



Municipal Law News

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LOCAL GOVERNMENT AUTHORITY TO REGULATE LIQUOR LICENSES

-Lisa J. Hamameh

You may have heard that the Michigan Liquor Control Commission ("MLCC") changed the rules regarding local government's authority to regulate liquor licenses. Now that the dust has settled, what do those changes really mean?

CHANGES IN APPROVAL PROCESS

Prior to July 1, 2012, local government approval was required before the MLCC would issue a new liquor license (a license which has not been previously issued by the MLCC), or approve a transfer of an existing liquor license (transfer of ownership, transfer of interest, or transfer of location). However, effective July 1, 2012, the MLCC changed that procedure by requiring local government approval only for a new on-premises liquor license. An on-premises liquor license allows for the sale of beer, wine, and spirits for consumption on the licensed premises. Therefore, local government approval is no longer required to transfer an existing on-premises liquor license, to issue a new off-premises liquor license, or to transfer an existing off-premises liquor license. An off-premises liquor license allows for the sale of beer, wine and spirits for consumption off the licensed premises. The MLCC has created a helpful chart summarizing the required approvals for every on-premises and off-premises liquor license and permit. The chart, which was last updated on Dec. 21, 2012, can be found at:

<http://1.usa.gov/1a5HmrZ>

The MLCC will continue to consider the opinions of local residents, the local legislative body, and the local law enforcement agency in accordance with the Michigan Administrative Code, AC,

R 436.1105(2), which sets forth factors the MLCC shall consider in determining whether to approve an application for a liquor license or permit.

ENTERTAINMENT PERMITS

Prior to Dec. 4, 2012 the MLCC required local government approval for all applications for dance permits, entertainment permits, topless activity permits and extended-hours permits, in addition to MLCC approval. MCL 436.1916(10).

However, on that date, a Michigan federal court struck down part of that law in a case entitled *S.A Restaurants, Inc. v. Deloney*, 909 F Supp 2d 881 (ED Mich 2012). That case held unconstitutional and unenforceable the law requiring local government and MLCC approval for various permits, including dance, entertainment, topless activity and extended-hours permits as a prior restraint on expressive activity.

Since that decision, the MLCC no longer requires local government approval for dance, entertainment, topless activity or extended hours permits.

ORDINANCES

The Michigan Administrative Code, AC, R 436.1003, requires a licensee to comply with all state and local building, plumbing, zoning, sanitation and health laws, rules, and ordinances as determined by the state and local law enforcement officials who have jurisdiction over the licensee.

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Recently, the Michigan Court of Appeals in *Maple BPA, Inc. v. Charter Township of Bloomfield* affirmed the local government's authority to enforce local regulations. This case involved Maple BPA's request for a liquor license at its convenience store and gas station in Bloomfield Township. The request met all of the MLCC requirements and would have been approved. However, the request did not meet all of the requirements of the Bloomfield Township Zoning Ordinance, which had regulations that differed from the regulations of the MLCC. After Bloomfield Township objected to the issuance of the liquor license, the MLCC denied the application because it did not comply with the Bloomfield Township Zoning Ordinance. Maple BPA appealed the MLCC's decision, and the Court of Appeals upheld the Ordinance and the decision of the MLCC.

This decision confirms local government's ability to regulate liquor licenses through properly drafted zoning ordinances.

CONCLUSION

Despite the scuttlebutt, the MLCC has not completely stripped local government of its authority to regulate liquor licenses. The MLCC still requires local government approval prior to issuing new on-premises liquor licenses. It continues to consider the opinions of the local residents, the local legislative body, and the local law enforcement agency in its decision-making process. Further, upon approval of a liquor license, it includes the following language in its Order:

Under Administrative Rule 436.1003, the licensee shall comply with all state and local building, plumbing, zoning, sanitation and health laws, rules and ordinances as determined by the state and local law enforcement officials who have jurisdiction over the licensee. Approval of this license by the Michigan Liquor Control Commission does not waive any of these requirements.

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The licensee must obtain other required state and local licenses, permits, and approvals before opening the business for operation. The licensee's failure to comply with all laws and rules may result in the revocation of the approval contained in this order.

NOW WHAT?

The MLCC and the courts have confirmed local government's ability to adopt and enforce ordinances that regulate liquor licenses, if those ordinances are properly drafted and not preempted by state or federal law.

To restore its ability to properly regulate liquor licenses, local governments, with the assistance of legal counsel, should review and update their liquor licensing ordinances to ensure they are properly drafted, in compliance with all relevant laws, and require approval of all new and transferred licenses and permits. With the assistance of legal counsel, local governments should also review and update their zoning ordinances to ensure the desired regulations are current and enforceable.

Do you have any questions regarding liquor licenses? Contact Lisa Hamameh at lhamameh@fosterswift.com or 248.539.9906.

WATCH WEBINAR RECORDINGS

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NEW RULES FOR ACTIVITY NEAR AM TOWERS

-Ronald D. Richards

This article summarizes proposed new FCC rules that apply to any municipality that is looking to build a new tower (such as a water tower or cell equipment tower) near an existing AM tower, to change an existing tower's height, or to add or replace antennae or transmission lines on a tower. As of this article's date, the rules have not yet taken effect, but it appears likely the rules will take effect very soon. The FCC released a draft of its proposed rules. This article summarizes the draft rules.

BACKGROUND

In AM radio, the tower itself is the antenna. So, putting a new tower near an AM tower may distort the AM station's signal. To guard against that distortion, the FCC proposed new rules to protect AM stations from distortion caused by nearby tower work. The proposed rules relate to requirements on broadcast and wireless entities, but since many municipalities own cell towers on which wireless entities locate antennae and change antennae, municipalities should be aware of the new rules, too and make sure they comply.



Here's a picture of a Michigan AM tower. Photo Credit: <http://www.michiganbroadcasttowers.com/towers/sea03.html>

Existing FCC rules on work near AM stations specify fixed distances within which work is presumed to affect the AM station. The new rules would require notice to AM station owners and others when certain work is done within a set distance of an AM station. Warning: some of the new rules are very technical, including the ways to measure "safe" distances from the towers.

But a municipal engineer should be familiar with these concepts and easily do the needed calculations and likely should be consulted if there is work on a municipal-owned tower that is near an AM station.

SUMMARY OF PROPOSED RULES

- **Purpose of the Proposed Rules.** Parties proposing to build or modify a tower that is near an AM station are responsible for taking precautions to avoid distorting the AM station's signal.
- **Proposed Rules for construction near a non-directional (single antenna) AM station.** You must give notice to the AM station owner 30 days in advance whenever there is proposed construction or significant modification of a tower that is (a) one wavelength away from the AM station, and (b) taller than 50 electrical degrees at the AM frequency. The new rules specifically define "significant modification" and describe the type of notice to be given.
- **Proposed Rules for construction near a directional (multiple antennas) AM station.** You must give notice to the AM station owner at least 30 days in advance for all proposed construction or significant modification of a tower that is (a) within the lesser of 10 wavelengths or 3 kilometers of the AM station, and (b) is taller than 36 electrical degrees at the AM frequency.
- Those proposing to build or modify a tower that falls within the distances listed above must examine the potential effects of their actions using the "moment method" analysis (yes, another area for the engineer to chime in on).

If you have any questions about the new proposed FCC Rules, or work near an AM station tower, please contact Ron Richards at r-richards@fosterswift.com or 517.371.8154.



MARK YOUR CALENDARS

INDUSTRY NEWS

MTA's 61st Annual Educational Conference & Expo is being held Jan. 28-31, 2014 at the Grand Traverse Resort. This year's theme is "Harvest the Knowledge." The conference hosts more than 1,000 local leaders providing the opportunity to learn from thought leaders, governance experts and other fellow township officials. We are sponsoring the Ask the Lawyer session so come with your questions! For more information:

<http://bit.ly/1eAThTW>

MML's 2014 Winter Institute will take place Jan. 28-31 at the McCamly Plaza Hotel in Battle Creek. The Winter Institute provides professionals with the opportunity for professional development covering topics including EVIP, Healthcare, web-based service delivery, government finance, bond rating, social media and labor relations. For more information: <http://bit.ly/196qhyC>

FOSTER SWIFT NEWS

With so many elections occurring in 2014, be sure your municipality is following Michigan Campaign Finance law. Attorney Eric Doster has written a book titled *Michigan Campaign Finance*, available on Amazon, explaining the complex regulatory scheme of Michigan campaign finance. Contact Eric Doster at edoster@fosterswift.com or 517.371.8241 for more information.

DO YOU HAVE WEBINAR IDEAS?

Are there topics you want more information on? We have some ideas, but we want to know the topics most important to you.

If you have ideas, please let us know. Send your suggestions to info@fosterswift.com. We appreciate your feedback.

MUNICIPAL ATTORNEYS

GROUP LEADER

Anne M. Seuryneck
616.726.2240
aseuryneck@fosterswift.com

Michael R. Blum | 248.785.4722
Karl W. Butterer | 616.726.2212
Nichole J. Derks | 616.796.2516
James B. Doezema | 616.726.2205
Laura J. Genovich | 616.726.2238
Brian G. Goodenough | 517.371.8147
Lisa J. Hamameh | 248.539.9906

Richard L. Hillman | 517.371.8129
Michael D. Homier | 616.726.2230
John M. Kamins | 248.785.4727
Thomas R. Meagher | 517.371.8161
Brian J. Renaud | 248.539.9913
Ronald D. Richards | 517.371.8154

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