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**TO:** Planning and Building Staff

**CC:** Scott Lazenby, City Manager  
Evan Boone, Deputy City Attorney  
Sean Cross, Finance Director  
Amanda Olsen, Finance, Business Licenses

**FROM:** Scot Siegel, Director  
Planning and Building Services

**SUBJECT:** Use Classification of “Bar” and “Restaurant”

**DATE:** June 30, 2015

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In the Community Development Code (CDC), LOC 50.03.002 Use Table, “restaurant” and “bar” are both listed as Commercial Food and Beverage Services, but the CDC does not define the terms. This is problematic because restaurants “with an associated lounge” are permitted in the City’s commercial zones, but bars and cocktail lounges are permitted only in certain commercial zones (GC, HC, EC and MC).

ORS 624.010 Food Service Facilities contains the following definition of “restaurant”:

**624.010 Definitions for ORS 624.010 to 624.121.** As used in ORS 624.010 to 624.121, unless the context requires otherwise:

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**(9) “Restaurant,” except as provided in subsection (9) of this section, means an establishment:**

- (a) Where food or drink is prepared for consumption by the public;**
- (b) Where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared; or
- (c) That prepares food or drink in consumable form for service outside the premises where prepared.

(10) “Restaurant” does not mean a railroad dining car, bed and breakfast facility, intermittent temporary restaurant, seasonal temporary restaurant or single-event temporary restaurant.

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By comparison, Oregon Administrative Rules (OLCC regulations) define “bar” as follows:

**“Bar” means a counter at which the preparation, pouring, serving, sale or consumption of alcoholic beverages is the primary activity. [OAR 845-006-3402(i)]**

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While the State defines “bar” narrowly, the OLCC definition of “drinking environment” (Attachment 1) is useful for making the distinction between bar and restaurant. Where an entire premises is a “drinking environment,” minors are not allowed and we would find the use is similar to “bar.” (Under OLCC rules where drinking predominates the limitations on minors are steeper and the posting requirements more specific.)

An establishment may serve food and not be a restaurant, for example, if it is primarily a bar or tavern (drinking environment) and minors are not allowed. However, under LOC 50.03.002 Use Table, an establishment may contain a bar or lounge and still be a “restaurant.” For purposes of LOC 50.03.002, we have determined that where the entire establishment is a drinking environment and thus minors are not permitted, even if food is prepared and served, the use is “bar” or “cocktail lounge,” or similar use.

#### **CONCLUSION:**

A “restaurant” is an establishment where food is prepared and served on the premises and minors are not excluded as they would be from a bar, cocktail lounge, or similar drinking environment.

Staff should request the following information from business license applicants before completing a land use compatibility statement (zoning verification) for the OLCC and issuing a business license for a bar or a restaurant with a bar/cocktail lounge. Finance has agreed to include the following statement with business license applications:

“For licensing of a restaurant with liquor license, a bar, or similar use, submit the following:

1. Narrative description of proposed use, including food and beverage menus, hours of operation, and any age limits
2. Floor plan identifying bar, bar/cocktail area seating, restaurant seating, and food preparation areas, as applicable
3. Oregon Liquor License application (submit with business license application), as applicable
4. Other information as needed to verify compliance with LOC 50 Community Development Code”

Please let me know if you have any questions.

## **Oregon Revised Statute (Food Service Facilities)**

**ORS 624.010 Definitions for ORS 624.010 to 624.121.** As used in ORS 624.010 to 624.121, unless the context requires otherwise:

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**(9) “Restaurant,” except as provided in subsection (9) of this section, means an establishment:**

- (a) Where food or drink is prepared for consumption by the public;
- (b) Where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared; or
- (c) That prepares food or drink in consumable form for service outside the premises where prepared.

(10) “Restaurant” does not mean a railroad dining car, bed and breakfast facility, intermittent temporary restaurant, seasonal temporary restaurant or single-event temporary restaurant.

(11) “Seasonal temporary restaurant” means an establishment:

(a) That operates at a specific location in connection with multiple public gatherings, entertainment events, food product promotions or other events that are arranged for by the same oversight organization; and

(b) Where food is prepared or served for consumption by the public.

(12) “Single-event temporary restaurant” means an establishment:

(a) That operates in connection with a single public gathering, entertainment event, food product promotion or other event; and

(b) Where food is prepared or served for consumption by the public. [Amended by 1953 c.177 §8; 1957 c.672 §1; 1959 c.153 §1; 1973 c.824 §1; 1973 c.825 §1; 1975 c.792 §1; 1979 c.236 §4; 1987 c.226 §1; 1991 c.468 §1; 1995 c.578 §1; 1999 c.351 §38; 2001 c.900 §210; 2001 c.975 §3; 2003 c.14 §375; 2009 c.595 §999; 2011 c.664 §5; 2013 c.306 §1; 2013 c.554 §7]

## Oregon Administrative Rules

### Oregon Liquor Control Commission – Division 6 Applications: Requirements, Restrictions, Prohibited Conduct

845-006-0340

#### Minor Postings

(1) The Commission is charged with regulating the sale of alcohol in a manner which protects the safety and welfare of the citizens, and ensures that alcohol is used legally. As a policy making body, the Commission has a responsibility to send a clear message to the community and its youth that drinking alcohol is an adult activity, and that drinking environments are for adults. This rule applies only to licenses that allow on-premises alcohol consumption including tastings, except for tasting areas at an Off-Premises license approved under OAR 845-006-0450.

(2) Definitions. For this rule:

(a) "Eating food is the predominant activity" means the Commission has determined that more people eat food than drink alcohol (or the Commission determines that the licensee has reasonably projected this).

(b) "Drinking predominates" means the Commission has determined that more people are, or at times are likely to be, drinking alcohol than not drinking alcohol.

**(c) "Drinking environment" means the Commission determines that there is a combination of conditions or factors in a premises, room, or area which make it likely that minors will obtain alcohol or which create an environment where drinking alcohol is or appears to be the predominant activity. Some examples of factors that contribute to a drinking environment include but are not limited to cocktail tables, a bar, bar equipment and accessories, dim lighting, alcohol advertising, events or entertainment primarily targeted to adults, and events or operations where the monitoring of patron behavior is or could be insufficient to prevent minors from obtaining alcohol.**

(d) "Recent serious violation history" means:

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(g) "Minor" means a person under the age of 21.

(h) "Adult" means a person 21 years of age or older.

**(i) "Bar" means a counter at which the preparation, pouring, serving, sale or consumption of alcoholic beverages is the primary activity.**

(j) “Food counter” means a counter in an area in which minors are allowed and at which the primary activity at all times is the preparation, serving, sale or consumption of food.

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**(n) “Minor control plan” means a written, dated and signed plan submitted to the Commission by an applicant or licensee for a premises, room, or area that shows where and when minors are permitted and the control measures used to prevent minors from obtaining alcohol, prohibit minors when drinking alcohol predominates, and minimize minors’ exposure to a drinking environment.**

(3) The Commission uses Section (5) to assign minor postings to a premises, room, or area where alcohol is consumed or where there is a drinking environment. When the facts do not clearly and convincingly meet the criteria for allowing minors, the Commission interprets the rule to prohibit minors. The Commission does not assign more than one type of minor posting to an area unless there are definable boundaries.

(4) Even when minors are otherwise allowed under this rule:

**(a) Minors may not sit or stand at a bar; however, minors may sit or stand at a food counter;**

(b) Minors may not be in a room or area where there is entertainment which is often found in a drinking environment. Examples include but are not limited to: video lottery games; social games; stage revues; nude entertainment; and wet t-shirt events. Minors may not be in an area where this entertainment is visible.

(c) Subsections (4)(a) through (4)(b) of this rule do not apply to a minor in the immediate company of his/her spouse or Domestic Partner who is at least 21 years of age, if allowed by subsection (10)(d) of this rule.

(5) The Commission uses the following minor posting signs to tell the public where minors are allowed or prohibited, and to assist licensees in controlling the presence of minors. In those circumstances when the licensee’s operation would qualify for a Number III, IIIA, IV, V, or VI minor posting, the licensee may have a Number I or II posting prohibiting minors.

**(a) "No Minors Permitted Anywhere on This Premises", (Number I Minor Posting). The Commission assigns this posting to an entire premises where there is a drinking environment or drinking alcohol does or is likely to predominate most of the time. An example could be a tavern.**

(b) "No Minors Permitted in This Portion of The Premises or at This Bar", (Number II Minor Posting). The Commission assigns this posting to rooms or areas of a premises where there is a drinking environment or drinking alcohol does or is likely to predominate most of the time. Some examples are lounges, gambling rooms, the bar and other rooms or areas where drinking alcohol is the predominant activity.

(c) "Minors Allowed in This Area", (Number III Minor Posting). The Commission assigns this posting to a premises, room, or area where there is no drinking environment and drinking alcohol will never predominate. The Commission does not generally require the Number III sign to be physically posted. Minors may use entertainment devices. Some examples are restaurants and dining rooms in premises with separate lounges.

(d) "Minors Allowed From: \_\_\_ To: \_\_\_ (Hours) On: \_\_\_ (days)", (Number III-A Minor Posting). The Commission assigns this posting to allow minors in a premises, room, or area during times when there is no drinking environment and drinking alcohol does not predominate and to prohibit minors during times when there is a drinking environment or drinking alcohol does or is likely to predominate. Minors may use entertainment devices during the times minors are allowed. An example is a pizza parlor with karaoke during some times. Minors are allowed in the area and may participate in karaoke during the times when there is no drinking environment and drinking alcohol does not predominate.

(e) "Minors Allowed During These Hours Only. On: (days) from: \_\_\_ to: \_\_\_ and only for the purpose of consuming food", (Number IV Minor Posting). The Commission assigns this posting to an area or entire premises that often has a drinking environment to let minors consume food during times when drinking does not predominate and eating food is the predominant activity. Eating food must predominate during all times when minors are allowed, even if minors are not present. Minors may not use entertainment devices in this area.

(f) "Minors Allowed Only with their Parent or Spouse or Domestic Partner age 21 or over", (Number V Minor Posting). The Commission assigns this posting to rooms or areas where the only alcoholic beverages served or consumed are sample tastings of distilled spirits, wine, malt beverages or cider. For purposes of this rule, a sample tasting is defined as a single container with no more than one and a half ounces of wine or cider, three ounces of malt beverages, one-half ounce of distilled spirits for the general public, or one ounce of distilled spirits for a trade visitor.

(g) "Minors Allowed in this Premises or in this Portion of this Premises only as provided in the Licensee's Minor Control Plan Approved by the Commission" (Number VI Minor Posting). The Commission may assign this posting to a premises, room, or area where minors will be allowed only as per the minor control plan approved by the Commission. Minors are allowed only during the days and times or types of events approved in the minor control plan. The Commission will not approve a minor control plan that proposes to allow minors in a premises, room, or area during times when the Commission determines that the predominant activity is the consumption of alcohol or when the drinking environment is not minimized. The minor control plan must be in writing, dated and signed by the licensee, and approved by the Commission prior to operating with this posting.

(6) Temporary Relaxation of Minor Postings. The Commission recognizes that under special, limited circumstances, it may be appropriate to allow minors in a premises, room, or area where minors are normally prohibited. Therefore, the Commission may grant a temporary

relaxation of a minor posting for an occasional event held on a licensed premises. The licensee must submit a written, dated, and signed request, including a minor control plan, to the Commission explaining the details of the temporary relaxation and how the licensee will prevent minors from obtaining alcohol, prohibit minors when drinking alcohol predominates, and minimize minors' exposure to a drinking environment. The licensee must obtain Commission approval prior to temporarily relaxing the minor posting.

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