% of the overall square mileage of Portland. Crime statistics compiled since 2000 indicate that 49% to 58% of drinking in public incidents occurring citywide take place within the proposed Alcohol Impact Area annually. A summary of these crime statistics from 2000 to 2010 is attached to this petition as Exhibit 2.
8. Street drinking is associated with disorderly conduct and offensive littering (public urination and defecation). Intoxicated individuals are more likely to engage in assault and harassment. A compilation of crime statistics within the proposed area, as compared to other areas of the city, is included within Exhibit 2.
9. The Portland Police Bureau began tracking detox-civil hold incidents in 2007. Since the bureau began tracking these incidents, nearly 30% of detox incidents on an annual basis have occurred within the proposed Alcohol Impact Area. Detox/Civil holds occur as directed in the Portland Police Bureau Manual of Policy and Procedure Directive 850.10 Custody, Civil Holds page 435. Under this Bureau Directive, Portland Police officers may take an individual into custody if it is evident that a person is unable to care for themselves due to intoxication or incapacitation.
10. Central City Concern (CCC) is a non-profit agency that provides social services in the Portland area. Hooper's Detoxification and Stabilization Center, an affiliate of CCC, provides medical detoxification services. Hooper's "CHIERS" roving response van assesses and transports alcoholics and addicts from the streets throughout the city. For the purposes of data collection, Hooper divides the city into zones, and tracks its admissions geographically. The proposed alcohol impact area corresponds with what is referred to as Zone 1 for the Hooper Detoxification Center. Since 2000, the number of admissions from Zone 1 has continued to grow, and make up the largest percentage of admissions city wide. Zone 1 is consistently associated with more than 60% of the annual admissions for Hooper detoxification center. Ninety four percent of admissions at the Hooper detoxification center are alcohol involved. A summary of the admissions data for Hooper is attached to this petition as Exhibit 3.
11. In an effort to assess the particulars of street drinking, during April through August, 2009 and again from January through April, 2010, security officers employed by Portland Patrol Incorporated contacted individuals drinking on the streets of downtown Portland. During these time periods, PPI officers approached individuals drinking on the street and asked where they purchased their alcohol and what they were drinking. The security officers recorded what forms of alcohol these individuals were drinking, and where the individuals identified they had purchased the alcohol. The records identify where the individual was approached, where they said they purchased the alcohol and what they were drinking. These incidents did not always involve an arrest or citation if a police officer was not available. Four hundred and sixty two PPI reports were used to assess the nature of typical street drinking activity in downtown Portland. Results indicate that street drinking is associated with high alcohol content products in large containers. A summary of these reports is attached as Exhibit 4 to this petition.

12. Portland has undertaken serious and good faith efforts to engage citizens and licensees to cooperate in establishing a voluntary program to address problems of street drinking and intoxication within the proposed Alcohol Impact Area.
13. Portland has sought public input on the proposed Alcohol Impact Area and the restrictions upon sales of specific alcoholic beverages, identified in studies as favored by street drinkers, before filing this petition.
 - a. From August of 2009 to May of 2010, Portland worked with licensees, community organizations, and individual stakeholders to set up a voluntary agreement. The initiative was called “Volunteering as Innovative Businesses to Reduce Alcohol related Nuisances Together”, or VIBRANT-PDX. Portland attended and held 67 public and individual meetings to provide an opportunity for the community and licensees to comment and provide feedback on the VIBRANT-PDX effort. A description of those meetings is attached as Exhibit 5 to this petition.
 - b. Portland undertook efforts to identify and notify those likely to be affected, and to obtain their input, such as obtaining a list of off premises liquor license locations from the OLCC. Sixty nine off premises licenses were located within the initially proposed VIBRANT-PDX area. A copy of the list provided by the OLCC is attached as Exhibit 6 to this petition. Portland mailed information to these licensees regarding the proposal for VIBRANT PDX and the specifics of the initiative. Staff then attempted to visit each licensee twice at their place of business. Those not personally contacted at their place of business were called as a follow up. Each licensee was delivered a survey by mail and in person, seeking input on impact assessment and to obtain feedback on the proposal. Each licensee was invited to three public meetings for discussion of the proposal. An additional 14 off premises liquor licensed establishments were notified when the initial boundaries changed. An additional public meeting was held on April 21, 2010. A summary of the chronological development of VIBRANT-PDX agreement, survey results, and overall feedback is attached as Exhibit 7 to this petition.
 - c. Of the potentially affected businesses, only nine licensees (11 locations) signed the voluntary agreement. Three stated their participation was contingent on 100% participation from the other licensed premises. Of the 32 licensees who declined to participate, 9 refused to participate on the grounds that they felt that a voluntary agreement could easily be violated by their competition with no repercussions, 10 felt the voluntary program was unnecessary, 3 stated the philosophy of free-enterprise was not one they were willing to give up, and 10 licensees did not respond to any of Portland’s outreach efforts.
14. Portland held two public hearings, on August 12, 2010 and in front of Portland City Council on September 15th, 2010, seeking comment from interested persons on the documentation of street drinking and public intoxication within the proposed Alcohol Impact Area, and the proposed rule language. At the August 12th, 2010 hearing, interested persons were given the opportunity to explain why their business operation should be

exempted from the proposed limitation and requirements. At the hearing on September 15th, 2010, amendments were made to the language to clarify the intent. A copy of the meeting notice, minutes and a list of attendees and those who testified are attached as Exhibit 8 to this petition

15. As provided in the OLCC's administrative rule, the proposed Alcohol Impact Area does not take into consideration, nor is it based upon, age, race, sex, disability, marital status, national origin, sexual orientation, color or religion.

16. As of May, 2010, a total 350 OLCC licensed premises existed within the boundaries of the proposed Alcohol Impact Area. A list of these licensed premises is attached to this petition as Exhibit 9. Liquor license types in this area include on- premises licenses, full on premises, limited on premises, brewery, brew pub, and warehouse licenses; as well as off premise licenses. Eighty three of the licenses are off premises liquor licenses, and 43 are off premise liquor licenses with a market operation. Off premise liquor licenses with a market operation are the primary contributors to the problem of street drinking. These stores sell high alcohol content products in large containers for consumption off the premises. A List of the 43 off premises licensed establishments with market operations are provided in Exhibit 10
It would require the devotion of extraordinary resources to identify particular licensed businesses whose customers are contributing to the problem of street drinking and public intoxication. Because the problem is mobile, it is difficult to associate incidents to a particular location without direct observation. Continuous monitoring of 43 different stores through direct observation would require an inordinate amount of local resources. Additionally, although one or two stores may be addressed, the other market locations in the vicinity sell the same products and the problems would persist. Even if only a few incidents arise out of each off premises liquor licensed location, cumulatively the result is the same. Street drinking incidents are a drain on law enforcement resources, and can contribute to more serious incidents and harm to the community.

17. In developing the proposed boundary for the Alcohol Impact Area, Portland tracked the density of street drinking incidents and off premises liquor licensees within this area. According to the analysis conducted by the Portland Police Bureau's Strategic Services, the average street drinker travels 2,521 ft before consuming alcohol after the purchase point. Ninety seven percent of street drinking occurs within 6,000 feet of the location where the alcohol was purchased, indicating that individuals who drink in public are likely to consume alcohol close to where they purchase it. A copy of Strategic Services Summary GIS mapping of where individual purchase alcohol to where they consume is attached to this petition as Exhibit 11. The boundaries of the proposed Alcohol Impact Area are geographical locations (streets; highways, and body's of water) that are within close proximity to the evident density of drinking in public and detox/civil hold incidents and density of off premises licensed establishments. Maps illustrating the density of locations and incidents developed by the PPB Strategic Services Division are attached in Exhibit 12.

18. As provided in OAR 845-005-0303 (4)(f), Portland notes that the proposed rule may impact the 350 OLCC licensees located within the proposed Alcohol Impact Area. An

assessment of the positive and negative impacts of the proposed Alcohol Impact Area follows:

- a. The proposed limitations and requirements of the proposed Alcohol Impact Area may have the following short and long term positive impacts on liquor licensed establishments within the area:
 1. Increased safety for employees and customers as public inebriation, disorderly conduct, harassment, and aggressive panhandling may decrease.
 2. Cleaner environment as alcohol related trash, urination and defecation associated with street drinking is likely to decrease.
 3. Increased livability and economic viability as the impact area will be more attractive to new businesses, customers, and visitors.
 4. The restrictions will be equal across all licensees of the type referred to in section (e) that are covered under the provisions; there will be no variability in the restrictions and all licensees will be treated equally.

- b. The proposed limitations and requirements of the proposed Alcohol Impact Area may have the following short and long term negative impacts on liquor licensed establishments within the area:
 1. On premise licenses may have to increase monitoring of their patrons as individuals who currently drink on the street may seek alcohol within these establishments.
 2. Off premise liquor licensed stores covered under the provisions of this proposal may experience a decrease in sales, although past implementation of alcohol impact areas indicate that reductions in sales will be temporary.

- c. The proposed limitations and requirements of the proposed Alcohol Impact Area may have the following short and long term positive impacts upon the economic viability of the proposed area as a whole:
 1. Increased economic viability for the area businesses and services as the area becomes more attractive for customers, business, and visitors.
 2. Economic savings for regulatory agencies and law enforcement as the demand for resources to deal with street drinking and public intoxication and associated problems and crime decreases.
 3. Decreased shoplifting of the preferred products as they will no longer be available, and therefore less loss by the affected licensees.
 4. Decreased calls for medical resources to address alcohol related issues.

- d. Portland does not believe that the proposed Alcohol Impact Area will have any short or long term negative impacts upon the economic viability of the proposed area as a whole.
- e. Portland believes that the proposed Alcohol Impact Area may decrease costs for public safety enforcement and regulatory agencies in addressing concentrated street drinking and public intoxication, presenting short and long term positive impacts on the surrounding areas and local governing body.
- f. As a potential short and long term negative impacts on the surrounding areas and local governing body, the proposed limitations and requirements of the proposed Alcohol Impact Area may increase the cost for law enforcement in other areas of Portland if displacement occurs. However, other jurisdictions that have utilized similar strategies have not experienced displacement. Summaries of the Alcohol Impact Areas in Tacoma, Washington and Seattle Washington are attached to this document as Exhibit 13. The requirements of the rule also mandate an automatic review after 1 year to access impacts. The possibility of long term negative impacts is minimal.

19. Portland notes that many liquor licensed establishments do not contribute to the documented problems of street drinking and public intoxication within the proposed Alcohol Impact Area. As provided in OAR 845-005-0303 (4)(g), a list of licensed businesses not covered in the proposed limitations and requirements the proposed Alcohol Impact Area is provided in Exhibit 14, attached to this petition. The liquor licenses that are not covered in the language do not contribute to the problem because they do not have an off premises sales privilege, or they have an off premise sales privilege but are not a market store operation and so do not carry the products documented to be contributing to the problem.
20. As provided in OAR 845-005-0303 (4) (h), eleven licensees requested exemptions from the language of the petition. The requests for exemption submitted to the City of Portland are attached in Exhibit 15.

Made in Oregon, licensee of Made in Oregon, requested an exemption because they operate as a gift shop inside Pioneer Place mall with no street entrance. The City of Portland supports the request from Made in Oregon for an exemption, as the licensed operation is in a gift shop with no street entrance, which meets the criteria outlined in the proposed rule language.

Douglas Peterson, licensee of Peterson's Convenience Stores; Peterson's on Morrison, Peterson's on Fourth avenue, and Peterson's on Yamhill responded to the opportunity for an exemption request that his licensed premises do not sell the products that are contributing to the problem and that the rule unreasonably restricts legitimate business and create a negative impression by tourists in the City of Portland. The City of Portland does not support Douglas Peterson's request for an exemption. The Peterson Convenience Stores and the privilege to sell alcohol for consumption off the premises has been

documented to contribute to alcohol related problems in this area. Due to their inherent ability to contribute to the problem of the environment in which they choose to do business, they should be under the same standards and safeguards provided by this rule as other similar off premises liquor licensed locations.

M & P Gustafson, licensee of Georgia's Grocery, requested an exemption from the rule language based on the assertion that they do not sell to street drinkers, that the problem exists because of the high concentration of social service providers and street people, and that clerks should have the primary responsibility of ensuring that individuals do not engage in street drinking. The City of Portland does not support this request because the environment that exists in the proposed alcohol area in connection with the density of off premises liquor licensed locations is the primary reason for the proposed rule. The social service providers within the impact area do not supply alcohol to the people they serve. The operation of Georgia's Grocery and the privilege to sell alcohol for consumption off the premises has been documented to contribute to alcohol related problems in this area. Due to their inherent ability to contribute to the problem of the environment in which they choose to do business, they should be under the same standards and safeguards provided by this rule as other similar off premises liquor licensed locations.

Carters Foodmarts, INC, licensee of Uptown Chevron, requested an exemption due to their participation in the responsible Vendors Program and their belief that the rule will be futile in addressing the problem. The City of Portland does not support this request because the environment that exists in the proposed alcohol area in connection with the density of off premises liquor licensed locations is the primary reason for the proposed rule. The operation of Uptown Chevron and the privilege to sell alcohol for consumption off the premises has been documented to contribute to alcohol related problems in this area. Due to their inherent ability to contribute to the problem of the environment in which they choose to do business, they should be under the same standards and safeguards provided by this rule as other similar off premises liquor licensed locations.

Walgreen's Inc, licensee at Walgreens #4495, requested an exemption because they do not sell single containers, or malt beverages. They also state that the rule does not address homelessness and that the licensee internally and externally monitors the premise. The City of Portland does not support this request because the environment that exists in the proposed alcohol area in connection with the density of off premises liquor licensed locations is the primary reason for the proposed rule. The operation of Walgreen's #4995 and the privilege to sell alcohol for consumption off the premises has been documented to contribute to alcohol related problems in this area. Due to their inherent ability to contribute to the problem of the environment in which they choose to do business, they should be under the same standards and safeguards provided by this rule as other similar off premises liquor licensed locations.

Ted Chong, licensee of Katina's Deli and Grocery, requested an exemption because they have not sold single beers or glass bottles since 2009, or alcohol higher than 5.95 ABV. He asserts that customers and neighbors are happy with their operation and that they only sell to individuals with rent receipts. He also thinks that the rule should be more concerned with drug problems. The City of Portland does not support this request because the

environment that exists in the proposed alcohol area in connection with the density of off premises liquor licensed locations is the primary reason for the proposed rule. The operation of Katina's Deli and Grocery and the privilege to sell alcohol for consumption off the premises has been documented to contribute to alcohol related problems in this area. Due to their inherent ability to contribute to the problem of the environment in which they choose to do business, they should be under the same standards and safeguards provided by this rule as other similar off premises liquor licensed locations.

Joanna and Jung Byun, licensees at McCormick Pier Grocery, requested an exemption because they are scared for their business livelihood. They also stated that they internally sight screen and ask for valid ID, as well as refuse service to intoxicated people. They stated that this should not be a rule. They are most concerned about customers who purchase 16 ounce 6 packs and wine. The City of Portland does not support this request because the environment that exists in the proposed alcohol area in connection with the density of off premises liquor licensed locations is the primary reason for the proposed rule. The operation of McCormick Pier Grocery and the privilege to sell alcohol for consumption off the premises has been documented to contribute to alcohol related problems in this area. Due to their inherent ability to contribute to the problem of the environment in which they choose to do business, they should be under the same standards and safeguards provided by this rule as other similar off premises liquor licensed locations.

Wendell Pilger, licensee of Commodore grocery, requested an exemption because he is selective about the street drinkers he sells to and asks them to leave the area. He asserts that the rule should be statewide or not a rule at all as it will negatively impact his business. The City of Portland does not support this request because the environment that exists in the proposed alcohol area in connection with the density of off premises liquor licensed locations is the primary reason for the proposed rule. The operation of Commodore Grocery and the privilege to sell alcohol for consumption off the premises has been documented to contribute to alcohol related problems in this area. Due to their inherent ability to contribute to the problem of the environment in which they choose to do business, they should be under the same standards and safeguards provided by this rule as other similar off premises liquor licensed locations.

21. The Commission has the authority to implement a rule regarding alcohol impact area as provided under OAR 845-005-0303.
22. In closing, the City of Portland believes that adoption of the proposed rule will serve to address the significant problem of street drinking and intoxication, and the detrimental impact of these problems on the businesses and residents of downtown Portland. The City believes that it has met all of the criteria set forth in OAR 845-0005-0303, and respectfully requests that the Oregon Liquor Control Commission adopt the proposed rule.

City of Portland, Oregon
Authorized Representative

Name:
Title:

Date