

A COMMUNITY COUNCIL'S GUIDE TO LIQUOR PERMIT OBJECTIONS

Please contact the City Prosecutor's Office, if additional copies of this manual are needed. The manual is constantly updated to provide current information.

January 2009

Introduction

The following materials are intended as a tool to get you started in the world of liquor permit objections. It is impossible to cover every scenario possible when it comes to liquor permit applications. Each community is unique, as is each application, each permit premise, and each applicant. Each application must be viewed in the context of how it will impact the community in which it is or will be located.

Ohio law governs liquor permit establishments and the issuance of the permits to operate a liquor permit establishment. Included in the materials is a general discussion of the law pertaining to the legal grounds upon which to base an objection to a liquor permit application. You should be able to apply the law to the facts surrounding a liquor permit application and determine whether there is a legal basis upon which to object before you request the City of Cincinnati to request the Ohio Division of Liquor Control (ODLC) to hold a hearing on the advisability of issuing (or renewing) the liquor permit.

The City of Cincinnati's Administrative Process

On March 26, 2003, City Council unanimously passed a motion transferring the review process of all liquor permit applications other than renewals, and any objections thereto, to the City Administration. The new process increases the amount of time in which the Police can investigate the application by approximately 14 days. The Police Department also assumed additional responsibilities in getting community feedback on the application and in resolving issues between the applicant, the Police Department, and the community at the District level.

The procedure the Administration follows is stated below:

1. Ohio Division of Liquor Control (ODLC) sends notice of an application to:

- (a) the Clerk of City Council, and
- (b) the Chief of Police at the CPD Vice Unit's address. The Police Department is also requested by the ODLC to perform a Personal History Police Check (criminal record check) and return the results to the ODLC.

2. The Vice Unit notifies the following that an application has been filed and the type of application:

- (a) the Community Council of the area in which the permit address is located;
- (b) the Health Department;
- (c) the Community Development Department;
- (d) the Recreation Commission;
- (e) the Park Board; and
- (f) the Police District in which the permit address is located. The Vice Unit prepares a Form 17, a Form 474 and an inspection checklist which is sent to the Patrol Bureau which is forwarded to the District involved

Note: Community Councils are advised to contact their local District Liquor Permit Supervisor in the event of an objection, concern, or desire for additional information pertaining to the liquor permit application. Community Council objections to a permit application must be submitted in writing to the District Liquor Permit Supervisor or the City Manager.

3. The Vice Unit notifies the applicant that an investigation of the liquor permit application will be conducted by the Liquor Permit Supervisor and that the applicant should contact that Officer to expedite the investigation.

4. The CPD Liquor Permit Supervisor conducts an investigation.

(a) The Liquor Permit Supervisor meets with the Community Council for the area in which the permit address is located to determine whether there are issues or concerns pertaining to the liquor permit application.

(b) The Liquor Permit Supervisor interviews the permit applicant.

(c) In the event that there are issues or concerns with the application with either the CPD or the Community Council, the Liquor Permit Supervisor facilitates a meeting between the applicant and the concerned parties to discuss possible solutions to the issues and concerns.

5. The Liquor Permit Supervisor prepares a Form 17 summarizing the investigation and the recommendations regarding an objection to the

application and forwards it to the Vice Unit. Community Council objections are to be attached as a separate document.

6. The Vice Unit prepares a Recommendation Report for an objection or not and forwards it to the Chief of Police for the appropriate signatures. Again, Community Council objections are attached as a separate document.

7. The Chief of Police reviews the Recommendation Report and forwards it to the City Manager.

8. The City Manager's Office assigns a Document Number to the Recommendation Report.

9. The City Manager or her designee reviews the Recommendation Report and determines whether a complete hearing upon the advisability of the issuance, transfer of ownership, or transfer of location of the permit should be requested.

10. The City Manager forwards the Recommendation Report to the Clerk of Council for filing and directs the Clerk of Council to report to the ODLC that a hearing is or is not requested.

Note: A request for a 30 day extension of the ODLC due date would still be made by the Clerk of Council at the request of the CPD or the City Manager on an as needed basis.

A detailed explanation of the City's process is included in these materials and will follow the discussion of the law pertaining to liquor permit establishments in Ohio. It is important to note that at all times, it is Ohio law that governs liquor permits. The City of Cincinnati does not have the power or authority to regulate liquor permits and liquor permit establishments.

Ohio Law

The following is a general discussion of the laws pertaining to liquor permit premises. It is not intended to replace reliance on the Ohio Revised Code. The Ohio Revised Code sets forth the laws that govern liquor permit premises and the grounds upon which the Ohio Division of Liquor Control

(ODLC) may base a denial of a liquor permit application. Municipalities, such as the City of Cincinnati, are notified of an application for a liquor permit for a location within its boundaries. The municipality cannot deny an application. It can only request that the ODLC hold a hearing on the advisability of issuing the permit. A municipality can object to the annual renewal of a permit that has already been issued to a location within the municipality. An objection to an annual renewal may only be made once a year at the time designated by the ODLC. For the City of Cincinnati, objections to annual renewals are generally due to the ODLC by early May. A more detailed explanation of these issues follows.

Who May Hold a Permit

With one exception for H permits, no liquor permit shall be issued to an individual who is not a citizen of the United States and who has not resided in the State of Ohio for at least one year. Additionally, no permit shall be issued to a firm or partnership unless all the members of the firm or partnership are citizens of the United States and the majority of which have resided in this state for at least one year.

There are, however, no citizenship restrictions on shareholders of corporations who apply for a liquor permit. Consequently, individuals who are not U.S. citizens who desire a liquor permit frequently form a corporation and apply for a permit in the corporation's name. Corporate applicants are common. It is important to look at the individuals who are officers of the corporation, the identity of whom is contained in the application itself.

Permit Types

There are more than forty different types of liquor permits available in Ohio and they are held by manufacturers, distributors, retailers, restaurants, and others. With very limited exceptions, permits are for one year. The statutory source and descriptions of the various permit types can be found at R.C. 4303.02 through 4303.23.1. The following is a chart of the most commonly seen permit types and a brief description of the type of sales and the type of beverage covered by the permit.

Permit Types

Permit Name	Statutory Source	Activity Permitted	Substance
C-1	R.C. 4303.11	Retail sale in containers for off premise consumption	Beer
C-2	R.C. 4303.12	Retail sale in containers for off premise consumption	Wine, mixed beverages
D-1	R.C. 4303.13	Retail sale by individual drink or in containers for consumption on or off premises	Beer
D-2	R.C. 4303.14	Retail sale by glass or in containers for consumption on or off premises	Wine, mixed beverages
D-3	R.C. 4303.15	Retail sale until 1:00 am by individual drink for consumption on premises	Spirituous liquor
D-5	R.C. 4303.18	Retail sale by individual glass or in containers for consumption on or off premises	Beer, intoxicating liquor
D-6	R.C. 4303.18.2	Sunday sales under various permits (1 pm - midnight)	Whatever primary permit relates to

Types of Applications

There are essentially three different classifications of applications that pertain to liquor permits: (1) **New**, (2) **Transfer**, and (3) **Renewal**. There are five types of transfers that pertain to liquor permits:

1. Transfer of ownership at the same location;
2. Transfer of location of an existing business;
3. Transfer of ownership and location;
4. Transfer of ownership and location out of safekeeping; and
5. Transfer of shares of stock in a corporation.

The ODLC Makes An Inspection

When the ODLC receives an application for a new permit or an application for a transfer of ownership or location, the ODLC will conduct an investigation which includes an "on-site" inspection of the proposed permit location. The ODLC will inspect the area and will identify all schools, churches, libraries, public playgrounds, and parks located within five hundred feet of the proposed permit premise.

The ODLC will then notify all the schools, churches, libraries, public playgrounds, and parks

that were found within 500 feet of the proposed permit location that such an application has been made and that they have the right to request a hearing on an objection to the application. Those institutions have the ability to object to an application for a new permit, a transfer of ownership, or a transfer of location. They do not have the ability to object independently to a renewal of a permit. Additionally, they do not have the ability to appeal an unfavorable ruling on their objection to the Liquor Control Commission. The ODLC also notifies the City of the application. All of the above have thirty days in which to request a hearing on an objection.

Renewals

Permit holders are entitled to have their liquor permits renewed upon application. In Cincinnati, liquor permits are issued from June to June. The ODLC must have good cause to reject a renewal application. The City may object to a renewal by passing a resolution that specifies the reasons for objecting to the renewal. Only the reasons set forth in R.C. 4303.292(A) shall be considered as grounds for denying a renewal application. Those reasons are discussed more fully below. Consequently, the permit holder is entitled to keep his permit unless the City can prove one of the

grounds set forth in R.C. 4303.292.

Renewal objections are not handled by the Administration. By law City Council must pass a resolution objecting to the renewal of a liquor permit and request a hearing on the issue before the ODLC. Community Councils are notified by the Cincinnati Police Department, Vice Unit, in February of the dates objections must be received by and when the renewals are before the Vibrant Neighborhood, Recreation and Public Services Committee. The Vibrant Neighborhood, Recreation and Public Services Committee reviews the objections voiced and makes a recommendation to full City Council as to whether City Council should pass a resolution objecting to the renewal of the liquor permit.

Again, objections must be based upon the legal grounds set forth in O.R. 4303.292. Schools, churches, libraries, public playgrounds, hospitals, and parks do not get notified by the ODLC of renewals. Those entities must notify the City of their objection or join with a community in an objection.

Grounds For Objections [and what they really mean]

What constitutes legal grounds for an objection has caused a great deal of confusion in the past. The grounds upon which an application can be denied are specifically stated in R.C. 4303.292. The type of application will determine the grounds upon which a denial, and hence an objection, may be based. Understanding the type of application involved and what grounds may be the basis for objecting to that specific type of application is **CRUCIAL** to a successful objection filed by the City, whether initiated by the Police Department, the local Community Council, or any other City agency. Many objections made in the past have been unsuccessful because the grounds stated for the objection were inapplicable to the type of application to which the objection was voiced.

It is important to remember that the ODLC determines whether the evidence establishes a legal ground upon which to deny an application. The objecting party's role is to request that the ODLC review the evidence in order to make the legal determination. The objecting party must, however, have reason to believe that such legal grounds

exist.

Ohio Revised Code 4303.292, **Grounds for Refusal To Issue, Transfer or Renew Permit** reads as follows [and my comments are enclosed in the brackets following each individual paragraph]:

(A) The division of liquor control may refuse to issue, transfer the ownership of, or renew, and shall refuse to transfer the location of any retail permit issued under this chapter if it finds:

[The ODLC is ordered to take action in certain circumstances. "May" means discretionary action; "shall" means mandatory action.]

(1) That the applicant, any partner, member, officer, director, or manager thereof, or any shareholder owning ten per cent or more of its capital stock:

[Most of this information is on the application paper work. The manager, however, is rarely identified on the application. An investigation may have to be conducted to determine who the manager is or will be. The Liquor Permit Supervisor should be able to provide that information by asking him or her to identify the manager, as well as all other employees.]

(a) Has been convicted at any time of a crime which relates to fitness to operate a liquor establishment;

[Emphasis on "convicted." "At any time" means that there are no rules as to how old a conviction can be or what kind of convictions count. All felonies, liquor violations, drug and alcohol related offenses, acts of violence, theft and dishonesty related offenses, administrative violations, and license violations are examples of crimes that relate to fitness to operate a liquor establishment. Criminal records will be investigated by the Liquor Permit Supervisor.]

(b) Has operated liquor permit businesses in a manner that demonstrates a disregard for the laws, regulations, or local ordinance of this state or any other state;

["Operate" includes owning, managing, running, or being in significant control of a liquor permit business, past or present. "In a manner that demonstrates" includes criminal convictions, arrests, or other activity that did not result in an arrest, and is a very broad phrase. "Laws, regulations, or local ordinances" obviously includes criminal laws, regulations, or ordinances, BUT ALSO includes civil and administrative laws, regulations, and ordinances.]

(c) Has misrepresented a material fact in applying to the department for a permit;

[Information provided in the application is false, incorrect, or misleading.]

(d) Is in the habit of using alcoholic beverages or dangerous drugs to excess, or is addicted to the use of narcotics.

["To excess" can be shown by criminal convictions for such offenses as DUI and drug abuse OR by personal observation, admissions, or statements from others.]

(2) That the place for which the permit is sought:

[The building or physical location where the permit premise is/or will be located.]

(a) Does not conform to the building, safety, or health requirements of the governing body of the county or municipality in which the place is located. As used in division (A)(2)(a) of this section, building, safety, or health requirements does not include local zoning ordinances. The validity of local zoning regulations shall not be affected by this section.

[The building/location must be in compliance. A building that has not been issued a certificate of occupancy, for example, is not in compliance. A carry-out that has health code violations, for example, is not in compliance. A bar with fire code violations, for example, is not in compliance. Zoning violations are not included under this section BUT can be used to demonstrate a

disregard for the laws, regulations, or local ordinances.]

(b) Is so constructed or arranged that law enforcement officers and duly authorized agents of the division are prevented from reasonable access to rooms within which beer or intoxicating liquor is to be sold or consumed.

[The location has barriers or blockages that prevent or hinder physical access to the area where the liquor is sold or consumed. A drive-up carry-out, for example, must not hinder access to the interior of the building/location where the alcohol is sold. The Liquor Permit Supervisor will conduct an on-site inspection.]

(c) Is so located with respect to the neighborhood that substantial interference with public decency, sobriety, peace or good order would result from the issuance, renewal, transfer of location, or transfer of ownership of the permit and operation thereunder by the applicant.

[This section applies to quality of life issues. The neighborhood may include one or more than one actual neighborhoods but should be geographically defined. "Substantial interference" is a relative term but is very broad. This section applies, in addition to others, when the community or the Police Department have continual problems or there is a belief that problems will occur if the permit is issued.]

(d) Has been declared a nuisance pursuant to Chapter 3767. of the Revised Code since the time of the most recent issuance, renewal, or transfer of ownership or location of the liquor permit.

[The building/location/business must have been declared a civil nuisance.]

(B) The division of liquor control may refuse to issue or transfer the ownership of, and shall refuse to transfer the location of any retail permit issued under this chapter if it finds:

[The following sections do not apply to renewals but do apply to transfers and new

applications.]

(1) That the place for which the permit is sought is so situated with respect to any school, church, library, public playground, or hospital that the operation of the liquor establishment will substantially and adversely affect or interfere with the normal, orderly conduct of the affairs of those facilities or institutions.

[The location must have some geographical tie to a school, church, library, public playground, or hospital. Substantial and adverse effect or interference will hinge on the individual facts of the case. This section is another reason to conduct an on-site inspection to locate and inform the entities that the Police Department is investigating the application. Quality of life issues may also be present.]

(2) That the number of permits already existent in the neighborhood is such that the issuance or transfer of location of a permit would be detrimental to and substantially interfere with the morals, safety, or welfare of the public, and, in reaching a conclusion in this respect, the department shall consider, in light of the purposes of Chapter 4301., 4303., and 4399. of the Revised Code, the character and population of the neighborhood, the number and location of similar permits in the neighborhood, the number and location of all other permits in the neighborhood, and the effect the issuance or transfer of location of a permit would have on the neighborhood.

[Otherwise known as over-saturation. No bright-line rule exists as to how many permits are too many. Evidence must be submitted regarding all of the permits in the neighborhood. Each neighborhood is unique and must be evaluated individually. An adverse impact on the neighborhood may consist of, for example, overall crime rates, DUI's, property crimes, public intoxication, public urination, littering, traffic, and parking problems, just to name a few. This section also addresses quality of life issues.]

(C) The division of liquor control shall not transfer the location or transfer the ownership

and location of a permit under division (B)(3)(b) of section 4303.29 of the Revised Code unless the permit is transferred to an economic development project.

[This applies to those permit types for which the City of Cincinnati is over-quota and will be monitored by the ODLC.]

(D) The division of liquor control shall refuse to issue, renew, transfer the ownership of, or transfer the location of a retail permit under this chapter if the applicant is or has been convicted of a violation of division (C)(1) of section 2913.46 of the Revised Code.

[R.C. 2913.46(C)(1) is Organizational Trafficking in Food Stamps.]

(E) The department of liquor control shall refuse to transfer the ownership of or transfer the location of a retail permit under this chapter while criminal proceedings are pending against the holder of the permit for a violation of division (B)(1) of section 2913.46 of the Revised Code. The department of job and family services shall notify the department of liquor control whenever criminal proceedings have been commenced for a violation of division (C)(1) of section 2913.46 of the Revised Code.

[R.C. 2913.46(B) is Trafficking in Food Stamps.]

(F) The division shall refuse to issue, renew, or transfer the ownership or location of a retail permit under this chapter if the applicant has been found to be maintaining a nuisance under section 3767.05 of the Revised Code at the premises for which the issuance, renewal, or transfer of ownership or location of the retail permit is sought.

[A civil nuisance must be declared.]

More Discussion of The Law

A successful objection to a liquor permit application requires that the City establish by a preponderance of the evidence any of the

applicable grounds set forth in R.C. 4303.292. If there is an appeal to the Liquor Control Commission, the issues on appeal are limited. In an appeal on the issuance or transfer of location of a permit, only the reasons for refusal contained in R.C. 4303.292 shall be considered. In an appeal on the transfer of ownership of a permit, only the reasons for refusal contained in divisions (A) and (B)(1) of R.C. 4303.292 shall be considered (not over-saturation). In an appeal on the renewal of a permit, only the objections considered at the initial hearing shall be considered (not new or additional objections), but additional evidence may be presented and additional witnesses may testify.

Quotas

The number of each permit type that may be issued by the ODLC in Cincinnati is determined by a quota system based on the population of the City of Cincinnati as a whole. Ohio law provides that one C permit may be issued for each 1,000 population and one D permit for each 2,000 population in the City. The population count for Cincinnati currently used by the ODLC is 332,458. Thus, a total of 333 of each C permit can be issued to locations in the City. A total of 167 of each D permit can be issued to locations in the City. As of January 26, 2009 there were D3, D4, D5, C1 and C2 permits available in Cincinnati, but no D1 or D2 permits available due to quota restrictions. A decrease in population will cause a jurisdiction to be "over quota" for a permit class. Permits in Cincinnati are issued from June to June.

It is not uncommon for applications for carry-out C1 (beer) and C2 (wine, mixed beverages) permits to be filed with the ODLC at the same time. Notice to the City of the applications, however, frequently arrives at different times. The City of Cincinnati is usually just over quota for C2 permits and the ODLC has a backlog of applications for the C2 permits. Notice of the application will not be sent to the City until a permit is actually available. Thus, an objection submitted to an application for a C1 permit will not automatically be considered an objection to a later C2 application. Separate objection letters must be submitted to both. A subsequent objection letter should reference the earlier objection. Failure to object to a subsequent C2 application will result in

the issuance of that liquor permit.

Identification of Individuals

Any person, which includes firms and corporations, may apply for a liquor permit to conduct a business. Applicants are required to identify by name and address each person having a legal or beneficial ownership of the business for which the permit is required. If the person is a corporation, then the applicant must list the names of each officer of the corporation and each person owning or controlling ten per cent or more of the corporation. If the person is a partnership or association, then the applicant must list the names of each partner or member of the association. The ODLC must be notified of any changes in the ownership occurring after the application or issuance of the permit.

What Does All Of This Mean?

All of this means that a successful objection case requires an application of the law to the facts before a decision to object is made. After a decision to object has been made and a hearing is requested, the time will soon come to present the evidence to the ODLC, which will decide whether the permit will issue (or renew) or not.

OBJECTION INVESTIGATIONS

Before you can apply the law to the facts of a particular application, you must have some facts about the application. The Cincinnati Police Department, Vice Unit, will notify the Community Council for the area in which the permit premise will be located that an application has been filed. The notification will include the applicant's name, the address for the permit premise, and the type of permit.

More information should be gathered. The District Liquor Permit Supervisor will be conducting an investigation for the Police Department and can share some, but not all, of the information they have gathered. There are additional areas a community can investigate. The following are some suggestions:

1. Review the type of application involved.

The legal grounds upon which an objection can be based differs depending on the type of application involved and are set forth at R.C. 4303.292.

2. **Inquire as to the people involved.** Who has applied for the permit? Who will be running the establishment? Have they come to any community meetings? Have they shared their plans with the community? Has the community invited them to any meetings to discuss their plans and be informed of the community's concerns? It is important to find out who will actually be working at the establishment and who will be in charge if not the actual permit holder.

3. **Take photographs and or videos of the area outside the permit premise of any problems (crowds, litter, etc.).** Note any problem spots nearby, other permit premises in the area, churches, schools, playgrounds, etc., in the area. Make sure you know the addresses that apply to the permit premise and the surrounding agencies or entities.

4. **Contact the churches, schools, playgrounds, businesses, neighboring communities, etc.** in the area. Ask if they are experiencing or noticing any problems with the permit premise. Follow up on their leads. Ask them to document their problems (dates, times, photographs, names of residents personally affected, etc.). Remember, if a hearing is requested, witnesses will have to appear to testify. You and/or the City attorney will need a list of witnesses' names and addresses in order to notify them of the hearing date and location. Advise those witnesses that they themselves should start collecting evidence to be used at every hearing.

5. **Examine the area surrounding the permit premise.**

a. Determine if the operation of the permit premise will substantially and adversely affect or interfere with any school, church, library, public playground, or hospital in the area.

b. Determine if there are quality of life issues for the residents and businesses in the area.

6. **Review the number and types of permits already in the neighborhood.**

a. Determine if the issuance of a another permit would be detrimental to and substantially interfere with the morals, safety, or welfare of the public.

b. Be prepared to compare and contrast the "problem" permit premise with similar permit premises in the area that are not a "problem." Specifics as to the demographics of the neighborhood must be introduced at the hearing.

Evidence Checklist

All objections must be supported by the appropriate documentation and evidence. The following list is intended as a guide and is not all inclusive of the types of evidence that can be used at the hearing. Remember to work with the District Liquor Permit Supervisor who may have additional suggestions or ideas. **Note:** All evidence and documentation must be updated prior to every hearing! All evidence must be provided to the Prosecutor's Office in a timely manner to ensure that there is time to adequately prepare for the hearing.

1. **Photographs and/or videos** of the permit premise and the surrounding area.

2. **A map of the area** showing the permit premise and other permit premises, schools, churches, playgrounds, businesses, etc.

3. **Photographs or video tapes** of the problems - crowds, litter, etc.

4. **Calendars or logs** of the dates, times, and nature of problems. Also, notes of when and what was said to applicants and or permit holders regarding problems.

5. **Witness list** of civilian and police witnesses who should be notified for hearings. The witness list should include badge numbers and District assignments for police officers and mailing addresses for civilians.

6. **Letters and petitions** that include the names and addresses of individuals who oppose the permit application.

7. **Community Council documentation** of actions, discussions, and votes pertaining to the application.

8. **Data** regarding the population size of the neighborhood, neighborhood boundaries, geographic size of the neighborhood, and the type and location of other liquor permits in the area.

Further Discussion of Objections

The ODLC determines whether any of the legal grounds exist and, thus, deny the application.

Objecting parties raise the question that legal grounds may exist. By requesting a hearing, they are requesting that the ODLC review the evidence and answer the question of whether the evidence establishes one or more of the legal grounds to "refuse to issue, transfer, or renew [the] permit."

Renewals

The ODLC may refuse to renew a permit if the applicant, any partner, member, officer, director, or manager, or any shareholder owning ten per cent or more of the capital stock has been convicted at any time of crimes which relate to fitness to operate a liquor establishment; has operated the permit premise with a disregard for laws, regulations or ordinances; has misrepresented a material fact in the application process; or is in the habit of using alcohol or drugs, or is addicted to drugs.

The ODLC may also refuse to renew a permit if the permit premises do not conform to building, safety, or health requirements (but not zoning requirements); if the premises are such that law enforcement officers do not have reasonable access to the areas where liquor is consumed or sold; if the premises have been declared a nuisance; or if the premises are located such that the renewal would cause substantial interference with the public decency, sobriety, peace or good order of the neighborhood. This last ground for objecting (adverse impact on the neighborhood) must always be considered and can cover a broad range of problems. Additionally, the ODLC shall refuse to renew a liquor permit if the applicant has been convicted of violating R.C. 2913.46(C)(1) (this ground for objection applies to organizations which knowingly allowed its employee or agent to Traffic In Food Stamps) or if the applicant has been found to be maintaining a nuisance under R.C. 3767.05.

The Police Department must be sensitive to the quality of life concerns of local businesses, agencies, residents, and the Community as a whole. The Community concerns, however, will not determine whether the Police Department will object to a renewal. Whether the Police Department objects to a renewal of a liquor permit depends on whether the Police Department is of the opinion that the continued operation of the permit premise will substantially interfere with the neighborhood.

Community Councils should submit a request in writing to the District Liquor Permit Supervisor and can submit a request in writing to the Neighborhood and Public Service Committee of City Council that Council object to the renewal of a permit based on the Community's opinion that the continued operation of the permit premise will substantially interfere with the neighborhood or any of the other relevant grounds. Such a request can be in letter form addressed to the Neighborhood and Public Service Committee of City Council and should contain the concerns and basis for the Community objection. Submitting the request to the Liquor Permit Supervisor ensures that the Police Department knows of the Community Council concerns.

New

The ODLC may refuse to issue a new permit for all the same reasons for which the ODLC can refuse to renew a permit as discussed above. The ODLC also may refuse to issue a new permit if the permit premise is situated with respect to any school, church, library, public playground or hospital so that the operation of the liquor establishment will substantially and adversely affect or interfere with the operation of those facilities; or if the number of permits already existent in the neighborhood that the issuance of the permit would be detrimental to and substantially interfere with the morals, safety, or welfare of the public. The ODLC shall refuse to issue a new permit if the applicant has been convicted of violating R.C. 2913.46(C)(1) - an organization which knowingly allowed its employee or agent to Traffic In Food Stamps, or if the applicant has been found to be maintaining a nuisance at the location under R.C. 3767.05.

Remember that the ODLC will independently inspect the location of a new liquor permit premise and will independently notify any school, church, library, public playground or hospital within 500 feet that an application has been filed. The above agencies may object themselves and should also join the City in an objection. The agencies, however, should object in their own name and not rely solely on the City's objection. Follow up with a check at the agencies within 500 feet to verify that they did receive notification of the application

and that their objection will be submitted before the deadline set by the ODLC. If the agency did not receive notification and it is located within 500 feet of the new permit premise, then contact the Vice Unit Commander, Melanie Reising of the City Prosecutor's Office, or the ODLC directly. The ODLC will come out and re-inspect if there is a dispute about whether one of the specified agencies is in fact located within 500 feet and should be given the opportunity to object.

The impact the new permit premise will have on the neighborhood must also be considered from the Police Department's perspective. The Police Department can object based on how the new permit is expected to affect the neighborhood. Schools, churches, playgrounds, etc. within 500 feet or not, as well as residents, businesses, and business owners make up the neighborhood. Contact them and consider the impact of a new permit premise from their perspective.

Over-Saturation

Saturation in the neighborhood can be another ground upon which to base an objection to a new liquor permit application. Saturation, or over-saturation, or too many liquor permits in a given neighborhood is frequently the basis for a Community Council objection. How many permits is too many for a neighborhood will be determined on a case by case basis. What may be "too many" for one neighborhood may not be "too many" for a different neighborhood. What may be "too many" for a residential area may not be "too many" for a business area. Each neighborhood and area has unique characteristics that set them apart from other neighborhoods and areas, and each must be considered separately.

In reaching a conclusion of over-saturation, the ODLC must consider the character and population of the neighborhood, the number and location of similar permits in the neighborhood, the number and location of all other permits in the neighborhood, and the effect the issuance or transfer of location of a permit would have on the neighborhood. In other words, evidence of all the other liquor permits in the neighborhood must be presented, as well as evidence of the neighborhood demographics.

Transfer of Ownership

Although the grounds for objecting to a transfer of ownership application are set forth in R.C. 4303.292, it is important to remember that the application is for a transfer of **ownership**. The real issue is whether the new or prospective owner should be allowed to be the new owner of the permit. If the application is denied, the new or prospective owner will not be allowed to be the permit holder. The permit, however, is still owned by someone and the permit premise will continue to operate. Objections to this type of application should focus on the new owner and what affect the new owner will have on the operation of the permit premise, not on whether the particular permit premise should remain in operation. If, however, the permit premise is a "problem," then object based on any of the grounds relevant to the "problems."

Community Councils frequently object to a transfer of ownership application and give as the basis for their objection that they do not want another permit premise in their neighborhood. Such an objection indicates a lack of understanding of the different application types. Again, a successful objection to a transfer of ownership application will not make the permit premise go away. It only means that the prospective owner will not be allowed to be a holder of a liquor permit. If there are problems associated with the permit premise, then document the dates, times, and types of problems. An objection to the annual renewal of the permit can be made at the appropriate time.

Transfer of Location

The ODLC shall refuse to transfer the location of a liquor permit for all of the same reasons for which the ODLC can refuse to renew a permit as discussed above and for all the same reasons for which the ODLC can refuse to issue a new permit as discussed above. The ODLC must deny the application for a transfer of location if any of the grounds set forth in R.C. 4303.292 are established.

Focus the analysis of whether to object or not on the proposed or new location of the permit premise. As in the case of a transfer of ownership, a denial of the application for a transfer of location does not mean that the permit will go away. A

denial only means that the permit will not be allowed to operate at the proposed location. You must also investigate how the permit premise has been operated in its current location. The current location may be in a different neighborhood and District. If the permit premise has been a problem bar or carry-out in one location, there may be reasons to believe it will be a problem bar or carry-out in the new location.

Transfer of Ownership & Location

An application for the transfer of both the ownership and location of a permit premise may be filed with the ODLC. The application covers both transfers. Consequently, the determination of whether to object to the application may be based on either the proposed owner or the proposed location, or both.

Stock Transfer

A corporation may be the holder of a liquor permit and all holders of ten percent or more of the stock of the corporation must be identified. If a transfer of the corporation's stock is proposed such that the transfer of stock will result in a change of the owner of the majority stock, then the transfer of stock is considered a transfer of ownership and an application for such must be filed with the ODLC. The application is treated the same as a transfer of ownership application.

Criminal Record Checks

Criminal record checks will be done on the permit holder, the employees, and agents. Businesses that are the named permit holder are owned and operated by individuals. Those individuals must be identified. The Liquor Permit Supervisor will check the criminal record of the business itself (there may be Building Code violations, Dance Hall violations, tax charges, etc.) as well as the named partners, stock holders, and owners. Corporations, partnerships, and businesses can be and are charged with criminal offenses in the corporate name, the partnership's name, or the business name.

The types of criminal convictions that can be the basis of an objection are too numerous to list. At the very least, the Police Department should object if any individual has any conviction relating

to a liquor permit premise, any theft related conviction, DUI, alcohol or drug related charge, felony conviction, or any conviction pertaining to dishonesty. The Police Department should object if the business has any type of conviction.

Summary

Determine whether problems in the area or neighborhood can be linked to the permit premise. Determining a link between the permit premise and area problems should not be difficult. A little investigation frequently reveals such links. Meet with the Liquor Permit Supervisor and the beat officers to get their input. The Police Department may not always receive reports of all the problems in the area. Whether activities are related to the permit premise or not is a determination the Hearing Officer will make. The Prosecutor or attorney representing the City will argue why the evidence shows that the activities are related; however, the arguments can be made only if the evidence is gathered.

Also be advised that the grounds upon which an objection to a renewal can be based are limited. Objections to transfers and new permit applications have additional grounds upon which an objection can be based. Over-saturation (too many permits in the neighborhood) is **not** a ground upon which a renewal objection can be made. An adverse impact on a school, church, library, public playground, or hospital alone is **not** a ground for objecting to a renewal. These two grounds apply to new permit or transfer of ownership and/or location objections only. Note, however, that schools, churches, libraries, playgrounds and hospitals are part of a neighborhood. They should be considered as such when deciding whether the renewal of a liquor permit will substantially interfere with the public decency, sobriety, peace, or good order of the neighborhood.

Annual Renewal Objections Are Different From The Other Objections

As discussed previously, liquor permits are automatically renewed unless the ODLC has "good cause" to reject the renewal application. Quality of

life issues with the community frequently go hand-in-hand with Police Department objections to annual renewals. Annual renewal objections must be presented to City Council for a Resolution of Objection before the ODLC will conduct a hearing.

How To Object To Annual Renewals

Once it has been determined that an objection to a liquor permit's annual renewal will be made, you must submit the proper paperwork to ensure that City Council will ultimately object to the renewal. The Vice Unit will notify Community Councils when the deadline is for returning an objection. The Vice Unit will also send to all of the Police Districts a memo or Form 17 with the due dates for objections. All Community Council objections to an annual renewal must be submitted in writing to the Liquor Permit Supervisor. All Community Council annual renewal objections must detail the nature of the objection with supporting documentation attached.

All documents generated as support for an objection must be copied prior to the hearing before the Neighborhood and Public Service Committee and before the hearing before the ODLC Hearing Officer. The District file must always contain a copy of all documentation and paperwork pertaining to a liquor permit. **Do Not** allow the only copy of a document to be presented into evidence at hearing. It is the District Liquor Permit Supervisor's responsibility to maintain the District files and they must have copies of all documentation.

Annual renewal objections are scheduled to be heard before City Council's Neighborhood and Public Service Committee in City Council's Chambers on the third floor of City Hall during both a regularly scheduled daytime meeting and a specially scheduled evening Public Hearing. Objecting community councils should appear before the Neighborhood and Public Service Committee to explain to the Committee why the community council is requesting a resolution of objection and be prepared to supply the details supporting the objection. The District Liquor Permit Supervisor is not scheduled to appear on behalf of the community council, but will be present to answer questions from the Committee pertaining to any objections from that District.

The purpose of appearing before the Neighborhood and Public Service Committee is to convince the Committee that a resolution of objection is the appropriate action for City Council to take. All supporting documentation must be brought to the Committee hearing.

HEARINGS

There are different stages at which a hearing can be held during the process of objecting to a liquor permit. Annual renewal objection hearings are as follows: (A) the Neighborhood and Public Service Committee, (B) City Council, (C) ODLC Hearing Officer, and (D) the Ohio Liquor Control Commission. Hearings for objections to applications other than annual renewals start with the hearing before an ODLC Hearing Officer. Understanding the nature and purpose of each of these hearings will give you a better understanding of how to prepare your case.

Vibrant Neighborhood, Recreation and Public Services Committee

All liquor permit renewal objections are placed on the agenda of the Vibrant Neighborhood, Recreation and Public Services Committee for report. City Council has too many issues to deal with as a single body. Various committees have been formed so that the committees can delve into the issues more thoroughly and then make recommendations to the full Council for action. If an objection is voiced by any of the City agencies or community councils, the objections will be heard first by the Committee.

The hearing before the Vibrant Neighborhood, Recreation and Public Services Committee is a vital step in the process of objecting to the renewal of a liquor permit. The hearing is the opportunity given to the objecting party or agency to convince the Committee to recommend that City Council pass a resolution of objection. If the Vibrant Neighborhood, Recreation and Public Services Committee does not agree that the objection should proceed, the entire process may stop. In other words, if you do not convince the Committee that City Council should object to the renewal, then the permit will be renewed as if you never objected.

Technically, if the Committee does not

recommend to the full Council that a resolution of objection be passed, the objecting party can request an opportunity to address the full Council at the next Council meeting. The objecting party can address the full Council and argue why a resolution of objection should be passed. Although this can be done procedurally, it is unlikely that the full Council will go against its Committee's recommendation. It is, however, something to keep in mind if you can marshal the support of the Police Department and the Community to back the objection.

Again, each liquor permit premise is unique. This guide cannot address all possible reasons you may have for objecting to a permit. You must keep in mind the legal grounds for an objection as set forth in R.C. 4303.292. The law as stated in R.C. 4303.292 is broad.

Full City Council

The hearing before the full City Council is generally a hearing in name only. There is no requirement for the objecting agency to be present at the Council meeting. Keep in mind, however, the permit holder or his allies may appear and request the opportunity to address the Council members. If the Vibrant Neighborhood, Recreation and Public Services Committee voted to recommend a resolution of objection, then City Council will generally pass the resolution of objection with no discussion. There is no guarantee, however, that the full City Council will do as the Committee recommends. Any Council member can speak on the issue, as can the applicant or anyone else who requested to speak to Council. As indicated above, the full City Council can be swayed to take an action different from that recommended by the Committee. An appearance by the Community Council, although not required, may prevent the full City Council from taking action different than the Committee recommendation.

Ohio Division of Liquor Control

If City Council passed a resolution of objection to an annual renewal of a liquor permit, or the City Manager requested a hearing for an objection to any other liquor permit application, then there **WILL BE A HEARING** before an ODLC Hearing

Officer unless the applicant withdraws the application or the permit is revoked by the Ohio Liquor Control Commission for other reasons. The hearing before the ODLC Hearing Officer will be scheduled at the ODLC's convenience anywhere from approximately 30 to 180 days after the resolution was passed or the request for hearing was received. The hearing will be held in Cincinnati City Hall.

The hearing before the ODLC Hearing Officer is an administrative hearing at which the rules of evidence apply (but loosely). Witnesses are sworn, testimony is presented, the applicant may cross-examine the witnesses, and exhibits are presented. In summary, it is much like a trial in which we have to prove our case. The applicant may also present evidence, including witnesses, documents, and any other exhibits he so chooses. At the conclusion of the hearing, the Hearing Officer returns to Columbus and prepares a recommendation report to the Director of the Division of Liquor Control. The Director issues his decision anywhere from 30 to 90 days later.

Liquor Control Commission

An appeal of an unfavorable ruling by the ODLC to the Liquor Control Commission may be made by either side. If an appeal is filed, a hearing de novo or new hearing will be conducted before the Ohio Liquor Control Commission in Columbus. Although there are certain limitations on the hearing before the Liquor Control Commission, all the same evidence presented at the first hearing will be presented again. More or different witnesses may testify before the Commission and more or different evidence may be presented, however, the evidence is limited to the original issues.

COMMUNITY COUNCIL OBJECTION LETTERS

All objections by Community Councils to liquor permit applications or to annual renewals must be submitted in writing. The "objection letter" submitted must state that the Community Council is objecting and the reasons for the objection. The objection letters are reviewed by either the Vibrant Neighborhood, Recreation and

Public Services Committee (in the case of annual renewals) or the Administration (in all other cases) to determine whether legal grounds exist to support the objection. If legal grounds to support the objection do not exist, then the objection will not be forwarded to the ODLC.

A well-prepared objection letter will increase the likelihood that a hearing before the ODLC will be requested by the City. Objection letters should be specific in the description of the basis for the Community's objection to the application. Detail the nature of the problems and concerns with the application. If the issues, concerns, and/or problems constitute a legal basis for the denial of the permit, the City will request that the ODLC hold a hearing on the advisability of the issuance or renewal of the permit.

Objection letters that fail to include specifics that would constitute legal grounds to support the denial of the application will not result in a hearing request. Beware that general objections to all liquor permit establishments in the community or that a certain business does not fit into the long term vision for the community, without more, are insufficient to generate a hearing request.

Objection letters should be submitted to the Liquor Permit Supervisor for all objections, annual renewal or otherwise. The Liquor Permit Supervisor should be your contact person for the Cincinnati Police Department on all liquor permit objection matters. The Liquor Permit Supervisor and your Neighborhood Officer should be keep informed of all problems a community is experiencing with a liquor permit premise. Both Officers should also be made aware of any concerns or issues pertaining to a liquor permit application. Remember, all objections **must be in writing**.

How Strong is the City's Case?

- 1) WEAK Case: Quantity and Quality of Evidence is Relatively Weak – i.e., Not Very Significant Evidence for ODLC to Consider.

Example: - NEW OWNER to location
- Location was source of problems IN THE PAST
- No liquor license at location for a period of time

- 2) 50/50 Case: Quantity and Quality of Evidence is Good, BUT Some Evidence is Either Lacking in Some Areas or Not Entirely in Our Favor.

Example: - Evidence of hot spot location
- Evidence shows burden on police
- Owner has history of good management
- Owner has spotless record & strong business plan with demonstrated business skills

- 3) VERY STRONG Case: Quantity and Quality of Evidence is Very Strong, AND NO Significant Evidence Against Us.

Example: - Hot Spot Location
- Bad Owner (criminal background, uncooperative with police & community)
- location bad for school, church, or park
- owner has no plan for addressing problems as they arise