

Community options for dealing with a problem liquor permit premises



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COMMUNITY OPTIONS FOR DEALING WITH PROBLEM LIQUOR PERMIT PREMISES

There are three ways a community may cease liquor permit privileges at a problem premises. These methods include:

- Local option election;
- Padlock procedures to close a nuisance permit premises;
- Local legislative authority objections to the annual renewal of a liquor permit.

Local Option Election to Affect an Entire Election Precinct

A local option election involves ceasing alcoholic beverage sales of all liquor operators in the precinct. Sections 4301.32, 4301.33, 4301.34, 4301.35, 4301.36, 4301.37, 4301.39, 4301.40 and 4305.14 of the Ohio Revised Code are the applicable laws dealing with local option elections affecting an entire voting district.

A local option election allows the voters of a particular election precinct to decide if the sale of beer, wine and spirituous liquor shall be permitted within the precinct. Note: It is extremely important to comply with all of the time limits, filings, petitions, etc., as required by these statutes.

More information regarding local option elections can be obtained from local Boards of Elections. Instructions for local option petitioners are available by calling the Secretary of State's Office at 614/466-2585.

Padlock Procedures to Close a Nuisance Permit Premises

An option which is of special importance to local officials and residents is the padlock procedure. By establishing that a permit premises is a nuisance, it may be ordered closed for one year.

Sections 3767.01, 3767.03 and 3767.05 of the Ohio Revised Code define what constitutes a nuisance and set forth the procedures to be used in seeking to padlock such a location. This type of action is brought in the local court system and may be instituted by any of the following:

- The Ohio Attorney General;
- The director of law of any municipal corporation or township;
- The solicitor of any village;
- The county prosecuting attorney;
- Any person who is a citizen of the county in which the nuisance exists.

A padlock action may be brought against any building, room, etc., where alcoholic beverages are manufactured, sold or possessed in violation of law and against all property kept and used maintaining it. Violation of law includes sales to an underage person, and any food stamp or drug violation.

After such an action is filed, if it appears to the satisfaction of the court that such a nuisance does exist, a temporary injunction may be issued restraining the defendant from conducting or permitting its continuance until the conclusion of the trial. The court may also preliminarily restrain the defendant from removing or interfering with any of the property that is the subject of the action.

If, at the trial’s conclusion, the court finds that the material allegations of illegality are proven, the padlocking of the property for one year may be ordered.

A certified copy of the judgement shall be filed with the Board of Elections in the county in which the nuisance exists. This filing would allow electors the ability to exercise a site-specific local option election for the permit premises declared a nuisance. However, no election shall be conducted until all appeals have been exhausted.

Further, the Division of Liquor Control is required to deny the issuance, renewal or transfer of any retail liquor permit if the applicant has been found to be maintaining a nuisance at the premises where the permit is sought.

Before undertaking a padlock proceeding, the following points should be considered.

1. Section 3767.04 of the Ohio Revised Code provides that all nuisance actions must be brought in the common pleas court of the county where the nuisance is located.
2. Local law officials or prosecuting attorneys are usually in a better position to initiate such action due to two factors:
 - a. The action must be brought in the local court system.
 - b. The probable witnesses are most likely either local residents and/or local law enforcement officials. Such familiarity and local nature of witnesses makes case preparation much more convenient and thorough.

3. Finally, these types of cases often take a great deal of time.

The equitable burden of proof in proving the existence of a nuisance is higher than the normal administrative burden before the Liquor Control Commission.

Local Legislative Authority Objections to the Annual Renewal of a Liquor Permit

Although not required by law, the Division of Liquor Control informs legislative authorities that they may object to annual permit renewals. They must adopt a resolution stating the reason for objecting and forward a copy to the division no later than 30 days before the expiration date of the permit. It must be accompanied by a statement from the chief legal officer that they have reviewed the resolution, and in their opinion it is based on substantial legal grounds.

For more detailed information regarding renewal objection procedures, please see the division’s publication “How to Object to the Issuance of a Liquor Permit,” or call the Licensing Office at 614/644-2431, or see the division’s web site at: www.com.ohio.gov/liqr

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