PREAMBLE

The Newton Board of License Commissioners (the "Board") is a regulatory entity created by the Massachusetts Liquor Control Act of the General Laws of the Commonwealth. The Act permits the Board to issue licenses under chapters 138 and 140 of the General Laws of the Commonwealth. In order to serve the public good and promote the general welfare of the City of Newton, the Board seeks to ensure that all licensed establishments be of high credit to the immediate community and substantially contribute to the quality of life within the City of Newton as a whole. The Board promulgates these Regulations for the proper administration of chapters 138 and 140 of the General Laws of the Commonwealth and the Regulations of the Alcoholic Beverages Control Commission (the "ABCC").

The Board strongly believes, and State Law mandates, that the rights of residents, neighbors, and abutters must be taken into account in considering the issuance of any license under these Regulations.

The Board is comprised of three uncompensated members appointed by the Mayor with the approval of the Board of Aldermen. The Board has an administrative office ("Office of the Board") in Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, MA.

All ranking officers of the Newton Police Department, the Board's Enforcement Officer, and the Administrative Director of the Board are all appointed agents of the Board. At any time, the Board's agents and the Board members themselves may inspect any licensed premises to ensure that the conduct of the business or the event conforms to all laws, ordinances, codes, rules and regulations pertinent to the licenses issued by the Board.

With a view to serve the public need and to protect the common good, the Board regularly receives and shares information with the City's Health Department, Inspectional Services Department, Fire Department and Police Department. Thus, these regulations are to be considered **in addition to, and not instead of,** all obligations imposed under State law, local law, City of Newton Ordinances, the Liquor Control Act, State Sanitary & Health Code, State Building Code, Fire Prevention Code, and the Regulations of the ABCC with which the licensee must comply.

As a regulatory entity charged with the proper administration of licenses under chapters 138 and 140 of the General Laws of the Commonwealth, the Board is empowered to conduct full evidentiary and public hearings in accordance with State Law. In connection with the administration of these Regulations and the General Laws of the Commonwealth, the Board may impose sanctions where appropriate and in accord with all protections of due process, including any attendant appellate rights.

The Board's Regulations are promulgated under the authority of the Massachusetts Liquor Control Act and may be amended and modified from time to time upon proper notice and after public hearing.

TABLE OF CONTENTS

SECTION I – DEFINITIONS 1-2

SECTION II - GENERAL RULES AND REGULATIONS FOR ALL LICENSEES

1. Regulatory Authority - M.G.L. c. 138 § 1 *et. seq.*; M.G.L. c. 140 § 1 3
2. Licensing Authority - M.G.L. c. 138 § 1 *et. seq.*; M.G.L. c. 140 §§ 2, 177A, 183A; 204 CMR 1.00 *et. seq.* 3
3. Severability 3
4. Remote Participation of Board Members – M.G.L. c. 30A §§ 18-25; 940 C.M.R. 29.10 3
5. Discrimination Prohibited 3
6. Corporate and Trade Names – 204 C.M.R. 2.01 4
7. Bankruptcy and Court Proceedings – M.G.L. c. 138 § 23; ABCC Guidelines 4
8. Corporate Transactions – M.G.L. c. 138 § 15A 4
9. Foreclosure on Loans - ABCC Guidelines 4
10. Employee List to be Maintained 5
11. Display of Licenses – 204 C.M.R. 2.01 5
12. Approvals of Other Departments – M.G.L. c. 10 § 74; M.G.L. c. 138 §§ 12, 12A, 15A 5
13. Acceptable Forms of Identification – M.G.L. c. 138 § 34B; ABCC Guidelines 5
14. Service Prohibited to Certain Individuals – M.G.L. c. 138 §§ 34A, 69 6
15. Violations and Penalties – M.G.L. c. 138 §§ 12, 23, 64, 65; M.G.L. c. 140 § 9 6
16. Posting of Notice of Violation 7
17. Cessation of Operations – M.G.L. c. 138 §§ 23, 77 7

18. Appeals – M.G.L. c. 138 §§ 15A, 67 8

19. License Required For Alcohol Consumption – M.G.L. c. 138 §§ 2, 41 8

20. Application Procedure - General Requirements – M.G.L. c. 138 §§ 15A, 16B; 204 C.M.R. 2.01 8

21. Legal Notice and Publication – M.G.L. c. 138 § 15A 9

22. Precise Plans Required – M.G.L. c. 138 §15A; M.G.L. c. 140 § 6; ABCC Guidelines 10

23. Proposed Plans Required for Conditional Approval – M.G.L. c. 138 § 15A 10

SECTION III - RESTAURANT ALCOHOL LICENSE – FOR CONSUMPTION ON THE PREMISES

24. Food Service Required 11

25. Employee Consumption Prohibited 11

26. Employees on Premises after Closing Hours – M.G.L. c. 138 § 12 11

27. Posting of Capacity, Emergency Exit Locations, and Fire Suppression Equipment – M.G.L. c. 10 § 74; M.G.L. c. 138 § 12; M.G.L. c. 148 § 34A 11

28. Access and Inspection of Licensed Premises by Board, Police and Agents – M.G.L. c. 138 § 63 12

29. Insurance Requirements – M.G.L. c. 138 §§ 12, 64A, 64B 12

30. Clear View of Interior of the Premises – M.G.L. c. 138 § 1 12

31. Maximum Occupancy Capacity and Maximum Seating Capacity – M.G.L. c. 138 § 12; M.G.L. c. 148 § 34A; Newton Revised Ordinances, §§ 30-11, 30-19 12

32. Interior Illumination, Clear Exits and Lighted Exit Signs, Clear and Unobstructed Interior – M.G.L. c. 138 § 1; M.G.L. c. 148 § 34A 13

33. Written Policies for Alcohol Service Required 13

34. Appointment of Manager – M.G.L. c. 138 § 26; 204 C.M.R. 2.01 13

35. Licensees and Managers – Responsibilities – 204 C.M.R. 2.05 13

36. Hours of Operation and Last Call – M.G.L. c. 138 § 12 14

37. Consumption on Premises – 204 C.M.R. 4.03 14

38. Serving Containers – 204 C.M.R. 4.03 14

39. Charge for Alcoholic Beverages – 204 C.M.R. 2.16, 4.02 14

40. Training and Certification 15

41. Annual Financial Reports 15

42. Licensing of the Exterior of the Premises – 204. C.M.R. 7.04, ABCC Guidelines 15

44. Licensing of a Public Sidewalk Café – Newton Revised Ordinances, § 26-30 16

45. Sunday Brunch – M.G.L. c. 138 § 33B 16

SECTION IV - CLUB LICENSES

46. List of Officers 17

47. Only Club Members and Guests to be Served – 204 C.M.R. 2.15 17

SECTION V - RETAIL PACKAGE STORE LICENSES

48. Hours and Days of Operation – M.G.L. c. 138 § 15; 204 C.M.R. 2.05 18

49. Consumption on Premises Prohibited Except Sample Tastings –
M.G.L. c. 138 § 15; 204 C.M.R. 2.05 18

50. Donations Prohibited – 204 C.M.R. 2.04 18

51. Seating, Chairs, Stools, and Tables Prohibited 18

SECTION VI - ONE DAY TEMPORARY ALCOHOL LICENSE

52. One Day Temporary License to Serve Alcohol – M.G.L. c. 138 §§ 2, 14, 23, 41; 204 C.M.R. 7.02, 7.04-7.06 19-20

53. Police Detail May be Required 20

SECTION VII - ENTERTAINMENT, AUTOMATIC AMUSEMENT MACHINES, BILLARDS

54. Entertainment and Noise – M.G.L. c. 140 § 183A;

Newton Revised Ordinances § 20-13 21

55. Coin-Operated Automatic Amusement – M.G.L. c. 140 § 177A 21

SECTION VIII - COMMON VICTUALLER LICENSE

56. Common Victualler License – M.G.L. c. 140 §§ 2, 6 22

SECTION I

DEFINITIONS

As used throughout these regulations, the terms contained within M.G.L. c. 138 and M.G.L. c. 140 will have the meaning as defined by statute. In addition, and to the extent not inconsistent with chapter 138 and chapter 140 of the General Laws of the Commonwealth, the following terms will have the following meanings:

"Abutters" – persons or entities listed on the City of Newton Assessor's most recent valuation list who are owners of record of real property which physically touches the real estate of the proposed licensed premises excluding record owners of real property located across a public way;

"Automatic amusement machine" – any mechanism whereby, upon deposit therein of a coin or token, any apparatus is released or set in motion or put in position where it may be set in motion for the purpose of playing any game involving, in whole or in part, the skill of the player, including, but not exclusively, such devices as are commonly known as pinball machines including free play pinball machines and video games;

"Board" – the City of Newton Board of License Commissioners;

"Club" - an entity licensed under M.G.L. c. 138 § 12, that has been granted written permission by the Board and the ABCC to restrict admission to the licensed premises to its members and to guests introduced by members, and to no other persons;

"ABCC" – the Alcoholic Beverages Control Commission of the Commonwealth of Massachusetts;

"Common Victualler" - the keeper of a restaurant or public eating house where the food sold is cooked or prepared on the premises and is intended to be eaten on the premises;

"Educational Institutional licenses"– a special license for the dispensing of wines and malt beverages only in dining halls maintained by incorporated educational institutions authorized to grant degrees;

"Food service" - the preparing, sale, service, dispensing, distribution, and/or delivery of food for consumption on the premises which includes meals, hot hors d'oeuvres, sandwiches, soups, hot prepared food, and salads, but excludes chips, nuts, pretzels, popcorn, candy, and other snack-like foods. Snack foods alone do not satisfy the requirement of food service;

"Innholder" – an innkeeper or person who holds him/herself out to the public as ready to entertain travelers, strangers, and transient guests;

"Keg"– any container for malt beverages having a capacity by volume of more than two gallons of liquid;

"Licensed premises" – the area designated by the Board upon which a licensee may conduct business as licensed under these Regulations;

"Licensee" – any person or entity granted a license by the licensing authority;

"Licensing Authority" – either the Board or the ABCC, as appropriate;

"Manager" - a responsible person designated by the licensee vested with full authority and control of the licensed premises and of the conduct of all business therein who directs and controls the day to day operation of the business of the licensed premises;

"Office of the Board" - the administrative office of the City of Newton Board of License Commissioners;

"Private residence" – the land together with a dwelling house, abode, or place where a person resides that is not open to the public. A private club that is open to members only is not a private residence;

"Responsible individual" – a person who is responsible for the orderly and safe conduct of an event and responsible for the proper sale, service, delivery, dispensing, and consumption of alcoholic beverages under a one-day temporary alcohol license issued under M.G.L. c. 138 §14;

"Restaurant"– space with seating, in a suitable building, provided with adequate and sanitary kitchen and dining room equipment and the capacity for preparing, cooking and serving suitable food for patrons and customers on the premises;

"Retail Package Store"– an establishment that offers alcoholic beverages for retail sale, not to be consumed on the premises;

"Seasonal Club" – a club which conducts business for only a portion of the year.

SECTION II

GENERAL RULES AND REGULATIONS FOR ALL LICENSEES

1. REGULATORY AUTHORITY

The Board's Regulations contained herein are promulgated under the authority of the Massachusetts Liquor Control Act pursuant to M.G.L. c. 138 § 23 and under M.G.L. c. 140 §§ 2, 177A, 183A, and may be amended and modified from time to time upon proper notice and after public hearing.

2. LICENSING AUTHORITY

These Regulations are adopted, and may be amended from time to time, by the local licensing authority, the City of Newton Board of License Commissioners ("the Board"), pursuant to the provisions of Massachusetts General Laws, Chapter 138 and Chapter 140. Any and all alcoholic beverages, common victualler, and entertainment licenses issued by the Board will be governed by these regulations, M.G.L. Chapter 138 and Chapter 140, the regulations of the Alcoholic Beverages Control Commission ("ABCC") of the Commonwealth of Massachusetts promulgated under 204 CMR 1.00 *et. seq.*, as amended, and any guidelines or advisory opinions issued by the ABCC.

3. SEVERABILITY

The Board's Regulations are severable, and if any section, paragraph, sentence, clause, phrase, or provision or the application thereof is held by a court of competent jurisdiction to be invalid, or rendered invalid by an amendment to the General Laws of the Commonwealth, such invalidity will not affect any other Regulations of the Board which will remain in full force and effect.

4. REMOTE PARTICIPATION OF BOARD MEMBERS

The Board will permit its members to participate remotely in accordance with City of Newton Executive Order dated September 14, 2012. In order for a Board member to participate in a public meeting from a remote location, the Chair, or designee, must make findings on the record that the remote member is unavailable to attend the public meeting. The remote member must have access to any written materials provided to the Board. Remote members may vote. A quorum of the Board must be physically present at the meeting.

5. DISCRIMINATION PROHIBITED

No licensee, employee, or manager may make any rule or policy that makes any distinction, discrimination or restriction on account of race, color, creed, sex, sexual orientation, gender identification or ancestry relative to the admission or treatment of any person.

6. CORPORATE AND TRADE NAMES

Licensees are prohibited from assuming any obligation for a licensed premises under any corporate or trade name other than that under which the licensee is licensed. Any change in corporate name or any change in trade name ("DBA") requires the prior written approval of both the Board and the ABCC.

7. BANKRUPTCY AND COURT PROCEEDINGS

(a) Licensees are required to notify the Office of the Board, in writing, of any and all court proceedings brought by or against the licensee, including those brought under the bankruptcy laws, as soon as the licensee becomes aware of such proceedings.

(b) Licensees are prohibited from pledging the license as an asset to any creditor without the prior written approval of both the Board and the ABCC.

(c) The Board will not approve of any pledged license acquired by sale in bankruptcy.

8. CORPORATE TRANSACTIONS

(a) Prior written approval of the Board and the ABCC is required for the following corporate transactions:

(1) change of manager;
(2) change of corporate officers;
(3) sale or transfer of corporate stock (with the exception of persons who own less than 10% stock in a publicly traded corporation);
(4) pledge of corporate stock or alcohol license as security; or
(5) acceptance of a loan or credit from another licensee, unless during the usual course of business.

(b) Prior written approval of the Board and the ABCC is required for any person, firm, corporation, partnership, association, entity, or combination of persons to obtain any interest in a license.

(c) The Board will not approve of any pledged license acquired by sale in bankruptcy, foreclosure, or sale/transfer of corporate stock.

9. FORECLOSURE ON LOANS

(a) Licensees are required to notify the Office of the Board, in writing, immediately when an assignee forecloses under an assignment of stock in incorporated licensed premises made as the result of foreclosure.

(b) The Board will not approve of any pledged license acquired through foreclosure.

10. EMPLOYEE LIST TO BE MAINTAINED

A current and accurate written list of all employees (including name, address, date of birth, date of hire, and position held) will be maintained upon or within the licensed premises and must be made readily available for inspection by authorized agents of the Board, Newton Police officers, the Board's Enforcement Officer, and members of the Board at all times. Licensees may be required to forward an employee list to the Office of the Board upon request.

11. DISPLAY OF LICENSES

All licenses issued by the Board will be prominently displayed within the licensed premises at all times in a conspicuous location, readily visible to the public.

In addition, any holder of a license to sell alcohol will post within the licensed premises additional signage relative to penalties for drunk driving, penalties for open alcohol beverage containers, prices for alcohol beverages, and any other signage as required by the ABCC where applicable.

12. APPROVALS OF OTHER DEPARTMENTS

(a) The Board will not grant final approval to issue any license until it receives the approval of all applicable City departments, in writing. The applicant or licensee will provide the Board with copies of approvals of all other applicable City departments. Approval of plans and/or the issuing of permits by the City's Inspectional Services Department, the Health Department, the Fire Prevention Bureau, the Police Department and/or grant of a Special Permit by the Board of Aldermen, does not constitute approval by the Board.

(b) Under certain circumstances, and only with prior approval of the Board, a license may be granted based upon the issuance of a temporary occupancy permit by the Inspectional Services Department.

13. ACCEPTABLE FORMS OF IDENTIFICATION

A licensee, manager, server, bartender, employee, or responsible individual may reasonably rely on the following types of identification, if valid and current, for proof of a person's identity and age:

(a) Massachusetts Driver's License;
(b) Massachusetts Registry of Motor Vehicles Liquor Identification Card;
(c) Passport issued by the United States or a country recognized by the United States; or
(d) Military Identification Card.

The Board may consider the reasonableness of the reliance on any of these four (4) forms of identification in any disciplinary matter before it.

14. SERVICE PROHIBITED TO CERTAIN INDIVIDUALS

(a) The sale, service or delivery of alcohol to any person who is under twenty-one (21) years of age is prohibited.

(b) The sale, service, or delivery of alcohol to an intoxicated person is prohibited.

15. VIOLATIONS AND PENALTIES

All licenses are subject to suspension, revocation, cancellation, forfeiture, modification, and/or refusal to renew for any violation of any regulation, the provisions of chapters 138 and 140 of the General Laws of the Commonwealth, or Regulation of the Board, the ABCC, or the City of Newton relating to the license, or for any breach of a condition of the license.

(a) Notice and public hearing required:

Prior to taking any action under this section, the Board will give reasonable notice to a licensee of any alleged violations, as set forth above. Reasonable notice will mean at least fourteen (14) calendar days and the notice will be made by first class mail to the licensee at the address on file with the Office of the Board.

The licensee will be granted an opportunity to be heard in a public hearing on the matter. The licensee will be permitted to present evidentiary, witness, and written testimony at the public hearing.

(b) Findings and determinations required:

After the close of the public hearing on the matter and a vote by the Board, within a reasonable time not to exceed thirty days, the Board will make written findings of fact and determinations of law as they pertain to the alleged violations. In making these findings and determinations, the Board may consider and examine any and all criteria the Board deems relevant, including but not limited to the following: past history of violations against the licensee or lack thereof; the severity of the offense alleged; whether service, sale, or delivery of alcoholic beverages occurred to a minor or to an intoxicated person; the extent to which violence or the threat of violence transpired; risk to the public safety; the public need and public good.

(c) Penalties:

If the Board concludes that there has been a violation or violations of any condition of the license, of any state and/or local law pertaining to the license including the ABCC's regulations at 204 CMR 1.00 *et. seq.*, or of any of the Board's Regulations, the Board may modify, suspend, revoke, cancel, declare forfeited, and/or refuse to renew the license. Without limitation of any of the foregoing, modification may include the reduction of hours of operation of the licensee.

Upon the Board's modification, suspension, revocation, cancellation, declaration of forfeiture or refusal to renew a license, the licensee will surrender the license to the Board by

physically delivering the license to the Office of the Board at a date and time determined by the Board.

Where the Board finds a violation of the sale or service of alcoholic beverages to a minor, or to an intoxicated person, the Board may, in the exercise of its discretion in appropriate instances, require as a condition precedent to any modification, reinstatement, or renewal of a license, that the licensee provide a certificate of insurance for liquor liability over and above the amount otherwise required by statute.

16. POSTING OF NOTICE OF VIOLATION

Whenever the Board, after proper notice and public hearing as appropriate, suspends, revokes, cancels, modifies, refuses to renew, or declares forfeited any license, the Board will provide to the licensee one or more signs each measuring eight and one-half inches by eleven inches, indicating the actions taken by the Board. The licensee is required to post the signs in a conspicuous place, clearly visible to the public for the duration of the sanction. During the entire period of any such license suspension, the Board, in its discretion, may require the licensee to segregate and obscure from public view all alcohol on the licensed premises.

17. CESSATION OF OPERATIONS

(a) Any licensee intending to permanently close a place of business, or who ceases business operations must immediately surrender its license to the Office of the Board.

(b) In the event that such closure is on a temporary basis, the licensee must notify the Office of the Board in writing prior to such temporary closing stating the reasons and estimated length of such temporary closing.

(c) Licensees who have ceased to conduct business may be subject to cancellation of the license, pursuant to the following procedures:

> (1) the Board must hold a public hearing prior to cancellation of the license;
> (2) the Board must give proper notice and an opportunity to be heard to any licensee who is subject to a hearing under this section; and
> (3) a licensee must be given at least six (6) months from the date of the public hearing to resume operation of the business to the satisfaction of the Board, before cancellation may take place.

(d) Failure to respond to notice from the Board and failure to attend the public hearing on the matter will result in cancellation of the license.

18. APPEALS

Any applicant for an alcohol license, applicant for an alcohol license transfer, and any alcohol licensee may appeal a decision of the Board to the ABCC. Any alcohol licensee whose license has been suspended, revoked, modified, cancelled, or declared forfeited by the Board may appeal a decision of the Board to the ABCC. The appeal must be made in writing within 5 days following receipt of written notice of the action of the Board. Pending a decision on any appeal to the ABCC, the action of the Board will have the same force and effect as if the appeal had not been taken. Licensees may petition the ABCC to stay proceedings pending outcome of the appeal.

Decisions of the Board concerning One-Day Temporary Licenses are final and may not be appealed to the ABCC.

19. LICENSE REQUIRED FOR ALCOHOL CONSUMPTION

(a) A license is required for the consumption, sale, service or delivery of alcohol that takes place outside of a private residence, excepting any appropriate exclusions under the General Laws of the Commonwealth or pursuant to federal law.

(b) This section is not intended to abridge any right or obligation under the General Laws of the Commonwealth.

20. APPLICATION PROCEDURE - GENERAL REQUIREMENTS

All applications and required forms for all licenses issued by the Board must be complete, legible, accurate, and submitted in a timely manner to ensure proper processing by the Office of the Board. It will be the sole responsibility of the applicant to fully and accurately complete all applications and forms as required. Failure to complete applications according to this section may result in sanctions up to and including denial, modification, revocation or cancellation of the license.

(a) Filing Fees: all required filing fees charged by the Board and by the ABCC pertaining to all licenses issued by the Board must be paid in full at the time the application is filed with the Office of the Board. An application will not be considered unless all fees are submitted with the application. All filing fees are non-refundable and will not be pro-rated for any reason.

(b) License Fees - for New, Transfer, and Annual Renewal Licenses: all license fees for any license issued under these Regulations must be paid in full prior to the issuance of the license. An application will not be considered unless all license fees are submitted with the application. All license fees are non-refundable and will not be pro-rated for any reason.

(c) Licensees are required to pay in full all taxes and charges owed to any Department of the City of Newton prior to the Board's issuance, renewal or transfer of the license.

(d) All applicants for alcohol licenses must legibly complete and submit an application, and any other forms or documents required by the Board or the ABCC, to the Office of the Board at least fourteen (14) days prior to public hearing.

(e) No application by the same applicant for the same type of license to be exercised on the same premises may be filed within one year of the date of the last application. The Board cannot receive more than two applications for the same premises in the same license year. This subsection does not apply to One Day Temporary Alcohol Licenses.

(f) Any misrepresentations made on an application may subject the licensee to modification, revocation or cancellation proceedings under M.G.L. c. 138 § 64 and these Regulations.

21. LEGAL NOTICE AND PUBLICATION

(a) All applicants for a new alcohol license, for an alcohol license transfer, for new stockholders, and/or for a change in the description of an alcohol licensed premises must provide proper and timely legal notice and publication which is required to occur at least ten (10) days prior to the public hearing conducted before the Board.

(b) Legal notice will include the following:

(1) the applicant's full name;
(2) the kind of license applied for;
(3) a complete description of the purpose of the application;
(4) and the full address where the license is to be used.

(c) Publication will be made in a print newspaper with a general circulation within the City of Newton.

(d) The applicant will send an accurate copy of its published legal notice by certified mail return receipt requested (green card), within 3 days of its newspaper publication, to the following:

(1) all abutters;
(2) all public or private elementary, middle, or secondary schools, churches, synagogues, religious institutions of worship, or hospitals within 500 feet from the proposed licensed premises.

(e) Once the applicant has provided proper and timely legal notice and publication, the applicant will file the return receipts (green cards) and an original of the notice with the Office of the Board.

(f) Applications will be considered incomplete without proof of proper and timely legal notice, and may not be acted upon by the Board.

22. PRECISE PLANS REQUIRED

(a) Precise plans are required to be submitted to the Board for approval for the following transactions:

(1) new license;
(2) transfer of an existing license;
(3) alteration of the structure of the licensed premises;
(4) extension of the licensed premises; and/or
(5) increase in seating capacity.

(b) Plans submitted to the Board for approval will specify square footage, location and number of all tables and seating of any kind, all means of egress, maximum and actual capacity, bathrooms, kitchen facilities, closets, waiting areas, dance floors, and any entertainment equipment.

(c) Plans submitted to the Board for approval must specify the number and location of any seats, chairs, stools, or bar stools upon or within the licensed premises.

(d) Upon the completion of any alteration to the structure of the licensed premises, the applicant or licensee is required to certify in writing that the work has been completed in substantial compliance with the plans approved by the Board.

(e) If, upon the completion of any alteration to the structure of the licensed premises, the work has not been completed in substantial compliance with the plans approved by the Board, the licensee will submit an additional set of as-built plans for approval.

(f) Failure to seek prior approval of plans for any alteration of the structure of the licensed premises or change in seating capacity may result in sanctions, or reconfiguration or alteration of the plan. Failure to submit as-built plans under section (d) for approval by the Board may also result in sanctions.

(g) Changes to plans may require a hearing before the Board.

23. PROPOSED PLANS REQUIRED FOR CONDITIONAL APPROVAL

(a) For premises for which construction has not yet commenced, or is in progress or not yet completed, proposed plans may be submitted for conditional approval for the grant of a license.

(b) The approval of a license based upon proposed plans is conditional only, and does not become final until precise, as-built plans are submitted to the Board for ultimate approval.

SECTION III

RESTAURANT ALCOHOL LICENSE – FOR CONSUMPTION ON THE PREMISES

24. FOOD SERVICE REQUIRED

The Board will not issue any tavern license, and food service is required for all licensees under this Section III of the Regulations at all times when alcohol is served.

25. EMPLOYEE CONSUMPTION PROHIBITED

No licensee, manager, server, bartender, employee, or responsible individual may consume any alcoholic beverages while on duty, nor after the official closing hour of the licensed premises, on the licensed premises.

26. EMPLOYEES ON PREMISES AFTER CLOSING HOURS

Employees may not remain on the licensed premises for more than one hour after closing time. In its discretion, the Board will allow for the following exceptions:

(a) to clean the premises;
(b) to make emergency repairs;
(c) to provide security to the premises; or
(d) with prior approval of the Board.

27. POSTING OF CAPACITY, EMERGENCY EXIT LOCATIONS, AND FIRE SUPPRESSION EQUIPMENT

All licensed premises which have a maximum occupancy capacity of over 50 (fifty) persons are required at all times to prominently post on, or in close proximity to, the licensed premises' front door and any other additional doors by which patrons and employees enter the licensed premises, one sign per entrance door. Each sign will measure at least eleven inches by seventeen inches and will contain in large bold print the following:

(a) the maximum occupancy capacity of the licensed premises;
(b) the location of each and every emergency exit of the licensed premises; and
(c) whether or not the entire licensed premises is equipped with fire suppression equipment consisting of overhead automatic watered sprinklers.

Said sign(s) must be attached by the licensee on the inside glass window of all entrance doors, or on an inside glass window in close proximity to all entrance doors, or in some other conspicuous location as the Board may determine. Said sign(s) must be clearly visible from the outside of the licensed premises as patrons and employees enter the licensed premises.

28. ACCESS AND INSPECTION OF LICENSED PREMISES BY BOARD, POLICE AND AGENTS

All members of the Newton Police Department, the Board's Enforcement Officer and the Administrative Director of the Board are appointed agents of the Board for purposes of enforcement. The licensed premises must at all times be subject to inspection by appointed agents of the Board, Newton Police officers, the Board's Enforcement Officer, and members of the Board.

The Board, and all appointed agents of the Board, are to be granted free, immediate and unhampered entrance upon and into the licensed premises at any time employees are on the premises, or at any time the licensed premises is open for business, for purposes of inspection related to a license granted under these Regulations. Any hindrance, delay, or denial in providing such free, immediate, and unhampered access will be cause for sanctions against the licensee by the Board.

Any evidence, including but not limited to observations, information, documents, writings, reports, statements, recordings, photographs, and videos obtained as a result of inspection of the licensed premises may be used by the Board for any lawful purpose, including but not limited to suspension, revocation, cancellation, forfeiture, refusal to renew, and/or modification of the license after proper notice and public hearing.

29. INSURANCE REQUIREMENTS

All licenses issued by the Board are subject to any and all insurance requirements the Board may impose and those arising under state law including but not limited to general liability coverage, workers compensation coverage, and alcohol liability coverage. Applications will be considered incomplete and will not be considered unless proof of insurance is provided. At all times the licensee must maintain said insurance coverages current and in accordance with state law, or at a level determined by this Board where permitted.

30. CLEAR VIEW OF INTERIOR OF THE PREMISES

Any advertising matter, sign, screen, shade, curtain, display, glass tint, reflective glass, or other visual obstruction, which completely prevents a clear view of the interior of the licensed premises from the outside, is prohibited on any window or door of any licensed premises, except as permitted in writing by the Board or the ABCC. This regulation does not apply to a club license issued under M.G.L. c. 138 § 12.

31. MAXIMUM OCCUPANCY CAPACITY & MAXIMUM SEATING CAPACITY

Maximum occupancy capacity and maximum seating capacity of the licensed premises will be adhered to at all times by the licensee, manager, or responsible individual and will be enforced by the Board. The licensee, manager, or responsible individual must ensure that procedures are in place so that maximum occupancy capacity and maximum seating capacity is not exceeded.

32. INTERIOR ILLUMINATION, CLEAR EXITS AND LIGHTED EXIT SIGNS, CLEAR AND UNOBSTRUCTED INTERIOR

At all times when persons are present within or upon the licensed premises, the interior of the licensed premises will be safely and sufficiently illuminated and all exits will at all times remain clear and unobstructed and be in proper working order providing for immediate emergency egress. All exits will be properly designated by lighted exit signs in proper working order and in proper location(s) at all times. All aisles, interior and exterior stairways, fire escapes, means of egress, hallways, corridors, and vestibules must remain clear and unobstructed at all times.

33. WRITTEN POLICIES FOR ALCOHOL SERVICE REQUIRED

In its discretion, the Board may require a licensee to create and maintain clear written policies concerning the service of alcohol, to be distributed to all managers and all employees. If the Board requires such written policies, copies must be maintained on the premises and be available for review and inspection at all times. Licensees may be required to forward any policies created under this section to the Office of the Board upon request.

34. APPOINTMENT OF MANAGER

All alcohol licensees will appoint and maintain a responsible person as Manager of the licensed premises, and the manager will be subject to the following conditions, obligations and requirements:

(a) appointment of the manager must be approved in writing by both the Board and the ABCC;
(b) the name of the manager will appear on the face of the license;
(c) must be at least 21 years of age and a US citizen;
(d) must be vested with full authority and control of the licensed premises and of the conduct of all business, and be of high moral character acceptable to the Board;
(e) will be subject to a criminal background check by the ABCC, in conformance with all protections of the law;
(f) must be present at the licensed premises at least fifty (50) percent of the time the licensed premises is open for business; and
(g) will be responsible for the proper operation of the licensed premises, for the safe and orderly conduct of the licensed business, for any area(s) under the direction and control of the licensee relating to the conduct of the licensee's business.

35. LICENSEES AND MANAGERS - RESPONSIBILITIES

The licensee and/or the manager are responsible for any and all violations or infractions incurred by any officer, agent, or employee of the licensee, whether the licensee or manager is present or not at the time of the violation.

The licensee and/or the manager must maintain order in and upon the licensed premises, The licensee and/or the manager are required to cooperate in all manner and at all times with state and city officials in ensuring safe and orderly facilities, and in the proper and safe sale, service, delivery, dispensing, distribution, and consumption of alcoholic beverages.

36. HOURS OF OPERATION AND LAST CALL

(a) Licensees may operate only during hours approved by the Board during a public hearing. The hours of operation will appear on the face of the license.

(b) Members of the public are not permitted on the licensed premises outside of the hours of operation.

(c) Last call must be made one half hour before closing time. No alcohol may be consumed on the licensed premises by anyone outside of the hours of operation.

37. CONSUMPTION ON PREMISES

(a) All alcoholic beverages must be served in open containers.

(b) Patrons may not remove any alcoholic beverage from the licensed premises. Licensees, managers, and other employees may not knowingly permit the removal of alcohol from the premises.

(c) Patrons may not possess more than two (2) glasses of an alcoholic beverage at any one time. Licensees, managers, and other employees may not knowingly permit the possession over the maximum permissible number of alcoholic beverages for any one patron.

38. SERVING CONTAINERS

Pitchers of beer may only be served to two (2) or more people at a time.

39. CHARGE FOR ALCOHOLIC BEVERAGES

(a) The price charged to the public for alcoholic beverages may not be lower than the actual cost to the licensee.

(b) A cover charge may not be credited towards the purchase price of any alcoholic beverage.

(c) Special drink pricing for happy hour is prohibited.

(d) A licensee may not impose a minimum charge for the purchase of alcoholic beverages or minimum alcoholic beverage drinking requirement.

40. TRAINING AND CERTIFICATION

(a) All servers of the licensed establishment including but not limited to bartenders, managers, waitresses, waiters and also persons under a retail package store license will complete an appropriate Massachusetts alcoholic beverage server training program of a type approved by the Board prior to any service, sale, and/or delivery of alcoholic beverages. Training will be renewed every three years.

(b) Proof of training must be submitted to the Board upon completion, and a copy will be kept on the licensed premises for inspection.

(c) In its discretion, the Board may impose additional training and certification requirements upon a licensee.

41. ANNUAL FINANCIAL REPORTS

Upon request, and in the discretion of the Board, holders of restaurant licenses under Chapter 138 § 12, may be required to deliver to the Office of the Board an annual written report indicating the percentage of gross sales of food and gross sales for alcoholic beverages for the preceding calendar year.

42. LICENSING OF THE EXTERIOR OF PRIVATELY OWNED PREMISES

A licensee may serve alcohol on the exterior of the premises only when certain conditions are met, and in the discretion of the Board, as follows:

(a) The licensee must apply to the Board for an extension of the licensed premises to include the area of proposed outdoor alcohol service. The licensee must follow the application and publication procedures in these Regulations, and the matter will be determined after a public hearing.

(b) The service and consumption of alcohol is limited to those areas approved by the Board during a public hearing.

(c) The exterior portion of the licensed premises must be enclosed by a barrier acceptable to the Board.

(d) The exterior portion of the licensed premises must directly abut the licensed premises.

(e) The entirety of the exterior portion of the licensed premises must be readily visible from the interior of the licensed premises.

(f) The Board may impose reasonable hours of operation for the exterior portion of the licensed premises to comport with these regulations and any other ordinances of the City or General Laws of the Commonwealth.

(g) Golf Courses will be subject to the guidelines issued by the ABCC, and may not be subject to subsections (c), (d), or (e) of this Regulation.

43. LICENSING OF A PUBLIC SIDEWALK CAFE

The service and consumption of alcohol on a public sidewalk café adjacent to the licensed premises requires prior approval of the Board, as well as submission and approval of the appropriate application for a sidewalk café license to the Department of Health and Human Services. Service of alcohol on a public sidewalk café without all required approvals and permits may result in sanctions by the Board against the licensee, including suspension, revocation, and modification of the license. Notification of the extension of the licensed premises made under this section must be made to the Department of Health and Human Services.

44. SUNDAY BRUNCH

Licensees may request permission of the Board to begin the service of alcohol on Sundays at 10:00 A.M. Approval is subject to a public hearing with proper notice and an opportunity to be heard.

SECTION IV

CLUB LICENSES

45. LIST OF OFFICERS

Club licensees are required to make the annual record of information concerning the officers of the Club available for inspection to authorized agents of the Board, Newton Police officers, the Board's Enforcement Officer, and members of the Board at all times. Club licensees may be required to forward this list to the Office of the Board upon request.

46. ONLY CLUB MEMBERS AND GUESTS TO BE SERVED

The service, sale, delivery, distribution, dispensing, and consumption of alcoholic beverages within or upon the Club's licensed premises must be limited to Club members and guests of Club members only, and to no other persons. Club door(s) must be kept closed and secured in a manner which will restrict access to members only, but must be in proper working order at all times to provide for immediate emergency egress. Entrance(s) to the Club's licensed premises must be by key, card or ringing of bell by Club member.

The Club licensee must keep an accurate and current written list of its members, including name, address, dates of membership, and position held, within or upon the licensed premises which list must be readily available for inspection by authorized agents of the Board, Newton Police officers, the Board's Enforcement Officer, and members of the Board at all times. A current and accurate copy of same must be forwarded by the licensee to the Office of the Board upon request.

SECTION V

RETAIL PACKAGE STORE LICENSES

47. HOURS AND DAYS OF OPERATION

(a) Monday through Saturday – Retail package store licensees may operate Monday through Saturday between the hours of 8:00 A.M. and 11:00 P.M., or until 11:30 P.M. on a day before a legal holiday, unless otherwise restricted by the Board.

(b) Sunday – On Sundays, retail package store licensees may operate between the hours of noon and 11:00 P.M., unless otherwise restricted by the Board.

(c) Retail package stores licensees are prohibited from operating on Memorial Day, Thanksgiving Day, and Christmas Day.

48. CONSUMPTION ON PREMISES PROHIBITED EXCEPT SAMPLE TASTINGS

(a) Consumption of alcoholic beverages in a retail package store is prohibited except for sample tastings as described below.

(b) Retail package store licensees may provide customers, free of charge, sample tastings. Food service is required, and samples are limited to those beverages for sale on the premises, and only in the following quantities:

(1) wine: 1 ounce maximum single serving restricted to 9 liters per 30 day period; malt beverages: 2 ounce maximum single serving restricted to 18 liters per 30 day period;
(2) liqueurs and cordials: 1/4 ounce maximum single serving restricted to 1 liter per 30 day period; and
(3) all other kinds of alcoholic beverages: 1/4 ounce maximum single serving restricted to 1 liter per 30 day period.

49. DONATIONS PROHIBITED

Donations of alcoholic beverages by a retail package store licensee to be used as prizes in a game of chance are strictly prohibited.

50. SEATING, CHAIRS, STOOLS, AND TABLES PROHIBITED

No seating, chairs, stools, or tables for use by customers or patrons will be placed or permitted by a retail package store licensee upon or within the licensed premises, or upon any area under the direction and control of the licensee.

SECTION VI

ONE DAY TEMPORARY ALCOHOL LICENSE

51. ONE DAY TEMPORARY LICENSE TO SERVE ALCOHOL

(a) A One Day Temporary License to serve alcohol is required for the sale, delivery, and/or consumption of alcohol.

(b) A One Day Temporary License may not be issued for a location that is already otherwise licensed to serve alcohol under these Regulations.

(c) A One Day Temporary License may only be granted to a natural person.

(d) Under this section, the Board may only grant to each natural person, per street address, a total of thirty (30) licenses in the aggregate for each calendar year.

(e) The notice and publication provisions at Regulation # 21 do not apply to One Day Temporary Licenses.

(f) Applicants for a One Day License must provide the Board with a sketch of the proposed licensed premises. The sketch must be of a reasonably precise nature acceptable to the Board which clearly delineates the location and manner that the alcoholic beverages will be served. The sketch must clearly and accurately designate the actual physical area within the proposed licensed premises where alcoholic beverages will be served.

(g) An event that takes place in a private residence where there is no charge, direct or indirect, for alcohol, is exempt from the application of this Regulation.

(h) Sample tastings are not permitted for holders of One Day Temporary Licenses.

(i) An applicant under this section must certify to the Board that he or she will provide for the orderly and safe conduct of the event. The applicant will be responsible for the proper sale, service, delivery, dispensing, and consumption of alcoholic beverages and will be required to be physically present during the duration of the entire event.

(j) The Board may grant an All-Alcohol One Day Temporary License to non-profit entities only.

(k) The Board may grant only a Beer and Wine One Day Temporary License to for-profit entities.

(l) The service of food is required for all licenses granted under this section. A menu for the food to be served at the event must be submitted to the Board with the application.

(m) Licensees under this section may also be subject to the requirements for an Entertainment License pursuant to Regulation # 53.

(n) Any and all alcohol served under this Regulation must be purchased from a wholesaler.

52. POLICE DETAIL MAY BE REQUIRED

(a) The Board may require a licensee to hire a police safety detail.

(b) The number of police personnel to be hired will be determined by the Chief of Police, or designee, in his or her discretion.

(c) The licensee is obligated to contact the Newton Police Department to arrange for the hiring of the police detail and confirmation of the hiring of an adequate police detail is required before the license will issue.

(d) The number and rank of police officers will otherwise be determined by the Chief of Police, or designee.

SECTION VII

ENTERTAINMENT, AUTOMATIC AMUSEMENT MACHINES, BILLARDS

53. ENTERTAINMENT AND NOISE[1]

(a) All entertainment, including but not limited to amplified music, recorded or live music, special effects, live performance, or dancing, conducted by a licensee under these Regulations will require that a licensee obtain an entertainment license. All entertainment licensees will comply with the Noise Control Ordinance of the City of Newton, as amended.

(b) The Board may require any licensee applying for an entertainment license to appear before it in a public hearing, and may require the applicant to adhere to the notice requirements outlined herein at Regulation # 21.

(c) In its discretion, the Board may place such conditions on the license as to ensure compliance with the General Laws, the Regulations of the Board, and any applicable City Ordinance. Any such conditions are automatically renewed with the license, unless modified or otherwise altered by the Board after a public hearing on the matter.

(d) Licenses under this section may be modified, suspended, or revoked after giving the licensee reasonable notice, a public hearing, and an opportunity for the licensee to be heard.

(e) Licenses under this section may be exercised seven days per week, subject to any reasonable restrictions in hours of operation. The licenses are annual, renewable, non-transferrable, and otherwise expire on December 31st of each year.

(f) Licensees who have been granted a One Day Temporary Alcohol License under Regulation # 52 are required to obtain a Special One Day Entertainment License, if applicable. A Special One Day Entertainment License for use on a Sunday may be subject to additional fees by the Commonwealth.

54. COIN-OPERATED AUTOMATIC AMUSEMENT

The existence of, type, and location of any automatic amusement machine within or upon the licensed premises must be first approved in writing by the Board. Any change in location or change in type of automatic amusement machine must likewise be approved in writing by the Board. The licensee, and not the distributor, is obligated to make application to the Office of the Board under M.G.L. c. 140 § 177A.

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[1] All applicants are directed to contact the Health and Human Services Department for further information concerning the issuance of an Entertainment License at 617-796-1420.

SECTION VIII

COMMON VICTUALLER LICENSE

55. COMMON VICTUALLER LICENSE

(a) Food Service to the Public:

Common Victuallers will require a license issued by the Board pursuant to chapter 140 § 2. Common Victualler licensees must have adequate and sanitary kitchen and dining room equipment and capacity for preparing, cooking and serving food on the licensed premises.

(b) Food Service in Private Organizations:

No club, society, association or other organization, may dispense food or beverages to its members and their guests to be consumed on its premises without a license issued by the Board as provided under M.G.L. c. 140 § 21E. This paragraph does not apply to tax-exempt literary, benevolent, charitable, scientific, or religious organizations, nor to clubs holding an alcohol license issued under M.G.L. c. 138 § 12, nor to any recognized veteran or fraternal organization.