

What Townships Need to Know About

Liquor Licensing

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The hospitality industry in Michigan is one that can bring jobs to the state and contribute to economic growth. Holding a license to sell alcoholic beverages can be considered an important component of being competitive and profitable within the industry. Township board members, as elected officials, are charged with making numerous decisions for their community—including approving liquor licenses, setting standards for approval or denial, and understanding the entire process.

The information below is intended to be a map of the basics of that process, including the types of licenses offered by the Michigan Liquor Control Commission (MLCC), the approval (or denial) process, steps required to recommend a license revocation under due process, and the handling of reports and returnable license fees.

Licenses & the Quota System

There are two general categories of liquor licenses: On-Premises (On-P) consumption and Off-Premises (Off-P) sales. Some On-P also hold take-out or Specially Designated Merchant (SDM) licenses which allow the sale of beer and wine for take-out. There is no provision for take-out sales of spirits from On-P establishments. The table on page 12 outlines the primary types of licenses and their accompanying fee. Licenses must be renewed each year before May 1, and all license fees must be paid before a license can be issued.

Population ratios used by the commission are different for on-premises and off-premises licenses. For on-premises licenses, one license is granted for each 1,500 of population or major fraction thereof. For off-premises licenses, one license is granted

for every 3,000 in population or any fraction thereof. Examples of the ratios are:

On-premises License Ratios		
Population		# of licenses
1-2,250		1
2,251-3,750		2
3,751-5,250		3
5,251		4 etc.

Off-premises License Ratios		
Population		# of licenses
1-3,000		1
3,001-6,000		2
6,001-9,000		3
9,001-12,000		4 etc.

On-P Class C, Hotels, and Tavern licenses and the Off-P Specially Designated Distributor (SDD) licenses are subject to a quota system of license distribution that is roughly one license for every 2,250 people (On-P) and one license for every 3,000 people (Off-P).

Local governments have an important role to play in the issuing of quota licenses. For example, for On-P licenses, approval is required from a local unit of government with a population of less than 750,000. In the case of Off-P licenses, township approval is not required but the MLCC requires that license applicants meet all appropriate township ordinances, including zoning requirements.

When township approval is required, a letter and resolution form (LC 1305) is

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On-Premises Licenses

<u>License</u>	<u>Authorized to Sell</u>	<u>Description</u>	<u>License Fee*</u>
<i>Class C</i>	Beer, wine and liquor	<ul style="list-style-type: none"> Consumption on the licensed premises Subject to quota 	\$600/year plus \$350/year for each additional bar
<i>Club</i>	Beer, wine and liquor	<ul style="list-style-type: none"> Consumption on the licensed premises Can only sell to bona fide club members Not subject to quota 	\$300/year plus \$1 for each member over 150. * Maximum fee is \$750 not including Sunday Sales fee.
<i>A Hotel</i>	Beer and wine	<ul style="list-style-type: none"> For consumption on the licensed premises and in the rooms of bona fide guests Subject to quota 	\$250/year plus \$1 for each bedroom over 20— not to exceed \$500*
<i>B Hotel</i>	Beer, wine and liquor	<ul style="list-style-type: none"> For consumption on the licensed premise and in the rooms of bona fide guests Subject to quota 	\$600/year plus \$3 for each bedroom over 20 plus \$350 for each additional bar
<i>Tavern</i>	Beer and wine	<ul style="list-style-type: none"> For consumption on the licensed premises Subject to quota 	\$250/year*
<i>Brewpub</i>	Beer	<ul style="list-style-type: none"> Issued in conjunction with an on-premises license authorizing the licensee to manufacture and sell beer for consumption on the premises or for take-out Not subject to quota 	\$100/year
<i>Micro Brewer</i>	Beer	<ul style="list-style-type: none"> Manufacturing license allows a business to sell beer produced on the premises for consumption on or off the premises Not subject to quota 	\$50 for <15,000 barrels plus \$50 for every 1,000 barrels over up to a maximum of \$800/year
<i>Wine Maker</i>		<ul style="list-style-type: none"> Manufacturing license allows a business to sell wine produced by that wine maker to consumers in a restaurant for consumption on or off the premises Not subject to quota 	\$100/year
<i>Class G-1 Golf Course</i>	Beer, wine and liquor	<ul style="list-style-type: none"> For consumption of beer, wine and spirits on the premises of an 18-hole golf course for members required to pay an annual membership fee and their bona fide guests Subject to quota 	\$1,000/year
<i>Class G-2 Golf Course</i>	Beer and wine	<ul style="list-style-type: none"> For consumption of beer and wine on the premises of an 18-hole golf course for members required to pay an annual membership fee and their bona fide guests Subject to quota 	\$500/year

*Additional bar permits are not required for A Hotel, Club and Tavern licenses.

NOTE: Resorts are a special type of on-premises license distributed only after all licenses under quota have been issued. Off-premises and resort off-premises licenses do not require local approval.

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mailed to the township for completion. Without prior township approval where it is required, the MLCC will not issue a license.

Another license requiring local approval is the Special 24-Hour On-Premises license, which is only good for one day, and profits from the sale of alcoholic beverages must go to the organization and not to any individual. The chief local law enforcement officer in the governmental unit must approve the request where the event is to be held. No more than five licenses are issued to individual organizations each year. The cost for this license varies from \$25 to \$57.50.

The Approval Process

The approval process begins with the application for individual or partnership (LC 2096) or the Corporation/LLC request for application. Several pieces of documentation are required, and the average application process takes 90 days. MLCC investigators will examine the premises and financial records before recommending approval or denial of the license. The MLCC cannot control how long requests for recommendations remain at the local level, so the process could ultimately take longer than 90 days.

While this is taking place, requests for recommendations are made to the township and local law enforcement agency. If the township does not recommend approval of a license, the MLCC will *not* grant one—regardless of any other factors. Local governments commonly cite information from the local police investigation as evidence of their denial; however, no justification is required by the MLCC.

An applicant who is denied a license may submit a written request for an appeal hearing (within 20 days of the denial letter) if it is felt there are extenuating circumstances that should allow the license to be permitted. Township approval, however, is still required. The process the township uses to evaluate the license applicant varies greatly across the state. There is no required formal process but many townships depend on advice resulting from the local police investigation.

If the township does not recommend approval of a [on-premises] license, the MLCC will not grant one—regardless of any other factors.

Objection to Renewal & Revocation of Liquor License

Townships have the right to object to the renewal of an on-premises license and also may request that the MLCC revoke an on-premises license. Townships may request that the MLCC revoke an off-premises license, but may not object to renewal of an off-premises license. These rights are accompanied by specific requirements that have evolved based on court decisions.

What Licenses are Subject to These Actions?

Because townships are required to approve public on-premises licenses, they may also object to renewal or request revocation of such licenses. Townships may also request revocation of off-premises SDD and SDM licenses in their jurisdiction when: (1) the commission has determined that the licensee has violated the Liquor Control Code by selling or furnishing alcohol to a person under 21 years of age on at least three occasions within a calendar year, and (2) those violations did not involve the use of false or fraudulent identification by the person under 21 years of age (MCL 436.1501(3)).

If a township objects to a renewal or requests revocation of an on-premises retail license, and the licensee also has an off-premises SDM license, the commission will also hold a “show cause” hearing to determine if there is any reason that the SDM license should not be renewed or revoked at the same time because the business no longer meets the licensing qualification requirements. Townships may also request revocation of a Dance, Entertainment, and/or Topless Activity Permit but must follow the rules of due process.

Due Process

Regardless of whether the township wishes to object to a renewal or request revocation of a license or permit, the licensee is entitled to due process. In *Bundo vs. City of Walled Lake (395 Michigan 679 (1976))*, the Michigan Supreme Court held that the liquor licensee has a property interest in the license and, therefore, is entitled to due process protection.

The procedural safeguards that the courts deemed necessary regarding a decision by the township to object to renewal of a license consist of “rudimentary due process.” Courts have said this includes:

- notice to the licensee of the proposed action and the reasons for the action;
- a hearing at which the licensee may present evidence, testify and confront adverse witnesses, and
- a written statement of the findings.

In *Roseland Inn, Inc. vs. Robert D. McClain and Township of Blackman and Liquor Control Commission (118 Michigan App (1982))*, the Court of Appeals held that a lack of standards and fair notification of the standards violates a licensee’s right to due process. Therefore, townships should consider the following guidelines and standards when pursuing an objection to renewal or a request for revocation of a liquor license:

- **Guidelines**—The township must establish standards or guidelines stating what conditions will constitute a basis for requesting non-renewal or revocation of a license.
- **Notification of Guidelines**—The township must notify licensees of the guidelines and any subsequent changes.
- **Notification of Hearing**—If the township objects to a renewal or requests revocation of a license, it must give the licensee timely written notice of the hearing, including:
 - Date and location of the hearing.
 - The proposed action that the township is considering taking.
 - The detailed reasons for the proposed action (i.e., citing specific standards or guidelines the licensee has not complied with).

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- The licensee's rights at the hearing, including the opportunity to defend by confronting adverse witnesses and by being allowed to present witnesses, evidence and arguments.
- The licensee's right to be represented by an attorney.
- **Hearing**—At the township hearing, the licensee must be given an effective opportunity to defend by confronting any adverse witnesses, evidence and arguments.
- **Resolution and Statement of Findings**—After the hearing, the township must make a written statement of findings and adopt a resolution indicating the specific action requested.
- **Required Documentation**—The township must send the following documents to the MLCC before the commission can take any action regarding objection to renewal or revocation of a license:

1. A copy of the **standards or guidelines**, or a description of the guidelines established by the township as to what would constitute a basis for objecting to renewal or to revoke the license. Also include the date of adoption and, when publishing in a newspaper, the name of the paper and date of publication.

2. A certified copy of the **notice** sent to the licensee.

3. Although not required, the commission also recommends that the township provide **proof of service** of the notice sent to the licensee in order to counter any questions as to whether the notice was indeed received by the licensee.

4. A certified copy of the **resolution** adopted by the township objecting to the renewal of the license or requesting that the license be revoked. If a separate statement of findings is made, then a certified copy of that document must also be included. The resolution should not include both an objection to renewal of the license *and* a request that the license be revoked. If such a resolution is received, the commission will proceed with the objection to renewal only.

Because all retail licenses expire on April 30, if a township objects to renewal of a license, the request and all substantiating

Townships with a full-time police department or ordinance enforcement department can receive 55 percent of all liquor license and renewal fees for each license located in the township.

documents (as outlined above) must be received by the MLCC no later than March 31 to be in compliance with the law.

The Differences Between Objecting to Renewal and License Revocation

Objecting to Renewal—When the proper documentation is received, the MLCC will stop renewal of the license. The existing license expires on April 30, preventing the licensee from legally selling alcoholic beverages after that date. The license will remain in escrow for one year, and cannot be placed in operation or transferred to another person or corporation unless the township adopts a resolution approving the renewal.

After one year, the licensee may request an extension—but the request may or may not be approved by the commission. If the extension is denied and the licensee does not request a hearing regarding the denial, the license is permanently canceled. If an extension is granted, the license remains in escrow for another year but cannot be placed in operation or transferred to another person unless the township adopts a resolution approving renewal.

There is no immediate effect on the local license quota as a result of objecting to renewal as long as the on-premises liquor license is held in escrow. It still counts toward the limited number of licenses available in the city, township or village. However, the township will not receive the 55 percent share of the licensing fee that it normally would have received had the license remained active.

Townships may adopt a resolution approving the license renewal at any time. The licensee may then renew the license and resume operation.

Revocation of a License—A resolution requesting revocation of a retail liquor license may be submitted any time during the year. When proper documentation is received, the commission is required by law to hold a hearing to consider the resolution. The township will be notified of the hearing, and a representative of the township or its legal counsel should attend. The sole purpose of this hearing is to determine if the licensee was afforded “rudimentary due process” as required by the courts. If it is found that due process was given the licensee, the license is immediately revoked by the MLCC. Revocation is a permanent action, and means that the licensee loses all ownership rights to the license.

The former licensee cannot transfer the revoked license. Also, the former licensee cannot apply for another liquor license for at least two years.

License revocation can also have an effect on the number of licenses available under the quota in the township. If the township is over the license quota (due to shrinkage in population), then revocation of a license means that one less license is available.

If the township is at quota or below, a new license becomes available when one is revoked.

Transferability of Escrowed Licenses

On-premises escrowed licenses issued under MCL 436.1531 are available, subject to township approval under Section 501(2), to an applicant whose proposed operation is located within any township in a county with a population under 500,000 or a county with a population over 700,000 in which the escrowed license was located. If the township within which the former licensee's premises were located spans more than one county, an escrowed license is available (subject to local approval) to an applicant whose proposed operation is located within any township in either county.

If an escrowed license is activated within a township other than that township within which the escrowed license was originally issued, the commission shall count that activated license against the township originally issuing the license. The upgrading of a license resulting from a request under MCL 436.1531(1) involving the transfer of an escrowed license shall be approved by the township with jurisdiction.

Township Liquor Law Enforcement

Townships with a full-time police department or a full-time ordinance enforcement department are eligible to receive 55 percent of all retail liquor license and renewal fees for each retail liquor license located in the boundaries of the township.

Townships that contract for local law enforcement may use the returnable license fees as payment toward the contracted services. The township treasurer is required to

sign an affidavit, provided by the commission and known as a "Certificate of Compliance," which states that the funds are used for liquor law enforcement activities. Failure to sign and return the certificate to the MLCC will result in the forfeiture of any grant money due to the township.

Payments are made to the townships quarterly and are based on fees collected within the quarter. The largest payment is made after the April-June quarter, which is when all licensees are required to renew their licenses.

Although townships are not required to submit inspection forms to the commission, they do need to keep proof of enforcement actions on file for auditors from the Department of Treasury.

Keeping It All Straight

The ins and outs of liquor licensing can seem overwhelming, but with a little back-

ground, preparation and knowledge, township officials can make decisions that are in the best interest of their community and its residents. ■

For further information, contact the Michigan Liquor Control Commission at (517) 322-1345. A packet, "The Michigan Liquor Control Commission & Local Units of Government: A Guide to the Rights and Responsibilities of Local Governments under the Liquor Control Code," is available from the MLCC at: www.michigan.gov/cis.

Sample liquor control and liquor license ordinances can be found on the MTA Web site at: www.michigantownships.org/sample_ordinances.htm



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