



# **TOWN OF ANDOVER**

## **XI.2.**

### **ALCOHOLIC BEVERAGE LICENSE POLICY**

**Board of Selectmen  
Licensing Board**

**Licensing Agent for Board  
Lawrence J. Murphy  
Town Clerk**

**Revised and Adopted: October 7, 2013**

## **XI.2. TOWN OF ANDOVER ALCOHOLIC BEVERAGE LICENSE POLICIES & REGULATIONS**

Whereas, it is desirable to adopt uniform policies and guidelines for the administration of liquor licenses, the Board of Selectmen, the Local Licensing Authority for alcoholic beverage licenses under MGL Chapter 138, does hereby adopt the following policies and guidelines:

### **A. ADMINISTRATION OF LIQUOR LICENSES**

1. The Town Clerk is the designated Licensing Agent of the Board of Selectmen. The Licensing Agent has the authority to accept and reject applications that do not meet the minimum requirements of the Alcoholic Beverages Control Commission and/or the Town of Andover. Upon recommendation from the Town Manager and the Chief of Police, a Police Officer will also be designated as an agent to the Board of Selectmen who will work with the Town Clerk to insure that the policies of the Board of Selectmen and the Massachusetts State Laws regarding Alcoholic Beverage Licensing are adhered to by all licensees.
2. Applications regarding Premises not actually in existence at the time of the application will not be approved unless and until a building permit has been issued by the Town of Andover and the applicant has filed with the application a plan showing the actual dimensions of the premises which are to be constructed on which the license is to be exercised. If construction of the premises is not completed at the time the license is approved, the license may be approved on the condition that construction shall be completed and as-built plans shall be filed prior to the issuance of the license.
3. Approvals of applications by the Board of Selectmen are valid for (6) six months from the date of approval by the Alcoholic Beverages Control Commission. If such time expires before the license is issued, due to the applicant's failure to meet all of the conditions imposed by the Board, the license will not be issued and the applicant must reapply and be reheard by the Board. Prior to the expiration of the (6) six month approval period, the applicant may petition the Board of Selectmen for an extension of the approval period not to exceed 2 months. The extension may be granted for good cause. No more than one extension may be granted.
4. A record of all liquor licenses issued by the Board of Selectmen, both as to premises and owner, shall be maintained in the office of the Town Clerk. Said file shall contain all applications, correspondence, decisions, etc. regarding the licensed premises, and other written information. The file of each owner and premises shall be reviewed annually at the time of the license renewal.
5. Andover, like other Massachusetts municipalities, is granted under MGL Chapter 138, a certain number of wine & malt beverages only pouring licenses and a certain number of all alcohol pouring licenses based on population. In the event a municipality has issued its maximum allowable wine & malt pouring licenses the local licensing authority has the discretion to issue additional wine & malt beverages pouring licenses, provided that an all alcohol pouring license is retired for each such wine and malt beverage pouring license issued. The Board will consider applications for the issuance of wine & malt beverages pouring licenses under these circumstances on a case by case basis. The Board may issue the same if determined to be in the best interests of the Town. The Board may

in its discretion impose additional fees for such licenses to offset the revenue lost by retirement of an all alcohol pouring license.

**B. LIQUOR LAW VIOLATIONS**

1. When, after hearing, it is determined by the Board of Selectmen that a violation of the liquor laws of the Commonwealth of Massachusetts has occurred or a licensee has failed to comply with the conditions of the license or these policies and regulations, the Board of Selectmen shall consider the appropriate disciplinary action. In determining the appropriate disciplinary action to be taken, the Board of Selectmen shall consider the following:
  - (a) the written record of the establishment on file within the Office of the Town Clerk during the preceding 36 calendar months and any prior infractions during this period.
  - (b) the particular merits of the case presented at the hearing inclusive of such factors as intent, culpability of the parties, and such other factors as the Board may deem relevant.
  - (c) the extent to which the owner, proprietor or operator has established procedures to guard against infractions.
  - (d) cooperation of the establishment owner, proprietor, and operators with the Town Clerk, Police Department, inspectors, and other Town officials in the conduct of its business.
  - (e) such recommendations as the Town Manager may present.
2. In general, in matters of first offense, the Board shall consider the issuance of a letter of reprimand to the owner and his representative, if there is one, a copy of which shall be placed on file in the license record of the office of the Town Clerk.
3. In matters of a second offense within the period of 36 calendar months the Board shall consider the issuance of a suspension for a period of 1-14 consecutive calendar days and shall so state the period of suspension.
4. In matters of a third or subsequent offense within 36 calendar months, the board shall consider a second suspension for a period of 1-30 consecutive calendar days and/or revocation of the license.
5. All of the above are general guidelines for the Board of Selectmen in their deliberations regarding infractions found against the licensed establishment, licensee, owner, proprietor, or other operators. Each case shall be considered upon its individual merits. The Board reserves the right to impose penalties in excess of the above if deemed appropriate.

**C. LIQUOR LICENSES – IN GENERAL**

1. Liquor licenses are issued under authority of MGL Chapter 138. Any new application for a license to sell alcoholic beverages, or for a change in an existing license, must be accompanied by the appropriate application fee.
2. Every liquor license application which requires a public hearing with newspaper publication or notice to abutters and all applications for change of manager shall go before the Board of Selectmen for hearing in conformity with the General Laws. All other liquor license applications shall first be referred to the Town Manager who shall have the authority to approve, but not to disapprove the same. If the Town Manager does not approve he shall transmit the application to the Board of Selectmen for determination along with his recommendations; and provided further, that the Town Manager may refer any application to the Board of Selectmen for approval in the first instance if he deems it in the public interest to do so.
3. If approved, the application is transmitted to the Alcoholic Beverages Control Commission (ABCC) for its approval. If disapproved the applicant may appeal to the ABCC under the provisions of MGL Chapter 138.
4. The Board of Selectmen, under the authority granted by MGL Chapter 138, shall set the hours of operation for any on-premise establishment. Once the operating hours are granted to any licensee, a change in these hours can be made only after a public hearing before the Board of Selectmen.
5. Any licensee intending to close the licensed premises must notify the Board of Selectmen in writing ten (10) days before such closing and shall state in the notice the reason for such closing and the estimated length of such closing. Any licensee intending to close for more than sixty (60) days must appear before the Board to discuss the status of the license.
6. No licensee shall conduct business under any corporate or trade name other than that under which it is licensed.

**D. MANAGER/CHANGE OF MANAGER**

1. The Manager of the licensed premises is the principal representative of the licensee with full authority and control of the licensed premises and of the conduct of all business therein relative to alcoholic beverages as provided in MGL Chapter 138, Sec. 26.
2. By the close of the next business day following the termination of employment of the Manager for any reason, the licensee must notify the Town Clerk, in writing, of the name of the person who will discharge the duties of Manager pending selection and approval of a new Manager. If, at any time, there is a change in the Manager of record for the licensed premises, an application for change of Manager must be filed no later than thirty (30) days after the effective date of the change.
3. The Board may impose a penalty for failure to file a timely application for change of Manager, which may include a penalty of suspension that may be up to one day of suspension for each day of non-compliance, unless the Board finds that there were circumstances which excused the non-compliance.

4. Except as otherwise provided in the Massachusetts General Laws or approved by the Board of Selectmen, the Manager must be a full time employee or a corporate officer of the licensee, and must be engaged exclusively in the management of the licensed business.
5. The Manager shall be on the licensed premises regularly in the course of business, consistent with the permitted hours of operation. When the Manager is not upon the premises, a method of contacting the Manager promptly must be arranged so that the Manager can be reached at all times by the person designated to be in charge of the premises. The Manager shall designate an Assistant Manager to be responsible in his or her absence. However, the Manager will continue to be responsible for the operation of the licensed premises whether or not on the premises.
6. Without limiting the scope of the previous subsections and without limiting the penalties which may be imposed on the licensee for violation of these regulations, the Manager shall be responsible for the following:
  - (a) Careful selection of qualified employees of the licensed business, including servers, clerks and persons who are engaged with the public in any capacity.
  - (b) Training of employees in all matters relating to the sale or service of alcoholic beverages. The Board strongly advises managers and all employees as they are hired to participate in a State recognized alcohol training program.
  - (c) Failure of the Manager to comply with these policies and regulations or to properly discharge the duties of Manager may result in removal as Manager or suspension or revocation of the license as may be appropriate to the circumstances.

**E. ADDITIONAL PROVISIONS**

1. Assignment of stock in a corporation granted an Alcoholic Beverage License gives no right to such assignee to conduct the business of the licensee without approval of the Board of Selectmen and the ABCC. Licensees must immediately file a Petition for a Transfer of Stock when the assignee forecloses under such assignment of stock.
2. Licensees shall immediately notify the Board of Selectmen of any proceedings brought against them or any proceedings brought by themselves under the Bankruptcy Laws.
3. Licensees shall immediately notify the Board of any court or administrative proceedings which may affect the status of the license.
4. No person may have a direct or indirect beneficial interest in any type of Alcoholic Beverage License without obtaining approval from the Town and the Alcoholic Beverage Control Commission.
5. All alcoholic beverages must be opened and consumed on the premises, unless removed in accordance with the provisions of MGL Chapter 138, Section 12. (applicable to Section 12 Licenses)

6. Last call shall be no later than thirty (30) minutes before the licensed closing hour. No alcoholic beverages may be served after last call. (applicable to Section 12 Licenses)
7. All tables and bars must be cleared of all glasses, bottles, and containers of alcoholic beverages by the licensed closing hour (applicable to Section 12 Licenses) and all customers must be off the premises by the licensed closing hour.
8. Owners and employees must be off the premises no later than thirty minutes after the licensed closing hour, except such owners and employees may be on the premises for the purpose of cleaning, making emergency repairs, providing security for such premises, or preparing food for the next day's business or opening or closing the business in an orderly manner. No employee or owner shall serve or consume any alcoholic beverage on the premises before the licensed opening hour or after the licensed closing hour. (applicable to Section 12 Licenses)
9. No licensee shall keep for sale, store or sell alcoholic beverages in any part of the premises not specified on the license.
10. No licensee shall make any distinction, discrimination or restriction on account of race, color, religious creed, national origin, sex or ancestry relative to the admission or treatment of customers.
11. A license is subject to suspension, revocation, or forfeiture for breach of any of its conditions or regulations, or any law of the Commonwealth.
12. All licenses and building certificates shall be displayed on the premises in a conspicuous manner where they may easily be seen and read.
13. Any changes to an Alcoholic Beverage License must be approved by the Board of Selectmen or the Town Manager under authority of Section C. 2, including but not limited to: transfer of license, change of manager, transfer of stock, new officers and/or directors of a Corporation, change of stockholders in a closely held Corporation, pledge of license, change of Corporation name, change of d/b/a, change of premises including reduction or extension of the area of the licensed premises, or a change in the physical layout of the premises.
14. Licensed premises shall be subject to inspection by the Police Department, Fire Department, Inspector of Buildings and/or any duly authorized agent of the Board of Selectmen or Alcoholic Beverage Control Commission.

**F. EVENTS WITH ALCOHOL IN GENERAL – SPECIAL LICENSES**

1. One Day Special Licenses are issued pursuant to MGL Ch. 138 Section 14.
2. Alcohol served at events held outside of a private residence are presumed to result in a sale of alcohol. As such, a One-Day Special License under Chapter 138 Section 14 shall be required for such events, unless such event falls within an exception stated in this policy. In the case of events held by private residents, outside of their private residence, the Town shall not require a special license where: 1) the event is by invitation only, 2) money is not exchanged for alcohol, 3) tickets are not sold, 4) a donation is not required or solicited, or 5) an entrance fee is not charged.

3. Businesses or charities which hold events where liquor is served are required to obtain a One-Day Special License unless evidence is provided to the Licensing Agent which rebuts the presumption of a sale. The Licensing Agent shall determine whether a Special License is required under Chapter 138 Section 14, and applicable rules and regulations. In making such a determination, the Licensing Agent shall consider such evidence as the location of the event, the purpose of the event, who is invited to the event, what fees are charged for the event, and other relevant information.
4. Charities which have wine donated must apply for a Charitable Wine Pouring or Charitable Wine Auction.
5. Events at the Town House – Special Requirements
  - (a). All businesses or organizations holding events at the Town House must file an application for a One-Day Special License with the Town Clerk. The Town Clerk's Office will determine if a License is necessary.
  - (b). Private individuals holding events at the Town House where alcohol is sold, tickets are sold, or an entrance fee is charged, must obtain a One-Day Special License. These events are only eligible for a Beer and Wine License.
  - (c). Private individuals holding private parties or events at the Town House are not required to obtain a One-Day Special License where: 1) the event is invitation only and 2) alcohol is not sold, tickets are not sold, a donation is not required or solicited, or an entrance fee is not charged.
  - (d). In all cases, where alcohol is served, it must be served by a caterer or bar service who has presented evidence of liquor liability insurance to the Town. The Town has the right to reject any requests to serve alcohol at the Town House regardless of whether a Special License is required.
6. For events that require a One-Day Special License, all alcohol must be purchased from a licensed Massachusetts wholesaler, in compliance with M.G.L. Chapter 138, Section 14, or a Caterer licensed under M.G.L. Chapter 138, Section 12C. Alcohol may not be purchased from any other source. A list of wholesalers is available at the Town Clerk's Office or through the State Alcoholic Beverages Control Commission.
7. Special licenses may be issued only to a natural person or a natural person in conjunction with a business, organization, or charity. The person named on the Special License must sign the application for the license. The person named on the license is responsible for management of the license and shall be on the premises for the entire event. The person named on the license shall be a United States citizen.
8. All Alcoholic Special Licenses shall only be issued to a non-profit organization. Proof of an organization's non-profit status may be required.
9. A person or entity may only be issued a maximum of 30 One-Day Special Licenses in any calendar year.
10. Holders of Section 12 or Section 15 licenses, that are not Massachusetts licensed wholesalers, are subject to disciplinary action by the Board of Selectmen if such licensee is found to have illegally sold alcohol to Section 14 license holders.

11. No alcohol may be stored on any unlicensed premise. For special events covered under a One-Day Special License, alcohol must be delivered the day of the event and removed from the premises after the event at the expiration of the Special License. Under State Alcoholic Beverages Control Law, M.G.L. Chapter 138, Section 22, holders of a One-day Special License may not transport alcohol without a permit. A caterer may transport alcohol on behalf of a Special License holder only if that caterer has a current transport permit issued by the Alcoholic Beverages Control Commission.
12. The licensee shall post the Special License in a conspicuous location during the event.
13. No special licensee may sell or deliver any alcoholic beverages between the hours of 2:00 a.m. and 8:00 a.m. Special licensees may sell or serve alcoholic beverages between the hours of 11:00 a.m. to 1:00 a.m., Monday through Saturday, and 12:00 p.m. to 1:00 a.m. on Sundays. Notwithstanding the foregoing, the Board of Selectmen may alter the specific hours and terms of sale and service of alcohol.
14. The Board of Selectmen may refuse to issue or reissue a special license, if the licensee fails to comply with state or local regulations or any reasonable requirements of the local licensing authority. The Board of Selectmen may suspend, cancel or revoke a special license, after a hearing, if the licensee fails to comply with state or local regulations or any reasonable requirements of the local licensing authority.

**G.**            **SPECIAL LICENSE: FARMER-WINERY** (Chapter 138, Section 15F)

1. Pursuant to MGL Chapter 138 Section 15F the Town may issue to an applicant authorized to operate a farmer-winery under Section 19B of Chapter 138, or any other state, a special license for the sale of wine produced by or for the licensee for off-premises consumption at an indoor or outdoor agricultural event.
2. All sales shall be conducted by an agent, representative, or solicitor of the licensee to customers who are at least 21 years of age.
3. A licensee under this section may provide, without charge, samples of wine to prospective customers at an indoor or outdoor agricultural event in conformity with said Section 15F as the same may be from time to time amended.
4. The term “agricultural event” shall be limited to those events certified by the Department of Agricultural Resources as set forth in said Section 15F. A copy of the certification, with all supporting documentation submitted to the Department, shall be submitted to the Town Clerk with the license application.
5. A license may be granted for an indoor or outdoor agricultural event which takes place on multiple dates and/or times during a single calendar year but no special license shall be granted for an agricultural event that will not take place within one calendar year.
6. The license application form shall be prepared by the Town Clerk and shall be made available on request. The application shall be signed on behalf of the applicant by a natural person duly authorized by the applicant and by the agent, representative or solicitor (as those terms are used in section 15F) on his or her own behalf. The authorized signer for the applicant and the agent, representative or solicitor may be the same person.

**H. SECTION 12 POURING LICENSE PREMISES: GOLF COURSES**

1. When acting on an application to license the sale and service of alcohol on a golf course the Board of Selectmen shall take into account the distance from residential dwellings, schools, and/or churches, the character of the surrounding neighborhood, noise, lighting, other licenses in the area and any and all other reasonable and proper concerns.
2. The specific location of stationary stands and/or structures for the sale and service of alcohol within golf course premises shall be approved the Board. Stationary stands and/or structures must serve within the approved location. Approval of the serving location shall take into account the distance from residential dwellings, schools, and/or churches, the character of the surrounding neighborhood, noise, lighting, other licenses in the area and any and all other reasonable and proper concerns.
3. The Board of Selectmen's approval of premises that are intersected, interrupted or divided by public ways is conditional upon the applicant receiving a transportation permit from the Alcoholic Beverages Control Commission.
4. No licensee shall permit any patron to possess alcoholic beverages on the grounds of approved golf course premises other than those alcoholic beverages purchased from that licensee
5. No licensee shall permit any patron to carry or transport any alcoholic beverages off the grounds of approved golf course premises.
6. No licensee shall permit any patron to carry or transport any alcoholic beverages on any public way.
7. Alcohol is not permitted in parking lots. No parking lot shall be included in the description of the licensed premises. Parking lots of a golf course will be treated the same as a public way.
8. At the intersection of each cart path with a public way, at the edge of parking lots, and other approved locations bordering the course the licensee shall erect sign posts with the following required signage / information:

“No alcoholic beverages permitted beyond this point.”

“Operating a golf cart while under the influence is a criminal offense punishable by law.”

“Possessing an open container of alcohol on a public way is a criminal offense.

These signs shall be in a conspicuous place where these signs can be easily read. The licensee shall post these signs regardless of whether or not the licensed premises extend beyond the public way or not.

9. At the intersection of each cart path with a public way, at the edge of parking lots, and other approved locations bordering the course the licensee shall place receptacles for beverage containers.

10. No more than two drinks shall be sold, delivered or in the possession of any one patron at any time while on the grounds of the approved golf course premises.
11. Alcohol must be properly stored and secured at all times. Alcohol shall not be stored overnight in wheeled carts.

**I. SECTION 12 POURING LICENSE PREMISES: PATIOS AND OUTDOOR AREAS**

1. When acting on an application to license the sale and service of alcohol on a patio and/or outdoor area the Board of Selectmen shall take into account the distance from residential dwellings, schools and/or churches, the character of the surrounding neighborhood, noise, lighting, other licenses in the area and any and all other reasonable and proper concerns.
2. Preferred are areas where alcohol is served to patrons who are seated at tables and where food is available.
3. The patio and/or outdoor area must be contiguous to the licensed premises and the licensee shall have a view of the outdoor premises from inside or staff shall be present in the serving area at all times. A clear path of ingress and egress from the inside to the outside must be clearly established to ensure safe, uninterrupted travel of patrons and the service of alcoholic beverages. The patio and/or outdoor area must have adequate exits in case of emergency.
4. The premises must be enclosed by a fence, rope or other means to prevent patrons or members of the public from wandering in or out and ensure the licensee has control of the area.
5. No licensee shall permit any patron to possess alcoholic beverages on the licensed patio or outdoor area other than those alcoholic beverages purchased from that licensee.
6. No licensee shall permit any patron to carry or transport any alcoholic beverages off the grounds of the approved patio and/or outdoor premises unless otherwise authorized by State Law.
7. Alcohol is not permitted in parking lots. A parking lot shall not be considered a patio or outdoor area under this policy. No parking lot shall be included in the description of licensed premises.
8. Licensees shall act reasonably and diligently to disperse loiterers or patrons who attempt to congregate outside the licensed patio and/or outdoor premises, especially those on public sidewalks and those in parking lots.
9. Alcohol must be properly stored and secured at all times. Alcohol shall not be stored overnight in outdoor areas and/or on patios.
10. Nothing in this policy shall be interpreted as an endorsement of the drinking and or serving of alcohol on public sidewalks or any outdoor area owned, maintained, or controlled by the Town, except pursuant to a license issued under Policy XI.5 "Regulations For Outdoor Dining Licenses".

**J.            HOURS OF OPERATION**

**Section 12 - Pouring Licenses:**

Mon-Sat:            11:00 A.M. to 1:00 A.M.  
\*Sunday:            12:00 P.M. to 1:00 A.M.

\*Licensees may apply for permission to open at 10:00 A.M. on Sundays.

**Section 15 - Package Stores:**

Mon-Sat:            8:00 A.M. to 11:00 P.M. (11:30 P.M. on the day before a legal holiday)  
Sunday:            Noon to 11:00 P.M. (11:30 P.M. on the day before a Monday legal holiday)

**K.            SUNDAY PACKAGE STORE OPENINGS**

The retail sale of alcoholic beverages not to be drunk on the premises is permitted on Sundays by retail establishments licensed under M.G.L. Chapter 138, Section 15; provided, however, that there shall be no such sales prior to the hour of 12:00 noon or on Christmas Day if Christmas occurs on a Sunday; and provided further, that establishments operating under this clause which employ more than 7 persons shall compensate all employees for work performed on a Sunday at a rate of not less than one and one-half of the employee's regular rate. No employee shall be required to work on a Sunday and refusal to work on a Sunday shall not be grounds for discrimination, dismissal, discharge, reduction of hours or any other penalty. (See M.G.L. Chapter 136, Section 6)

**L.            ALCOHOLIC BEVERAGE LICENSES ON TOWN OWNED PROPERTY**

The Consumption of alcohol is not allowed on Town owned property, except 1) at the Town House under controlled conditions; i.e., such alcohol must be served by a person in the employ of a caterer or bar service who has presented evidence of liquor liability insurance to the Town; or, 2) pursuant to an Outdoor Dining License issued in conformity with Policy XI.5 "Regulations For Outdoor Dining Licenses."

**M. FEES: ALCOHOLIC BEVERAGE LICENSES**

The following are the fees that are charged in the Town of Andover for Alcoholic Beverage Licenses at the time of the issuance of the License and for the renewal of the license.

LIQUOR LICENSES		TOWN	ABCC
Innholder - All Alcoholic	Application	125.00	200.00
	Fee	4500.00	-----
Restaurant - All Alcoholic	Application	125.00	200.00
	Fee	4500.00	-----
Retail Pkg. Goods - All Alcoholic	Application	125.00	200.00
	Fee	2000.00	-----
Club - All Alcoholic	Application	125.00	200.00
	Fee	2000.00	-----
Retail Pkg. Goods - Wine & Malt	Application	125.00	200.00
	Fee	1500.00	-----
Restaurant - Wine & Malt	Application	125.00	200.00
	Fee	2000.00	-----
Innholder - Wine & Malt	Application	125.00	200.00
	Fee	2000.00	-----
One-Day All Alcoholic		50.00	
One-Day Wine & Malt		50.00	
Charitable Wine Pouring		75.00	
Farmer-winery (MGL Ch. 138 Sec. 15F)		50.00	

Fees for a new license, other than a one-day license, a Charitable Wine Pouring license or a Farmer-winery license, will be adjusted on a quarterly basis over a twelve (12) month period from January 1<sup>st</sup> thru December 31<sup>st</sup>, i.e., on April 1<sup>st</sup>, July 1<sup>st</sup> and October 1<sup>st</sup>, and will be effective as of the date of the issuance of the license.