

Approved by Board of Selectmen
December 6, 2010

TOWN OF BILLERICA
RULES AND REGULATIONS
FOR THE
LICENSING AND SALE OF ALCOHOLIC BEVERAGES

1. LICENSING AUTHORITY

These regulations are adopted, and may be amended from time to time by the Billerica Licensing Authority (hereafter, "Board of Selectmen"), pursuant to the provisions of Massachusetts General Laws, Chapter 138 and Chapter 140. Any and all alcoholic beverages and common victualler licenses issued by the Board of Selectmen shall be governed by these Rules and Regulations, Massachusetts General Laws, Chapter 138 and Chapter 140, and the rules and regulations of the Alcoholic Beverages Control Commission of the Commonwealth of Massachusetts, as the same may be amended from time to time.

- A. The Board of Selectmen as the licensing authority for the Town of Billerica hereby appoints The Chief of Police and any Police Officer of the rank of Sergeant or above as Authorized Agents for the purpose of implementation, enforcement and compliance of these Rules and Regulations.

2. FILING OF APPLICATIONS

In accordance with M.G.L., Chapter 138, Sections 15A and 16B, all license applications submitted to the Board of Selectmen must be "complete" in order to be processed by the Office of the Selectmen for action at or following a public hearing. The Office of the Selectmen has prepared a complete instruction sheet regarding the filing of applications which itemizes the information that will be required as well as the various forms that will be required to be filed with the application form. In many instances, a published legal notice, paid for by the applicant, and other appropriate notice to abutters will be required to notify interested parties of the date of the public hearings. Applicants are subject to the timelines listed in M.G.L. c. 138 s. 15A and 16B. The Board of Selectmen will take final action on an application within 30 days after a completed application is filed with the Board. Applicants should allow at least fourteen (14) days for license change requests or new licenses.

Complete information regarding legal notice and notification to abutters is available at the office of the Board of Selectmen. While the office of the Board of Selectmen will assist any applicant with the filing of an application, it is not the responsibility of the office staff to complete and submit the application and related forms required by the Town and the Commonwealth of Massachusetts. It is the responsibility of the applicant to be fully versed in all relevant laws, rules, regulations and procedures pertaining to the sale or dispensing of alcohol. Ignorance of said laws, rules, regulations and procedures shall not constitute a defense for procedural mistakes or illegal behavior.

Town of Billerica Applications and Rules and Regulations are available on the Town Web Site.

Applicants for renewal will sign a copy of the Rules and Regulations acknowledgement page and turn it in at the Selectman's office with the renewal application.

www.town.billerica.ma.us

All applicants will use the ABCC web site online applications.

www.mass.gov/abcc

3. FILING FEE

All applicable filing fees must be paid at the time as an application is filed at the office of the Board of Selectmen. Fees will vary depending upon the type of application submitted.

Town of Billerica filing fees, if paid for by check, shall be made payable to the "Town of Billerica". Filing fees required by the Alcoholic Beverages Control Commission shall be made payable to the "Commonwealth of Massachusetts", and must be made by certified check or bank treasurer's check. Filing fees are not returnable once an application has been accepted by the office of the Board of Selectmen.

4. ANNUAL LICENSE FEES

Annual license fees must be paid prior to the issuance or renewal of any license. License fees will be prorated from the date of issue for new licenses. All annual license fees are non-refundable.

5. COMPLIANCE WITH ALL LAWS AND REGULATIONS

In accordance with the provisions of M.G.L., Chapter 138, all licensees shall maintain their premises and operations in full compliance with all applicable federal, state and local laws and regulations, including building codes, all health and sanitary codes, Town By-Laws and Zoning By-Laws. All taxes, assessments and charges owed to the Town of Billerica by the applicant or with respect to the licensed premises must be paid on a current basis. Failure to comply with any of these laws and regulations shall be sufficient cause for revocation, suspension or modification of the license pursuant to M.G.L. Chapter 138, §64.

6. CORPORATE AND TRADE NAMES

No licensee shall assume obligations for, or engage in the operation of, a licensed premise under any corporate or trade name other than that under which he or she is licensed. **Any change** in corporate name or any change in trade name (including any “DBA”) shall require the prior approval of the Board of Selectmen.

7. CESSATION OF OPERATIONS

In accordance with M.G.L., Chapter 138, Section 77, any licensee intending to close a licensed business, or to otherwise cease operation of a licensed business, whether on a temporary or permanent basis, must notify the Board of Selectmen in writing, before such closing or cessation of operations, stating the reason and length of such closing or cessation of operations. Failure to provide such notice may result in the modification, suspension or revocation of the license.

8. BANKRUPTCY AND COURT PROCEEDINGS

A licensee shall immediately notify the Board of Selectmen, in writing, of any proceedings brought by or against the licensee under the bankruptcy or insolvency laws or of any other court proceedings which may affect the status of the license or operation of the licensed business.

9. CORPORATE TRANSACTIONS AND CHANGE OF MANAGERS

The licensee shall not change managers, change corporate officers, sell or transfer corporate stock, pledge corporate stock or liquor license as security, or accept a loan or credit from another licensee, without first obtaining the approval of the Board of Selectmen. No person may acquire or maintain a direct or indirect beneficial interest in a license without first obtaining the approval of the Board of Selectmen, subject to the provisions of M.G.L. Chapter 138, Section 15A which state: Provisions of this section shall not apply to stockholders of a corporation whose stock is listed for sale to the general public with the Securities and Exchange Commission and who hold less than ten percent of the outstanding stock entitled to vote at the annual meeting of the said corporation.

10. FORECLOSURE ON LOANS

Assignment of stock in incorporated licensed places for the purpose of safeguarding the assignee on loans, or like matters, gives no right to such assignee to conduct the business of the licensee; therefore, licensees must notify the Board of Selectmen immediately when an assignee forecloses under such assignment of stock.

11. MANAGER

No corporation shall be approved for a license unless the corporation, by vote of its Board of Directors, has appointed a Manager who is a United States citizen and who has been vested with full authority and control of the premises and the business to be licensed. The Manager shall have total responsibility for the proper operation of the licensed premises, whether present or not. No appointment of a Manager shall be effective unless and until **approved by the Board of Selectmen.**

12. MANAGER'S RESPONSIBILITIES

The Manager shall at all times maintain order and decorum in the licensed premises and in the immediately surrounding area of said premises and shall cooperate in all ways with Town officials in ensuring safe and orderly operations. There shall be no disorder, indecency, prostitution, lewdness or illegal gambling on the licensed premises. The Manager will ensure that noise does not become disturbing to abutters and/or neighbors.

The Board of Selectmen deems the Manager of licensed premises to be the principal representative of the licensee with respect to all operations of the licensed business. The Manager shall have full authority and control over the licensed premises and shall be responsible for the conduct of all business therein relative to alcoholic beverages as provided in General Laws, c. 138 § 26 and these Rules and Regulations. In addition, an Assistant Manager or other suitable managerial employee capable of fulfilling the duties of Manager must be designated on all Section 12 (Restaurant) licenses by the licensee. Such designation will allow for fulfillment of the Manager's duties and responsibilities in the absence of the Manager. Should either the Manager or Assistant Manager positions become vacant during the course of the year, the licensee must file an application for Change of Manager with the Board, and in the event of an unexpected change in Manager status, notify the Board of Selectmen as soon as practicable but no less than 1 business day after such change while the licensee awaits Board approval.

Without limiting the scope of the previous provisions of this subsection, the Board will hold the Manager 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;
- c.* Ensuring that no criminal activity, including the sale and distribution of narcotic drugs, takes place on the licenses premises, including within any parking area on the licensed premises; Reporting any criminal activity that occurs on the licensed premises to the Police Department immediately.
- d.* Immediately reporting to the Police Department all instances of attempted purchase or procurement of service of alcoholic beverages by minors, including attempts to gain access to premises upon which alcoholic beverages are served and from which minors are excluded, and the nature of the appropriate action taken by the licensee in response thereto. Such appropriate action shall include (1) Reporting to the Registry of Motor Vehicles instances involving possession or use of a false, forged or counterfeit license to operate motor vehicles or identification card issued by the Registry of Motor Vehicles; (2) confirmation of the name and address of any minor presenting a liquor identification card or motor vehicle operator's license; and (3) if a purchase was made or service was procured, the name of the licensee's employee participating therein.

- e. Enforcement of all laws, regulations and rules relating to the operation of the licensed business.
- f. Ensuring that the licensed premises, including the exterior, are maintained in a safe, clean, neat and sanitary condition at all times.

The Manager is expected to be a full time employee of the licensee and shall be on premises consistent with the permitted hours of operation and not less than 50% of the hours of operation of the licensed business. The Manager will continue to be responsible for the operation of the business whether or not he or she is on the premises.

Failure of the Manager to comply with these Rules and Regulations or to otherwise properly discharge the duties of Manager may result in removal of the Manager or suspension or revocation of the license by the Board of Selectmen, as it may deem appropriate under the circumstances.

13. SERVICE PROHIBITED TO CERTAIN INDIVIDUALS

In accordance with M.G.L., Chapter 138, Sections 34, and 34A, no alcoholic beverages shall be sold or furnished to anyone less than twenty-one (21) years of age. No service of alcoholic, wine/malt beverages shall be made to anyone less than twenty-one (21) years of age. No employee and/or entertainer shall solicit, induce or request a patron to purchase or procure any alcoholic or non-alcoholic beverage for them or any other person.

14. IDENTIFICATION CARDS

In accordance with M.G.L., Chapter 138, Section 34B, any licensee who reasonably relies on a 1) Massachusetts driver's license, 2) Massachusetts liquor ID card, 3) Valid passport issued by the U.S. or foreign government recognized by the U.S., 4) a valid military ID or 5) a valid U.S. Passport ID card for proof of a person's identity and proof of age shall be presumed to have exercised due care in making a delivery or sale of alcoholic beverages to a person under twenty-one years of age and shall have a defense to said charge. A licensee acts at his or her own risk if the licensee or any employee or agent thereof accepts any other type of proof of identification. In the interest of assuring full compliance with all statutes, regulations and rules relating to the sale and service of alcoholic beverages, the Board of Selectmen strongly recommends that all purveyors, sellers and servers of alcoholic beverages request that every customer or patron served an alcoholic beverage display a valid form of identification. As noted in Section 17 of these Rules and Regulations, the failure to request a valid form of identification from a customer or patron shall be deemed an aggravating factor by the Board in the determination of penalties for breach of any statute, regulation, rule or license term/condition relating to the sale or service of alcoholic beverages.

15. DISCRIMINATION PROHIBITED

No licensee shall make any distinction, discrimination or restriction on account of race, color, creed, sex, sexual orientation or ancestry relative to the admission or treatment of any person.

16. EMPLOYEES OF THE LICENSEE

An up-to-date list of all employees shall be available on the licensed premises at all times for review by authorized agents of the Board of Selectmen and the Chief of Police or his designee. The list shall include contractors, entertainers or promoters working on the premises.

- a. employees working at a licensed premises must comply with the requirements of MGL c. 138, and any other applicable State or Town law, Bylaw, rule or regulation.
- b. All employees serving alcohol to the public are required to have successfully completed an alcoholic beverage server training program, which has been approved by the Town. This shall include the Manager, Assistant Manager, and persons responsible for viewing identification cards to determine the age of patrons for service of alcohol. Managers and Assistant Managers shall be certified prior to assuming the duties of Manager or Assistant Manager. All alcohol servers are strongly encouraged to attend periodic retraining programs at least bi-annually that reinforce their certification training. Records of retraining shall be submitted to the Billerica Police Department annually in December, and will be kept on file. The retraining programs underscore the importance of proper server training to minimize the dangers associated with alcohol abuse on a licensed premises.

17. SUSPENSION, REVOCATION, OR MODIFICATION OF LICENSE

In accordance with M.G.L., Chapter 138, Sections 23 and 64, all licenses are subject to suspension, revocation or modification for breach of any conditions thereof, regulations or laws of the Town or Commonwealth. The Board of Selectmen reserves the right to modify or supplement any license conditions or any regulations pertaining thereto after notice to the licensee.

Any violations of the rules and regulations of the Town of Billerica, of the Selectmen or the Commonwealth of Massachusetts regarding the sale or service of alcoholic beverages may result in a warning, suspension, modification or revocation of a license, as the Board shall deem appropriate. Any complaints and/or reports relative to any licensed premises presently on file shall continue in full force until disposed of by this Board.

Determination of Penalties

The Board shall endeavor to be fair and judicious in the determination of penalties imposed for violations of the terms and conditions of licenses. Penalties shall be progressive in nature, and may, in the discretion of the Board, be increased or decreased based on certain aggravating or mitigating factors, including, but not limited to, the following:

Aggravating factors

1. Failure to request a proper identification card, operator's license or passport.
2. Juvenile appearance of purchaser.
3. Use/acceptance of altered identification
4. Failure/refusal of licensee to cooperate in investigation.
5. Multiple sales on the same occasion.
6. Quantity of beverages sold.
7. Staff not adequately trained.
8. Under-age server.
9. Illegal conduct on premises, such as prostitution, solicitation, drugs, gambling, disorderly conduct, cigarette sales to minor.
10. Concealing violation.
11. Furnishing false information to investigator.
12. Exceeding lawful capacity of premises.
13. Intimidating or coercing witnesses, or attempting to do so.
14. Offense occurring while under suspension of prior penalty.
15. Sale occurring while license suspended.
16. The occurrence of any personal injuries or fatalities related to the underlying violation.

Mitigating factors

1. Reasonable reliance upon an identification card or operator's license for proof of identity or age. (M.G.L. ch. 138 § 34B)
2. Acceptance of responsibility by licensee as evidenced by;
 - Substantial and voluntary assistance offered in investigation.
 - Public acknowledgment of responsibility.
 - Agreement to participate in training program by licensee, manager, and servers.
 - Prompt notice of decision not to contest charge and agreement to proposed recommended resolution.
 - Licensee agreement to participate in an effective program to detect and prevent future offenses.
 - Age of past violations (beyond 7 years).

Suggested Penalty Guideline

The following penalties represent guidelines for the minimum action to be taken by the Board of Selectmen for violations of the laws, rules and regulations relating to the sale or serving of alcoholic beverages. They do not preclude the Board from taking such further or additional action as the specific circumstances and merits of each case may warrant. Suspensions of licenses shall take place on consecutive days, unless other timeframes are specifically designated by the Board.

- 1st Violation: Letter of reprimand/Warning to 5 day suspension
- 2nd Violation: 5 days to 10 days suspension
- 3rd Violation: 10 days to 30 days suspension, with revocation considered in aggravated circumstances
- 4th Violation: Revocation or Termination of license

Misconduct related to an underlying Violation

For instances of violations based on sale to a minor, the Board will impose no less than a suspension as a penalty.

While the Board will endeavor to impose penalties upon licensees in a manner consistent with these regulations, where exigent or special circumstances warrant, such as a violation of these regulations resulting in serious personal injury or death, the Board reserves the right to immediately order a full hearing, provide licensee and other affected parties an opportunity to present evidence, and to revoke a license where the evidence warrants a revocation.

18. DISPLAY OF LICENSES AND PERMITS

All licenses and permits issued by the Town shall be displayed on the premises in a conspicuous place where the public has access and may read the license/permit. A copy of these Rules and Regulations will be issued to all licensees by the Board and shall be made available on the premises for inspection.

19. HOURS OF OPERATION (SEE HOURS OF OPERATION UPON YOUR LICENSE)

In accordance with M.G.L., Chapter 138, Section 12, Paragraph 6, the hours of operation of the licensed business shall be restricted to those set by the Board of Selectmen. No patrons shall be on the premises before the official opening hour or beyond fifteen minutes after the official closing hour. Customers must be up and on the way out of the premises once the closing hour of the licensed premises has been reached. Furthermore, with respect to all Section 12 licenses with authorized hours past 11:00 P.M., the last sale of alcohol will be made no later than thirty minutes prior to closing time. All tables and bars must be cleared of all glasses, bottles, and containers of alcoholic beverages within fifteen minutes of closing time.

20. EMPLOYEES ON PREMISES AFTER CLOSING HOURS

In accordance with M.G.L., Chapter 138, Section 12, owners and employees must be off the licensed premises no later than sixty (60) minutes after the "Official Closing Hour", provided, however, that such owners and employees or other hired personnel may remain on the premises at any time for the purpose of cleaning, making emergency repairs, providing security for such premises, preparing food for the next day's business or opening or closing the business in an orderly manner.

If it is necessary to have workers other than employees on the premises after hours, or if it is necessary for the owners or employees to be on the premises beyond sixty (60) minutes after the closing hour, **the Manager must contact the Billerica Police Department's Commanding Officer** and state the reason for occupying the premises, the number of people on the premises, as well as the approximate hours they will be on the premises. Failure to provide such notice shall be cause for action against the licensee.

21. **ACCESS TO PREMISES BY POLICE AND AGENTS**

In accordance with M.G.L., Chapter 138, Section 63A, the licensee shall ensure that procedures are in place, be it by posting a person or otherwise, to allow Police and authorized agents of the Board of Selectmen immediate access to the premises at any time employees are on the premises. Any delay in providing such access shall be cause for action against the licensee.

22. **INSPECTION OF PREMISES**

In accordance with M.G.L., Chapter 138, Sections 63 and 63A, the licensed premises shall be subject to inspection by the members of the Board of Selectmen or duly authorized agents of the Board of Selectmen. Any hindrance or delay of such inspection caused by an employee of the licensee shall be cause for action against the licensee.

23. **PREMISES DESCRIPTION - INTERNAL AND EXTERNAL ALTERATIONS**

In accordance with M.G.L., Chapter 138, Sections 12 and 15A, no licensee shall keep for sale, store, or sell alcoholic beverages in any part of the premises not specified on the license, or any plans filed with respect thereto, such as a patio, sidewalk or parking lot. No physical changes to the interior or exterior of the premises shall be made without the prior approval of the Board of Selectmen. Any changes to the original plans must be approved by the Board of Selectmen prior to any work commencing in accordance therewith. Changes to the premises must be approved by the Board of Selectmen and any other Board or Commission having jurisdiction.

24. **REFUSE REMOVAL**

No licensee shall allow refuse generated at the premises to be collected by any contractor between the hours of 11:00 p.m. and 7:00 a.m. On Sundays and legal holidays, no such collection shall be allowed prior to 10:00 a.m. nor after 10:00 p.m. Refuse shall be removed to prevent any nuisance condition. All refuse shall be stored in a dumpster or in such other manner as approved by the Billerica Board of Health, and shall be maintained in accordance with the regulations and conditions of the Billerica Board of Health. Any rules and regulations of the Billerica Board of Health relative to refuse storage and removal may supersede or supplement this Regulation.

25. **FOOD SERVICE REQUIRED**

Licenses issued under Massachusetts General Laws, Chapter 138, Section 1 and 'Section 12, which are restaurant licenses, may be issued only to those who have been granted a common victualler license under Massachusetts General Laws, Chapter 140. These two sections also apply to holders of inn holder licenses. Common victuallers must have adequate and sanitary kitchen and dining room equipment and capacity for preparing, cooking and serving suitable food for strangers, travelers and other-patrons as required by Massachusetts General Laws, Chapter 138 and Chapter 140.

26. **SERVICE LIMITED TO APPROVED AREAS**

The service and consumption of alcoholic beverages shall be limited to those areas of the premises approved by the Board of Selectmen. No alcoholic beverages shall be served or consumed in any areas of the premises which are not within the original approved description of the premises, or any approved amendment thereof. Proposed new areas must be shown on plans submitted to the *Board of Selectmen and all other Town Boards/departments with jurisdiction* for approval.

27. **SERVICE LIMITED TO FOOD SERVICE AREAS OR APPROVED LOUNGE**

Food service shall be available in all areas of the licensed premises where alcoholic beverages are served, including dining areas and lounge areas. This does not include any area approved as a waiting area by the Board of Selectmen. Within approved waiting areas, individuals who have given their name to the maitre d' and are waiting to be seated for dining may be served no more than two standard sized drinks, upon approval by the Board of Selectmen. .

28. **CONSUMPTION ON PREMISES**

In accordance with applicable provisions of M.G.L., Chapter 138, all alcoholic beverages shall be served in open containers, and no such beverage shall be allowed to be removed from the premises. No patron or customer shall be allowed to bring alcoholic or wine or malt beverages on to the premises for the purpose of consumption on the premises. **For off premises sales establishments no alcoholic beverages shall be sold to be drunk on the premises, except for wine or beer tasting.**

29. **SERVING CONTAINERS**

No alcoholic beverages, with the exception of wine and specialty drinks, shall be served in any container or glass, the capacity of which is in excess of twenty three (23) fluid ounces. Sale or service of malt beverages, beer, or ale in pitchers is allowed only to groupings of two or more patrons.

30. **SERVER TRAINING FOR MANAGERS AND OTHERS**

In accordance with M.G.L., Chapter 138, Section 12, the manager shall have successfully completed an alcoholic beverage server training program such as the Intervention Procedures by Servers of Alcohol Programs (Approved server training program), or its equivalent, prior to his/her appointment. Certificate of proof that the manager has completed the approved server training program shall be provided to the Board of Selectmen when applying for a new license, change of manager or renewal of license. Such training shall be required for all bartenders at all establishments with a bar. All other employees who serve alcoholic beverages shall receive, at a minimum, in-house training similar to that received under the TIPS program, approved by the Board of Selectmen, the Police Chief or his designee. Note: Online courses are not authorized; physical attendance at an approved course is required.

31. **VERIFICATION OF SERVER TRAINING**

Verification for "Server Training" shall be maintained for each employee and shall be available for inspection on the premises at all times. Verifications shall be submitted each year with the license renewal application.

32. **ENTERTAINMENT**

In accordance with M.G.L., Chapter 140, Section 83 and Chapter 138, Section 54 and ABCC, 204 CMR, 2.05 (2), and other applicable laws, Bylaws and regulations, no forms of entertainment, including, but not limited to, live music or dancing, shall be allowed without first obtaining an entertainment license for weekdays, Saturday and/or Sunday. This includes the use of amplified music, inside or outside the premises.

33. **COIN-OPERATED AUTOMATIC AMUSEMENT MACHINES**

No licensee may have upon the premises any automatic amusement machine unless same has been approved and licensed by the Town of Billerica. Types of machines and location of machines upon the premises must be approved. Name and serial number of machines must be provided to the Board of Selectmen. The licensee must make application, not the distributor, under Massachusetts General Laws, Chapter 140, Section 177A.

Billiard/Pool tables must be licensed by the Board of Selectmen and requires an advertised public hearing with notification to abutters.

34. **ANNUAL FINANCIAL REPORTS - RESTAURANTS**

All holders of restaurant licenses under Chapter 138, Section 12, shall furnish an annual report indicating the percentage of gross sales of food and gross sales for alcoholic beverages for the preceding calendar year.

35. **EXTENSION OF HOURS REQUESTS**

In order for your establishment to be considered for a 2:00 a.m. closing, a written request must be received by the Board of Selectmen *no less than ten (10) days prior to the next regularly scheduled Board of Selectmen's meeting*. Requests received after this date will not be considered until the next regularly scheduled meeting occurring more than 10 days after receipt of the request.

36. **DELIVERY OFF PREMISES- MALT BEVERAGES/ KEGS**

A written record shall be maintained listing the name and address of every person whom a delivery of one or more keg(s) or any fraction of a keg of malt beverages is made outside of the premises. Such record shall include the amount of the beverages that were delivered, the date and time of delivery, and the signature of the person receiving the delivery. Such records shall be maintained for a period of not less than one year and must be available for inspection by the Board of Selectmen and its agents at all times.

37. **ONE DAY SPECIAL LICENSE**

A One Day Special License for the sale of wines and/or malt beverages may be issued to a responsible Manager of any indoor or outdoor activity or enterprise (for profit or non-profit). One Day Special licenses for the sale of all alcoholic beverages may be issued to non-profit organizations only. No person may be granted licenses for more than a total of thirty (30) days per calendar year and no special license will be granted to any person while his/her application for an annual license is pending before the licensing authorities.

No more than one license can be issued for a premises at one time. Therefore, a Special License can not be issued for use in a licensed premises.

Any request for a Special License must be received by the Board of Selectmen no less than ten (10) days prior to the next regularly scheduled Board of Selectmen's meeting.

38. SEPARABILITY

All provisions of these regulations are hereby declared to be separable. In the event that any provision herein shall be deemed to be invalid or unenforceable by any court or authority with appropriate jurisdiction, all remaining provisions shall continue in full force and effect.

