

February 1, 2022

Oregon Liquor and Cannabis Commission
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Dear Director Marks and Commissioners:

The undersigned are a group of concerned attorneys whose primary legal practice is representing OLCC marijuana licensees and ancillary businesses. We write to strongly urge the OLCC to reconsider its position relative to the retroactive application of House Bill 4016 in consideration of the OLCC's public communications about the recent expiration of the license application pause and the sunset of the producer license moratorium. To avoid further confusion and serious economic harm to applicants, the OLCC should work with the Oregon State Legislature to make House Bill 4016 consistent with the OLCC's communications to the industry and the public at large.

As background, on November 8, 2021, the OLCC released a bulletin announcing that new non-producer applications were being processed and that, beginning on January 2, 2022, the OLCC would no longer inactivate new producer applications. After this bulletin, many of our clients have reported that OLCC representatives have told them that their new applications (including, specifically, producer applications) would be processed.

Following this guidance, many applicants are entering into long term leases, purchasing real estate, and/or making other significant investments based upon the expectation that their applications will be processed. Additionally, business transactions have been abandoned, with litigation on the horizon, as a result of the OLCC's statements.

In contradiction with its bulletins, the OLCC supports a reinstatement and extension to the moratorium with retroactive application to January 2nd, 2022. The inactivation of license applications submitted after January 1st, 2022 will cause significant damages to applicants.

While we understand that agency staff provided clarification of the OLCC's position at a commission meeting, the content of the message was unclear, the speakers were difficult to hear, and the message was given at the end of an especially lengthy commission meeting after a going-away celebration for one of the commissioners. It is notable that none of the applicants we have counseled have been aware of this clarification. And even worse, agency representatives have continued, since then, to tell applicants that their applications would be processed.

A confusing oral statement near the conclusion of a commission meeting – and only issued after what can best be described as a social event – is not the standard of communication to which your licensees, applicants, and the general public are entitled. We urge the OLCC facilitate revisions to

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House Bill 4016 removing retroactive application of the moratorium. This will fulfill the expectations agency staff have given to applicants, avoid significant monetary losses for applicants who have capitalized businesses based on these expectations, and protect the OLCC from lawsuits from these applicants. Alternatively, the OLCC should issue a clear bulletin that the agency is seeking retroactive application of the moratorium and then make it retroactive to the date the bulletin sets forth, which should be a date no earlier than one week after the bulletin. This will allow would-be applicants who have incurred significant costs with respect to their businesses, but not yet applied for a license, to apply.

The moratorium must be reinstated and extended in a way that is consistent with OLCC guidance to the industry and avoids further economic harm to applicants.

Thank you for your consideration. Please do not hesitate to reach out to any of us with any questions or to discuss our concerns and suggestions.

Thank you,

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