UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WINERIES OF THE OLD MISSION PENINSULA (WOMP) ASSOC., a Michigan Nonprofit Corporation, BOWERS HARBOR VINEYARD & WINERY, INC., a Michigan Corporation, BRYS WINERY, LC, a Michigan Corporation, CHATEAU GRAND TRAVERSE, LTD, a Michigan Corporation, CHATEAU OPERATIONS, LTD, a Michigan Corporation, GRAPE HARBOR, INC. a Michigan Corporation, MONTAGUE DEVELOPMENT, LLC, a Michigan limited liability company, OV THE FARM, LLC a Michigan limited liability company, TABONE VINEYARDS, LLC. a Michigan Limited Liability Company, TWO LADS, LLC, a Michigan limited liability company, VILLA MARI LLC, a Michigan Limited Liability Company, WINERY AT BLACK STAR FARMS, L.L.C., a Michigan Limited Liability Company,

Plaintiffs,

vs.

PENINSULA TOWNSHIP, a Michigan Municipal Corporation,

Defendant.

Case № 1:20-cv-01008
Hon. Paul L. Maloney
Magistrate Judge Ray S. Kent

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BRIEF IN SUPPORT OF DEFENDANT PENINSULA TOWNSHIP'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT ON COUNT VIII OF PLAINTIFFS' FIRST AMENDED COMPLAINT

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I. INTRODUCTION

On January 15, 2021, the Court denied the Plaintiffs' Motion for Preliminary Injunction, which focused primarily on Plaintiffs' seven constitutional challenge counts to the Township's Ordinances—at which the Court responded to Plaintiffs' position: "In sum: none of Plaintiffs' constitutional arguments carry the day." (ECF No. 34, Page ID# 1875). On April 14, 2021, three months later, in an apparent attempt to refocus their case, Plaintiffs filed this Motion for Partial Summary Judgment as to a Count VIII of their First Amended Complaint alleging not a constitutional violation, but that some of the Township's Ordinances, in part, are preempted by the Michigan Liquor Control Code.[1] (ECF No. 53, Page ID# 2271).

However, despite Plaintiffs' attempt to capitalize Plaintiffs' Motion fails for three primary reasons: (1) For years, even decades, Plaintiffs have operated under the Township's Ordinances and contractually agreed to do so, with scant a challenge, through their Special Use Permits; (2) the Township's Ordinances cited by Plaintiffs do not directly conflict with the Michigan Liquor Control Code because they merely complement or add on to it, nothing more and nothing less; and, (3) Plaintiffs have attempted to add Township Ordinances to this argument that are not present in their First Amended Complaint nor their Motion for Preliminary Injunction. For these reasons, more fully detailed below, Plaintiffs' Motion should be denied and summary judgment should be granted to the Township on Count VIII.

II. FACTUAL BACKGROUND

A. Michigan Liquor Control Code and Township Ordinances

[1] While the Court opined it found "more merit in Plaintiffs' MLCC preemption arguments, it noted that regardless, Plaintiffs failed to establish a strong likelihood of success on the merits of any of their claims. (ECF No. 34, Page ID# 1875).

The entire legal basis for Count VIII in Plaintiffs' First Amended Complaint (ECF No. 29) is that certain Sections of the Township's Ordinances are preempted because they directly conflict with the Michigan Liquor Control Code ("MLCC"). That is also the sole basis for their request for summary judgment on Count VIII. (ECF Nos. 53-54). The MLCC, MCL 436.1101, *et. seq.*, is a Michigan statute that was first enacted in 1998 for the creation of a commission "for the control of the alcoholic beverage traffic within [Michigan]," provide powers and duties of the commission, liquor stores and enforcement of the same within this State.

The Township's Ordinances are, on the other hand, a set of municipal zoning ordinances with the express purpose of protecting "the public health, safety, morals and general welfare of the inhabitants" of the Township. § *2.1 of PTZO.*[2] The Township's Ordinances are further promulgated, in part, "to encourage the use of lands and resources of the Township in accordance with their character and adaptability." *Id.* The Michigan Zoning Enabling Act ("MZEA") expressly permits these purposes:

> A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state's citizens … and to promote public health, safety and welfare.

MCL § 125.3291, Sec. 201(1).

Notably, and uncontested, all of the Plaintiffs operate in land zoned by the Township as Agricultural, A-1 land. Consistent with the grant of authority under the MZEA, the intent and purpose of the creation of the A-1 District within the Township is as follows:

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[2] The Peninsula Township Zoning Ordinances ("PTZO") are one-hundred and sixty-four pages of text that the Township will not attach in their entirety as to not overburden the Court as the vast majority of those Ordinances are not at issue here. An electronic copy is available: https://www.peninsulatownship.com/uploads/1/0/4/3/10438394/penizo15.ord.pdf.

> This District is intended to recognize the unique ecological character of the Peninsula and to preserve, enhance, and stabilizing existing areas within the Township which are presently being used predominately for farming purposes, yet recognize that there are lands within the district which are not suited to agriculture, therefore allowing other limited uses which are deemed to be compatible with agricultural and open space uses.

§ 6.7.1 of PTZO.

These intents and purposes are different from the Township's Commercial District, C-1 land, for instance, which is intended to promote commercial businesses and the offering of goods and services to the Township residents and visitors. *§ 6.6.1 of PTZO.*

It is apparent that Plaintiffs, through this lawsuit, seek unfettered commercial activity on A-1 zoned lands. And, to try and promote that agenda, Plaintiffs, through Count VIII of their First Amended Complaint, contend that some of the Township's Ordinances are preempted by claiming the MLCC directly conflicts with the same. As detailed below, that is not the case.

B. Plaintiffs Execute SUP Contracts Agreeing to Ordinances

While Plaintiffs seem to be of the belief that holding a license from the MLCC as a Small Wine Maker or Wine Maker permits each Plaintiff to engage in whatever commercial activity they please, wherever they please (See ECF No. 54, Page ID## 2277-2281), it is paramount to the disposition of this Motion and this litigation to point out that not only is this legally inaccurate, but the Plaintiffs have expressly agreed to be contractually bound to the aspects of the very Ordinances they claimed are preempted. Each of the A-1 land-using Plaintiffs in this case have operated under Special Use Permits ("SUPs") in which they contractually agreed to be bound by these Ordinances.

Specifically, as to *each* of these Plaintiffs[3], the following SUPs and agreements existed long before they filed this lawsuit claiming preemption:

Plaintiff Chateau Chantal: SUP No. 21 later replaced by SUP 95 in 2004 (**Ex. 1**, SUP No. 21 and Amendments), by which they agreed to restrict food service (except wine tasting) to registered guests, agreed to special permits for outdoor events, **including limitations upon hours of conduct**, **limitation on outdoor festivals**, and the following "catch-all" provision:

> Notwithstanding the provisions of Section 6.7 of the Township Zoning Ordinance, uses, other than as shown on the site plan or approved in this permit, whether permitted by right or by special use permit, shall not be carried on within the development except by amendment or other alteration of this Special Use Permit. Although it is not the intention altogether to prohibit such uses, any such proposed use must be integrated into the approved plan in a manner which is consistent with the Township Zoning Ordinance.

(**Ex. 2**, SUP No. 95).

And, despite filing a lawsuit against the Township in the 1990s, Chateau Chantal agreed to a **Consent** Judgment in November 1998 at which time they consented as follows:

> The winery-chateau known as "Chateau Chantal" shall not directly or indirectly sell wine by the glass to anyone on the winery-chateau premises, nor shall it directly or indirectly sell or provide food or other beverages to persons who are not "registered guests" unless specifically approved by a resolution or motion passed by a majority of the Peninsula Township Board.

Through that Consent Judgment, Chateau Chantal also consented to certain types of foods to be served at any wine tasting they held, and they agreed to cancel their musical entertainment "Jazz at Sunset" series. (**Ex. 3**, Consent Judgment).

Plaintiff Chateau Grand Traverse: SUP No. 24, by which they explicitly agreed to abide by the entirety of 8.7.3, including those relative to the reasonable restrictions on food

[3] The only exceptions are Plaintiff Two Lads, which operates a Farm Processing Facility, a use permitted by right not requiring a SUP under Section 6.7.2(19) of the Ordinance and Plaintiff WOMPs, which does not operate a Winery, but alleges to represent interests of all of the Plaintiffs.

service, activities and outdoor gatherings and "at such hours and in such manner as to not be disruptive to neighboring properties" while containing the identical "catch-all" provision as Chateau Chantal. (**Ex. 4**, SUP No. 24). Chateau Grand Traverse has never attempted to amend or challenge its adherence to the Ordinances until this lawsuit.

Plaintiff Bowers Harbor: SUP No. 132, which was most recently updated in 2019, and by which Bowers Harbor specifically agreed to abide by 8.7.2(10), including hours of operation:

> Retail sales shall be limited to the sale of wine by the bottle plus regionally grown fresh and/or processed farm produce … but excluding items of a kind that are not grown regionally, and also exclude non-agricultural items.

(**Ex. 5**, SUP No. 32 and 132).

And, Bowers Harbor also contracted as follows:

> The petitioner shall comply with all state, county, **township** and other governmental regulations relative to the establish for a parcel zoning A-1, agricultural, with the above permitted use(s) on site…
>
> Zoning compliance is based on the governing special land use document, approved site plan, and Articles **6 and 8** of the Peninsula Township Zoning Ordinance.

(**Ex. 5**).

This is similar to the "catch-all" provision for the Chateaus above and shows contractual agreement to comply with the ordinances they claim are preempted. Its 2019 amendment to SUP No. 32 to No. 132 did not challenge or change these agreements.

Plaintiff Black Star Farms: SUP No. 34, originally agreed to in 1994, containing the exact same "catch-all" provision noted by the Chateaus above. (**Ex. 6**, SUP No. 34). In 1997, Black Star also entered into a "Deed of Conservation Easement" with the Township under its Purchase Development Rights Ordinance No. 23, agreeing further that "[n]one of these covenants, terms and conditions shall be construed as allowing a use that is not otherwise

permitted by applicable state and local laws, codes, standards and ordinances." (**Ex. 7**, PDR Deed).

Plaintiff Brys Winery: SUP No. 115, amended four times since its inception, most recently in December 2018, at which time its owner indicated he was not even interested in guest activities, but now wants to have a restaurant and conduct activities until 2 a.m. (**Ex. 8**, SUP No. 115 and Amendments). Brys Winery has never challenged any of the "restrictions" it agreed to in any of the *four* amendments it has agreed to with the Township since its initial agreement in 2011. (**Ex. 8**).

Plaintiff Villa Mari: SUP No. 126, by which it agreed to food and beverage services in accordance with the Ordinances and for registered guests only, as well as the reasonable restrictions on hours of operation and the identical "compliance" provision as Bowers Harbor above. (**Ex. 9**, SUP No. 126). Villa Mari has never challenged or attempted to amend its SUP with the Township to date.

Plaintiff Tabone Vineyards: SUP No. 73, originally approved in 2000, and containing the exact same "catch-all" provision as above. (**Ex. 10**, SUP No. 73 and Documents). When Tabone Vineyards was transferred the property from "Tabone Orchards" in 2004, the Township noted that the SUP transfers with the property, so no new SUP was necessary, but if they wanted to make any changes, a new application would be required, with public hearing and agreed to by both the property owner and the Township. (**Ex. 10**). Tabone Vineyards did not attempt any such application or change in the last seventeen years.

Plaintiff Oosterhouse Vineyards: SUP No. 118, issued in 2013, at which time its owner agreed and acknowledged compliance with the Ordinances at issue:

> I hereby acknowledge that I have received a true copy of the Special Land Use and I have been informed of said requirements of this Special Land Use and of the requirements of the

> Peninsula Township Zoning Ordinance, pertaining to the operation of the approved Winery Chateau.

(**Ex. 11**, SUP No. 118).

Oosterhouse Vineyards has not challenged or attempted to amend its SUP since the initial approval and agreement between it and the Township.

Plaintiff Peninsula Cellars: SUP No. 62, containing the same "catch-all" provision as noted for the Chateaus above. (**Ex. 12**, SUP No. 62). This SUP was negotiated, agreed to and issued in November of 1998. Peninsula Cellars has done nothing to challenge or attempt its terms, inclusive of the "catch-all" provision to adhere to all Township Ordinances in nearly twenty-three years.

Plaintiff Hawthorne Vineyards: SUP No. 135, which contained the same compliance provision quoted above for Bowers Harbor. (**Ex. 13**, SUP No. 135). Their recent 2020 application did not contemplate any "planned guest houses or single-family residences…" Instead of attempting to negotiate hours, restaurant/catering, or more entertainment privileges at a time when it appears Plaintiffs were on the precipice of this lawsuit, Hawthorne Vineyards did nothing and agreed to the same restrictions as all of the other Plaintiffs.

Plaintiff Two Lads: A Farm Processing Facility operating since 2007 and having never challenged the Ordinances and reasonable restrictions as a "use by right", including being "not intended to allow a bar or restaurant"; reasonable restrictions on activities such as "weddings, receptions and other social functions"; and, with *no hours restrictions*. Although not operating under a SUP, Two Lads has done nothing to challenge its compliance with the Ordinances in nearly a decade and a half.

In short, all of the Plaintiffs contractually greed, either explicitly or through a general compliance, "catch-all" provision in their SUP, to abide by the very Ordinances they now claim

are preempted years and years later. The significance of these agreements and many of the Plaintiffs' decades-long compliance with the same without challenge cannot be overlooked.

C. Plaintiffs Claim Preemption of Five Ordinance Sections

Understanding that the Township's Ordinances were originally instituted in 1972 and that the Plaintiffs have operated for years, even decades, without any attempt to amend or otherwise challenge them, except for those that doubled down and amended or agreed to further compliance, the Township now examines the Ordinances Plaintiffs claims are preempted. It seems, if it were up to the Plaintiffs, all of the Township's Ordinances regarding them would be preempted, but of course that is not the case.[4] The Ordinances generally regard hours of service, restaurants/catering and music. Yet, Plaintiffs' claims have changed from their original allegations. With respect to direct conflict preemption, there are multiple differences between the claims Plaintiffs have actually made and those upon which they now seek summary judgment. Indeed, the allegations of Plaintiffs' First Amended Complaint (ECF No. 29), their Motion for Preliminary Injunction (ECF No. 3) which was denied, and Plaintiffs' Motion for Partial Summary Judgment here are not consistent. (ECF No. 54):

- **Plaintiffs' First Amended Complaint: Claim 3 Sections of PTZO Preempted:**
  - Section 8.7.3(10)(u)(5)(b) conflicts with Mich. Admin. Code R. 436.1403(1), which allows wineries to serve alcohol until 2:00 AM every night. (ECF No. 29, Page ID# 1125, ¶ 290);
  - Section 8.7.3(10)(u)(5)(g) conflicts with MCL 436.1916(11), which grants wineries the right to host "[t]he performance of playing of an orchestra, piano, or other types of musical instruments, or singing" without a permit. (ECF No. 29, Page ID# 1126, ¶ 291);

[4] The Plaintiffs admit that they "…do not contend that field preemption applies to this case", despite the fact they believe the Michigan Liquor Control Code to be "expansive" in its regulation and imply the Township has little to no regulatory power in this area. (ECF No. 54, Page ID# 2285).

- Section 8.7.3(10)(u)(5)(i) conflicts with MCL 436.1536, which states a "wine maker [or] small wine maker … may own and operate a restaurant to cater private events off their premises where they may serve food and alcohol they manufacture. (ECF No. 29, Page ID# 1126, ¶ 292).

➢ **Plaintiffs' Motion for Preliminary Injunction: Claim 4 Sections of PTZO Preempted:**

- "…Section 8.7.3(10)(u)(5)(b) which requires that alcohol sales conclude at 9:30 p.m." (ECF No. 3, Page ID# 472);

- "…Sections 8.7.3(10)(u)(2)(e) and 6.7.2(19), both prohibiting wineries from operating a restaurant, directly conflict with and are preempted by MCL 436.1536(7)(h)…" (ECF No. 3, Page ID# 474);

- "Lastly, Section 8.7.3(10)(u)(5)(g), which limits the wineries to playing only 'amplified voice and recorded background music,' is preempted by state law…" (ECF No. 3, Page ID# 475).

➢ **Plaintiffs' Motion for Summary Judgment – Claim 8 Sections of PTZO Preempted:**

- Plaintiffs argue the four sections from their Motion for Preliminary Injunction, plus additional Secs. 6.7.2(19)(b)(1)(iv) and 8.7.3(10)(u)(2)(a)-(c)) also not contained in their First Amended Complaint (ECF No. 54, Page ID# 2277).

While it is clear that Plaintiffs now seek summary judgment regarding preemption of Ordinance Sections that are not even alleged[5] in Count VIII of their First Amended Complaint, the Township will address the following substantively:

Activity Regulated	Township Ordinance	MLCC Statute
Restaurants	**6.7.2(19)(a)** The Farm Processing Facility use includes retail and wholesale sales of fresh and processed agricultural produce but is not intended to allow a bar or restaurant on	**MCL § 436.1536(7)(h)** A brewer, micro brewer, wine maker, small wine maker, distiller, small distiller, brandy manufacturer, or mixed spirit drink manufacturer *may* own and operate a restaurant or

[5] The Court too has recognized these differences even before this Motion was filed. In its Opinion and Order Denying Plaintiffs' Motion for Preliminary Injunction, the Court stated that, in addition to Plaintiffs' constitutional challenges, "Plaintiffs also argue that **four subsections** are preempted by the Michigan Liquor Control Code: §§ 8.7.3(10)(u)(5)(b), 8.7.3(10)(u)(5)(e), 6.7.2(19) and 8.7.3(10)(u)(5)(g). (ECF No. 34, Page ID# 1865). The Township addresses the same Ordinances that the Court addressed in its Opinion and Order.

	agricultural properties and the Township shall not approve such a license. **8.7.3(10)(u)(2)(e)** No food service other than as allowed above or as allowed for wine tasting may be provided by the Winery-Chateau. If wine is served, it shall only be served with food and shall be limited to Old Mission Peninsula appellation wine produced at the Winery, except as allowed by Section 6 below.	allow another person to operate a restaurant as a part of the on-premises tasting room on the manufacturing premises. If the [manufacturer] allows another person to operate a restaurant on the manufacturing premises the [manufacturer] must hold a participation permit naming as a participating the other person. The other person must meet the requirements for a participant in R 436.1041(3) of the Michigan Administrative Code.
Catering	**8.7.3(10)(u)(5)(i)** Kitchen facilities may be used for on-site food service related to Guest Activity Uses but not for offsite catering.	**MCL § 436.1547(3)** The commission *may* issue a catering permit to a specially designated distributor, specially designated merchant, or public on-premises licensee, as a supplement to that license, to allow the sale and delivery of beer, wine, or spirits in the original sealed container at locations other than the licensed premises and to require the catering permit holder to serve beer, wine, or spirits at the private event where the alcoholic liquor is not resold to guests. The commission shall not issue a catering permit to an applicant who delivers beer, wine, or spirits but does not serve the beer, wine, or spirits.
Hours of Operation	**8.7.3(10)(u)(5)(b)** Hours of operation for Guest Activities shall be determined by the Township but will not occur later than 9:30 PM.	**MCL § 436.1403(1)** "…an on-premises licensee shall not sell, give away, or furnish alcoholic liquor between the hours of 2 a.m. and 7 a.m. on any day nor between the hours of 2 a.m. and 12 noon on Sunday and

		shall not sell, give away, or furnish spirits between the hours of 2 a.m. and 12 midnight on Sunday, unless issued a Sundays sales permit by the commission which allows the licensee [to do so]."
Music	**8.7.3(10)(u)(5)(g)** No amplified instrumental music is allowed, however amplified voice and recorded background music is allowed, provided the amplification level is no greater than normal conversation at the edge of the area designated within the building for guest purposes.	**MCL § 436.1536(7)(h)** The following activities are allowed without the granting of a permit under this section: (a) The performance or playing of an orchestra, piano, or other types of musical instruments, or singing.

As outlined above, these are the Ordinances that Plaintiffs challenged through their First Amended Complaint and added through their Motion for Preliminary Injunction. The others, referenced above, are discussed in further detail below and the consideration of whether they are preempted is not properly before this Court. Regardless, they are not preempted, either.

III. STANDARD OF REVIEW

Summary judgment is appropriate only when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In this analysis, "the judge's function is not himself to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 242-43; 106 S.Ct. 2505 (1986). "Summary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 242.

A party seeking summary judgment always bears the initial responsibility of the basis for its motion, and identifying those portions of the "pleadings, depositions, answers to

interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548 (1986). All reasonable inferences must be construed in favor of the nonmoving party to the extent supportable by the record. *Id.* From there, a court may enter summary judgment sua sponte in favor of a nonmoving party so long as the losing party was on notice to present all desired evidence on the matter at issue. *QSI Holdings, Inc. v. Alford*¸283 B.R. 731 (2007), citing *Celotex Corp., supra* at 326. Under these standards, as to Count VIII of Plaintiffs' First Amended Complaint, summary judgment for the Township is proper.

IV. LAW AND ARGUMENT

A. The Plaintiffs Have Agreed to the Conditions through Their SUPs

Prior to directly addressing the preemption issue, the Township must again point to the fact Plaintiffs attempting to use state law as a shield from their own contractual agreements to abide by the Township's Ordinances by arguing they are preempted . Simultaneously, they are using this litigation as a sword, an end-around modification to the Ordinances with complete disregard for the procedures of the Michigan Zoning Enabling Act for doing so and ignoring those duly considered, negotiated and binding contractual SUP agreements with the Township.

Indeed, in an effort to get around this, Plaintiffs have repeatedly argued this is "not a zoning case", but rather, "…this is a case facially challenging those Ordinances as unconstitutional." (ECF No. 28, Page ID# 1070). This Court previously recognized this, noting that "…Plaintiffs have been aware of and operating under the challenged restrictions for quite some time." (ECF No. 34, Page ID# 1867). In taking the Plaintiffs' long delay in pursuing these allegations into account, this Court further opined:

> Relatedly, Plaintiffs seek to completely upset the status quo in Peninsula Township. They ask this Court to enjoin several provisions of Peninsula Township's Zoning Ordinance without implementing any replacements. It is not the Court's place to draft new

> Ordinances, so presumably Plaintiffs seek to simply eliminate the Ordinances they view as offensive. To do so would be to completely upset the regulatory system that presently exists in Peninsula Township…"

(ECF No. 34, Page ID# 1867).

Presumably because the Court found, at least with respect to whether to grant an injunction, that "none of Plaintiffs' constitutional arguments carry the day" (ECF No. 34, Page ID# 1875), Plaintiffs have now turned their attention to the preemption argument to which they previously lent little focus.

As extensively outlined above, the SUPs approved and agreed to by the Plaintiffs are contractual agreements between each Winery and the Township and, each such contract contains an express agreement by the Plaintiffs to abide by the very terms and conditions they now claim are preempted. These SUPs include all the basic elements of a valid contract: (1) parties competent to contract, (2) proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation. *Hergenreder v. Bickford Senior Living Grp., LLC*, 656 F.3d 411, 417 (6th Cir.2011)(quoting *Hess v. Cannon Twp.*¸265 Mich App 582, 696 NW2d 742 (2005).

Courts in this jurisdiction have previously recognized the contractual nature of SUPs. In *Forest Service Employees for Environmental Ethics v. U.S. Forest Service*, 689 F.Supp.2d 891 (W.D.Ken.2010), the Court construed certain contracts executed by the National Wild Turkey Federation were actually and also special-use permits given the language of the agreements, despite Plaintiffs challenge to enjoin the implementation of the same. In holding this, the Court reasoned:

> Additionally, the Court finds that the NWTF "contract" with farmers are special-use permits. While this term was not defined in the statute, it appears from the plain meaning of the documents that these "contracts" were intended to be special-use permits. The language in the introductory portion of the document setting forth the scope defines the

> document as a "permit" and the document is referred to as a permit throughout. Additionally, the permit is issued for specific purposes and to be applied "in accordance with the attached Operation and Management Plan." … Based on this plain language, it appears all parties to these agreements intended the contracts between the farmers and the NWTF to be special-use permits.

Id. at 903.

The plain language of the agreements carried the day—the contracts were deemed special-use permits and the special-use permits were contracts. The same is true in this matter.

Here, the SUPs between each Plaintiff and the Township contain all the basic elements of a contract. First, both the Plaintiffs and the Township are parties competent to contract and regarding subject matter related to the SUPs and the proposed special uses by each Plaintiff. Second, there is clear consideration—the Plaintiffs are allowed to engage in certain commercial activities, i.e., special uses, in the A-1 District that would not otherwise be permitted, and the Township agrees to allow the special use and not engage in enforcement for activities that would otherwise be impermissible in that District. Third, both the Plaintiffs and the Township are mutually obligated and agreed to be bound by the terms and conditions of these SUPs. And, just as in *Forest Service*, the plain language of all of the attached SUPs is demonstrative of a contractual agreement.

The sampling of the language from the SUPs above and more fully included in the exhibits attached hereto show that the Plaintiffs and the Township have agreed to the SUPs and the uses, restrictions and conditions contemplated by the same. **Here, the Plaintiffs *never* challenged the terms and conditions of their respective SUPs**,[6] yet now, years later, want to

[6] The sole exception to this is Plaintiff Chateau Chantal. However, as shown in the attached, their challenge resulted into the Consent Judgment that particular Plaintiff entered into in 1998 shows a *further consensual agreement* to reasonable food service and music restrictions. (**Exs. 1-3**).

argue their contracts are preempted. This, despite numerous Plaintiffs amending their SUPs over the decades. (See **Exs. 1-13**). This requested relief does not comport with the law or common sense. Rather, Plaintiffs agreed to be bound by the terms of the SUPs and many of them have operated for decades without any issue or without any challenge, until now, to what they acknowledged, agreed and signed on to be bound with respect to their relationship with the Township and the commercial enterprises they operate on agriculturally-zoned land. A review of the SUPs demonstrates as much and had they chosen to appeal to the zoning board or subsequent courts of competent jurisdiction, perhaps this would not be the case. However, that is not what has transpired and for many Plaintiffs, what is a decades late challenge to their SUPs does not remove this from the purview of zoning law or support Plaintiffs' preemption argument. For this reason, Plaintiffs' Motion should be denied, and the Court should enforce the terms and conditions of the SUPs, i.e., contractual agreements entered into by the Plaintiffs and summary judgment should be granted to the Township on Count VIII sua sponte.

B. Township's Ordinances are Not Preempted as a Matter of Law

Plaintiffs claim they are entitled to summary judgment on Count VIII of their First Amended Complaint because the Ordinances outlined above are preempted by the MLCC. Because field preemption is not at issue here,[7] the only way in which the Township's Ordinances *may* be preempted by the MLCC, a state statutory scheme, is where the local regulation directly conflicts with the state statute. *People v. Llewellyn*¸401 Mich. 314, 322, 257 NW2d 902 (1977).

[7] And it should not be as Michigan Courts, including in *Jott, Inc. v. Charter Twp.*, 224 Mich App 513, 569 NW2d 841(1997)(holding that "…the Commission's decision to recognize local zoning authority indicates that the Legislature *did not intend to preempt every local zoning statute* that concerns alcoholic beverages sales."). Any argument to the contrary is not supported by the law even if intimated in passing by the Plaintiffs here.

The general proposition of this principle has been long-recognized in Michigan jurisprudence and disfavors preemption, but rather, speaks to interpretation:

> In general, the preemption concept works as a limitation on the exercise of inherent police powers by a governmental body when the purported regulations relate to a subject matter on which superior governmental authority exists … Townships, however, have no police power of their own, but have only those powers and immunities which are provided by law … Their ability to pass laws comes directly from the legislative enactments. As a result, the function of this Court, when township ordinances are involved, appears to be on relating more to a statutory construction and interpretation than one of making a determination of preemption.

Detroit Edison Co. v. Richmond Twp., 150 Mich App 40, 47-48, 388 NW2d 296 (1986).

In analyzing whether a state statute's language preempts a municipal regulation, statutory construction dictates that the plain language is meant to give effect to the intent of the Legislature. *People v. Ambrose*, 217 Mich App 556, 561; 895 NW2d 198 (2016). "[A] statute's words are the most reliable indicator of the Legislature's intent and should be interpreted based on their ordinary meaning and the context within which they are used in the statute." *Id.* [internal quotation and citation omitted]. "Judicial construction of a statute is only appropriate 'if reasonable minds could differ regarding the statute's meaning.'" *Id.* (citing *People v. Stone Transport, Inc.*, 241 Mich App 49, 50-51, 613 NW2d 737 (2000).

As to *express* preemption via direct conflict with state statutory language, a conflict only exists "between a local regulation and a state statute when the local regulation permits what the statute prohibits or prohibits what the statute permits." *McNeil v. Charlevoix County*, 275 Mich App 686, 697 741 NW2d 27 (2007). Thus, here, if the MLCC does not expressly address what the Township's Ordinances seek to regulate, express preemption cannot exist. Moreover, even if the Ordinances do so, so long as the municipal ordinance is not more restrictive than the state statute on the particular issue seeking to be regulated, there also is no preemption. *Maple BPA Inc. v. Bloomfield Charter Twp.*, 302 Mich App 505, 8383 NW2d 915 (2013). A local ordinance

may also add to the conditions of a state law "as long as its additional requirements do not contradict the requirements set forth in the statute." *DeRuiter v. Byron Twp.*, 505 Mich. 130, 147, 949 NW2d 91 (2000)(citing *Llewellyn*, *supra*, at 322).

The MLCC contemplates this legal coexistence, as it requires its licensees to comply with both its requirements and local zoning ordinances. Mich. Admin. Code R. 436.1003 ("A 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.")[emphasis added]; *See also*, *Allen v. Liquor Control Comm.*, 122 Mich App 718, 333 NW2d 20 (1982). Further, the MLCC requires the denial of an applicant's license if it does not meet all zoning and other ordinances' requirements. Mich. Admin. Code R. 436.1105(3).

And in fact, the MLCC rules specifically permit local ordinances to regulate licensees' commercial activities. Mich. Admin. Code R. 436.1003; *See also Oppenhuizen v. Zeeland*, 101 Mich App 40, 48, 300 NW2d 445 (1980). Michigan Courts have also been clear, as Plaintiffs themselves recognize by not arguing field preemption, that "…the Legislature did not intend to preempt every local zoning statute that concerns alcoholic beverage sales." *Maple BPA*, *supra*, at 513. While Plaintiffs appear to believe a license from the MLCC provides them the ability to engage in whatever commercial activities they please in the A-1 District, the case law in this jurisdiction does not remotely support this contention.

Notably, a Michigan Supreme Court case from 2020 held that a township's zoning ordinance regarding medical marijuana activities which added to, but did not conflict with state law on the same issue was entirely proper. In *Deruiter v. Byron Twp.*, 505 Mich. 130, 949 NW2d 91 (2020), the township enacted an ordinance regulating the location of medical

marijuana growing facilities, prohibiting the same from being operated in commercial districts of the township, while allowing them in residential districts. While the plaintiff grower argued that the Michigan Medical Marijuana Act ("MMMA") expressly addressed where growing could take place and that these requirements directly conflicted with that MMMA, the Michigan Supreme Court rejected all of these arguments. To the contrary, the Court held that it was acceptable for the zoning ordinance to add on to the MMMA with respect to location of growing facilities. *Id.* at 143. In reaching this conclusion, the Court recognized that local zoning in Michigan can go further than state law applicable to a similar area of regulation and "add to the conditions" of the state law. Relevantly, the Court explained:

> Thus, where both an ordinance and a statute are prohibitory and the only difference between them is that the ordinance goes further in its prohibition, but not counter to the prohibition under the statute, and the municipality does not attempt to authorize by the ordinance what the legislature has forbidden or forbid what the legislature has expressly licensed, authorized, or required, there is nothing contradictory between the provisions of the statute and the ordinance because of which they cannot coexist and be effective.

"Mere differences in detail do not render them conflicting." *Id.* at 146-147.

In reaching this conclusion, the *Deruiter* Court also relied upon *Miller v. Fablus Twp. Bd.*, 366 Mich. 250, 255-257, 114 NW2d 205 (1962)("a local ordinance that prohibited powerboat racing and water skiing between the hours of 4:00 p.m. and 10:00 a.m. was not preempted by a state law that prohibited the activity 'during the period 1 hour after sunset to 1 hour prior to sunrise'"); and *Detroit v. Qualls*, 434 Mich. 340, 363, 454 NW2d 374 (1990)("a city ordinance regulating the quantity of fireworks a retailer may store was not in conflict with a state law that limited possession to a 'reasonable amount.'"). Summarily, a state statute that regulates a particular area also sought to be regulated and/or added on to by a local ordinance does equate to automatic preemption as the Plaintiffs seem to argue here. This general and binding precedent is clear on this issue. The Township will now address each of Plaintiffs'

attempts to preempt its Ordinances, all of which have no merit under these principles. And, because the Ordinances are not preempted, summary judgment on Count VIII in favor of the Township is warranted.

1. Hours of Operation

One of the Ordinances Plaintiffs seek to have preempted is Section 8.7.3(10)(u)(5)(b), which they claim conflicts with MCL § 436.2114 and Mich. Admin. Code R. 436.1403(1), the latter of which *prohibit* liquor sales between 2 a.m. and 7 a.m. The MLCC is plain in its language—it does not state its licensees *must be allowed* to sell alcohol until 2 a.m. as the Plaintiffs suggest. (ECF No. 28, Page ID# 1080). Rather, it *prohibits* such sales between 2 a.m. and 7 a.m. and, Section 8.7.3(10)(u)(5)(b) does nothing to prohibit that. The Township has not required the Plaintiffs to begin serving alcohol at 6 a.m., which would conflict directly with the MLCC, but rather, simply added on to, or perhaps complemented the MLCC in it's A-1 District without any direct contradiction. This is legally permissible. *See Deruiter*, *supra* and *Miller*, *supra*. The plain language of each of these regulations does not conflict.

In arguing to the contrary, Plaintiffs rely upon inapplicable and easily distinguishable precedent. First, *Noey v. Saginaw*, 271 Mich. 595, 261 NW 88 (1935). (ECF No. 54, Page ID## 2291-92). *Noey*, a case from over fifty years before the MLCC was adopted as law, involved the liquor control commission's authority then in place as "…regulations relative to the hours of close are binding upon all licensees…" *Id.* at 599. The problem with Plaintiffs' position is that it suffers the same issue articulated above—the Ordinance, 8.7.3(10)(u)(5)(b), does nothing to *further restrict* that authority. Moreover, *Noey* is unpersuasive here because the ordinance at issue in that case was *not a zoning ordinance* like those at issue in this litigation. Rather, the ordinance at issue in *Noey* was a blanket prohibition on the sales in the entire municipality after midnight. The Township's Ordinance is applicable only to those that *choose* to locate in the A-1

District and engage in commercial activities there as a special use. There is no such comparable Ordinance in the Township and *Noey* is inapplicable to this case.

Perhaps not surprisingly, the law has changed since 1935 and it did not take all that long for the Michigan Supreme Court to clarify *Noey*. In *Mutchall v. Kalamazoo*, 323 Mich. 215, 223, 35 NW2d 245 (1948) the Court recognized that Section 52 of Act No. 8 of 1933 (the Legislative act creating the Liquor Control Commission) was amended to **permit local authorities to control the closing time of licensed establishments**. *Noey* does not stand for the proposition that the MLCC should repeal local ordinances and additional cases since, such as *Jott, Inc. v. Clinton Charter Twp.*, 224 Mich App 513, 541-43, 569 NW2d 841 (1997) have explicitly permitted localities to promulgate laws regarding alcoholic beverages. ("this grant of authority [to MLCC] does not preclude communities from controlling alcoholic beverage traffic within their boundaries in the proper exercise of their police powers."). Again, *Noey* is inapposite.

Next, Plaintiffs rely upon *R.S.W.W., Inc. v. City of Keego Harbor*, 397 F.3d 427 (6th Cir.2005) to claim that they have unassailable right to sell alcoholic beverages until 2 a.m. in the A-1 District. (ECF No. 54, Page ID# 2292). This case is not germane to this matter. There, the Sixth Circuit determined there was a valid claim *only* where an existing pub's request for variance and site plan regarding change with its sign was contingent upon the municipality's demand that the pub change its hours of operation and close at 11 p.m. *Id.* The issue of preemption was not even addressed in *R.S.W.W.* The Township here is not attempting to take away a right the Plaintiffs previously had, it is merely enforcing its Ordinances to which the Plaintiffs contractually agreed to be bound. The Plaintiffs have not been asked to change

anything; it is they who seek the change. Regardless, this does nothing to support their claim of preemption.

Finally, Plaintiffs cite *Sherman Bowling Ctr. v. Roosevelt Park*, 154 Mich App 576, 397 NW2d 839 (1987), which they admit is a *field* preemption case, which is not at issue here. (ECF No. 54, Page ID# 2292-94). The court in *Sherman* dealt with an ordinance regulating outdoor dancing and events, with additional requirements applicable to those licensed by the MLCC. *Id.* at 580-81. The court **found no conflict preemption**. Rather, it concluded it was *field* preempted because the ordinance sought to impose additional restrictions on the licensees merely because they sold alcohol. The court clarified its holding:

> However, cities cannot use liquor sales as a determinant of when or where another type of activity can take place. A law which uses liquor sales as a determinant regulates when and where liquor sales can take place. We do not wish to imply that cities may not regulate the number of outdoor events which can be held or the hours of such outdoor events. Nor do we wish to imply that cities may not regulate the hours within which outdoor entertainment can take place. Provided that they are otherwise valid, general regulations in this regard which are not tied to the sales of alcoholic beverages are not preempted by the authority granted to the MLCC.
>
> *Id.* at 583.

In other words, the *Sherman Bowling* Court recognized that this was not a blanket preemption of local ordinances by the MLCC. *Id.* at 584. And, in subsequent cases, including *Jott, supra*, Michigan Courts have rejected Plaintiffs' overinterpretation of *Sherman Bowling*. (the *Jott* Court: "[t]he very nature of the liquor business is such that local communities, as a matter of policy, should be permitted to regulate the traffic within their own bounds in the proper exercise of their police powers, subject to the larger control of the liquor control commission as to those matters wherein the commission is given exclusive powers by the legislature.)" *Id.* at 541. The Township's Ordinance applies to **all Guest Activities in the A-1 District**, whether meetings, seminars, conferences, no matter if alcohol is served or not. Section 8.7.3(10)(u)(5)(b)

imposes no additional requirements on Plaintiffs' sale of alcohol, but rather, merely attempts to limit the adverse impacts of commercial operations in a district zoned primarily for purposes outside of Plaintiffs' commercial interests. There is no express preemption and because that is the only basis for summary judgment, Count VIII should summarily dismissed in favor of the Township.

2. Restaurants and Catering

Plaintiffs next claim that the "…Liquor Control Code is unequivocal that tasting rooms may have restaurants." (ECF No. 54, Page ID# 2296). In support of this, Plaintiffs argue that MCL § 436.1536(7)(h), which recognizes that a wine-maker "**may** own and operate a restaurant", directly conflicts with Section 8.7.3(10)(u)(2)(e)(applicable to Winery-Chateaus), which provides for reasonable restrictions on food service for Winery-Chateaus. Plaintiffs also argue that the same section of the MLCC preempts Section 6.7.2(19)(a)(applicable to Farm Processing Facilities) because the latter is "not intended to allow a bar or restaurant on agricultural properties", but rather is to "promote a thriving local agricultural production industry and preservation of rural character by allowing construction and use of a Farm Processing Facility", while still allowing for "retail and wholesale sales of fresh and processed agricultural produce." *§ 6.7.2(19)(a) PTZO.*

Plaintiffs also argue that MCL § 436.1547(3) preempts Section 8.7.3(10)(u)(5)(i) because the former allows the MLCC to issue a catering permit to specifically designated merchants who are MLCC licensees to "as a supplement to that license", to "allow the sale and delivery of beer, wine, or spirits in the original sealed containers other than the licensed premises" so long as they serve the same, while the former reasonably restricts "food service" from the kitchen facilities to on-site service. MCL § 436.1547(3). These arguments are unavailing as the MLCC does not guarantee or vest in licensees a right to own or operate a restaurant or provide catering services.

As to the each of these, Plaintiffs have mischaracterized and misinterpreted the MLCC as it pertains to zoning. The MLCC regulates alcoholic beverage traffic, including manufacture, importation, possession, transportation and sale. MCL § 436.1201(2). What it does not do, is regulate or require restaurants or catering for all of its licensees. The text of MLCC itself recognizes that food service businesses are licensed and regulated by the Food Law from the Michigan Department of Agriculture and Rural Development. *See* MCL § 436.1111(5); MCL § 289.1101 to MCL § 289.8111. A restaurant that does not hold a license under the MLCC "shall not manufacture, market, deliver, or sell alcoholic liquor in this state." MCL § 436.1547. The Plaintiffs recognition that food service, with restaurants and catering, is regulated by an entirely different entity and Michigan statutory scheme completely belies their preemption assertion. The idea that having a license from the MLCC automatically equates to a food service permit is not legally supported. These are separate and distinct regulations and to that end, the Township's Ordinances are not preempted.

Moreover, the Township's Ordinances permit for food service for registered guests. While Section 8.7.3(10)(d) states that "principle use permitted upon the site shall be a winery", there is no explicit restriction as to restaurants and in fact, permits "accessory uses" such as "food and beverage services" … "for registered guests…" *See § 8.7.3(10)(m) of PTZO*. Contrary to the Plaintiffs' position, the Township Ordinances specifically contemplate the operation of food and beverage services that could be offered and otherwise place no explicit restriction upon the ownership or operation of the same other than including the same on a Site Plan that includes the winery, use by registered guests and a reasonably necessary size restriction. *Id.* None of this is contemplated by, let alone directly conflicts with the MLCC. Rather, through its Ordinances, which have been in place for decades, the Township merely

seeks to limit non-agricultural activities in the A-1 District, but it does not ban restaurants or catering within the Township or even in the A-1 District. *See §§ 6.7.1, 6.6.2 of PTZO.* There is no provision of the MLCC that would grant the Plaintiffs the entitlement to operate a restaurant or providing catering in the A-1 District that conflicts these Ordinances and thus, no preemption.

Further diluting Plaintiffs' arguments in this regard is the plain language of the MLCC which provides restaurants and catering possibilities as discretionary activities in which its licensees "may" engage. MCL § 436.1536(7)(h); MCL § 436.1547(3); *See also Murphy v. Mich. Bell Co.*, 447 Mich. 93, 100, 523 NW2d 310 (1994)("may" is discretionary, while "shall" is a mandatory requirement); *See also, Deruiter, supra* at 147 (there is no conflict preemption where the local regulation "adds to and complements" state regulation); *Frens Orchards, Inc. v. Dayton Twp.*, 253 Mich App 129, 137; 654 NW2d 346 (2002)(local regulation which regulated "location of a use of land within the township" did no conflict with state health and safety regulations for migrant camps). The Township Ordinances cited by Plaintiffs may add or complement to the MLCC, but they do not otherwise restrict anything that is mandatory under the same; they regulate the location of a use of land within the Township, i.e., the A-1 District being used primarily for its intended purpose—agriculture, not commercial activities. This is legally permissible and not preempted.[8]

[8] In its proposed supplement to its Motion to Intervene, Protect the Peninsula, Inc. recognizes the inherent contradiction in Plaintiffs' position: "Under Plaintiffs' theory, restaurants and caterers would be exempt from zoning if they hold a liquor license, but remain subject to zoning if they do not." (ECF No. 56-1, Page ID# 2592). Certainly neither the MLCC nor the Court would recognize or agree with Plaintiffs' position in that regard. Again, obtaining a license from the MLCC does not permit the Plaintiffs, or any other licensee for that matter, to engage in whatever types of activities they wish wherever they wish so long as they are serving alcohol and abiding by the MLCC. The consequences of such a holding would be disastrous.

As to the catering specifically, there clearly is no conflict between a permissive catering permit that *may* be issued to an MLCC liquor licensee that is *also* licensed as a "food service establishment" under the Food Law. First, in their Motion, not one of the Plaintiffs have argued that they are licensed as a "food service establishment." Second, just as with the restaurants, the MLCC provision with respect to catering permits is permissive and the Township Ordinances do not alter the "may" aspect of the state statutory scheme. These arguments are equally applicable to catering as they are to restaurants. While the Plaintiffs focus on restaurants and catering, the MLCC also permits its licensees to host a variety of events such as adult entertainment, dancing, motorsports and the like. *See* MCL § 436.1518; MCL § 436.1916. Do the Plaintiffs really contend—because they certainly do not challenge—that they can operate a strip club or drag race on their agricultural properties by virtue of simply have a license from the MLCC to make wine? Obviously not, yet this is the same argument they have made with respect to restaurants and catering; because the MLCC *may* allow it, the Township's Ordinance cannot even address it.

To that end, just because the MLCC specifies various activities in which its licensees *may* be able to engage does not preclude with local regulation of the same or similar activities. That is not what conflict preemption is. *See Mallach v. Mt. Morris*, 287 Mich. 666, 668-69, 284 NW 600 (1939)(Holding that although the Liquor Control Commission was given broad regulatory powers relative to alcoholic beverage activities, a municipality was not prevented from regulating locations within its community where dancing in public places was permitted); *see also Tally v. Detroit*, 54 Mich App 328, 220 NW2d 778 (1974). As explained above, many of the permits for these "other" activities in which Plaintiffs seek to engage by virtue of their MLCC license to make wine require compliance with zoning ordinances rather than preclude them. There is no conflict between the Township's Ordinances and the MLCC as it pertains to

restaurants and catering where the latter merely permits it to occur subject to the former. Therefore, these Ordinances are not preempted and summary judgment for the Township is proper as to Count VIII.

3. *Music*

Plaintiffs also claim that MCL § 436.1916(11) preempts Township Ordinance Section 8.7.3(10)(u)(5)(g) with respect to the Township's reasonable restriction on amplified *instrumental* music and reasonable restrictions on the volume of other types of amplified and unamplified music. (ECF No. 54, Page ID## 2300-01). This argument is misplaced and also fails. As stated numerous times by Plaintiffs in their Motion, the MLCC regulates alcohol sales and trafficking, not music and entertainment. MCL § 436.1916(11)(a)[9] permits "the performance or playing of an orchestra, piano, or other types of musical instruments, or singing."

This statute does not preempt the cited Township Ordinance because both actually permit music and the Township only places a reasonable restriction on amplification levels in the A-1 District in accordance with its intent and without reference to service of alcohol. *See, e.g., Nixon v. Webster Twp.*, 2020 WL 359625 (The Court held that "the sounds of hundreds of wedding attendees and amplified music for dancing and celebrating are not traditional agricultural sounds or noise associated with agricultural activities" such that the zoning decision to prohibit the same was permissible)(**Ex. 14**). There is no conflict preemption as the Township only desires to regulate the same in a particular agricultural district and the statute from the MLCC *does not even address amplification at all*. The Ordinance on the other hand, *allows music*, but only reasonably restricts the volume by placing reasonable restrictions on it—something not

[9] MCL § 436.1916(11)(b) also permits "any publicly broadcast television transmission from a federally licensed station", but Plaintiffs do not use this statute as grounds for any preemption argument, so it is only addressed here for the sake of completeness.

contemplated by the MLCC. There is no conflict preemption. Plaintiffs have not supported a request for summary judgment, but further, the above case law demonstrates that there is simply no preemption and Count VIII should be dismissed.

C. Plaintiffs Seek to Add Four New Rules to Preemption Argument

Although found nowhere in their First Amended Complaint (ECF No. 29), Plaintiffs' Motion for Partial Summary Judgment seeks, for the first time, to argue that four additional sections of the Township's Ordinances are preempted by state law. (ECF No. 54, Page ID# 2277). Although not claimed in their Complaint, First Amended Complaint, Motion for Preliminary Injunction (ECF No. 3), Plaintiffs now skeletally argue the following are preempted:

- Section 6.7.2(19)(b)(1)(iv) – Farm Processing Facility

> "Sales of wine by the glass in a tasting room is allowed pursuant to minimum requirements of the Michigan Liquor Control Commission rules and related Michigan Department of Agriculture permits regarding the sales of limited food items for on-premises consumption…"

- Section 8.7.3(10)(u)(2)(a)
- Section 8.7.3(10)(u)(2)(b)
- Section 8.7.3(10)(u)(2)(c)

All of these Ordinances pertain to Winery-Chateaus and Guest Activities permitted by the same. (ECF No. 54, Page ID# 2277; 2301).

However, in making these claims here for the first time, Plaintiffs do not identify which, if any, state laws these Ordinance Sections conflict with nor how it is they conflict with the same. (ECF No. 54, Page ID# 2301). This failure to support their own argument is detrimental to the relief requested. *See, e.g., Tingali v. Lal*, 164 Mich App 299, 416 NW2d 117 (1987)("A party may not leave it to this Court to search for authority to sustain or reject its position. A

statement of position without supporting citation is insufficient to bring an issue before this Court.")(citing, *Butler v. DAIIE*, 121 Mich App 727, 737, 329 NW2d 781 (1982).

Even if these claims were properly before the Court, they suffer the same legal defects as Plaintiffs' arguments as to restaurants and catering—a permissive permit for dancing/entertainment does not equate to unencumbered ability to do whatever Plaintiffs please in the A-1 agricultural district. The Township relies upon its arguments and legal citations above in response to these new and unsupported claims by Plaintiffs and this Motion should be denied.

V. CONCLUSION

Plaintiffs' request for summary judgment on the basis of MLCC preemption is legally unsupported. Given Plaintiffs' years of express agreements to abide by the Township's Ordinances and the prevailing caselaw in this jurisdiction on preemption, there is no doubt that Plaintiffs' Motion is without merit. For the reasons set forth above, the Township requests that Plaintiffs' requested relief be denied, and that summary judgment be granted to the Township on Count VIII of Plaintiffs' First Amended Complaint.

Dated: May 11, 2021

By: /s/ Matthew T. Wise

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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2021, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, and I hereby certify that I have mailed by US Postal Service and sent via email to the following: none.

By: /s/ Gregory M. Meihn
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