

# **FILE**

**MPT-2: *City of Ontario***



**CITY OF ONTARIO**  
City Hall  
131 West Fifth Street  
Ontario, Franklin 33875

**MEMORANDUM**

**To:** Applicant  
**From:** Lawrence Barnes, City Attorney  
**Date:** July 27, 2010  
**Re:** Liquor Control Commission Procedures

Since becoming City Attorney, I have been reviewing city ordinances for the Liquor Control Commission (“the Commission”). Any establishment in the city that sells or serves alcohol must hold a liquor license, which is issued by the Commission. When a licensee faces charges that could result in a fine or the loss of a license, the licensee is entitled to a hearing before the Commission. The Mayor and City Council believe that the present procedures for such hearings are cost-effective and expeditious. However, I want to ensure that Commission decisions reached following these procedures will be given preclusive effect and so cannot be relitigated in state and federal courts.

I have attached the applicable city ordinances, outlining the Commission’s authority and hearing procedures. The only standardized form used in Commission proceedings is the attached “Notice of Liquor Control Violation.”

Please prepare a memorandum analyzing whether, under the applicable legal authority, courts would extend preclusive effect to decisions rendered under the procedures set forth in the city ordinances. Your memorandum should:

- Identify which city procedures already comply with the requirements for preclusion;
- Identify which city procedures do **not** comply with the requirements for preclusion, and describe how those procedures should be changed for preclusive effect; and
- Explain how the changes you recommend would affect the city’s goals of cost and time-effectiveness.

You need not draft the language of any of your proposed changes; I will draft any changes that may be needed.

**CITY OF ONTARIO**  
**MUNICIPAL ORDINANCES**

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Chapter Two: LIQUOR CONTROL ORDINANCES

2-1. **Liquor Control Commission.** The Mayor and the City Council shall constitute the Liquor Control Commission for the City of Ontario. The Commission is charged with the administration of the Franklin Liquor Control Act and the City Liquor Control Ordinances in the City of Ontario. The Mayor, acting on behalf of the Commission, shall have the following powers and duties:

1. To receive applications, investigate applicants, and grant, renew, or deny liquor licenses;
2. To enter or authorize any law enforcement officer to enter, at any time, any premises licensed under these Ordinances in order to enforce the ordinances of this City;
3. To maintain and update records relating to the granting or denial of liquor licenses;
4. To receive liquor license fees;
5. To conduct hearings and render decisions; and
6. To impose penalties, including fines and loss of license as provided in Section 2-5 of this Ordinance, and to receive any fines.

2-2. **Notice; Hearings.** If any licensee is charged with violation of any applicable law or ordinance, the Mayor shall issue written notice of the charge or charges against the licensee. Except under the emergency procedures in Section 2-6 of this Ordinance, no licensee shall be fined and no license shall be suspended or revoked prior to a hearing pursuant to this Section. Any licensee wishing to contest the charges must request a hearing concerning the charges within 10 business days of the notice. The Mayor shall conduct the hearing, which shall be held no later than five business days after the request.

- 2-3. **Conduct of Hearings.** The Mayor shall have the power to issue subpoenas for witnesses. The Mayor shall have the power to place witnesses under oath, rule on objections, dismiss charges, conduct the evidentiary hearing in an efficient manner, and issue a fine and/or suspend or revoke a license as provided in this Chapter. The Mayor shall secure a court reporter for the hearing, costs of the reporter to be borne by the City.
- 2-4. **Burden of Proof; Evidence.** The City shall have the burden of proving by a preponderance of the evidence the charges alleged against the licensee. Without the need for live testimony or other foundation, the Mayor will admit into evidence any report by the police or other investigative authority relevant to the charges. The City may also present evidence through other means. The licensee may cross-examine the witnesses presented by the City and may present evidence in its defense. The City may cross-examine the witnesses presented by the licensee and may present rebuttal evidence. The hearing shall be informal and the Franklin Rules of Evidence shall not apply.
- 2-5. **Penalties for Violation. \*\*\*\***
- 2-6. **Emergency Procedures. \*\*\*\***  
[remaining provisions omitted]

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**NOTICE OF LIQUOR CONTROL VIOLATION**

Notice to \_\_\_\_\_ (name of licensee)

You are hereby notified that you have been charged with violating Section(s) \_\_\_\_\_ of the State of Franklin Liquor Control Act and/or the City of Ontario Liquor Control Ordinances. As a result of these violations, you will be penalized as provided in Section 2-5 of the City of Ontario Ordinances, including but not limited to fines, suspension of your liquor license, or revocation of your liquor license.

If you seek to contest the charge(s), you may contact the Office of the Mayor of the City of Ontario. Upon contacting the Office of the Mayor, you will receive further instructions about the procedures to be followed in connection with your claim. For further information concerning this process, please see the Ordinances of the City of Ontario, which you may also obtain by contacting the Office of the Mayor.

If you fail to contact the Office of the Mayor, it will be assumed that you do not dispute the charges against you and the penalties being imposed.

\_\_\_\_\_  
(date & signature)

Mayor

City of Ontario, Franklin