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November 29, 2013

BY MAIL

Melinda Reith
Municipal Clerk and CAO
United Townships of Head, Clara and Maria
15 Township Hall Road
Stonecliffe, ON K0J 2K0

Re: Municipal Liquor License Inquiry

Dear Ms. Reith:

Earlier this week, you asked me to provide a legal opinion concerning the possibility of the municipality obtaining a permanent liquor license for the community center instead of continuing the current practice of renting the facility to parties who have obtained a Special Occasion Permit (SOP).

Our office has conducted research on this matter and I am in a position to give the following legal opinion. I will start by outlining the advantages of obtaining a permanent liquor license and discarding the SOP system. I will then outline the responsibilities and costs associated with obtaining a permanent liquor license.

From a legal point of view, I would recommend that council obtain a permanent liquor license and abandon the system of renting the community center to parties with SOPs. However, my recommendation is qualified by the fact that council must assess whether the added responsibilities and costs associated with having a permanent liquor license outweigh the legal and possible financial benefits.

Advantages of Having a Permanent Liquor License

1. When the municipality rents out a facility to a party with an SOP, the municipality remains liable under both the Ontario *Occupier's Liability Act* and at common law, even

though the municipality will not be serving alcohol at the event. The liability stems from the fact that the building where alcohol is being served is still a municipal facility. Both the party that obtained the SOP and the municipality may be liable. There is no statutory limit on the occupier's liability.

2. When the municipality rents a facility to a party with an SOP, that party is the party that serves the alcohol and there is no guarantee that said party will fulfill its responsibilities under the SOP and the applicable law. The municipality has no jurisdiction to ensure compliance with the SOP. That is a matter for the OPP.
3. When the municipality obtains a permanent liquor license and stops renting the facility to parties with an SOP, it is the municipality itself that serves the alcohol. This allows the municipality to maintain control over the serving of alcohol on its premises and to ensure compliance with Ontario law.
4. Because of the oversight considerations mentioned above, both the Alcohol and Gaming Commission of Ontario (AGCO) and the OPP appear to be encouraging municipalities to obtain their own permanent liquor license. Enclosed herewith is an article earlier this year concerning the possibility of Perth County obtaining a permanent liquor license for one of its community centers. The article makes clear that the AGCO and the local OPP support the municipality's acquisition of a permanent liquor license for the community center.

Responsibilities/Costs associated with a Permanent Liquor License

1. The application fee for the license is \$1,055. The license is valid for two (2) years. The license can be renewed every three (3) years upon payment of a \$450 fee.
2. Like any commercial establishment or person hosting an event, a municipality with a permanent liquor license is required to fulfill its responsibilities under the Ontario *Liquor License Act* and regulations.
3. The municipality would have to hire its own beverage servers. As a condition of the license, servers would be required to take the Smart Serve™ beverage server training program. The course is available online and costs \$40.
4. The municipality would have to create policies concerning the serving of alcohol at the community center, pursuant to the requirements of the *Liquor License Act* and the

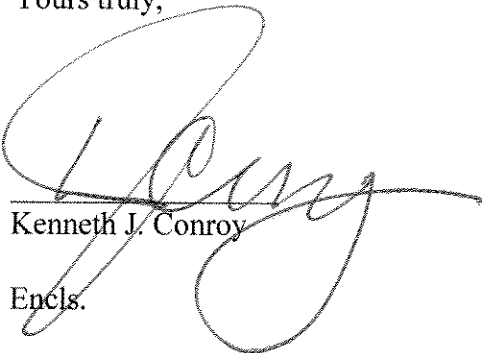
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United Townships
November 29, 2013

policies of the AGCO. The legal advantages of having a permanent liquor license would be lost if the municipality does not have sound policies on serving beverages or does not implement and follow those policies. I would recommend that the township consult directly with the AGCO and the local OPP. Enclosed herewith is a licensee information sheet from the AGCO. It outlines the steps that the liquor licensee should take in order to ensure safety and minimize liability.

Besides the other documents already referred to, I am also enclosing a report earlier this year by the Recreation and Facilities Department of the municipality of North Middlesex. The report recommends that the municipality obtain its own permanent liquor license.

I would be happy to answer any questions you may have. Again, from the legal viewpoint, it would be advisable for the municipality to obtain its own permanent liquor license. However, council will have to decide if the responsibilities and costs associated with having a liquor license are ultimately worth it.

Yours truly,



Kenneth J. Conroy

Encls.

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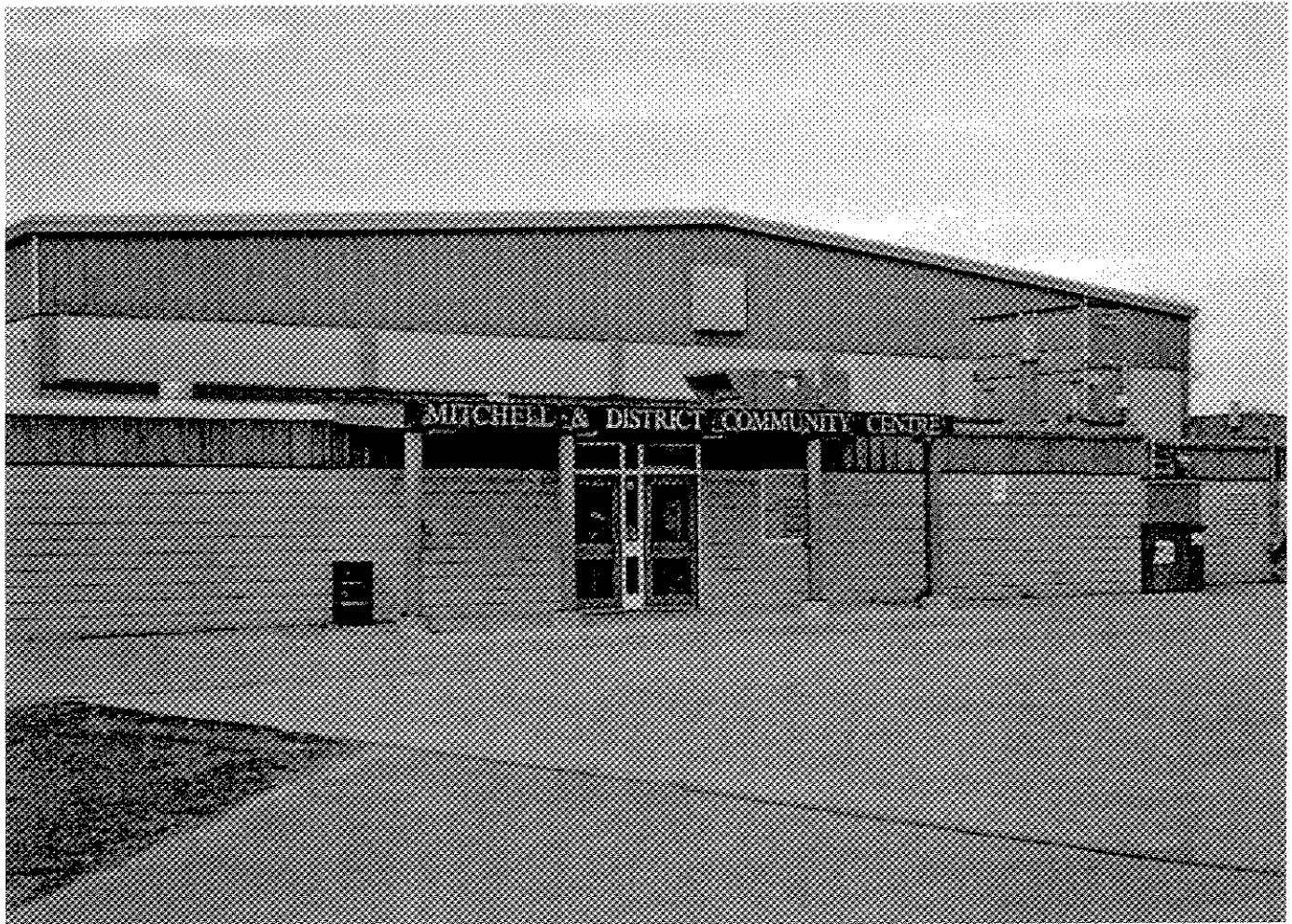
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NEWS LOCAL

Council OKs arena, community centre liquor license

By Rita Marshall, The Mitchell Advocate

Wednesday, March 20, 2013 8:58:29 EDT AM



The Mitchell District Arena and Community Centre should have a permanent liquor license by this fall.

At their March 11 meeting, West Perth council gave facilities manager Rick Vivian the go-ahead to pursue the license.

Vivian told council that he had recently met again with OPP, representatives from the Alcohol and Gaming Commission of Ontario (AGCO) and staff from other municipalities.

The OPP and AGCO are continuing to explain the strict regulations and enforcement around private event special occasion permits (SOPs), used for events such as buck and does.

Vivian said the AGCO is encouraging municipal facilities to obtain their own permanent liquor licenses instead of renting out facilities to individuals with a private event SOP.

Vivian said the municipality is already liable for any infractions that a private event SOP holder may commit. He added that individuals with private event SOPs are less concerned with following the rules.

"They will often try to get away with as much as possible when staff is not visibly present at the time," he wrote in his council report. "If there is an incident, the renter will not suffer the long-term consequences; this will rest with the facility."

The OPP and AGCO will be closely monitoring buck and does now to make sure that popular private event SOP infractions, like advertising the event and making money off a cash bar, don't happen.

A permanent liquor license for the arena would make things different for buck and doe organizers, said Vivian. He said advertising would be allowed, as would splitting proceeds from a cash bar. The municipality still needs to decide how such profit sharing would occur.

Under a permanent liquor license, the municipality would operate the bars for all private events. It's also possible for the municipality to operate the bar at public events as well, something Vivian said many nearby facilities are starting to insist upon.

In 2012, the community centre was the site of 23 buck and does. Vivian said this year there are 12 buck and does scheduled. Originally there were 14, but the organizers of two buck and does have cancelled their bookings.

Hibbert Coun. Barb MacLean asked Vivian where the two cancelled buck and does would be held instead.

Vivian said he believes one is going to a licensed facility while he suspects the other will turn into a "shed party."

"That's what I'm more nervous about," said MacLean.

Vivian said that OPP have already announced that they will be monitoring shed parties as well.

"These people having shed parties have no idea what they're getting into," he said, adding that the owner of the property is liable for any actions, including impaired driving causing death or injury, during the event and after.

"The people that are having the buck and does in their shed could lose their farm. It's as simple as that," he said.

"It's not so much the person that might be there and get served and have a few drinks, it's the person they hit when they're going home."

Vivian said treasurer Karen McLagan has determined there will be no insurance increase if the municipality gets a license for the arena and community centre.

He said arena staffing will have to be a consideration, however, since staff will be required to obtain, store and serve alcohol.

Vivian recommended that council pursue licensing only the arena and community centre at this time. He said that before licensing any other West Perth facilities, like the Dublin Pavilion, the municipality should consult further with different community groups involved with those facilities.

Vivian said the arena and community centre should be able to host events under its own liquor license by this September.

Reader's comments »

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REPORT TO:	MAYOR AND COUNCIL
PREPARED BY:	Scott Nickles
DEPARTMENT:	Recreation / Facilities Department
MEETING DATE:	April 15, 2013
SUBJECT:	Permanent Liquor License

BACKGROUND

At the January 21st meeting, Council requested that staff prepare a detailed report pertaining to a permanent liquor licence.

An information sharing session pertaining to amendments to the Alcohol Gaming Commission of Ontario (AGCO) Liquor Licence Act was held in Belmont on December 20, 2012 and another one was held in Komoka on March 21, 2013. Municipal Councils and staff were invited to attend. At this meeting, the AGCO made it very clear that although enforcement has been intermittent in the past, OPP and Inspectors are committed to enforcement and ensuring that events are compliant with the regulations. The AGCO is encouraging and recommending that Municipalities strongly consider applying for a permanent liquor licence for their Municipal facilities. The rationale for making application centers on providing safe and responsible beverage service. Applications must be submitted and approved through the Alcohol and Gaming Commission of Ontario.

DISCUSSION

Special Occasion Permit (SOP)

- There are two types of SOP permits that renters can apply for use in Municipal facilities: Public Event and Private Event.

1 A Public Event SOP:

Public Event SOP is specifically for events that are open to the public and alcohol will be sold or served. Public Event permits can be issued to charities registered under the *Income Tax Act (Canada)* and to a non-profit organization or association organized to promote charitable, educational, and religious or community objects; or for an event of municipal, provincial, national or international significance. An event of municipal significance requires a designation by the municipality in which the event will take place. Applications must be accompanied by either a municipal resolution or a letter from a delegated municipal office designating the event as municipally significant. A Public Event may be advertised to members of the public. Alcohol may be sold at a profit, allowing for fundraising through the sale of

alcohol. Service clubs in our community (Lions Club, Optimist Clubs, Fall Fairs and Festivals and Minor Sport organizations) are some of the organization that would obtain a Public Event permit.

2 Private Event SOP:

Private Event SOPs are for occasional events for invited guest only, such as a Wedding reception, Anniversary party, Family Reunion, Birthday Party, and Stag & Doe, among others, where only family, friends and people who know the hosts permit holders are invited to attend. The public cannot be admitted, and there can be no intention to gain or profit from the sale of alcohol at the event. Private events cannot be publicly advertised.

With a Special Occasion Permit (SOP) the person has no future stake in the facility. Renters are inexperienced in beverage service and have little background knowledge pertaining to the AGCO guidelines. Should an incident occur, the renter will not suffer the long term consequences, this will rest with the Municipality. An AGCO infraction at one facility could impact the ability to operate licenced events at any of our other facilities.

In the end, the Municipality is liable without the control for ensuring safe and responsible service of beverages.

Many individuals securing an SOP have no idea the type of liability and responsibility they are signing for. Most events consist of new individuals, applying for a liquor licence. Staff is required by the AGCO to take measures to ensure these individuals are aware of the rules, regulations and responsibilities.

A licenced facility employs trained and knowledgeable staff, experienced in providing safe and responsible service. SOP servers are customarily family or friends of the special event who have no previous experience in beverage service and are not concerned with following the rules and regulations set forth by the AGCO.

Advantages of a Permanent Liquor Licence

- A Private Event would be able to advertise their event
- A Private Event can financially gain from the sale of alcohol
- Event could be open to the public
- Through a catering endorsement, has the ability to transfer the permanent liquor licence to other Municipal facilities in North Middlesex at no cost
- Would be an enhanced service that we could provide to our renters
- Reduced liability concern due to control
- Municipal staff would be on the premises at all times
- Customer would not be required to purchase 2 million liquor liability insurance
- A customer could have a local service club operate their beverage service
- Service clubs have an opportunity to raise funds for their organization by offering their bartending service at a reduced risk and responsibility

Operating event without a Permanent Liquor Licence

- Private Event would not be able to advertise their event
- There could be no intended financial gain from the sale of alcohol
- Private Event would be invited guest only
- Customer would be required to have 2 million dollars in liquor liability insurance (average cost \$180.00)
- A customer could have a local service club operate their beverage service
- Service clubs have an opportunity to raise funds for their organization by offering their bartending service at a much higher risk and responsibility

Municipal Insurance Endorsement

- Municipal insurance cost would not increase as a result of obtaining a permanent Liquor Licence or running events under that licence.
(See attached)

FINANCIAL IMPLICATIONS

Cost to obtain a permanent liquor license:

- Permanent Liquor Licence application fee \$1,055.00
- First Time renewal after two years \$450.00
- Renewal every three years at a cost of \$450.00

CONCLUSION

In the event that the customer is unable to secure individuals to operate their beverage service, having a permanent liquor licence would allow the Municipality to provide this service to the public. This service could be provided at no cost to the Municipality, as all expenses would be recouped from the sale of alcohol. This would offer an enhanced customer service to renters of North Middlesex facilities.

A permanent liquor licence obtained by the Municipality of North Middlesex would not affect beverage service provided by local service groups in the community. All service groups and organizations would still be able to operate their events through an SOP or their own permanent liquor licence.

RECOMMENDATION

That staff be directed to apply for a permanent liquor licence for the main level (arena floor & dressing rooms) of the North Middlesex Arena & Fitness Centre.

Prepared by:

Scott Nickles
Recreation & Facilities Manager

Reviewed by:

Linda Creaghe
Chief Administrative Officer

Scott Nickles

From: D'Arcy Elliott [darcy99@execulink.com]
Sent: Friday, April 12, 2013 10:24 AM
To: Scott Nickles
Subject: FW: North Middlesex Liquor Licence
Attachments: Policies and Procedures_Alcohol Polices ON_Mun_0612.pdf

Hi Scott!

Below is an email from our Cowan rep, with exactly what we promised and talked about.

Is this what you are after?

Please confirm.

Thanks!

D'Arcy Elliott, BA, CIP, RIB (Ont.)
HMS - MacLachlan Insurance Inc.,
197 Parkhill Main Street, PO Box 189,
Parkhill, ON
N0M 2K0
tel.519.294.6871
fax.519.294.0061

From: Tony Commisso [mailto:tony.commisso@frankcowan.com]
Sent: April 12, 2013 10:25 AM
To: D'Arcy Elliott
Subject: RE: North Middlesex Liquor Licence

Good Morning D'Arcy,

Following our discussions regarding this subject I can confirm that with the proper Risk Management practices in place there wouldn't be a direct increase in insurance premium to the Municipalities liability policy.

I have attached a document which I believe will assist in the process.

As always feel free to contact me if there are any other concerns.

Take care!

Tony Commisso | Account Manager | Frank Cowan Company |
75 Main Street North, Princeton, ON N0J 1V0
Office: 519-458-4331 Ext 55237 | Mobile: 519-320-1144 | Fax: 519 458-4366 |
tony.commisso@frankcowan.com
www.frankcowan.com

4/12/2013



AGCO

Alcohol and Gaming
Commission of Ontario

Liability: There's more to lose than your licence

Licensee information sheets from the Alcohol and Gaming Commission of Ontario

Under the *Liquor Licence Act*, it is illegal to serve customers to intoxication, promote practices that may encourage customers to become intoxicated, or serve someone who is showing signs of intoxication. Licensees who do, can have their liquor sales licence suspended or lose their liquor sales licence permanently.

Beyond the penalties imposed by the AGCO, however, licensees are also subject to civil litigation if they serve liquor to someone whose subsequent intoxication causes harm.

Licensees have been found liable for the actions of intoxicated customers both inside and outside their establishments. Third parties injured by intoxicated patrons — and sometimes the patrons themselves — are suing licensed establishments for significant damages, and they are winning.

The Ontario Court has ruled that "a tavern owes a twofold duty of care to its patrons. It must ensure that it does not serve alcohol which would apparently intoxicate or increase the patron's intoxication. As well, it must take positive steps to protect patrons and others from the dangers of intoxication."

Licensees have therefore had to pay out huge sums because someone became intoxicated in their establishment and caused an accident. In notable lawsuits, licensees have been ordered to pay:

- \$400,000 when a customer drank 10 bottles of beer then killed three people and injured two others in a car accident;
- \$88,000 to the relatives of a man who became intoxicated at two establishments and died after falling down a flight of stairs;
- \$1.75 million when the licensee served an already intoxicated customer whose subsequent car crash rendered his passenger a quadriplegic (damages were divided between the licensee and the drunk driver);

- \$93,000 to a car-leasing firm whose automobile was destroyed after the man who leased the car was overserved in a tavern;
- \$124,000 to a professional hockey player who lost income after a bar brawl damaged his arm.

Section 29 of the *Liquor Licence Act* states: "No person shall sell or supply liquor or permit liquor to be sold or supplied to any person who is or appears to be intoxicated." Section 20 of Regulation 719/90, states: "The holder of a licence to sell liquor shall not engage in or permit practices that may tend to encourage patrons' immoderate consumption of liquor."

If you serve a customer to intoxication — or serve alcohol to someone who came into your establishment showing signs of intoxication — you are responsible until that person sobers up. Coffee, cold showers and food won't do it; only time can remove alcohol from the blood. You could be held liable for any harm caused by this person.

In one case, a server drove an intoxicated patron home, but the patron then got back in his car and killed another driver in a highway accident. The licensee was still held legally responsible because a ride home does not excuse the fact that the staff served this patron to intoxication in the first place. Remember, the law does not say that you must drive intoxicated patrons home, but rather that you can't serve patrons to intoxication in the first place.

Licensees should also remember that while drunk driving is a very serious concern, intoxicated people can get into just as much trouble off the road as on. Fights, falls and drunken stunts have all led to lawsuits against licensed establishments.

Continued on Page 2

Responsible Service

Contact number for AGCO Customer Service & General Enquiries: 416.326.8700 or 1.800.522.2876 or visit us at www.agco.on.ca

Learn to protect your patrons from harm and your business from court action. Educate yourself and your staff about the responsible sale and service of alcohol.

- Ensure that your staff take the mandatory Smart Serve™ responsible beverage server training program. Well-trained staff, fully aware of the effects of alcohol and the techniques for dealing with intoxicated patrons can be your best way of avoiding trouble. Call (416) 695-8737 for more information about Smart Serve or to order the program.
- Develop and enforce written policies and procedures for the service of alcohol. These house policies, if properly communicated to your staff and monitored on a regular basis, may help to avoid high-risk situations.
- Don't serve patrons showing signs of intoxication. These customers get you in trouble — with the police, the AGCO and the civil courts.
- Don't serve minors. More than any other group, these inexperienced drinkers may not understand the effects of alcohol on their bodies and are most likely to drive irresponsibly and cause accidents while under the influence of alcohol. Service to minors leaves you open to both criminal and civil action.
- Keep a record of incidents indicating those times when your staff refused to serve an intoxicated patron or a minor. This documentation could be used to your favour, demonstrating that you are a good operator with a history of responsible serving practices.
- Employ adequate security staff to keep trouble out. In many establishments, well-trained security is essential to maintain order and head off potential problems. Security staff should carefully check ID, monitor washrooms, deter potential trouble and handle incidents as needed.
- Do not promote the over-consumption of alcohol. Irresponsible promotions, such as “shooter” specials and others that encourage customers to drink alcohol more quickly than they would normally, are sure to result in a dramatic increase in cases of customer intoxication. This practice is illegal.
- Offer alternative beverages. Non-alcoholic or low-alcohol drinks allow your customers to make responsible choices while visiting your establishment. Consider offering free or lower-cost non-alcoholic beverages to designated drivers.
- Focus on quality, not quantity. Recognize that your business benefits when your customers moderately consume quality products sold at a higher price.
- Develop a good working relationship with the police and your local enforcement inspector. They can provide you with valuable advice, and if a problem arises, you can feel comfortable calling for assistance.
- Develop a checklist of potentially dangerous areas in your establishment and take action to improve them. Establishments have a duty under the *Occupier's Liability Act* to ensure that the premises are reasonably safe. An unmarked step or low railing may not look dangerous in the bright light of mid-day but could be missed by a customer in a dark bar.

Know the Law

The *Liquor Licence Act* states that a licensee or a Special Occasion Permit holder may be held liable for damages if liquor is served to a person whose subsequent intoxication causes harm. Section 39 of the Act reads:

The following rules apply if a person or an agent or employee of a person sells liquor to or for a person whose condition is such that the consumption of liquor would apparently intoxicate the person or increase the person's intoxication so that he or she would be in danger of causing injury to another person or the property of another person:

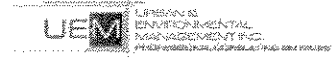
1. *If the person to or for whom the liquor is sold commits suicide or meets death by accident while so intoxicated, an action under Part V of the Family Law Act lies against the person who or whose employee or agent sold the liquor.*
2. *If the person to or for whom the liquor is sold causes injury or damage to another person or the property of another person while so intoxicated, the other person is entitled to recover an amount as compensation for the injury or damage from the person who or whose employee or agent sold the liquor.*

defined in the Regulation. The development and implementation of effective procedures, document control, records management and communication processes are paramount for demonstrating compliance with MMS. Documented maintenance procedures must clearly define MMS-compliant processes. Associated records must be maintained in compliance with MMS requirements. Furthermore, the records must be completed fully, accurately, and with adequate detail to confirm compliance with relevant portions of the MMS Regulation.

It is good practice for a municipality to periodically review documented and undocumented procedures to identify areas where operational, economic or legislative changes may warrant revisions to current practices. Performing a gap analysis is an effective means of conducting these periodic reviews. The Gap Analysis process allows for a critical look at where a municipality is and where it needs to be in terms of MMS compliance and MMS-related documentation and records. Gap Analysis is flexible and can be tailored to best address the needs of an individual municipality. On-site interviews with appropriate municipal staff are recommended to confirm the accuracy of documented processes and identify relevant processes that may not be documented but well established. Once completed, the findings will clearly illustrate where a municipality needs to take action.

MMS implementation is an effective means to minimize municipal liability arising from road maintenance claims, provided that municipalities can adequately demonstrate compliance through documented procedures and record-keeping.

UEM provides a full range of professional engineering, planning and project management consulting services to public and private sector clients.



UEM is assisting a number of municipalities meet MMS requirements through the completion of MMS gap analysis, development of documentation and forms, and through the development of quality management systems for transportation systems. For further information, please contact UEM at 905-371-9764 and speak with either Shawna Mills (smills@uemconsulting.com) or Ana Gall (agall@uemconsulting.com).

Changes to AGCO's SOP legislation: Should your Municipality consider permanent liquor licences?

Over the last couple of years, the Alcohol and Gaming Commission of Ontario (AGCO) has been clarifying or "modernizing" the Special Occasion Permit (SOP) program. This has occurred in three phases with changes to Regulation 719 (Licences to sell Liquor) and Regulation 389/91 (SOP). These changes were introduced June 1, 2011; August 2, 2011; and July 1, 2012.

A SOP is required if someone wants to sell or serve alcohol anywhere other than a licensed establishment or private place. The latest phase of changes reduced the number and types of SOP events from nine to the following three types of special occasions where a permit can be issued:

1. Private Event – invited guests only; no advertising; no profit or gain from sale of alcohol;
2. Public Event – open to public; advertising permitted; allowance for profit or gain from sale of alcohol;
3. Industry Promotional Event – to promote a manufacturer's products through sampling; no profit or gain from sale of alcohol.

It is our understanding that the modernization of the SOP Program was intended to remove unnecessary barriers for special events; provide increased flexibility for permit holders; and simplify the application process, while balancing these with enhanced compliance tools that support reduced risk to public safety.

Several of our clients, after meeting with AGCO representatives, were encouraged to consider obtaining permanent liquor licenses for their various public facilities where SOPs are currently obtained by renters that are hosting alcohol related events. This raises questions such as, "Why?", and "What has prompted this change in philosophy?"

We understand that AGCO has identified that SOPs for private events—in particular Stag & Does (aka Buck & Does)—are the cause of many compliance issues due to the fact that the permit holder is not permitted to make a profit on the sale of alcohol nor are they permitted to advertise these private events. It would appear to us that the AGCO is simply cracking down on violators more diligently than it had in the past.

Some AGCO representatives seem to be encouraging municipalities to consider obtaining permanent liquor licenses for facilities to alleviate their concerns with these SOPs; however, is this really a reasonable and viable solution for the municipality?

We have heard from some clients that by licensing their facilities, the municipality would have more control over these alcohol-related events. We agree with this statement, however, caution municipalities that more control equates to more responsibility and adequate resources to manage all events.

From an insurance perspective, if the municipality is operating a licensed facility, we would need to be informed as there is typically an additional charge for this increased exposure to the municipality generally based on receipts from the sale of alcohol. Along with this information, the underwriters will be requesting full disclosure of how the establishment will be staffed and what risk management measures are in place.

From a risk management perspective, when a municipality is involved in operating licensed facilities, it also needs to ensure that all facilities are properly maintained for this use; appropriately train and retrain all employees and ensure that all staff have current training (i.e. Smart Serve). Essentially, the municipality will be taking control of all alcohol related events within their facilities, along with the corresponding liability for the same.

Having the proper resources in place for all third party rental events may or may not be feasible for a municipality for these types of events. If, however, the municipality continues with its SOP rental functions, it will be able to pass along the corresponding liability to the person or group that is renting its facility, along with the reasonable risk management controls that are required and are set out in its Municipal Alcohol Policy and facility rental permit conditions. For many municipalities this makes the most sense and is the best use of its resources.

Each individual municipality will need to determine which route best suits its individual circumstances based on a cost-benefit analysis. We encourage our clients to fully review all facts and make an informed decision when deciding whether or not to apply for a permanent liquor license for your rental facilities.

For more information on these articles, please contact JLT Public Sector at:

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Sept 2013

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