City of Minot

Special City Council Meeting
Monday, August 26, 2024, at 2:30 PM
City Council Chambers, City Hall (10 3rd Ave SW)
Any person needing special accommodation for the meeting is requested to notify the City Clerk's office at 857-4752.

1. ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. EXECUTIVE SESSION: RETAIL LIQUOR LICENSE CAP REMOVAL
   This will be an opportunity for the City Council to review attorney work product and consult with its attorneys regarding the retail liquor license cap. Attorney Consultation is exempt from NDCC 44-04-19. That portion of a meeting of a governing body during which an attorney consultation occurs may be closed by the governing body under NDCC 44-04-19.2. See N.D.C.C. 44-04-19.1.

   3.1. EXECUTIVE SESSION: RETAIL LIQUOR LICENSE CAP REMOVAL
4. EXECUTIVE SESSION: FEDERAL GRANT COMPLIANCE
   This will be an opportunity for the City Council to consult with its attorney regarding federal grant compliance files - specifically to receive their attorney's advice and guidance on the legal risks, strengths, and weaknesses of an action of the City, which if held in public, would have an adverse fiscal effect on the entity. Attorney Consultation is exempt from NDCC 44-04-19. That portion of a meeting of a governing body during which an attorney consultation occurs may be closed by the governing body under NDCC 44-04-19.2. See N.D.C.C. 44-04-19.1.
5. POTENTIAL ACTION FOLLOWING EXECUTIVE SESSION
6. ADJOURNMENT

MEMORANDUM

TO: City of Minot

FROM: Katie J. Schmidt

DATE: July 18, 2024

RE: Retail Liquor License Cap Removal

I. INTRODUCTION AND BACKGROUND

The purpose of this memo is to discuss the ability of the City of Minot (the "City") to remove the limitation on the number of retail liquor licenses that the City may issue. City Ordinance § 5-16(2)(d) currently limits the total number of retail liquor licenses in force in any one (1) year to not exceed one (1) license for each one thousand five hundred (1,500) persons, or major fraction thereof, of the total population of the City. This limitation on the number of retail liquor licenses has been in place for decades and is believed to have created value in a secondary market to the license holders of such licenses. Accordingly, this memo analyzes the following question:

1. Does the City legally have the authority to remove the limitation on the number of retail liquor licenses?

Although courts have yet to consider the removal of a limitation on the number of liquor licenses, they have considered the removal of similar caps, and based on those cases, it is likely the City may legally remove the limitation.

II. LAW AND ANALYSIS

The regulation of alcohol has a longstanding history in the United States due to alcohol being a critical commodity and driving force for the economy. Karen Powell, *How Taxis, Peanuts and Assault Rifles Get You a Martini for Dinner: Examining Peanut Quotas and Taxi Medallions in Consideration of Whether a Fifth Amendment Takings Claims Is a Red Hearing When Eliminating Alcohol License Quota Systems*, 13 DePaul Bus. & Com. L.J. 433, 436 (2015). With the ratification of the 21st Amendment to the U.S. Constitution and the passing of the Liquor Law Repeal and Enforcement Act, the states were given broad, sweeping authority to regulate the manufacture, transportation, and consumption of alcoholic beverages within their borders. Id. at 440.

Armed with this authority, each state enacted extensive regulatory legislation regarding alcoholic beverages. Linda L. Munden, *Retail Liquor Licenses and Due Process: The Creation of*

Property Through Regulation, 32 Emory L.J. 1199, 1199 (1983). In enacting statutes to regulate the licensing of retail alcohol establishments, states typically followed three (3) distinct policies: (i) licenses that are generally open and available without a numerical limit; (ii) licenses that may be restricted by such things as location, saturation, or other public policy pursuant to the discretionary authority of the licensing agency; and (iii) licenses that are capped on a jurisdictional basis or quota system. Powell, supra at 441.

The North Dakota Legislature, with its newly granted authority, followed the second policy and adopted the Liquor Control Act in 1937 (the "Act"), determining that retail liquor licensing is subject to both state and local regulation. Thielen v. Kostelecky, 287 N.W. 513, 514 (N.D. 1939). Section 12 of the Act "conferred upon the governing bodies of Cities and Villages, and . . . . the Board of County Commissioners, within their respective jurisdictions, the authority to revoke licenses for cause, and to regulate the retail sale of alcohol and alcoholic beverages, subject to review by the Courts of [North Dakota]." Id. at 515. Local authority over licenses remains intact today in N.D.C.C. § 5-02-09, which provides that "[t]he local governing body by ordinance or resolution may regulate or restrict the operation of [liquor] licensees, including among other things determining the number of licenses to be granted[.]"

In response to the grant of authority from the North Dakota Legislature, the City adopted the third policy to craft its retail liquor license ordinance, limiting the number of licenses on a jurisdictional basis or pursuant to a quota system. City Ordinance § 5-16(2)(d) currently provides the following:

> Limitation on number of licenses. The total number of retail liquor licenses in force in any one (1) year shall not exceed one (1) for each one thousand five hundred (1,500) persons, or major fraction thereof, of the total population of the city. The city council may issue such additional licenses as it deems warranted by the change in population. Before the official 2020 United States Census, this population of the city shall be determined by the most recent official federal, regular, or special census. After the official 2020 United States Census, this population of the city shall be determined by the most recent official federal, regular, or special census or by the annual official United States Census Bureau population estimate.

Under a quota system like the City's, when the number of licenses issued has reached the threshold set forth in the ordinance, new businesses purchase an existing license from a current licensee in lieu of purchasing a license from the regulatory entity. Powell, supra at 441. This type of structure causes value to be added to the existing license for these secondary market sales, resulting in high costs for entering the market for new licensees and a potential stifling effect on economic development. Id. at 442-44.

Due to such potential negative effects, jurisdictions, including the City, have started considering departing from the quota system. Id. at 444. Such a move has resulted in pushback from owners of existing licenses, who argue to maintain the status quo and their hold on the market. Id. ("When other markets faced an opening of the regulatory structure, the market participants brought taking claims to control their prior hold on the market."). Although courts have yet to confront claims pertaining to the elimination of the quota system for liquor licenses, they have heard analogous cases pertaining to grazing permits, import licenses, peanut quotas, taxi medallion licenses, and game farm licenses, with arguments centering around compensatory regulatory takings and due process rights. In all but one of these cases, which has been distinguished by the Eighth Circuit Court of Appeals, the permittees' arguments were found to be meritless. Below is a summary of such cases:

A. Grazing Permits

In McKinley v. United States, 828 F. Supp. 888, 890 (D.N.M. 1993), a grazing permittee, McKinley, brought suit against the U.S. Forest Service following a decision by the U.S. Forest Service to reduce the number of cattle he was allowed to graze on an allotment located in the national forest. McKinley contended, in part, that a reduction in the permitted number of cattle amounted to a taking of private property because it affected the value of his base property and would render his entire operation essentially useless. Id. at 893. His permit indicated "it may be modified at any time during the term to conform with needed changes brought about . . . because of resource condition or other management needs." Id. at 892.

The court disagreed with McKinley and focused on the U.S. Forest Service's oversight of the permit. Id. at 893; see also United States v. Fuller, 409 U.S. 488, 494 (1973) (focusing on the power of Congress to revoke grazing permits as a means to determine no compensable property interest was created in the permit lands themselves as a result of the permit). "While the Court does not doubt that the modification of appellant's permit has a negative effect on the value of his base property and the economic viability of his ranching operation, the value added to his property by his holding the permit is clearly a 'benefit and privilege bestowed by the government[.]' . . . 'Although the permits are valuable to ranchers, they are not an interest protected by the Fifth Amendment against taking by the government who granted them with the understanding that they could be withdrawn . . . without payment of compensation.' [Accordingly,] [n]o compensable taking was implicated by the Forest Service's actions in this case." Id. (internal citations omitted).

B. Import Licenses

In Mitchell Arms, Inc. v. United States, 7 F.3d 212, 213-15 (Fed. Cir. 1993), a firearms importer filed an action against the United States, alleging that the suspension and revocation of its import permits for assault rifles was a compensable taking under the Fifth Amendment. In affirming the trial court's dismissal of Mitchell Arms' complaint, the court of appeals analyzed Fifth Amendment caselaw to determine whether Mitchell Arms had asserted the kind of property right that could be the subject of a takings claim. Id. at 215. Mitchell Arms argued "that a property interest was created when it agreed to purchase the assault rifles with an expectation of importing them under the issued permits. Thus, Mitchell ask[ed the court] to hold that its investment-based reliance on the issued imported permits constituted 'property' within the meaning of the Fifth Amendment." Mitchell, 7 F.3d at 215.

In finding that dismissal was appropriate, the court of appeals focused on the character of the governmental action and the extent of the government's regulatory control. Id. at 215-17.

"[T]he termination provision [of the import license statute] 'was part of a regulatory program over which Congress retained authority to amend in the exercise of its power to provide for the general welfare.'" Id. at 216. "[T]he enforceable rights sufficient to support a taking claim against the United States cannot arise in an area voluntarily entered into and one which, from the start, is subject to pervasive Government control." Id. "The reason 'enforceable rights sufficient to support a taking claim' cannot arise in such an area is that when a citizen voluntarily enters such an area, the citizen cannot be said to possess 'the right to *exclude*.'" Id. (citation omitted). "And the reason the citizen cannot be said to possess 'the right to exclude' is that the citizen is in an area subject to government control." Id.

"Mitchell voluntarily entered the firearms import business, thereby knowingly placing itself in the governmentally controlled arena of firearms importation under the Gun Control Act . . . . Under these circumstances, Mitchell's expectation of selling the assault rifles in the United States—which expectation necessarily flowed from the ATF permits—could not be said to be a property right under the Fifth Amendment." Id. Additionally, "[t]he Fifth Amendment concerns itself solely with the 'property,' i.e., with the owner's relation as such to the physical thing and not with other collateral interests which may be incident to his ownership." Id. at 217 (quoting United States v. General Motors Corp., 323 U.S. 373, 378 (1945). "[T]he frustration of Mitchell's financial expectations by the unforeseen revocation of the import permits did not amount to the taking of a property right protected by the Fifth Amendment." Id.

C. Peanut Quotas

In Members of the Peanut Quota Holders Association, Inc. v. United States, 421 F.3d 1323, 1325 (Fed. Cir. 2005), holders of peanut quotas (the "Members") sued the federal government after the enactment of the Farm Security and Rural Investment Act of 2002 (the "Farm Act"). The terms of the Farm Act changed the nature of peanut quotas, making them available only to those who actually farmed peanuts. Id. The Members were previously allocated peanut quotas but leased those quotas to other farmers and were therefore ineligible to continue receiving the allocation under the Act. Id. The Members brought suit, alleging the Farm Act effectuated a regulatory taking because they suffered financial losses as a result of the changes. Id. The Member specifically contended "(1) that the 2002 Act rendered valueless expenditures made in reliance on their peanut quotas for the 2002 growing season; (2) that by establishing a program of marketing loans open to peanut producers who actually grew peanuts, the statutory changes deprived them of their entitlement to price supports under the 1996 FAIR Act; and (3) that the 'buyout payments' established under the 2002 Act did not approximate the fair market value of the repealed 'peanut quota.'" Id. at 1329.

The court of appeals first described the standard for determining whether a compensable taking occurred. Id. at 1330. "To evaluate whether a governmental action effects a taking of private property without just compensation, this court must first determine whether the claimant has established a property interest for purposes of the Fifth Amendment." Id. "[T]he decisions by both the Supreme Court and this court imply that a compensable interest is indicated by the absence of express statutory language precluding the formation of a property right in combination with the presence of the right to transfer and the right to exclude." Id. at 1331. Further, "[t]he parameters of a protected property interest are delimited by the law that creates the interest and by 'existing rules and understandings' and 'background principles' derived from independent sources, such as state, federal, or common law[.]" Id. at 1330 (internal citation omitted). "Once a property right has been established, the court must then determine whether a part or a whole of that interest has been appropriated by the government for the benefit of the public." Id. "While a taking often occurs as a result of a physical invasion or confiscation, the Supreme Court has long recognized that 'if a regulation goes too far it will be recognized as a taking.'" Id. (quoting Penn. Coal Co. v. Mahon, 260 U.S. 393, 415 (1922)). "The issue in this case is whether, in amending the statute that created the peanut quota, the government effected a compensable taking of a property interest under the Fifth Amendment." Id.

After reviewing the transferability and exclusivity of the peanut quotas in terms of third parties aside from the government, the court ultimately found that the Members had a property interest in their quotas. Id. at 1332. Although transfer of the permit was subject to approval by the regulatory authority, "[t]he mere fact that transfers of allotments are not unrestricted does not undermine the importance of transferability to the characterization of quotas as a form of property." Id. "A property right accrues when the government has seen fit to take a limited resource and secure it for the benefits of an individual or a predetermined group of individuals. The peanut quota holders possessed an excludable interest, because the peanut quota program isolated their particular interest from competition. For the reasons stated, we conclude that the Members established a property interest cognizable under the Fifth Amendment." Id. at 1334.

Nonetheless, the court ultimately determined that such property interest was not compensable. "The question, therefore, is not whether the peanut quotas have aspects of property, but whether Congress must pay the owners of peanut quotas compensation when it takes steps that render the quotas less valuable, or even valueless." Id. "The answer is no, because the property interest represented by the peanut quota is entirely the product of a government program unilaterally extending benefits to the quota holders, and nothing in the terms of the statute indicated that the benefits could not be altered or extinguished at the government's election." Id. "The government is free to create programs that convey benefits in the form of property, but, unless the statute itself or surrounding circumstances indicate that such conveyances are intended to be irrevocable, the government does not forfeit its right to withdraw those benefits or qualify them as it chooses." Id. at 1335. "Since Congress at all times retains the ability to amend statutes, a power which inheres in its authority to legislate, Congress at all times retains the right to revoke legislatively created entitlements." Id. "[T]he fact that quota holders expected to continue to derive benefits from the program does not create rights to compensation from the government." Id. Consequently, the Members did not suffer a compensable taking with the enactment of the Farm Act. Id.

D. Taxi Medallion Licenses

1. ***Minneapolis Taxi Owners Coalition, Inc. v. City of Minneapolis***

In Minneapolis Taxi Owners Coalition, Inc. v. City of Minneapolis, 572 F.3d 502, 504 (8th Cir. 2009), holders of transferable taxicab licenses (the "Coalition") brought an action against the

City of Minneapolis following the adoption of an ordinance to uncap the number of transferable taxicab licenses that it issues, thereby opening a previously restricted market. The Coalition contended that the new ordinance reduced the value of their existing licenses to zero and claimed the City of Minneapolis (i) deprived them of their property interests without just compensation and (ii) deprived the Coalition members of their licenses without due process. Id. at 506.

To assert its takings claim, the Coalition argued "that removing the cap on the number of licenses destroyed the market value of the licenses" and tried to liken their situation to the holders of the peanut quotas in Members "for the proposition that a license to participate in the restricted nature of that market, such that the City cannot, without just compensation, reduce the market value of the taxicab licenses by increasing their numbers." Id. at 507-08. The court, however, disagreed with the Coalition, finding the peanut quotas had a minimum established price, while the taxicab licenses had no equivalent guaranteed minimum, and that "[t]he taxicab licenses themselves do not carry an inherent property interest guaranteeing the economic benefits of using the taxicab license." Id. at 508. The court was also careful to distinguish the cases where a licensee is entirely unable to use any aspect of the license, such as was the case in State v. Saugen, 169 N.W.2d 37, 46 (Minn. 1969), as opposed to the scenario where the licensee can still use the license but its potential economic value on the secondary market is constricted or eliminated. Members, 572 F.3d at 508.

Further, "the 'existing rules or understandings' that define[d] the dimensions of the property interest indicate that the taxicab licenses were not understood to provide an unalterable monopoly over the Minneapolis taxicab market." Id. "[I]n the case of personal property, by reason of the State's traditionally high degree of control over commercial dealings, [a property owner] ought to be aware of the possibility that new regulation might even render his property economically worthless . . . ." Id. (quoting Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1027-28 (1992)). "This inherent limitation is especially present in highly regulated markets." Id. (citing Mitchell, 7 F.3d at 216). "The general expectation of regulatory change is no less present where the value of the property interest is derived from the regulation itself." Id. (citing Holders, 421 F.3d at 1334). "Contrary to the Coalition's contention, the City retained the discretion to alter the number of licenses, and so long as the government retains the discretion to determine the total number of licenses issued, the number of market entrants is indeterminate." Id. at 509 (internal citations omitted). In conclusion on the takings issue, the court provided that the Coalition's collateral interest in the value of the license on the secondary market was not protected by the Fifth Amendment and its claim failed as a result. Id.[1]

After addressing the Coalition's takings claim, the court then quickly also dispelled with the Coalition's due process claim. Id. at 510. "A municipal ordinance may create a protected property interest 'by establishing procedural requirements that impose substantive limitations on the exercise of official discretion.' Here, however, [a]s discussed above, the taxicab licenses do not have protected property interests in the market value of their licenses. As such, the ordinance

[1]The Fifth Circuit specifically relied upon the reasoning set forth in Minneapolis in Dennis Melancon, Inc. v. City of New Orleans 703 F.3d 262, 273-74 (Fifth Cir. 2012), to conclude the interest asserted by the plaintiffs in certificates did "not fall within the ambit of a constitutionally protected property right, for it amounts to no more than a unilateral expectation that the City's regulation would not disrupt the secondary market of [certificates.]"

does not implicate the holders' property rights or, it follows, their due process rights." Id. (internal citation omitted).

2. ***Boonstra v. City of Chicago***

In Boonstra v. City of Chicago, 574 N.W.2d 689, 693 (Ill. App. Ct. 1991), the administrator of the estate of a deceased taxicab driver filed suit against the City of Chicago, challenging an ordinance amendment that made taxicab licenses non-assignable. Boonstra contended that the decedent had a constitutionally protected property interest in the taxicab license and its assignability and argued both a compensatory taking and a violation of due process. Id. The court, siding with Boonstra, determined that the taxicab license and its assignability were constitutionally protected property interests. Id. at 694. "In effect, the City of Chicago created for its citizens a public market place for the assignment of its taxicab licenses." Id. "In a functional sense, the taxicab licenses embraced the essence of property in that they were securely and durably owned and marketable." Id. "Thus, we hold that the taxicab license and its assignability is a constitutionally protected property interest[.]" Id.[2] The plaintiff in Boonstra, however, made no argument regarding the loss of value related to the license, as the licensees had in Minneapolis, so the court did not make the further, subsequent assessment made by the Eighth Circuit for such collateral consequences.

E. Game Farm Licenses

In Kafka v. Montana Department of Fish, Wildlife and Parks, 201 P.3d 8, 12-13 (Mont. 2008), owners and operators of alternative livestock game farms filed suit against the Montana Department of Fish, Wildlife and Parks ("FWP") following the adoption of a statute that (i) made their licenses for a specific facility non-transferable and (ii) prohibited the charging of a fee or other renumeration for the shooting of game animals or alternative livestock. The owners and operators contended that the restrictions amounted to a taking of their licenses. Id.

The court analyzed the claims under a two-step system, first considering whether the plaintiffs possessed a cognizable property interest in the subject of the alleged taken and then, if established, considering if the governmental action at issue constituted a taking of that property. Id. at 18. Relying upon the Federal Circuit's analysis in Members, the court provided that in order for the licenses to qualify as compensable property interests, they must be transferable, exclusive, and free of any express statutory language precluding the formation of a property right. Id. at 22.

First, the court determined that, although a transfer of the license first needed approval by the FWP, "FWP did not have broad discretion to deny the transfer assuming the transferee complied with the statutory requirements in part 4." Id. Accordingly, the court found the licenses were transferrable. Id.

Next, the court considered whether there was language in the statute expressly disclaiming that the licenses themselves created any compensable property interest. Id. Finding none, the

[2]The Eighth Circuit in Minneapolis references Boonstra in a footnote and specifically declines to extend its holding to establish a compensable property right in a regulation-created market value. 572 F.3d at 507 n.4.

court analyzed notice provisions found in the statute that informed licensees they must continue to comply with applicable laws and regulations in order to maintain the license and that FWP expressly had the authority to revoke the licenses if the operator failed "to operate an alternative livestock ranch according to the provisions of this part, rules adopted under this part, or stipulations of the alternative livestock ranch." Id. Further, in analyzing exclusivity, the court found "nothing in part 4 limits the ability or discretion of FWP or the State to make changes to the statute[;]" "[the Licenses] undoubtedly lack the most significant of all the indicia discussed in Members: the right to exclude. In the bundle of rights we call property, one of the most valued is the right to sole and exclusive possession—the right to *exclude* strangers, or for that matter friends, but especially the Government." Id. at 22-23 (citations omitted). Finding that the government highly regulated the game farm industry, the court determined "the Licenses were not compensable property interests under the Fifth Amendment of the U.S. Constitution[.]" Id. at 23.

The court then analyzed the licensees' arguments regarding the loss of their intangible business assets, including their ability to profit from fee-shooting, as a result of the statutory change. Id. at 23-26. Relying on Mitchell, 7 F.3d at 217, and focusing on the fact that the FWP did not physically occupy the property, the court indicated "[a]n expectation of profitability in a highly regulated field of business, where a license or permit is required for participation, is virtually never, in and of itself, considered a compensable property interest." Kafka, 201 P.3d at 24. Instead, "if the going-concern value is based upon a right or ability to exclusive use of the property which the government is occupying, it makes sense to provide compensation for the value lost." Id. Here, "the State has not appropriated for its own use any property owned by the appellants. Thus, I-143 did not physically appropriate or 'take' any of the appellants' property, although it did eliminate the in-state market for fee-shooting and had a significant impact upon the value of their businesses." Id. at 25-26. "[T]hose interests are not compensable in this case under the Fifth Amendment . . . because there has been no physical condemnation or occupation of appellants' property by the State." Id. at 26.

F. City's Liquor License Ordinance

As provided, the City's ordinance currently sets a limitation on the number of liquor licenses that the City may issue. In the event the City decides to amend the liquor license limitation, and a licensee challenges the amendment, it seems likely that the City, based on the above-provided cases, would have meritorious arguments in defending the amendment.

For a takings claim, the reviewing court would first likely consider whether the licensees have a property interest, and, if they do, it then would consider the City's action in amending the ordinance. To establish a property interest, licensees may contend the Ordinance specifically provides them with a "defeasible property right in the license," as set forth in the Ordinance. City Ord. § 5-31(a). Nonetheless, based on the analysis of transferability and exclusivity in the above-provided cases, this argument may not be supported.

First, in terms of transferability, it seems likely that the licenses would be transferable. Although the City retains the ability to approve of transfers such like the FWP in Kafka, such a limitation does not seem to hamper the transferability so long as the licensee abides by the ordinance requirements. As a result, the licenses are arguably transferable.

Next, the court would consider exclusivity, which was largely the main focus of the courts' analysis in the above-provided cases, focusing on the ability of the regulatory authority to revoke licenses and modify the regulatory scheme. Here, even though the Ordinance provides that there is a "defeasible property right in the license," the next sentence provides that "[i]t is defeasible in the sense that it may be revoked by the city 'for cause' without compensation to the licensee as provided in section 5-32 of the Code." City. Ord. § 5-31(a). This is certainly the City maintaining its reservation of rights in the license and providing notice to the licensee that licenses are not irrevocable. Members, 421 F.3d at 1335.

Further, remaining portions of Chapter 5 set forth the highly regulated nature of alcohol and liquor licenses within the City. See City Ord. § 5-23 (discussing the annual renewal of a license); § 5-31 (limiting transfers, leases, grants, and retention of security interests of licenses to only those approved by the City); § 5-32 (outlining the suspension or revocation of a license). The City also retains the general authority to amend ordinances at any time. See City Home Rule Charter art. 6, 7(7). Section 5-35 of the City's Ordinances further references amending the numerical limitation formulas set forth in the City Ordinance and allowing licenses in addition to those calculated by the formula. Accordingly, license holders are on notice that the City has broad authority over the liquor licenses, may provide for competing licenses even if the cap has been met, and may amend the ordinances at any time. All of this works against license holders having exclusivity and property interest arguments in the licenses. Mitchell, 7 F.3d at 215; Minneapolis, 572 F.3d at 509; Kafka, 201 P.3d at 22-23.

Even assuming the licensees could successfully establish that they hold a property interest in their licenses, it does not mean that they have a compensable takings claim in the reduction of value of the licenses on the secondary market, which would be the actual property interest claim in the City's case. See Minneapolis, 572 F.3d at 509 (quoting Rogers Truck Line, Inc. v. United States, 14 Cl. Ct. 108, 114 (1987) ("Even if there is a property interest in a particular license, 'a takings claim cannot be supported by asserting ownership in a property interest that is different and more expansive than the one actually possessed.'"); Members, 421 F.3d at 1334 ("The question, therefore, is not whether the peanut quotas have aspects of property, but whether Congress must pay the owners of peanut quotas compensation when it takes steps that render the quotas less valuable, or even valueless."). The loss of value in a permit is a different interest entirely, and the courts in the above-provided cases indicated that these types of collateral interests are insufficient to establish a compensable takings claim. Minneapolis, 572 F.3d at 508 ("We therefore hold that any property interest that the taxicab-holders may possess does not extend to the market value of the taxicab licenses derived through the closed nature of the City's taxicab market. Without such a property interest, their takings claim necessarily fails.").

License holders may additionally attempt to assert a due process claim based on an ordinance amendment. As the Eighth Circuit discussed in Minneapolis, however, if there is no protected property interest in the market value of the license, then the ordinance amendment would not implicate the license "holders' property interests or, it follows, their due process rights." 572 F.3d at 510. Accordingly, this argument would also likely be without merit.

III. CONCLUSION

Based on existing caselaw, although there are no cases directly on point, analogous cases support the argument that the City could amend its ordinance, removing the liquor license cap, and successfully defend against a lawsuit alleging a compensatory taking or due process violation.