UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

v.

PENINSULA TOWNSHIP, Michigan Municipal Corporation,

Defendant,

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

Case No: 1:20-cv-01008

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

ORAL ARGUMENT REQUESTED

PLAINTIFFS' REPLY TO PENINSULA'S TOWNSHIP'S RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PREEMPTION CLAIMS

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I. INTRODUCTION

Michigan case law on preemption is straightforward—if the state allows a certain activity, then a municipality may not prohibit it. The City of Grand Rapids could not prohibit walkathons where state law allowed them. *Nat'l Amusement Co. v. Johnson*, 259 N.W. 342, 343 (Mich. 1935). The City of Wyoming could not criminalize marijuana use where state law permitted it. *Ter Beek v. City of Wyoming*, 846 N.W.2d 531, 544 (Mich. 2014).

A municipality can, however, add conditions if those conditions do not restrict permitted activity. For example, Bloomfield Township could impose setback requirements on gas stations selling alcohol because the Liquor Control Code (the "Code") says nothing about setbacks. *Maple BPA, Inc v. Bloomfield Charter Twp.*, 838 N.W.2d 915, 921 (Mich. App. 2013). Byron Township could allow for marijuana use in residential, but not commercial, districts because state law said nothing about specific zoning districts. *DeRuiter v. Twp. of Byron*, 949 N.W.2d 91, 98 (Mich. 2020). Where state law is silent, a municipality may have authority to impose zoning conditions.

That's not what happened here. The Code gives the Wineries the right to stay open until 2:00 a.m., operate restaurants, cater, and play amplified music. Despite that clear grant of authority, Peninsula Township has banned those activities for all Wineries. The Township's argument that the Wineries could theoretically engage in those activities in a commercial district rings hollow—Wineries are not allowed in the C-1 district, and it would be impossible to operate one there given the Township's acreage requirements. Peninsula Township has effectively banned activities that state law allows. Therefore, those bans are preempted and must be ruled unlawful.

II. ANALYSIS

A. The Code preempts Peninsula Township's limited hours of operation, prohibitions on restaurants and catering, and restrictions of amplified music.

Peninsula Township suggests that it may add restrictions where activity is allowed by the Code. That rationale has two problems.

First, the cases involving added conditions presume there was some restriction in the first place. In *DeRuiter*, that was the "enclosed, locked facility" in a residential zone. In *Maple BPA*, that was setback requirements. Here, however, the Code sections at issue are allowances, not limitations. This case, therefore, falls right in line with *National Amusement*. There, the state allowed for walkathons, so the City of Grand Rapids could not prevent them or add conditions to them. The Michigan Supreme Court called the walkathon statute "regulatory, not prohibitory," so "it would seem clear that the Legislature intended to permit continuance of the [walkathons], subject to statutory conditions." *Nat'l Amusement*, 259 N.W. at 343. The Michigan Supreme Court summarized:

> The statute makes it unlawful to conduct a walkathon only in violation of certain conditions. This is merely a common legislative manner of saying that it is lawful to conduct it if the regulations are observed. Assuming the city may add to the conditions, nevertheless **the ordinance attempts to prohibit what the statute permits**. Both statute and ordinance cannot stand. Therefore, the ordinance is void.

Id. (emphasis added, internal citation omitted). The same analysis applies here. The Code allows Wineries to sell wine until 2:00 a.m. *See* Mich. Comp. Laws § 436.2114(1), Mich. Admin. Code R. 436.1403, and Mich. Admin. Code R. 436.1503. It allows them to operate restaurants. *See* Mich. Comp. Laws § 436.1536(7)(h). It allows them to cater outside events. *See* Mich. Comp. Laws § 436.1547. And it allows them to play any type of musical instrument, which includes amplified. *See* Mich. Comp. Laws § 436.1916(11). In all respects, the relevant portions of the Code are regulatory, not prohibitory. Therefore, the Township may regulate only where the Code

allows it to. For example, the Township may limit the hours of Sunday sales. *See* Mich. Comp. Laws § 436.2114(2). But it may not completely prohibit those uses where the Code allows them.

Second, Peninsula Township states that "Plaintiffs are free to operate a restaurant, have amplified music, or extended hours – just not in the A-1 district." (ECF No. 353, PageID.12923.) That's impossible. Each classification of winery is only allowed in the A-1 District. *See* 6.7.2(19)(b) ("Farm Processing Facility is permitted in the Agricultural A-1 Zone subject to the following . . . ."); Section 8.7.3(10)(b) (Winery-Chateaus "shall be subject to all requirements of Article VIII, Section 8.5, Food Processing Plants in A-1 Districts and the contents of this subsection."); 8.7.2(13) ("Remote Winery Tasting Rooms within the Agricultural District A-1."). On May 23, 2023, just days after filing its brief, Peninsula Township prohibited an applicant from opening a winery in the commercial zone because "our zoning ordinance does not allow a wine making/wine tasting operation … in the C zone."[1] The Township does not allow Wineries to operate in any district other than A-1.

Moreover, even if the Wineries were allowed in the commercial district, they could not meet the acreage requirements because there are only 35 acres of land designated for commercial use in the entire Township. (**Exhibit 1: Land Use Designations**.) Farm Processing Facilities must be comprised of 40 acres. Section 6.7.2(19)(b)(iv)(I) ("A total of forty (40) acres of land are required to be devote to the operation of a farm processing facility."). Winery-Chateaus must have at least 50 acres. Section 8.7.3(10)(c) ("The minimum site shall be fifty (50) acres which shall be planned and developed as an integrated whole.")[2]

[1] A video of that meeting can be found here: https://www.youtube.com/watch?v=fv5PPY613Ak. *See* 31:00-33:00.

[2] Remote Winery Tasting Rooms are allowed on 5-acre parcels. **Exhibit** 1 shows the commercially zoned property is not contiguous and is spread around the Township with existing businesses.

In sum, Peninsula Township restricts wineries to the agriculture district and prohibits them from operating in the commercial district. Even if they were facially permitted in the commercial districts, the Township's acreage requirements would prevent any winery from operating there. Stated simply, the Township prohibits wineries from operating restaurants, or catering, or playing amplified music. These restrictions conflict with, and are therefore preempted by, the Code.

1. Hours of operation

The Township cannot require the Wineries to close before 2:00 a.m. This Court—exercising supplemental jurisdiction over the state law preemption claims—is bound by decisions of the Michigan Supreme Court. And the Michigan Supreme Court has spoken unequivocally: "Under the broad power thus conferred upon the liquor control commission by the Constitution and the statute, it must be held that its regulations relative to the hours of closing are binding upon all licensees, and are not affected by the provision in the ordinance relating thereto." *Noey v. City of Saginaw*, 261 N.W. 88, 89–90 (Mich. 1935). *Noey* held that the City of Saginaw could not set shorter hours of operation than those allowed by the Code. This Court should reach the same conclusion. Peninsula Township's arguments to the contrary are unavailing.

The Township first asserts that because the Code prohibits the sale of alcohol between 2:00 a.m. and 7:00 a.m., it does not necessarily follow that the Wineries are allowed to sell between 7:00 a.m. and 2:00 a.m. (ECF No. 353, PageID.12924.) *Noey* holds otherwise. So does *National Amusement*, which explains that when a state statute sets certain regulations on conduct, "[t]his is merely a common legislative manner of saying that it is lawful to conduct it if the regulations are observed." 259 N.W. at 343.

The Township next cites *Mutchall v. City of Kalamazoo*, 35 N.W.2d 245 (Mich. 1948). *Mutchall* did not concern liquor licensees like the Wineries. Instead, it contemplated bottle clubs, where patrons brought their own liquor and stored it at the club. The Code did not apply. "It is

not, however, necessary here to pass upon whether the ordinance usurps or conflicts with the power of the State liquor control commission for the ordinance is not a regulation of possession of liquor by individuals for private use on private premises." *Id.* at 249. The court continued: "plaintiff is not engaged in the liquor traffic." *Id.* at 250. In other words, *Mutchall* did not overturn *Noey*, which is why subsequent cases cite *Noey* for the proposition that municipalities may not force liquor licensees to close before 2:00 a.m.[3] *See People v. Llewellyn*, 257 N.W.2d 902, 905 n.7 (Mich. 1977) (post-*Mutchall* case citing *Noey* positively and explaining "[i]n the light of these provisions, the Court held that an ordinance setting the permissible time period for selling alcoholic beverages was invalid."); *R.S.W.W., Inc. v. City of Keego Harbor*, 397 F.3d 427, 435 (6th Cir. 2005) ("On its face, the rule does not grant licensees a right to remain open until 2:00 a.m. but merely provides that licensees cannot sell liquor after 2:00 a.m. Nevertheless, in *Noey v. City of Saginaw*, the Supreme Court of Michigan determined that a Michigan city ordinance cannot fix closing hours to a period shorter than that specified in the state rule.").[4]

Finally, the Township runs away from the testimony of Rob Manigold, suggesting that the "Township Supervisor is not empowered to interpret or enforce the PTZO." (ECF No. 353, PageID.12927.) Magistrate Judge Kent ordered the Township to produce witnesses to testify about specific provisions of the Winery Ordinances. The Township produced Rob Manigold. It cannot back away from Manigold's testimony simply because it finds that testimony inconvenient.[5]

[3] The year after *Mutchall* was decided the Legislature enacted the Bottle Club Act whose "purpose is to maintain complete and exclusive control of liquor traffic in a Liquor Control Commission established by the Legislature." *Gardner v. Wood*, 429 Mich. 290, 300 (1987).

[4] The Township misrepresents *Keego Harbor* when it quotes the first sentence but not the second. (ECF No. 353, PageID.12927.)

[5] The Township also alleges that the "C-1 commercial zone does not contain any limit restriction on hours of operation." (ECF No. 353, PageID.12925.) Just last week, however, the Township

2. Catering

The catering issue is simple. The MLCC regulates food at businesses with MLCC licenses and Mich. Comp. Laws § 436.1547 allows the Wineries to obtain a catering permit and cater food and beverages offsite. Peninsula Township cannot ban that. This Court got it right the first time (*see* ECF No. 162, PageID.5992), and should adopt the same reasoning again.

3. Amplified music

The Township again misrepresents its own regulations to continue the illusion it is regulating, not prohibiting, amplified music. The Township argues that the Ordinance "does not prohibit the sound amplification in the entire township, rather it only restricts sound amplification in the A-1 agricultural zone." (ECF No. 353, PageID.12929.) The Township has a generally applicable noise ordinance. (**Exhibit 2**.) But, the Ordinance also contains a complete prohibition on amplified music for winery chateaus. No other use in the A-1 zone has a sound amplification restriction.

4. Restaurants

The restaurant issue is also straightforward.[6] Mich. Comp. Laws § 436.1536(7)(h) allows the Wineries to operate restaurants. Peninsula Township cannot ban them.

imposed a 10:00 pm hours restriction on an MLCC licensed tasting room in the C-1 Zone. (*See* **Exhibit 3**.)

[6] The Wineries pleaded a challenge to restaurants in their First Amended Complaint. (*See* ECF No. 334, PageID.12047.) Peninsula Township briefed the issue, so it is ripe for this Court's review.

B. Peninsula Township's remaining arguments are meritless.

1. The Wineries have standing.

Peninsula Township argues that the Wineries do not have standing. (ECF No. 353, PageID.12912.) To have standing, the Wineries must prove that they "have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). An "injury in fact" means "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Id.* at 338–339 (quoting *Lujan*, 504 U.S. at 560).

Peninsula Township contends that the Wineries do not have a "legally protectable property interest" at issue. (ECF No. 353, PageID.12913.) Each Winery holds a winemaker or small winemaker license. (*See* ECF No. 162, PageID.5987 ("Each Plaintiff possesses multiple permits and at least one license (wine maker, small wine maker, small distiller, or brandy manufacturer, for example[.]"); ECF No. 334-1 through ECF No. 334-11 (showing Plaintiffs' liquor licenses).) A liquor license is a property right. *Bundo v. City of Walled Lake*, 238 N.W.2d 154, 161 (Mich. 1976). *See also Wojcik v. City of Romulus*, 257 F.3d 600, 609–10 (6th Cir. 2001) ("Michigan courts have held that the *holder* of a liquor license has a constitutionally protected interest and is therefore entitled to proper proceedings prior to making decisions regarding renewal or revocation."). The Wineries have proven that they have legally protectable property interests.

Next, the Wineries have proven injuries that are "fairly traceable" to Peninsula Township. The Wineries have identified rights granted to them under the Code. These include the right to stay open until 2:00 a.m., *see* Mich. Comp. Laws § 436.2114(1), Mich. Admin. Code R. 436.1403, and Mich. Admin. Code R. 436.1503; operate a restaurant, *see* Mich. Comp. Laws §

436.1536(7)(h); cater, *see* Mich. Comp. Laws § 436.1547; and play amplified music, *see* Mich. Comp. Laws § 436.1916(11). The Wineries have identified specific provisions of the Ordinance that prohibit the Wineries from exercising these rights. *See* Sections 8.7.3(10)(u)(5)(b) (hours); 6.7.2(19)(a), 8.7.3(10)(u)(2)(e), and 8.7.3(12)(j) (restaurants); 8.7.3(1)(u)(5)(i) (catering), and 8.7.3(10)(u)(5)(g) (amplified music). The Wineries also submitted evidence that the Township is enforcing these provisions against the Wineries. (*See* ECF No. 334-18, PageID.12142 (Manigold deposition confirming Township enforces hours of operation); **Exhibit 4: Deeren Dep**. at 64-65, 92 (restaurants), 76 (hours of operation), 81-82 (amplified music), 86-87 (catering).)

Case law supports this conclusion. For example, in *Swepi, LP v. Mora Cnty., N.M.*, 81 F. Supp. 3d 1075 (D.N.M. 2015), a New Mexico county passed an ordinance banning the extraction of oil and natural gas. A party with extraction rights sued, alleging (in part) that New Mexico law preempted the county's ordinance. The district court rejected the county's assertion that the corporation had not suffered an "injury in fact" because "[d]eprivation in a property interest's value and the inability to exploit one's property interest is a sufficient injury in fact to bring a state law preemption claim." *Id.* at 1156.

Similarly, the State of Michigan passed a law banning governmental units from entering into construction contracts with collective bargaining organizations. *Michigan Bldg. & Const. Trades Council, AFL-CIO v. Snyder*, 846 F. Supp. 2d 766, 771 (E.D. Mich. 2012). Several collective bargaining organizations sued, alleging (in part) that the National Labor Relations Act preempted the Michigan law. The district court concluded that individual members of the collective bargaining units would have a sufficient, "[p]urely legal injury" for Article III standing because the members "have been injured and continue to be injured by the deprivation of their right to engage in concerted protective activity, including collective bargaining, in violation of the

NLRA." *Id.* at 777. The district court emphasized that '[t]hese injuries are plainly not speculative or inchoate, and are palpable injuries in fact." *Id.*

The same analysis applies here. The Wineries each have state liquor licenses. Those licenses confer the right to stay open until 2:00 a.m., operate restaurants, cater, and play amplified music. The Winery Ordinances prevent the Wineries from exercising those property interests. Just like the inability to extract, as in *Swepi*, or the inability to collectively bargain, as in *Michigan Building*, the Wineries have been deprived of the full use of their rights. That deprivation is a sufficient injury for Article III standing and is fairly traceable to the Zoning Ordinance.

Finally, a declaration that the Code preempts these sections of the Winery Ordinances will redress these injuries. If the Court declares these prohibitions preempted, the Wineries will be able to fully utilize the rights afforded to them under the Code. That was sufficient to show redressability in both *Swepi* and *Michigan Building*. *See Swepi*, 81 F. Supp. 3d at 1157 ("If the Ordinance is invalidated, SWEPI, LP's leases would have their value reinstated."); *Michigan Building*, 846 F. Supp. 2d at 778 ("A ruling . . . that the Act is preempted by the NLRA, and an injunction barring its enforcement, would allow Plaintiffs to continue negotiations with government contractors that were interrupted by the Act's passage, and would affirm the validity of existing PLAs that were allegedly rendered null and void by the Act."). For the same reasons, a declaration and injunction that the Code preempts the challenged sections of the Winery Ordinances would allow the Wineries to use their liquor licenses to the fullest extent allowed under Michigan law.

2. The Michigan Zoning Enabling Act does not immunize local zoning from preemption by the Liquor Control Code.

Peninsula Township repeatedly argues that Mich. Admin. Code R. 436.1003(1) allows a municipality to enact any zoning ordinance it desires, regardless of whether that zoning ordinance conflicts with the Code. (ECF No. 353, PageID.12915–12917, .12919, .12924, .12929, .12931, .12933.) Mich. Admin. Code R. 436.1003(1) states "A licensee shall comply with all state and local building, plumbing, zoning, sanitation, and health laws, rules, and ordinances as determined by state and local law enforcement officials who have jurisdiction over the licensee." This Court already ruled that Rule 436.1003(1) does not immunize local zoning from challenge. (ECF No. 211, PageID.7808-7809.) That conclusion was correct.

The Township cites opinions from the Michigan Court of Appeals purporting to confirm that municipalities have the "power to regulate MLCC licensees' operations through zoning." (ECF No. 353, PageID.12917.) The Township conveniently omits language from every opinion stating that municipal authority cedes to the Liquor Control Commission when there is a conflict. *See, e.g.*, *Oppenhuizen v. City of Zeeland*, 300 N.W.2d 445, 448 n.3 (Mich. App. 1980) ("Thus, while a home-rule grant is generally held to permit a municipality to act in the fields of taxation, public utilities, education, health, liquor regulation, traffic control, and rent control, **nonetheless when such ordinances conflict with state legislation, they have been held not to prevail**." (emphasis added)); *Allen v. Liquor Control Comm'n*, 333 N.W.2d 20, 21 (Mich. App. 1982) ("It is well settled that local government units may exercise their police powers to regulate the liquor business, **subject to the commission's authority when a conflict arises**." (emphasis added)); *Jott, Inc. v. Charter Twp. of Clinton*, 569 N.W.2d 841, 853 (Mich. App. 1997) ("Accordingly, we conclude that defendant has the authority under the Twenty-first Amendment to regulate the traffic of liquor "within its own bounds through the exercise of its police powers, **subject to the authority**

of the Liquor Control Commission only when a conflict arises." (emphasis added)); *Maple BPA*, 838 N.W.2d at 921 ("[I]t has long been recognized that local communities possess 'extremely broad' powers to regulate alcoholic beverage traffic within their bounds through the exercise of their general police powers, **subject to the authority of the [Commission] when a conflict arises**." (emphasis added)). In other words, municipalities may regulate only where they do not conflict with the Liquor Control Code.

A deeper analysis of these cases confirms this rule. In *Oppenhuizen*, the Michigan Court of Appeals held the City of Zeeland's ordinance banning the sale of alcohol within city limits was preempted by the Code. The Code authorized a municipality to opt out of liquor sales if certain procedures were followed. The City of Zeeland tried to zone without following those procedures, so its ordinance was preempted. *Oppenhuizen* thus stands for the proposition that a municipality cannot regulate contrary to the Code.

Two years later, in *Allen*, 333 N.W.2d 20, the Michigan Court of Appeals considered whether Mich. Admin Code R. 436.1105(3) was an unconstitutional delegation of the Liquor Control Commission's authority. Effectively, Mich. Admin Code R. 436.1105(3) allowed a municipality to impose zoning restrictions that would make it impossible for certain SDM licenses to be issued. The Michigan Court of Appeals reasoned that "[i]t is not arbitrary or capricious for the commission to decline to grant a license to applicants who, because of valid local ordinances, will be unable to use a license. *Id.* at 21. However, the Court of Appeals emphasized that local zoning ordinances are "**subject to the commission's authority when a conflict arises**." *Id.* (emphasis added). Peninsula Township's assertion that it has unfettered zoning authority, regardless of what the Liquor Control says, is incorrect.

Jott involved challenges to Clinton Township's ordinances prohibiting nudity in liquor-licensed establishments and restricting "adult uses" to B-3 business zones. The Michigan Court of Appeals held that restricting "adult uses" to B-3 business zones was a permissible time, place, and manner restriction under the First Amendment. 569 N.W.2d at 847. The Court of Appeals also held Clinton Township's ban on nudity in liquor-licensed establishments was not preempted "[b]ecause the LCC's regulations [Rule 436.1409(1)] explicitly recognize the authority of local governmental units to prohibit, apart from 'bottomless' nudity, other types of nudity in liquor-licensed establishments." *Id*. at 853. Neither restriction is at play here.

Finally, in *Maple BPA*, Bloomfield Township passed an ordinance regulating the sale of alcoholic beverages at gas stations. 838 N.W.2d at 919. The ordinance allowed gas stations to sell alcohol subject to six restrictions. *Id.* A local gas station filed suit, alleging that Bloomfield Township's ordinance was preempted by the Code. The Michigan Court of Appeals held that the ordinance did not conflict with the Code because the Code was silent on those issues or because the ordinance went no further than the Code. *Id.* at 922. In all, *Maple BPA* stands for the unremarkable conclusion that a municipality may regulate where the Code is silent. As demonstrated above, however, the Code is not silent on the issues herein.

3. Restaurants, catering, and music amplification are not commercial uses.

The Township repeatedly characterizes the Wineries' desired uses as commercial, rather than agricultural. (*E.g.*, ECF No. 353, PageID.12929–12930.) These uses are agricultural and should be characterized as agritourism. "Agritourism is a niche form of tourism and defines the places where agriculture and tourism connect, including any time a farming operation opens its doors to the public inviting visitors to enjoy their products and services." (ECF No. 310-4, PageID.11619-11620.) "Agritourism offers farmers a path to diversification of their businesses to

include value-added products and activities, which helps them better withstand things like poor weather conditions and market fluctuations." (*Id.*, PageID.11620.)

4. Although Peninsula Township repealed the relevant ordinances, a case and controversy remains.

Peninsula Township suggests that the Wineries' preemption challenges are moot because it repealed the Winery Ordinances through Amendment 201. (ECF No. 353, PageID.12914 n.4.) It is unclear how Amendment 201 has any role in this litigation. The Wineries are now apparently nonconforming uses. *See, e.g.*, *Belvidere Twp. v. Heinze*, 615 N.W.2d 250, 253 (Mich. App. 2000) ("A prior nonconforming use is a vested right in the use of particular property that does not conform to zoning restrictions, but is protected because it lawfully existed before the zoning regulation's effective date."). As a remedy in this case, the Court should declare the Wineries' operations allowed uses. *See Schwartz v. Flint*, 426 Mich. 295, 329 (1986) ("After a zoning ordinance has been declared unconstitutional, in addition to that declaration, a judge may provide relief in the form of a declaration that the plaintiff's proposed use is reasonable, assuming the plaintiff's burden has been met, and an injunction preventing the defendant from interfering with that use.").

That injunctive remedy should apply although Peninsula Township repealed the Winery Ordinances. "It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982). "Mere voluntary cessation of allegedly illegal conduct does not moot a case; if it did, the courts would be compelled to leave the defendant free to return to his old ways." *Id.* at 289 n.10 (cleaned up). This issue is not moot because Peninsula Township has signaled it fully intends to reenact unconstitutional restrictions. In Amendment 201, Peninsula Township reinstated the local produce requirements this Court ruled—repeatedly—

violated the Dormant Commerce Clause. And the Township Planner said that the "zoning ordinance is intended to be a living document" that can be "changed." (**Exhibit 5: December 13, 2022 Meeting Minutes at 16**.) The Township is signaling that it will pass an additional ordinance on these activities (hours, restaurants, music, catering, etc.). (***See id.***) Thus, the preemption claims are not moot given that the Township will reinstate the prior unconstitutional restrictions if left to its own devices.

C. The Wineries are entitled to attorney fees.

Plaintiffs may recover attorney fees when they prevail on state law claims. *See Williams v. Hanover Hous. Auth.*, 113 F.3d 1294, 1298 (1st Cir. 1997) ("[I]t is immaterial for § 1988 purposes that plaintiffs' success in the § 1983 action results from a favorable ruling on a relevant issue of state law, so long as the state law issue and the federal claims being made in the § 1983 proceeding are closely interrelated."). This Court has already determined that the Wineries' "state-law and federal constitutional claims arise out of a common nucleus of operative facts" and that "[t]he Wineries' claim are all related, regardless of the legal theory that the Wineries utilize to challenge each specific subsection of the Township Ordinances." (ECF No. 301, PageID10688-10689.)

III. CONCLUSION

The Code grants Wineries the right to stay open until 2:00 a.m., operate restaurants, cater, and play amplified music. Peninsula Township completely prohibits those activities, and the ordinances prohibiting them must be ruled unlawful. In turn, the Township has violated the MZEA. This Court should award the Wineries their costs and attorneys' fees incurred in this action as well as damages in an amount to be determined at trial.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

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CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.2(b)(i)

1. This Brief complies with the type-volume limitation of L. Civ. R. 7.2(b)(i) because this Brief contains 4,281 words.

/s/ Joseph M. Infante
Joseph M. Infante

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2023, I filed the foregoing via the Court's CM/ECF System, which will automatically provide notice of the filing to all registered participants in this matter.

/s/ Joseph M. Infante
Joseph M. Infante