

16

Liquor Licenses

Kelly A. Allen
Lisa J. Hamameh

- I. Overview §16.1
- II. Michigan Liquor Control Commission (MLCC)
 - A. Composition and Duties §16.2
 - B. Authority §16.3
 - C. Divisions and Units §16.4
- III. Municipal Authority and Powers
 - A. In General §16.5
 - B. MLCC Procedures Regarding Municipal Approval §16.6
 - C. Preemption by State Law or Regulation §16.7
 - D. Ordinances
 - 1. Liquor Licensing Ordinances §16.8
 - 2. Zoning Ordinances §16.9
 - 3. Bistro Ordinances §16.10
 - E. Agreements
 - 1. In General §16.11
 - 2. Approval Resolution for New Liquor Licenses When Implementing Agreement §16.12
 - F. Committees §16.13
- IV. Availability of Liquor Licenses
 - A. In General §16.14
 - B. The Quota System §16.15
 - C. Licenses Exempt from the Quota System
 - 1. In General §16.16
 - 2. Redevelopment Licenses §16.17
 - D. Liquor License Transfers §16.18
- V. On-Premises Retail Licenses
 - A. Types §16.19
 - B. Municipal Approval Requirements §16.20
- VI. Off-Premises Retail Licenses
 - A. Types §16.21
 - B. Municipal Approval §16.22
- VII. Permits Issued by the MLCC
 - A. In General §16.23

- B. Dance, Entertainment, Topless Activity and Extended Hours Permits §16.24

VIII. Municipal Objection to Renewal or Revocation of License

- A. In General §16.25
- B. Procedure to Request Revocation or Object to Renewal of an On-Premises Liquor License §16.26
- C. The Effect of Nonrenewal §16.27
- D. The Effect of Revocation §16.28

IX. Alcoholic Beverage Consumption in Unlicensed Premises §16.29

- X. Enforcement of Liquor Code and Rules §16.30

Forms

- 16.1 Sample Liquor License Application for Use by a Municipality
- 16.2 Letter from Municipality Regarding Conditional Approval of New Liquor License
- 16.3 Local Government Approval Form
- 16.4 MLCC Notice of Deficiency
- 16.5 Sample Local Government Resolution Seeking Quota of Redevelopment Liquor Licenses
- 16.6 Local Government Resolution Approving Redevelopment Project Area Liquor License

Exhibits

- 16.1 A Guide to the Rights and Responsibilities of Local Governments Under the Liquor Control Code
- 16.2 Local Approval Charts
- 16.3 MLCC Memo Regarding Redevelopment Licenses

I. Overview

§16.1 Municipal attorneys in Michigan should be familiar with the rules and procedures of the Michigan Liquor Control Commission (MLCC). State and local liquor licensing laws and procedures have evolved significantly since Prohibition was abolished in 1933 and continue to change frequently. In fact, since last year's publication, the MLCC has significantly changed its procedures, having a direct impact on municipalities. As of June 2012, there have been changes to the approval process for transfers and for liquor license and permit applications. See §§16.6 and 16.20. In December 2012, a federal district court held unconstitutional a statute requiring MLCC approval for various permits, including dance, entertainment, topless activity, and extended hours permits. See §16.24. There have also been changes to the redevelopment license process. See §16.17. Finally, the MLCC has developed new "Local Approval Charts" in order to obtain input from local governments and local police agencies when it makes decisions on applications for licenses and permits. See §16.20.

In addition to the Michigan Liquor Control Code of 1998, 1998 PA 58, MCL 436.1101 et seq. (the Code), and the Michigan Administrative Code, AC, R 436.1001–.2021 and 445.1–.3 (the Rules), most municipalities have their own set of applications, ordinances, and procedures. Although some municipalities

welcome new liquor-licensed establishments, others use every tool available to limit the number of liquor-licensed establishments or to keep them out of their community altogether.

The trend for municipalities is to codify their policies and procedures for reviewing and approving or denying liquor license applications. The MLCC's change of procedure in July of 2012 makes it even more important for municipalities to codify their policies. The best advice to give a municipality is to establish a comprehensive liquor licensing ordinance and systematic procedures for the acceptance and review of all liquor license applications. Since municipalities have unique goals, rules, and procedures, a municipal attorney should expect phone calls from applicants or their attorneys. You should understand, and be prepared to articulate, the municipality's procedures so that the process is efficient.

This chapter details the law and procedure for the liquor licensing process in Michigan while providing the municipal attorney with practical tips on how to successfully navigate through the municipal and state law maze of liquor licensing. You should have copies of the Code and the Rules and access to the MLCC's website (<http://www.michigan.gov/lcc>). A comprehensive, consolidated booklet of the Code and Rules, prepared by the Michigan Department of Licensing and Regulatory Affairs (LARA), is available online at http://www.michigan.gov/documents/dleg/MLCC_Code_and_Rules_343265_7.pdf.

Some of the information and liquor licensing charts in this chapter are adapted or included from the following publications at the MLCC's website:

- *A Guide to the Rights and Responsibilities of Local Governments Under the Liquor Control Code* (January 2004), no longer available on the MLCC website. See exhibit 16.1.
- *Guide for Retail Liquor Licensees: Michigan Liquor Laws & Rules*, available at http://www.michigan.gov/documents/dleg/FINAL-Retail_Guide_2009_WEB_304923_7.pdf (last modified January 2012).
- Local Approval Charts (On and Off Premises), available at http://michigan.gov/documents/lara/Approval_charts_383073_7.pdf (last modified December 2012). See exhibit 16.2.

II. Michigan Liquor Control Commission (MLCC)

A. Composition and Duties

§16.2 The MLCC consists of five members, not more than three of whom must be from the same political party. The members are appointed by the governor, with the advice and consent of the senate. MCL 436.1209(2). The chairperson designates two of the members as hearing commissioners. The hearing commissioners preside over violation cases, so that if an enforcement officer or a state or local police officer issues a violation complaint against a liquor licensee, the case is heard by one of these commissioners. The hearing commissioners may also perform any other functions and duties assigned to them by the chairperson. The remaining three commissioners are administrative commissioners, charged with the responsibility for administering the provisions of the Code relating to

licensing, purchasing, enforcement, merchandising, and distribution. The administrative commissioners also act as an appeal board to the decisions rendered by the hearing commissioners. *Id.*

B. Authority

§16.3 The Code vests the MLCC with the right, power, and duty to control alcoholic beverage traffic within the state of Michigan, including the manufacture, importation, possession, transportation, and sale thereof. MCL 436.1201(2). The Code confers authority on the MLCC to adopt rules and regulations under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201–.328. MCL 436.1215. Under that authority, the Rules were enacted.

C. Divisions and Units

§16.4 The MLCC includes divisions and division units that provide the following services:

Executive Services Division. The Executive Services Division provides staff support services to the MLCC. The Hearings and Appeals Unit (Hearings and Appeals) records all violation reports received from state and local police agencies and from the MLCC’s enforcement agents.

Hearings and Appeals is also responsible for scheduling violation hearings and appeals from decisions of the hearing commissioners or from the MLCC’s administrative denial of licensing matters. Enforcement officers receive notice of all violation hearings. Municipal representatives may want to appear at an appeal hearing to voice the municipality’s opinion. For example, if an application for a liquor license is denied by the MLCC because the governing body of the municipality or local law enforcement provided input to the MLCC suggesting denial of the license, the applicant will generally appeal the MLCC’s denial by requesting an appeal hearing. Appeal hearings are routinely granted by the MLCC. Since the MLCC requires only the municipality’s approval for a new license and does not require local law enforcement approval for any applications (see §16.20), a municipal representative may want to attend the appeal hearing to provide an opinion about law enforcement’s position or further explain the municipality’s position. A municipality that wishes to be notified of an appeal hearing should make a request to Hearings and Appeals.

Enforcement Division. The Enforcement Division operates from district offices in Southfield, Lansing, Grand Rapids, and Escanaba. The MLCC enforcement staff investigates applicants for new licenses and transfers of ownership or location of existing licenses and investigates complaints against licensees. Additionally, this division inspects licensed establishments to ensure compliance with the Code and the Rules. This division also advises and assists law enforcement agencies in liquor law enforcement at the local level and conducts training for law enforcement officers.

Licensing Division. The Licensing Division of the MLCC includes Licensing Administration, the Data Control Section, the Retail Licensing Processing

Section, and the Manufacturers and Wholesalers Section. The division has the following four specialized units:

- Unit 1 receives and processes all liquor license applications.
- Unit 2 prepares paperwork for investigations needed for the licensee to open for business.
- Unit 3 reviews investigation reports and recommendations from local law enforcement and governing bodies for MLCC consideration.
- Unit 4 processes closing packages, releases MLCC orders, and reviews closing papers required to issue licenses.

Once an application for a liquor license has been filed with the MLCC, the application status can be monitored by contacting the Licensing Division or by accessing the MLCC Application Status webpage, at <http://www2.dleg.state.mi.us/reqstatus/>. Each application is assigned a Request ID Number by the MLCC. Have that number handy before contacting the MLCC or accessing the website. The Request ID Number can be obtained by searching for the applicant's name on the MLCC Application Status webpage. Municipalities are often interested in learning how the MLCC handles any input the municipality provides. Using this tool enables the municipal attorney to readily provide municipal officials with status updates.

Financial Management Division. This division provides support for the MLCC in all areas of financial management and accounting. Financial Management collects over half a billion dollars annually in sales, taxes, fees, and other funds for the state of Michigan. It also accounts for and provides reports on these funds and transfers the funds to the appropriate agencies. The MLCC pays to cities, villages, and townships in which a full-time police department or full-time ordinance enforcement department is maintained or to the county (credited to the sheriff's department), if a police department or full-time ordinance enforcement department is not maintained, 55 percent of the amount of the proceeds of the retailers' license fees and license renewal fees collected in the jurisdiction in which the licensed premises are located. MCL 436.1543(1).

While the attorney general's office is not a division of the MLCC, assistant attorney generals are assigned to the MLCC. These attorneys prosecute Code and Rule violations and represent the MLCC at all appeal and licensing hearings before administrative commissioners and courts of law. Assistant attorney generals who practice in this area are quite knowledgeable and will generally assist municipal attorneys with questions that may arise.

III. Municipal Authority and Powers

A. In General

§16.5 The adoption and enforcement of ordinances and resolutions relating to municipal concerns is a valid exercise of municipal powers as long as the ordinance does not conflict with the constitution or general laws. *Rental Prop Owners Ass'n v City of Grand Rapids*, 455 Mich 246, 566 NW2d 514 (1997); *People v Llewellyn*, 401 Mich 314, 257 NW2d 902 (1977), *cert denied*, 435 US 1008