

Exhibit 2:



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Rob Manigold, Supervisor
Peninsula Township Board
13235 Center Road
Traverse City MI 49686

Re: *Township Winery Ordinances*

Dear Supervisor Manigold:

The following is a bullet-point summary of my findings relative to the Township's winery ordinances for your consideration and reference. This summary incorporates my legal opinions regarding the same as supported by my previous May 30, 2019 opinion (Ex. A) and August 2019 correspondence to Attorney Infante (Ex. B). Implicit in those opinions, contrary to Attorney Infante's interpretation, is that the Michigan Liquor Control Code does not fully preempt local zoning statutes that also concern alcoholic beverage sales.

Ordinances for Possible Revision, Modification, or Clarification

The following are the ordinances I believe have potential issues that should be addressed:

- 8.7.3(10)(u)(2)(e) – *Restaurants* – should be modified
 - Has the potential to improperly restrict food service, possibly preempted by state statute—MCL §436.1536 allowing wineries to serve food/have restaurant
 - 2018 amendments to MLCC impact this as they allow for restaurant as a part of on-premises tasting room
- 8.7.3(10)(u)(5)(i) – *Catering* – should be modified
 - Ordinance restricts off site catering, but may be preempted by MCL 436.1547 in scenarios in which a winery has a permit under MLCC for off-site catering
- 8.7.3(10)(u)(5)(b) – *Hours of Service* – needs to be fully revised
 - Ordinance restricts guest activity uses after 9:30 p.m. while MCL 436.1403 permits service until 2:00 a.m.—preemption issue because there is a regulation that confers the benefit and prohibits officials from rescinding

- 8.7.3(10)(u)(2)(b) – *Meetings of 501(c)(3) Non-Profits* – requires clarification only
 - Need to ensure equal competition for out-of-county non-profits if it prevents them from holding meetings at the wineries, clarify to avoid Commerce Clause issue
- 8.7.3(10)(u)(2)(c) – *Meetings of Agricultural Groups* – requires clarification only
 - Need to ensure that groups other than only “agricultural groups” may hold meetings at the wineries as well by clarifying “guest activity uses”, clarify to avoid Commerce Clause issue
- 8.7.3(10)(u)(2)(e) – *Serving Only Old Mission Wine* – needs to be fully revised
 - Ordinance restricts sale of other wines produced outside of region and likely violates the Commerce Clause unless no other reasonable means to advance sales of local wines
- 8.7.3(10)(u)(3) – *Requiring Grape Purchases* – needs to be fully revised
 - Ordinance requires wineries to purchase certain local grape tonnage to have guest activity uses and likely violates the Commerce Clause unless no other reasonable means to advance sales of local grapes
- 6.7.2(19)(b) – *85% Threshold Requirement for Juice in Wine Sold* – should be modified
 - Ordinance requires 85% of the juice for wines processed, tasted and sold be from fruit grown on Old Mission Peninsula, more than likely violates the Commerce Clause
- 6.7.2(19)(b)(v) – *Logo Merchandise Restriction* – needs to be fully revised
 - Ordinance restricts wineries ability to merchandise and logo certain products and allows others, with other restrictions that violate the First Amendment
- 8.7.3(12)(i) - *Other Logo and Promotional Restrictions* – needs to be fully revised
 - Ordinance suppresses ability of wineries to promote own items and otherwise restricts ability to market wineries and particular products in violation of the First Amendment
- 8.7.3(12)(k) - *Restricts Food Advertising* – needs to be fully revised
 - Not permitting wineries to promote food, to the extent they are allowed and properly permitted to serve either on-site or off-site violates First Amendment

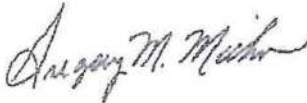
Ordinances Which Require No Absolute Revision

- 8.7.3(10)(u)(5)(g) – *Music* – no revision absolutely necessary
 - Only restriction is to amplified instrumental music while the MLCC does not regulate that, but rather, just playing/performing the same—no preemption
- 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) – *Requiring Promotional Materials* – no revision necessary
 - Ordinances require that wineries provide generic advertising materials, but do not otherwise restrict their ability to promote and advertise themselves—See *Glickman v. Wileman Bros & Elliot, Inc.*, 512 U.S. 457 (1997)

Conclusion

The above lists should be used as guideposts to foster a discussion of the necessary and other potential revisions to the Township's winery ordinances. While many of the legal issues would otherwise require some declaration by a court of competent jurisdiction, the opinions offered by counsel for the Township err on the side of caution and cooperation with their local wineries in an effort to offer the most mutually beneficial regulations possible for all involved.

Sincerely,



Gregory M. Meihn