

CITY OF NEWTON  
BOARD OF LICENSE COMMISSIONERS'  
REGULATIONS

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## **PREAMBLE**

The Newton Board of License Commissioners ("the Board") is convened under State Law to promote public welfare. Accordingly, the Board's objective is to provide a number of restaurant, innholder, club and package goods store licenses for the sale and/or service of all alcoholic beverages and/or wine/malt beverages up to a maximum permitted under State law and commensurate with local public need. Moreover, the Board also regulates food establishments by the granting and oversight of common victualler licenses. The Board seeks to insure 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 number of alcohol related licenses issued by the Board is based upon a quota system related to population and regulated by the General Laws of the Commonwealth. The Board may issue new additional licenses only if in the opinion of the Board, the public need and the public good will be served by the issuing of new licenses.

The Board endeavors to insure that all persons holding a financial interest and/or a beneficial interest in a licensed business are of sound character and high moral turpitude, and are qualified to hold a license. Any and all licensees and their manager of record must demonstrate to the Board that they will operate a closely supervised business of the highest standards. Moreover, restaurant licensees, innholder licensees, club licensees, and one-day temporary alcohol permit licensees must insure that prepared food service shall be available at all times and that food service represents the majority of the licensee's business.

Under operation of State Law and by vote of the Newton electorate at public election, taverns are prohibited within the City of Newton and no tavern license shall be issued. Thus, it is imperative that all restaurant licensees, innholder licensees, club licensees, and one-day temporary alcohol permit licensees provide prepared food available for all patrons and customers at all times. Failure to do so shall be sufficient grounds to cause the Board to take appropriate sanction(s) against the licensee, including but not limited to suspension, revocation, modification, refusal to renew, and/or cancellation of the license.

The Board strongly believes, and State Law mandates, that the rights of residents, neighbors, and abutters must be taken into account in considering the granting, renewing, extension, modifying, and/or transferring of any license. Accordingly, the Board regulates, and strictly enforces, the closing hours of all licensed premises. Therefore, for restaurant, innholder, and club licensees, last call shall be one-half hour before the Board imposed official closing hour of the licensed premises and there shall be no drink consumption allowed beyond the official closing hour. Moreover, the Board shall regulate the conduct of the business, and the conduct of an event under a one-day temporary alcohol permit, as provided herein. If any form of entertainment is to be provided at any time, the licensee must secure the proper entertainment license(s) from the Board, Mayor, Public Safety Department, or the Chief of Police as the case may be.

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") located on the first floor of Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, MA with an Administrative Director, an Administrative Assistant, and a Liquor Enforcement Officer.

Appointed agents of the Board constitute all ranking officers of the Newton Police Department, the Board's Enforcement Officer, and the Administrative Director of the Board. At any time, the Board's agents and the Board members themselves may inspect any licensed premises to insure that the conduct of the business or the event conforms to all applicable laws, ordinances, codes, rules and regulations. The manager of record is responsible for the proper and orderly conduct of the business, whether present or not, and is required to be present upon the licensed premises at least fifty (50) percent of the time that the licensed premises is open for business. For one-day temporary alcohol permits, a Board approved "responsible individual" shall be present during the duration of the entire event, who shall be responsible for the orderly and safe conduct of the event and the proper service of alcohol. Promoting public safety, all managers and all persons who serve, sell, dispense, distribute, furnish, or deliver alcoholic beverages must complete an appropriate Massachusetts alcoholic beverage server training program.

With a view to serve the public need and in such a manner 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 in lieu of, all obligations imposed under State law, local law, City of Newton Ordinances, State Sanitary & Health Code, State Building Code, Fire Prevention Code, the Commissioner's Regulations, and 204 CMR to which the licensee must comply.

Should sufficient grounds exist to charge any licensee with a violation of State law, local law, applicable codes, the Commission's regulations, the Board's Regulations as herein expressed, and/or breach of condition of the license, the Board shall conduct a full evidentiary and public hearing in accordance with State Law and may suspend, revoke, modify, refuse to renew, or cancel the license upon the finding(s) of violation(s). Following the imposition by the Board of sanction(s) against an alcohol licensee, the licensee may appeal to the Alcohol Beverage Control Commission ("the Commission") in writing, however the Board's sanction(s) shall have full force and effect pending appeal.

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 M.G.L. c. 140, §§ 2, 177A, 181, 183A. The Board's Regulations may be amended and modified from time to time upon proper notice and after public hearing.

The Board wishes to acknowledge and thank Alfred R. Guzzi, Jr., Administrative Director, Patricia Sweeney, Administrative Assistant, Sgt. Edward J. Aucoin, Newton Police Department, and Richard G. Chmielinski, Esq., Assistant City Solicitor, for their contribution and assistance in preparing the Board's Regulations.

**CITY OF NEWTON  
BOARD OF LICENSE COMMISSIONERS  
RULES AND REGULATIONS**

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## **SECTION I**

### **GENERAL PROVISIONS – ALL LICENSES AND PERMITS**

#### **1. APPLICABILITY OF SECTION I - APPLIES TO ALL LICENSES AND PERMITS ISSUED BY THE BOARD**

Section I which includes the following regulations number 1 (one) through 29 (twenty-nine) inclusive shall apply to any and all licenses and permits of any kind and all types issued by the Board under M.G.L. c. 138 and c. 140, including but not limited to Common Victuallers, Restaurants, Clubs, Seasonal Clubs, Package Stores, Innholders, Educational Institutional Licenses, All-Alcohol Licenses, Wine/Malt Licenses, One-Day Temporary All-Alcohol Permits, One-Day Temporary Wine/Malt Permits, General On-Premises All-Alcohol Licenses, Entertainment Licenses, Automatic Amusement Machine Licenses, and Billiard Licenses as defined hereunder, unless otherwise specified. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

#### **2. REGULATORY AUTHORITY** (M.G.L. c. 138, § 23; c. 140, §§ 2, 177A, 181, 183A)

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, 181, 183A, and may be amended and modified from time to time upon proper notice and after public hearing. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

#### **3. SEVERABILITY**

The Board's regulations as contained herein 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, such invalidity shall not affect any other regulations of the Board which shall remain in full force and effect. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

#### **4. DEFINITIONS**

As used throughout these regulations in their entirety, the terms contained within M.G.L. c. 138, §1 and M.G.L. c. 140, §§ 1, 12A shall have the meaning as defined thereunder. In addition, the following terms shall 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;

"Alcohol" (M.G.L. c. 138, §1) – all alcohol other than denatured alcohol, methyl alcohol, or wood alcohol, so called;

“Alcohol beverages” (M.G.L. c. 138, §1) –any liquid intended for human consumption as a beverage and containing one half of one per cent or more of alcohol by volume at sixty degrees Fahrenheit.

“Automatic amusement machine” (M.G.L. c. 140, § 177A) – 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;

“Bar” – a platform, counter, table, tabletop, surface, devise, or mechanism which may be used, designed, arranged, or constructed for the purpose of selling, serving, dispensing, distributing, delivering, and/or furnishing alcoholic beverages in open containers or glasses for consumption on premises;

“Bartender” – a person who sells, serves, dispenses, distributes, delivers, or furnishes alcoholic beverages at a bar;

“Bar rail” – a platform, counter, shelf, surface, devise, or mechanism which may be used, designed, arranged, or constructed for the purpose of holding alcoholic beverages which is less than eighteen (18) inches in width;

“Bar stool” – a chair or seating devise which is located adjacent to a bar;

“Beer” / “Malt” (M.G.L. c. 138, §1) – all alcoholic beverages manufactured or produced by the process of brewing or fermentation of malt, with or without cereal grains or fermentable sugars, or of hops, and containing not more than twelve per cent of alcohol by weight;

“Billiards” (M.G.L. c.140, §177) – Billiard or pool table to be used for amusement only and not for the purpose of gaming for money or for property;

“Board” – the City of Newton Board of License Commissioners;

“Club” - holder of an alcohol license issued under M.G.L. c. 138, § 12, who has been granted written permission by the Board and the Commission to restrict admission to the licensed premises to its members and to guests introduced by members, and to no other persons.

“Commission” – 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 eaten on the premises and the keeper of a food service business where food is sold, served, dispensed, distributed, or delivered to the public irrespective of whether or not the food is eaten on the premises.

"Educational Institutional licenses" (M.G.L. c. 138, §14) – a special grant of authority from the Board for the dispensing of wines and malt beverages only in dining halls maintained by incorporated educational institutions authorized to grant degrees.

"Entertainment license" – a grant of authority from the Board to the licensee for a specific period of time to provide a specific form of amusement, fun, merriment, sport, frolic, pleasure, and/or enjoyment.

"General On-Premises All-Alcohol license" (M.G.L. c. 138, §12) – a special grant of authority from the Board, subject to the Commission's approval, to an entity or person authorizing him to sell alcoholic beverages without food service to patrons and customers to be sold and drunk in such rooms as the Board may approve in writing.

"Food service" - the preparing, sale, service, dispensing, distribution, and/or delivery of food which shall include meals, hot hors d'oeuvres, sandwiches, soups, hot prepared food, and salads, but shall exclude chips, nuts, pretzels, popcorn, candy, and other snack-like foods;

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

"Keg" (204 C.M.R. 9.01) – any container for malt beverages having a capacity by volume of more than two gallons of liquid;

"License" – any and all grant(s) of authority from the licensing authority to the licensee;

"Licensed premises" – Any and all real estate, real property, personal property, building(s), space(s), ground(s), place(s), location(s), parking lot(s), walkway(s), sidewalk(s), driveway(s), way(s), fixture(s), motor vehicle(s), delivery vehicle(s), trailer(s), shed(s), storage container(s), and area(s) under the direction and control of the licensee which relates in any manner to the conduct of the licensee's business or licensee's event;

"Licensee" – any person, business, firm, corporation, partnership, association, society, organization, entity, club, or combination of persons presently holding or possessing a valid and current license or interest in a license granted by the licensing authority, or as the case may be, any person, business, firm, corporation, partnership, association, society, organization, entity, club, or combination of persons presently holding or possessing a valid and current permit or interest in a permit granted by the licensing authority;

"Licensing Authority" – either the Board or the Commission;

"Local Licensing Authority" – the Board;

"Malt beverage" (M.G.L. c. 138, §1) – all alcoholic beverages manufactured or produced by the process of brewing or fermentation of malt, with or without cereal grains or

fermentable sugars, or of hops, and containing not more than twelve per cent of alcohol by weight.

“Manager” (M.G.L. c. 138, §26) - 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 relative to alcoholic beverages who directs and controls the day to day operation of the business of the licensee;

“Maximum occupancy capacity” (M.G.L. c. 138, §12) - the highest number of persons permitted within or upon the licensed premises as certified by any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules or regulations.

“Maximum seating capacity” – the highest number of seats, including but not limited to chairs, stools, bar stools, and any other device used for the purpose of sitting, permitted by the Board within or upon a licensed premises;

“Off-peak hours” - Monday through Friday from 8:00 a.m. to 3:00 p.m. only, legal holidays excepted.

“Office of the Board” - The administrative office of the City of Newton Board of License Commissioners located at City Hall, First Floor, 1000 Commonwealth Avenue, Newton Centre, MA 02459;

“Official closing hour” - the time fixed by the Board for the daily secession of the service, sale, delivery, and/or consumption of alcohol which may appear on the face of the license.

“Official opening hour” - the time fixed by the Board for the daily commencement of the service, sale, delivery, and/or consumption of alcohol which may appear on the face of the license.

“Permit” (M.G.L. c. 138, §14) – a special grant of authority for up to a maximum of one day from the Board to the licensee for the sale of either All-Alcohol or Wine/Malt beverages to the responsible manager of any nonprofit organization conducting any indoor or outdoor activity or enterprise issued under M.G.L. c. 138, §14;

“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 permit issued under M.G.L. c. 138, §14.

“Restaurant” (M.G.L. c. 138, §1) – space, in a suitable building, leased or rented or owned by a person holding a duly issued and valid license as a common victualler under the provisions of M.G.L. c. 140, and provided with adequate and sanitary kitchen and dining room equipment and capacity for preparing, cooking and serving suitable food for strangers, travelers and other patrons and customers, and in addition meeting and complying with all the requirements imposed upon common victuallers under M.G.L. c. 140;

“Retail Package Store” (M.G.L. c.138, §15) – a business or location that offers for sale at retail of such alcoholic beverages or wines, as the case may be, not to be drunk on the premises;

“Seasonal Club” – a club which conducts business for only a portion of the year;

“Servers” – any and all persons who serve, sell, dispense, distribute, furnish, or deliver alcoholic beverages to a consumer, including but not limited to bartenders, waitresses, waiters and persons under a retail package store license;

“Tavern” (M.G.L. c. 138, §1) – an establishment where alcoholic beverages may be sold, as authorized by this chapter, with or without food, to be served to and drunk by patrons in plain view of other patrons, all entrances to which shall open directly from a public way.

“Wine” (M.G.L. c. 138, §1) – all fermented alcoholic beverage made from fruits, flowers, herbs or vegetables and containing not more than twenty four per cent of alcohol by volume at sixty degrees Fahrenheit, except cider containing not more than three percent, or containing more than six percent, of alcohol by weight at sixty degrees Fahrenheit; (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

## **5. 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 and permits issued by the Board shall be governed by these regulations, M.G.L. Chapter 138 and Chapter 140, and the rules and regulations of The Alcoholic Beverages Control Commission of the Commonwealth of Massachusetts (“the Commission”) under 204 CMR, as the same may be amended from time to time. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

## **6. APPLICATION PROCEDURE – GENERAL REQUIREMENTS** - (M.G.L. c. 138, §§ 12, 14, 15, 15A, 23; c. 140 § 2; c. 140, §§ 21E, 177, 177A, 181, 181A, 183A)

All applications and required forms for all licenses and permits issued by the Board (and approved by the Commission where required) must be complete, legible, and timely submitted to insure proper processing by the Office of the Board for transmittal to the Board for action following public hearing, and further, in the case of applications for alcohol licenses and permits, must comply with Regulation #31 (entitled “Application Procedure for Alcohol Licenses and Permits – Specific Requirements”) and Regulation #32 (entitled “Legal Notice and Publication”) where applicable. The Office of the Board possesses comprehensive written instructions regarding the filing of license and permit applications which will be provided to any applicant upon request. While the Office of the Board will assist any applicant with the filing of an application, it shall be the sole responsibility of the applicant to fully complete all applications and forms as required in a legible and timely

manner. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**7. FILING FEES** - (M.G.L. c. 138, §§ 12, 14, 15, 15A, 23; c. 140 § 2; c. 140, §§ 21E, 177, 177A, 181, 181A, 183A)

All required filing fees charged by the Board and by the Commission pertaining to all licenses and permits issued by the Board shall be paid in full at such time as an application is filed at the Office of the Board. The type and amount of filing fees vary depending upon the type of application submitted. Current filing fees charged by the Board and by the Commission may be obtained from the Office of the Board upon request. The Board's filing fees, if paid for by check, must be made payable to: "City of Newton". Filing fees required by the Commission must be made payable to: "Commonwealth of Massachusetts" and must be by certified check or bank treasurer's check. Upon filing an application with the Office of the Board, all filing fees shall be non-refundable and shall not be pro-rated for any reason. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**8. NEW LICENSE & PERMIT FEES, TRANSFER LICENSE FEES, AND ANNUAL RENEWAL LICENSE FEES** - (M.G.L. c. 138, §§ 12, 14, 15, 15A, 16A, 23; c. 140 § 2; c. 140, §§ 21E, 177, 177A, 181, 181A, 183A)

All license and permit fees for the initial issuance of a new license or permit, or for the transfer of an existing license, shall be paid in full prior to the issuance of the license or permit. Licensees must pay in full all taxes and charges owed to the City of Newton on a current basis prior to the Board's issuance of the license or permit or transfer of the license where applicable. All license and permit fees shall be non-refundable and shall not be pro-rated for any reason.

License fees for the annual renewal of all licenses must be paid in full prior to the Board's issuance of any renewal license. Licensees must pay in full all taxes and charges owed to the City of Newton on a current basis prior to the license's annual renewal. All license fees shall be non-refundable and shall not be pro-rated for any reason. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**9. CORPORATE AND TRADE NAMES**

No licensee shall assume obligations 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) shall require the prior written approvals of both the Board and the Commission. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**10. CESSATION OF OPERATIONS** (M.G.L. c. 138, §§ 65, 77; c. 140, § 9)

Any licensee intending to permanently close a place of business, or who ceases business operations, or whose business does in fact permanently closes, shall immediately surrender its license and physically deliver said license to the Office of the Board.

In the event that such closure is on a temporary basis, the licensee shall notify the Office of the Board in writing prior to such temporary closing stating the reason(s) and estimated length of such temporary closing. Failure of the licensee to provide said notice for temporary closing may result in the suspension, modification, refusal to renew, or revocation of the license. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**11. BANKRUPTCY AND COURT PROCEEDINGS**

The licensee shall immediately notify in writing the Office of the Board of any and all proceedings brought by or against the licensee under the bankruptcy laws or of any other court proceedings. No license shall constitute a pledgable asset to any creditor without the prior written approvals of both the Board and the Commission. The Board will not approve of any pledged license acquired by sale in bankruptcy. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**12. CORPORATE TRANSACTIONS** (M.G.L.c. 138, §§ 2, 15A, 23, 25)

Only upon first obtaining the written approvals of both the Board and the Commission, may a licensee change managers, change corporate officers, sell or transfer corporate stock (with the exception of persons who own less than 10% stock in a publicly traded corporation), pledge corporate stock or alcohol license as security, or accept a loan or credit from another licensee (unless during usual course of business) or change the physical layout of the licensed premises.

No person, firm, corporation, partnership, association, entity, or combination of persons shall obtain any interest in a license without first obtaining the written approvals of both the Board and the Commission. The Board will not approve of any pledged license acquired by sale in bankruptcy, foreclosure, or sale/transfer of corporate stock. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**13. FORECLOSURE ON LOANS**

Licensees must notify in writing the Office of the Board immediately when an assignee forecloses under an assignment of stock in incorporated licensed premises made as the result of foreclosure. No license shall constitute a pledgable asset to any creditor without the prior written approvals of both the Board and the Commission. The Board will not approve of any pledged license acquired through foreclosure. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**14. FOOD SERVICE REQUIRES LICENSING** – (M.G.L. c. 140, §§ 5, 6, 21E, 21F)

**(A) Food Service to the Public** – (M.G.L. c. 140, §§ 5, 6) - No person, business, firm, corporation, partnership, association, organization, club, entity, or combination of persons shall engage in food service to the public, irrespective of whether the food is to be consumed on-premises or is to be taken off-premises for consumption, without a common victualler license issued by the Board. 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 M.G.L. c. 140, §§ 5, 6.

For the purpose of this regulation, the term "food service" shall be the preparing, sale, service, dispensing, distribution, and/or delivery of food which shall include meals, hot hors d'oeuvres, sandwiches, soups, hot prepared food, and salads, but shall exclude chips, nuts, pretzels, popcorn, candy, and other snack-like foods.

**(B) Food Service in Private Organizations** – (M.G.L. c. 140, §§ 21E, 21F) - 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 required under M.G.L. c. 140, §21E. This paragraph shall 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. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**15. 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) shall be maintained upon or within the licensed premises and shall 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. A current and accurate copy of said employee list shall be forwarded by the licensee to the Office of the Board upon request. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**16. DISPLAY OF LICENSES, PERMITS, AND CERTIFICATES** (204 CMR 2.01)

All licenses, permits, certificates of inspection and occupancy, fire safety certificates, and health certificates issued by any board, agency, and/or department of the City of Newton and the Commonwealth of Massachusetts regarding the licensed premises and/or the licensed business, including but not limited to any license issued by the Board, shall be prominently displayed within or upon the licensed premises at all times in a conspicuous location where the public has clear access to read.

In addition, all alcohol licensees shall post within the licensed premises additional signage relative to penalties for drunk driving, penalties for open alcohol beverage containers, prices for alcohol beverages, and the like as required by the Commission where

applicable. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**17. POSTING OF CAPACITY, EMERGENCY EXIT LOCATIONS, AND FIRE SUPPRESSION EQUIPMENT (sprinklers)** – (M.G.L. c. 138, §§ 15, 69)

All licensed premises which have a maximum occupancy capacity of over 50 (fifty) persons shall, at all times persons are present within or upon the licensed premise, prominently post on, or in close proximity to, the licensed premise's front door and any other additional door(s) by which patrons and employees enter the licensed premises (where patrons and employees can easily read upon entry), one sign per entrance door. Each sign shall measure at least eleven inches by seventeen inches and shall contain in large bold print the following: (1) the licensed premises' maximum occupancy capacity; (2) the location of each and every emergency exit of the licensed premises; and (3) whether or not the entire licensed premises is equipped with fire suppression equipment consisting of overhead automatic watered sprinklers. Said sign(s) shall 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(s) as the Board may determine. Said sign(s) shall be clearly visible from the outside of the licensed premises as patrons and employees enter the licensed premises. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**18. DISCRIMINATION PROHIBITED** - (MCAD – M.G.L. c. 273, §§ 92, 98, 98A)

No licensee, agent, employee, or manager 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. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**19. ACCESS AND INSPECTION OF LICENSED PREMISES BY BOARD, POLICE AND AGENTS** (M.G.L. c. 138, §§ 12, 63, 63A; c. 140 §§ 3, 25)

Appointed agents of the Board constitute all ranking officers of the Newton Police Department, the Board's Enforcement Officer, and the Administrative Director of the Board. The licensed premises shall at all times be subject to inspection by authorized agents of the Board, Newton Police officers, the Board's Enforcement Officer, and members of the Board.

All licensees, all managers, and all individuals responsible for the orderly and safe conduct of an event under a one-day temporary alcohol permit issued under M.G.L. c. 138, §14 (hereinafter "responsible individual") shall ensure that procedures are in place, be it by posting a doorman or otherwise, to allow authorized agents of the Board, Newton Police officers, the Board's Enforcement Officer, and members of the Board free, immediate and unhampered entrance upon and into the licensed premises at anytime employees are on the premises or at any time the licensed premises is open for business. Any hindrance, delay, or denial in providing such free, immediate, and unhampered access shall be cause for sanction(s) 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. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**20. PRECISE PLANS REQUIRED – NEW LICENSES, TRANSFER OF LICENSES, AND ALTERATIONS OF EXISTING LICENSED PREMISES WHERE CHANGE IN STRUCTURAL COMPOSITION, CHANGE IN BOARD APPROVED ALCOHOL AREA(S), OR INCREASE IN SEATING CAPACITY**

**(A) Precise Plans Required** - In addition to all other requirements, any applicant for a new license, transfer of an existing license, change in the structural composition of a licensed premises, change in Board approved area(s) for the sale, service, dispensing, distribution, or consumption of alcohol (as recited in Regulation #43A), or increase in the seating capacity upon or within a licensed premises, shall submit to the Board written drawings, blueprints, and/or accurate plans of a reasonably precise nature acceptable to the Board (hereinafter "plans") for the Board's consideration, with the exception of applicants for a one-day temporary alcohol permit issued by the Board under M.G.L. c. 138, §14 who shall instead comply with Regulation #20F below.

**(B) Renovations and modifications to existing licensed premises - Change in structural composition, Change in Board approved alcohol areas, or Increase in seating capacity** - In the event that the renovation, physical change, modification, extension, expansion, or alteration constitutes a change to the structural composition of a licensed premises, or to any area under the direction and control of the licensee (including but not limited to buildings, kitchens, walls, floors, ceilings, patios, decks, sidewalks, roofs, and/or any exterior extension), the applicant or licensee must submit new plans for the Board's consideration as required in Section A above and comply with Sections C, D, and E below.

In the event that the renovation, physical change, modification, extension, expansion, or alteration relates to those areas upon or within the licensed premises, or to any area under the direction and control of the licensee, previously approved by the Board for the sale, service, dispensing, distribution, and/or consumption of alcohol (including but not limited to any increase in the maximum seating capacity) as recited in Regulation #43, the applicant or licensee must submit new plans for the Board's consideration as required in Section A above and comply with Sections C, D, and E below.

There shall be no increase in maximum seating capacity within or upon the licensed premises, or to any area under the direction and control of the licensee, without the prior written approval of the Board based upon new plans submitted by the applicant or licensee as required in Section A above and Sections C, D, and E below.

In the event that any licensed premises is issued or granted a change in its maximum occupancy capacity, the licensee shall, within 10 days, notify in writing the Board

of said change and provide to the Board a copy of the new maximum occupancy capacity certificate.

**(C) Minimum Information the Plans Must Contain** - The applicant's or licensee's plans shall, at a minimum, specify the following information: maximum occupancy capacity, maximum seating capacity, total square footage, square footage by floor, square footage by room, and the location, numbers, and dimensions of each of the following: all stages, tables, counters, seats, chairs, stools, bars, bar stools, exits, entrances, means of egress, exterior and interior doors, exterior and interior stairs, show areas, entertainment areas, amplifiers, phonographs, dance floors, automatic amusement machines, billiards, pool tables, kitchens, bathrooms, hallways, vestibules, closets, waiting areas, and rooms. For alcohol licensees, the plans shall also comply with Regulation #42 (entitled "Seats, Chairs, Stools, Bar Stools and Bar Rails") and Regulation #43A (entitled "Sale, Service, Consumption of Alcohol Limited to Approved Areas"). In addition, the plans shall specify any other additional information as the Board may require or direct. No license shall issue without the Board's receipt of said plans and until written approval is granted and recorded by the Board upon the applicant's or licensee's submitted plans.

**(D) Board's Approval Process of Plans and Board's Recording of Approval Upon the Plans** – If so approved, upon approval by the Board of the submitted plans, the Board shall cause to be made a written notation of the date and the fact of the Board's approval upon the face of the approved plans. All plans submitted by the applicant or licensee, approved in writing by the Board and recorded as such, shall be kept on file by the Office of the Board. Once the plans are approved in writing by the Board and recorded as such, the licensed premises shall continue to conform to the written plans as so approved and recorded by the Board kept on file at the Office of the Board, including the licensed premises' maximum seating capacity. Any renovation, physical change, modification, extension, expansion, or alteration made within, to, or upon the licensed premises, and/or in any area under the direction and control of the licensee, which constitutes a change to the structural composition of a licensed premises or results in a change of areas approved by the Board for the sale, service, dispensing, distribution, and/or consumption of alcohol (including but not limited to any increase in the maximum seating capacity), shall require the Board's written approval based upon new plans submitted by the applicant or licensee. Any violation of this requirement shall be cause for sanctions against the license and, in the case of an application for a transfer of an existing license, as against the current licensee.

No license shall issue until the Board's independent approval and all approvals of all applicable City departments has issued in writing. The applicant or licensee shall provide the Board with copies of approvals of all applicable City departments. Approval of plans and/or the issuing of permits by the City's Inspectional Services Department, the Health Department, Fire Prevention Bureau and/or special permit use granted by the Newton Board of Alderman, does not constitute approval by the Board. The Board must grant separate and independent written approval before any work is commenced, with the sole exception of emergency repairs.

No licensee, manager, agent, or employee shall keep for sale, store, dispense, deliver, serve, or sell alcoholic beverages upon or within any part of the licensed premises not specified on the plans approved in writing and recorded by the Board, including but not limited to patios, decks, sidewalks, roofs, and/or any exterior extension.

**(E) Certification letter or as-built plans required upon completion of construction or modifications** - Upon completion of the new construction, build-out, renovations, physical changes, modifications, extensions, expansions, or alterations, which constitute a change in the structural composition of the licensed premises or change in Board approved areas for the sale, service, dispensing, distribution, or consumption of alcohol, as the case may be, the applicant or licensee shall submit to the Office of the Board a letter certifying under pains and penalties of perjury that the premises as constructed accurately and completely conform to the plans as previously submitted and approved by the Board. Said certification letter shall act in lieu of the requirement for "as-built" drawings. No license shall issue until receipt of said certification letter by the Board. Said certification letter shall be kept on file by the Office of the Board along with the plans recorded approved by the Board. Should the premises in fact fail to conform in any manner to the applicant's or licensee's representation of conformity contained within said certification letter, the Board may take sanctions against the license, or in the case of an application for the transfer of an existing license, as against the current licensee.

In the event that the premises after construction do not conform to the plans as previously submitted and recorded approved by the Board, the applicant or licensee shall submit an additional set of drawings, blueprints, and/or accurate plans of a reasonably precise nature acceptable to the Board which accurately depict the premises as constructed (so-called and hereinafter "as-built plans"), which as-built plans shall also be subject to written recorded approval by the Board. The as-built plans shall contain the same information as required in Section C above. Should the Board, in the exercise of its discretion, approve the as-built plans, the fact of said Board approval shall be recorded upon the as-built plans and the as-built plans shall be kept on file by the Office of the Board, as Section D above recites. Should the Board, in the exercise of its discretion, fail to approve of the applicant's or licensee's as-built plans, the licensee shall alter and modify the licensed premises to conform to the Board's direction within a reasonable time thereafter, not to exceed sixty days. After completion of said alteration and modification to the premises to comply with the Board's direction, the applicant or licensee shall then modify in writing the as-built plans and resubmit said as-built plans for the Board's reconsideration. Should the Board, in the exercise of its discretion, approve of the resubmitted as-built plans, the fact of said Board approval shall be recorded upon the as-built plans and the as-built plans shall be kept on file by the Office of the Board, as Section D above recites. In the event that the Board fails to approve of the resubmitted as-built plans, or in the event that a reasonable time not to exceed sixty days expires and the premises continues to fail to conform to the Board's direction, the Board may take sanctions against the license, or in the case of an application for the transfer of an existing license, as against the current licensee.

**(F) Sketch required in lieu of plans for one-day temporary alcohol permit issued under M.G.L. c. 138, §14** - The requirement for precise plans as recited in Regulation #20A-E above shall not apply to applicants for a one-day temporary alcohol permit issued by the Board under M.G.L. c. 138, §14 but instead an 8 and ½ inch by 11 inch sketch submitted by the applicant and approved in writing by the Board (hereinafter "sketch") shall be required as recited in Regulation #31(B)7b and Regulation #43B (entitled "Sale, Service, Consumption of Alcohol Limited to Approved Areas"). Said sketch of the proposed licensed premises must be of a reasonably precise nature acceptable to the Board which clearly delineates the location and manner alcoholic beverages will be served, sold, delivered, and/or dispensed. Said sketch must clearly and accurately designate the confined physical area within the proposed licensed premises where alcoholic beverages will be served, sold, delivered, dispensed, and/or consumed, and otherwise contained, and any other information on the sketch as the Board may require. No one-day temporary alcohol permit shall issue without the Board's receipt and written approval of the sketch. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**21. INSURANCE REQUIREMENTS** - (M.G.L. c. 138, §§ 64A, 64B, 67; c. 152, §25C6)

All licenses and permits 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. No license or permit shall be issued or renewed until the applicant or licensee demonstrates compliance with insurance requirements of the Board and under state law by submission of written evidence acceptable to the Board. At all times the licensee shall maintain said insurance coverages current and at minimum levels required under state law.

A current and accurate copy of said insurance coverages shall be maintained upon or within the licensed premises and shall 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. A current and accurate copy of said insurance coverages shall be forwarded by the licensee to the Office of the Board upon request. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**22. SUSPENSION, REVOCATION, CANCELLATION, AND/OR MODIFICATION OF LICENSE, REFUSAL TO RENEW, SURRENDER OF LICENSE, REDUCTION OF HOURS, INSURANCE INCREASES** - (M.G.L. c. 138, §§ 12, 64, 64A, 64B, 65, 67; c. 140, § 9)

All licenses and permits are subject to suspension, revocation, cancellation, forfeiture, modification, and/or refusal to renew for any violation of any regulation, ordinance, code, or law of the Board, the Commission, the City of Newton, Department of the City of Newton, Commonwealth of Massachusetts, or State Agency, or for any breach of condition of the license. After proper notice and public hearing, if the Board finds a violation of any condition of the license or permit, of any state and/or local law including but not limited to building codes, zoning codes, local ordinances, health and sanitary codes, fire prevention codes, Commission's regulations, 204 CMR, or of any of the Board's

regulations as herein recited, the Board may modify, suspend, revoke, cancel, declare forfeited, and/or refuse to renew the license or permit.

After proper notice and public hearing, in the event that the Board finds that the alleged violation(s) has/have in fact occurred, the Board shall assess appropriate sanctions against the licensee, including but not limited to suspension, revocation, modification, cancellation, forfeiture, and/or refusal to renew the license or permit. In determining the appropriate sanction to be imposed against the licensee, the Board will consider and examine any and all criteria the Board deems relevant, including but not limited to the following: past history of findings of violation(s) against the licensee or lack thereof; past history of conduct of the licensee; the severity of the offense alleged; any current or prior findings or verdicts by tribunal(s) of competent jurisdiction (criminal, civil, or administrative); the egregious nature of the facts; 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; whether criminal infractions were alleged, prosecuted, and/or committed; public safety; risk to the public; public need and public good; whether personal injury(ies) occurred and extent; whether destruction of property occurred and extent; the extent to which residents' peace and tranquility was disturbed; police response and the extent thereof; any and all remediation taken by the licensee; precautions taken by the licensee to prevent reoccurrence; current sanctions imposed by the Commission or other State agency or City department charged with enforcement for like violation(s); culpability of the licensee, his manager, bartenders, servers, agents, employees, and/or individual responsible for the orderly and safe conduct of an event under a one-day temporary alcohol permit issued under M.G.L. c. 138, §14 (hereinafter "responsible individual"); and any other additional factors deemed relevant by the Board.

Upon the Board's suspension, revocation, cancellation, forfeiture, or refusal to renew a license or permit, the licensee shall surrender the license or permit to the Board and physically deliver the license or permit to the Office of the Board at a date and time determined by the Board.

In addition to the foregoing, the Board may, in the exercise of its discretion, decrease the hours during which any licensee may make sales of alcoholic beverages after proper notice and after conducting a public hearing concerning the public need for such decrease.

In addition to the foregoing, where the Board finds a violation of the sale or service of alcohol 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 providing security for the liability of the licensee to a limit of not less than \$100,000 to any one person and \$200,000 to all persons. Said limits may be increased at the discretion of the Board.

In the exercise of its discretion, the Board may alter, change, modify, impose, or add to any license or permit any condition(s) after notice to the licensee. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**23. POSTING OF NOTICE OF SUSPENSION, REVOCATION, CANCELLATION, MODIFICATION, REFUSAL TO RENEW, AND/OR FORFEITURE OF LICENSE**

Whenever the Board, after proper notice and public hearing, suspends, revokes, cancels, modifies, refuses to renew, or declares forfeited any license, the Board shall provide to the licensee one or more signs each measuring eight and one-half inches by eleven inches, containing in large bold print such exact words as the Board may direct which shall notify patrons and the public of the Board's sanction(s). Said sign(s) shall be attached by the licensee on the inside glass window of the front door of the licensed premises, and to all other door(s) by which patrons enter the licensed premises, one sign per entrance door, clearly visible upon said door(s) from the outside of the licensed premises, or if not clearly visible to the outside by attachment to said door(s) said sign(s) shall be attached in some other conspicuous location as the Board may determine. Said sign(s) shall remain prominently and clearly displayed during the entire period of such license suspension, revocation, cancellation, refusal to renew, modification, or forfeiture. During the entire period of any such license suspension, the licensee shall segregate and obscure from public view all alcohol present within or upon the licensed premises. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**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 periodically removed to prevent any unsanitary or nuisance conditions or at such frequency as determined by the Board or any other appropriate City department. All refuse shall be stored in a dumpster or in such other manner as approved by the Newton Health Department, and shall be maintained in accordance with the regulations and conditions of the Newton Health Department. This regulation shall operate in conjunction with rules and regulations of the Newton Health Department and to the extent this regulation may conflict with any rule or regulation of the Newton Health Department, this regulation shall be superceded. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**25. CLEAR VIEW OF PREMISES' INTERIOR** (M.G.L. c. 138, § 1)

No 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 shall be maintained within or upon any window or door of any licensed premises, except as permitted in writing by the Board or the Commission. This regulation shall not apply to a club license issued under M.G.L. c. 138, § 12. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

## **26. MAXIMUM OCCUPANCY CAPACITY & MAXIMUM SEATING CAPACITY**

Maximum occupancy capacity of the licensed premises shall be strictly adhered to at all times by the licensee, manager, and individual responsible for the orderly and safe conduct of an event under a one-day temporary alcohol permit issued under M.G.L. c. 138, §14 (hereinafter "responsible individual") and shall be strictly enforced by the Board. The licensee, manager, and responsible individual shall ensure that procedures are in place, be it posting a doorman using a counter or otherwise, that maximum occupancy capacity is not exceeded.

Maximum seating capacity of the licensed premises shall be strictly adhered to at all times by the licensee, manager, and responsible individual and shall be strictly enforced by the Board. The storage of extra seats, chairs, or stools upon or within a licensed premises is not permitted without the Board's prior written approval. In no event shall the total number of seats, chairs, and stools upon or within the licensed premises exceed the maximum seating capacity nor the maximum occupancy capacity of the licensed premises. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

## **27. INTERIOR ILLUMINATION, CLEAR EXITS, LIGHTED EXIT SIGNS, AND CLEAR & UNOBSTRUCTED INTERIOR**

At all times persons are present within or upon the licensed premises, the interior of the licensed premises shall be safely and sufficiently illuminated and all exits shall at all times remain clear and unobstructed and be in proper working order providing for immediate emergency egress. All exits shall 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 shall remain clear and unobstructed at all times. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

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## **SECTION II**

### **ALCOHOL LICENSES AND PERMITS**

#### **30. APPLICABILITY OF SECTION II - APPLIES TO ALL ALCOHOL LICENSES AND ALCOHOL PERMITS ISSUED BY THE BOARD**

Section II which includes the following regulations number 30 (thirty) through 59 (fifty-nine) inclusive, shall apply to any and all alcohol licenses and alcohol permits issued by the Board under M.G.L. c. 138, including but not limited to Restaurants, Clubs, Seasonal Clubs, Package Stores, Innholders, Educational Institutional licenses, All-Alcohol licenses, Wine/Malt licenses, One-Day Temporary All-Alcohol permits, One-Day Temporary Wine/Malt permits, and General On-Premises All-Alcohol licenses, but shall not apply to Entertainment licenses, automatic amusement machine licenses, billiard licenses, and Common Victualler licenses as defined hereunder, unless otherwise specified. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

#### **31. APPLICATION PROCEDURE FOR ALCOHOL LICENSES AND PERMITS – SPECIFIC REQUIREMENTS** - (M.G.L. c. 138, §§ 12, 14, 15, 15A, 16B, 23; 204 CMR 2.01, 7.00 et seq.)

**(A) Applicants for an original alcohol license, an alcohol license transfer, or a change in the structural composition of an alcohol licensed premises** - For application purposes only, all applicants for any and all alcohol licenses including an original alcohol license, an alcohol license transfer, and/or a change in the structural composition of an alcohol licensed premises, with the exception of applicants for a one-day temporary alcohol permit under M.G.L. c. 138, §14, shall comply with the following:

1. Regulation #6 (entitled "Application Procedure-General Requirements");
2. Regulation #7 (entitled "Filing Fees");
3. Regulation #8 (entitled "New License & Permit Fees, Transfer License Fees, and Annual License Fees");
4. Regulation #20A-E (entitled "Precise Plans Required – New Licenses, Transfer of Licenses, and Alterations of Existing Licensed Premises where Change in Structural Composition, Change in Board Approved Alcohol Area(s), or Increase in Seating Capacity");
5. Regulation #21 (entitled "Insurance Requirements");
6. Regulation #32 (entitled "Legal Notice and Publication");
7. Regulation #33A (entitled "Appointment of Manager of an Alcohol Licensed Premises – Approved manager required for all alcohol licenses"); and,
8. In addition to all other requirements, all applicants shall legibly, completely, and timely complete and submit to the Office of the Board at least 14 days prior to public hearing the following:
  - a. An application form;
  - b. If a corporation, a vote of its Board of Directors;

- c. The Commission's Form A entitled "Licensee's Personal Information Sheet" with appointment of manager;
- d. The Commission's Form C, or its equivalent, verifying sources of income;
- e. If a corporation, Articles of Organization stamped by the Secretary of the Commonwealth;
- f. If applicant is leasing the premises, a current and accurate copy of the lease;
- g. The Commission's Form 997 if applicable;
- h. A current and accurate copy of the menu;
- i. If for a new alcohol license or an alcohol license transfer, a current and accurate copy of any Pledge Agreement of license or stock if applicable;
- j. If for an alcohol license transfer, the Commission's Form 983;
- k. If for a new alcohol license or an alcohol license transfer, a current and accurate copy of the signed purchase and sales agreement; and,
- l. Any other additional forms, documents, writings, reports, statements, plans, or information the Board may require.

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 can not receive more than two applications for the same premises in the same license year.

This regulation does not limit or restrict the legal effect of all other regulations contained herein which are applicable to any and all alcohol licenses including but not limited to an original alcohol license, an alcohol license transfer, a change in the structural composition of an alcohol licensed premises, a change in the Board approved alcohol areas, and/or an increase in seating capacity, to which the licensee or applicant must comply.

**(B) Applicants for a one-day temporary alcohol permit under M.G.L. c. 138, §14 -** For application purposes only, all applicants for a one-day temporary alcohol permit under M.G.L. c. 138, §14 only, shall comply with the following:

- 1. Regulation #6 (entitled "Application Procedure-General Requirements");
- 2. Regulation #7 (entitled "Filing Fees");
- 3. Regulation #8 (entitled "New License & Permit Fees, Transfer License Fees, and Annual License Fees");
- 4. Regulation #20F (entitled "Sketch required in lieu of plans for one-day temporary alcohol permit issued under M.G.L. c. 138, §14");
- 5. Regulation #21 (entitled "Insurance Requirements");
- 6. Regulation #33B (entitled "Approved 'responsible individual' required in lieu of manager for one-day temporary alcohol permit issued under M.G.L. c. 138, §14"); and,
- 7. In addition to all other requirements, all applicants for a one-day temporary alcohol permit only under M.G.L. c. 138, §14 shall legibly, completely, and

timely complete and submit to the Office of the Board at least 48 hours before public hearing the following:

- a. The Board's Application for One Day Temporary Alcohol Permit;
- b. An 8 and ½ inch by 11 inch sketch of the proposed permitted premises of a reasonably precise nature acceptable to the Board (hereinafter "sketch") which clearly delineates the location and manner alcoholic beverages will be served, sold, delivered, and/or dispensed. Said sketch must clearly and accurately designate the confined physical area within the proposed licensed premises where alcoholic beverages will be served, sold, delivered, dispensed, and/or consumed, and otherwise contained, and any other information on the sketch as the Board may require as recited in Regulation #20F (entitled "Sketch required in lieu of plans for one-day temporary alcohol permit issued under M.G.L. c. 138, §14") and Regulation #43B (entitled "Sale, Service, Dispensing, Distribution, Consumption of Alcohol Limited to Approved Areas");
- c. Written indication of the manner by which service, sale, delivery, and/or dispensing of alcoholic beverages is to be controlled;
- d. Written indication of existence and number of police detail(s) and/or security as determined by the Board;
- e. Written evidence of owner's permission to utilize the proposed licensed premises in a form acceptable to the Board;
- f. Written evidence of the maximum occupancy capacity of the proposed licensed premises in a form acceptable to the Board;
- g. Designation and identification in writing by the applicant of an individual responsible for the orderly and safe conduct of the event and responsible for the sale, service, delivery, dispensing, and consumption of alcoholic beverages (hereinafter "responsible individual"), who shall be physically present during the duration of the entire event, as recited in Regulation #33B (entitled "Approved 'responsible individual' required in lieu of manager for one-day temporary alcohol permit issued under M.G.L. c. 138, §14") and who must sign the application;
- h. Designation and identification in writing by the applicant of all individuals who will serve, sell, deliver, and/or dispense alcoholic beverages as required under Regulation #47 (entitled "Service of Alcohol Beverages Limited") and evidence of whether or not said individuals have completed in the past three years an appropriate Massachusetts alcoholic beverage server training program of a type approved by the Board as recited under Regulations #48A & B (entitled "Server Training & Written Verification"); and,
- i. Any other additional forms, documents, writings, reports, statements, sketches, plans, or information the Board may require.

However, all applicants for a one-day temporary alcohol permit under M.G.L. c. 138, §14, shall be exempted from the application requirements of Regulation #32 (entitled "Legal Notice and Publication").

This regulation does not limit or restrict the legal effect of all other regulations contained herein which are applicable to a one-day temporary alcohol permit under M.G.L. c. 138, §14, to which the licensee or applicant must comply. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**32. LEGAL NOTICE AND PUBLICATION** - (M.G.L. c. 138, §15A)

All applicants for an original alcohol license, for an alcohol license transfer, and/or for a change in description of an alcohol licensed premises, with the exception of applicants for a one-day temporary alcohol permit issued under M.G.L. c. 138, §14, shall provide for proper and timely legal notice and publication which must occur at least ten (10) days prior to public hearing conducted before the Board.

Legal notice shall include the applicant's full name, the kind of license applied for, a complete description of the applicant's intended action, and the full address where the license is to be used. The applicant shall provide and pay for legal notice for publication directly to a newspaper of the City of Newton, or, if there is no local newspaper, then to the newspaper that provides general circulation in the City of Newton, preferably the Daily News Tribune or the Newton Tab. The applicant's legal notice and newspaper publication must occur at least ten (10) days prior to public hearing conducted before the Board. The applicant shall send a current and accurate copy of its legal notice by certified mail return receipt requested (green card), within 3 days of its newspaper publication, to all abutters (owners of property directly touching the proposed licensed premises as shown on the City of Newton Assessor's most recent valuation list), and to 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 whereupon the legal notice shall include a statement reciting the necessity of a written objection to prevent the issuance or transfer of such license. In such an event, whether the application for a license is protested or not, the applicant shall affirmatively demonstrate to the Board at public hearing that the proposed licensed premises is not detrimental to the educational and spiritual activities of such school, church, synagogue, or hospital, and the Board shall make written findings of such prior to the issuance of the license, if so approved by the Board.

Once the applicant has in fact provided proper and timely legal notice and publication as herein described, the applicant shall file with the Office of the Board the following: (a) an affidavit under pains and penalties of perjury attesting to said service of notice; (b) all return receipts of said notice (green cards); and, (c) one or two original(s) of said notice as required.

The Board shall take no action on any application for an original alcohol license, alcohol license transfer, and/or a change in description of an alcohol licensed premises until proper and timely legal notice and publication as herein described have been rendered by

the applicant at least ten (10) days prior to public hearing. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**33. APPOINTMENT OF MANAGER OF AN ALCOHOL LICENSED PREMISES / APPOINTMENT OF RESPONSIBLE INDIVIDUAL FOR ONE-DAY TEMPORARY ALCOHOL PERMIT** - (M.G.L. c. 138, § 26; 204 CMR 7.00 et seq.)

**(A) Approved manager required for all alcohol licenses** - All alcohol licensees, shall appoint and maintain a responsible person as Manager at all times who has been approved by both the Board and the Commission, and whose identity shall appear on the face of the license, with the exception of one-day temporary alcohol permits issued under M.G.L. c. 138, §14 who shall instead comply with Regulation #33B below. At minimum, in order to gain Board approval, the Manager must be at least 21 years of age, a United States citizen, vested with full authority and control of the licensed premises and of the conduct of all business therein, and be of high moral character acceptable to the Board which may include the Board's review of a criminal record background check as conducted by the Commission. The Manager must be present upon or within the licensed premises at least fifty (50) percent of the time the licensed premises is open for business. Whether present or not, the Manager shall have total responsibility 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, and for the proper sale, service, delivery, dispensing, distribution, and consumption of alcoholic beverages within or upon the licensed premises including any area(s) under the direction and control of the licensee relating to the conduct of the licensee's business. No appointment of a Manager or successive Manager shall be effective unless and until first obtaining the written approvals of both the Board and the Commission.

**(B) Approved "responsible individual" required in lieu of manager for one-day temporary alcohol permit issued under M.G.L. c. 138, §14** - The requirements of Regulation #33A above as to appointment and retention of a manager shall not apply to a one-day temporary alcohol permit issued under M.G.L. c. 138, §14 but instead the one-day temporary alcohol licensee shall provide an individual responsible for the orderly and safe conduct of the event and who shall be responsible for the proper sale, service, delivery, dispensing, and consumption of alcoholic beverages (hereinafter "responsible individual") who shall be physically present during the duration of the entire event, and who shall sign the application as provided for in Regulation #31(B)7g. The responsible individual must be acceptable to the Board as to his/her character and be approved by the Board in writing prior to issuance of any one-day temporary alcohol permit. The responsible individual shall have total responsibility for the proper operation of the licensed premises, for the safe and orderly conduct of the licensed event, for any area(s) under the direction and control of the licensee relating to the conduct of the licensee's event, and for the proper sale, service, delivery, dispensing, distribution, and consumption of alcoholic beverages within or upon the licensed premises including any and all area(s) under the direction and control of the licensee relating to the conduct of the licensee's event. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**34. LICENSEE'S, MANAGER'S, & RESPONSIBLE INDIVIDUAL'S RESPONSIBILITIES / PROHIBITED ACTIVITIES / FIREARMS** (M.G.L.c. 138, § 64; c. 140, §§ 3, 9, 26; c. 272, § 26; c. 94C §§ 1 et seq.; c. 140, § 121; c. 269, §10; 204 CMR 2.05)

All licensees, all managers, and all individuals responsible for the orderly and safe conduct of an event under a one-day temporary alcohol permit issued under M.G.L. c. 138, §14 (hereinafter "responsible individual"), shall at all times maintain the licensed premises, any area under the direction and control of the licensee relating to the conduct of the licensee's business or event, and the conduct of the licensed business or event itself in full compliance with all applicable state and local law including but not limited to all building codes, zoning codes, local ordinances, health and sanitary codes, fire prevention codes, the Commission's regulations, 204 CMR, the Board's regulations recited herein, and any requirements or conditions contained within the license. The licensee, the manager, and the responsible individual shall be responsible for any and all violations or infractions, whether present or not. Failure to comply with any and all state, local law, regulations, codes, ordinances, or license conditions/requirements shall be sufficient cause for revocation, suspension, cancellation, modification, forfeiture, and/or refusal to renew the license by the Board and sanctions against the licensee, the manager, and the responsible individual.

In addition, the licensee, the manager, and the responsible individual shall at all times maintain order and decorum in and upon the licensed premises, and in any area under the direction and control of the licensee relating to the conduct of the licensee's business or event. The licensee, the manager, and the responsible individual shall cooperate in all manner and at all times with state and city officials in ensuring safe and orderly facilities, in the orderly conduct of the licensed business or event, and in the proper sale, service, delivery, dispensing, distribution, and consumption of alcoholic beverages with food service made simultaneously available within or upon the licensed premises. There shall be no disorder, indecency, prostitution, lewdness, illegal gambling, unlicensed entertainment, unlawful entertainment, illegal drugs or controlled substances as defined under M.G.L. c. 94C §§ 1 et seq., unlawful firearms as defined under M.G.L. c. 140, § 121, or unlawful dangerous weapons as defined under M.G.L. c. 269, §10 within or upon the licensed premises, and in any area under the direction and control of the licensee relating to the conduct of the licensee's business or event. No licensee, manager, server, bartender, agent, employee, or responsible individual shall knowingly permit such prohibited conduct in or upon the licensed premises, or in any area under the direction and control of the licensee relating to the conduct of the licensee's business or event.

No licensee, manager, server, bartender, agent, employee, or responsible individual shall carry or possess a firearm within or upon the licensed premises, and/or in any area under the direction and control of the licensee relating to the conduct of the licensee's business or event while said licensed premises is open for business, with the exception of a Newton Police Officer on privately paid detail, and with the exception of any other person who has previously received written permission from the Board based upon an affirmative showing of just cause and who has complied with state law as to firearms

licensing. This paragraph shall not apply to a retail package store license issued under M.G.L. c. 138, § 15.

All exterior doors to the licensed premises shall be kept in a closed position for noise control but shall be in proper working order at all times to provide for immediate emergency egress. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**35. FOOD SERVICE REQUIRED** – (M.G.L c. 138, §§ 11, 12; c. 140, §§ 5, 6)

No tavern license shall be issued by the Board.

Innholder and restaurant licenses issued under M.G.L. Chapter 138, § 12, shall be issued only to those who have been granted a common victualler license under M.G.L. Chapter 140. 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 M.G.L. c. 140, §§ 5, 6.

No alcoholic beverages shall be sold, delivered, dispensed, distributed, or served by any licensee, manager, server, bartender, agent, or employee, unless food service shall be made at the same time available. The sole two exceptions to this requirement of food service shall be a General On-Premises All-Alcohol license issued by the Board under M.G.L. c. 138, §12 and a retail package store license issued under M.G.L. c. 138, § 15.

For the purpose of this regulation, the term "food service" shall be the preparing, sale, service, dispensing, distribution, and/or delivery of food which shall include meals, hot hors d'oeuvres, sandwiches, soups, hot prepared food, and salads, but shall exclude chips, nuts, pretzels, popcorn, candy, and other snack-like foods. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**36. EMPLOYEE CONSUMPTION PROHIBITED**

No licensee, manager, server, bartender, agent, employee, or individual responsible for the orderly and safe conduct of an event under a one-day temporary permit issued under M.G.L. c. 138, §14 (hereinafter "responsible individual"), shall consume any alcoholic beverages while on duty, nor after the official closing hour of the licensed premises within or upon the licensed premises, nor in any area under the direction and control of the licensee relating to the conduct of the licensee's business or event. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**37. SERVICE PROHIBITED TO CERTAIN INDIVIDUALS / WRITTEN POLICIES**

(M.G.L. c. 138, §§ 34, 69)

No alcoholic beverage shall be sold, served, dispensed, distributed, delivered, or furnished to any person who is under twenty-one (21) years of age.

No alcoholic beverage shall be sold, served, dispensed, distributed, or delivered to an intoxicated person, or person known to have been intoxicated within the past six months.

Every alcohol licensee shall possess clear written policies distributed to all managers, individuals responsible for the orderly and safe conduct of an event under a one-day temporary permit issued under M.G.L. c. 138, §14 (hereinafter "responsible individual"), bartenders, servers, agents, employees and on the proper sale, service, dispensing, distribution, delivery, and consumption of alcohol and alcoholic beverages, including but not limited to the offering of assistance to an intoxicated person and under what circumstances the police are to be notified. Said written policies shall be maintained upon or within the licensed premises and shall 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. A current and accurate copy of said policies shall be forwarded by the licensee to the Office of the Board upon request. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**38. ACCEPTABLE FORMS OF IDENTIFICATION** – (M.G.L. c. 138, § 34B)

A licensee, manager, server, bartender, agent, employee, and/or individual responsible for the orderly and safe conduct of an event under a one-day temporary permit issued under M.G.L. c. 138, §14 (hereinafter "responsible individual"), who reasonably relies on one or more of the four types of identification listed below for proof of a person's identity and age shall be presumed to have exercised due care in making a delivery, sale, or service of alcohol or alcoholic beverages to a person who is under twenty-one years of age and shall not suffer any modification, suspension, revocation or cancellation of such license:

- A. Valid & Current Massachusetts Driver's License,
- B. Valid & Current Massachusetts Registry of Motor Vehicles Liquor Identification Card,
- C. Valid & Current Passport issued by the United States or a country recognized by the United States,
- D. Valid & Current active duty Military Identification Card (interpreted by the Commission to be the green, active service card).

In the event that the licensee, manager, server, bartender, agent, employee and/or responsible individual accepts any other form of identification not herein recited in #A-D above, no such presumption of due care shall exist and the licensee proceeds at his/her own peril. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**39. APPEALS** – (M.G.L. c. 138, § 67)

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 Commission. 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 Commission. 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 Commission, the action of the Board shall have the same force and effect as if the appeal had not been taken. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**40. HOURS OF OPERATION AND LAST CALL**

The hours of operation of all alcohol licensed premises shall be restricted to those approved by the Board and specified upon the face of the license which shall constitute the official opening and official closing hours of the licensed premises. No patron(s) shall be upon or within the licensed premises before the official opening hour nor after the official closing hour. Upon the official closing hour, the licensee, manager, bartenders, servers, agents, employees, and/or the individual responsible for the orderly and safe conduct of an event under a one-day temporary permit issued under M.G.L. c. 138, §14 (hereinafter "responsible individual") shall cause all patrons to promptly exit the licensed premises without delay, and all tables, counters, and bars shall be immediately cleared of all glasses, bottles, and containers of alcohol beverages. There shall be no drink consumption time permitted after the official closing hour. Last call shall be one-half hour before the official closing hour of the licensed premises as specified upon the face of the license. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**41. EMPLOYEES ON PREMISES AFTER CLOSING HOURS** (M.G.L.c. 138, § 12)

Other than the licensee and the manager, all employees and agents shall vacate the licensed premises no later than sixty (60) minutes after the official closing hour designated on the alcohol license, provided however, that such licensee, manager, agent, and employees or other hired personnel may be upon or within the licensed premises at any time for the purpose of cleaning, making renovations, making emergency repairs, providing security for such licensed premises, or preparing food for the next day's business or opening or closing the business in an orderly manner.

If it is necessary to have workmen other than employees within or upon the licensed premises after the official closing hour, or if it is necessary for the licensee, manager, agent, and/or employees to be upon or within the premises beyond sixty (60) minutes after the official closing hour, the Licensee or Manager shall immediately notify the Newton Police Department's Commanding Officer and state the reason, the number of people upon or within the licensed premises, and the anticipated approximate hours they will be upon or within the licensed premises. Failure to provide such notification shall be cause for sanction(s) by the Board against the license. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

## **42. SEATS, CHAIRS, STOOLS, BAR STOOLS AND BAR RAILS**

The number and location of all seats, chairs, stools, and bar stools upon or within a licensed premises must be approved in writing by the Board. Any change, alteration, increase, or modification in the number and location of any seats, chairs, stools, or bar stools upon or within a licensed premises must also be approved in writing by the Board. The storage of extra seats, chairs, stools, or bar stools upon or within a licensed premises is not permitted without the Board's prior written approval. In no event shall the total number of seats, chairs, stools, and bar stools upon or within the licensed premises exceed the maximum seating capacity nor the maximum occupancy capacity of the licensed premises.

Bar rails shall be prohibited within or upon any and all alcohol licensed premises. For the purpose of this regulation, the term "bar rails" shall be any platform, counter, shelf, surface, devise, or mechanism which may be used, designed, arranged, or constructed for the purpose of holding alcoholic beverages which is less than eighteen (18) inches in width. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

## **43. SALE, SERVICE, DISPENSING, DISTRIBUTION, CONSUMPTION OF ALCOHOL LIMITED TO APPROVED AREAS** – (M.G.L. c. 138, §30H)

**(A) Alcohol limited to Board approved areas appearing in Board approved plans** - The sale, service, dispensing, distribution, and/or consumption of alcoholic beverages upon or within all licensed premises shall be strictly limited to those areas of the licensed premises which appear clearly delineated on the written drawings, blueprints, and/or accurate plans of a reasonably precise nature acceptable to the Board (hereinafter "plans") submitted by the licensee and specifically approved in writing by the Board, including but not limited to patios, decks, sidewalks, roofs, and/or any exterior extension, for the sale, service and/or consumption of alcohol upon or within the licensed premises, as required under Regulation #20A-E (entitled "Precise Plans Required – New Licenses, Transfer of Licenses, and Alterations of Existing Licensed Premises where Change in Structural Composition, Change in Board Approved Alcohol Area(s), or Increase in Seating Capacity"). The sale, service, dispensing, distribution, and/or consumption of any alcoholic beverage in any area upon or within the licensed premises not specified within the plans submitted by the licensee, and thus lacking the Board's written approval, is strictly prohibited. In addition, possession of an unauthorized alcoholic beverage by a licensee upon or within a licensed premises shall be prima facie evidence that said alcoholic beverage is kept for sale and is strictly prohibited.

Any change, renovation, modification, extension, addition, expansion, or alteration to those areas upon or within the licensed premises previously approved by the Board for the sale, service, dispensing, distribution, and/or consumption of alcohol, including but not limited to any increase in the maximum seating capacity, shall also require written approval by the Board for the sale, service, dispensing, distribution, and/or consumption of alcohol based upon new plans submitted by the licensee, as required under Regulation #20A-E (entitled "Precise Plans Required – New Licenses, Transfer of Licenses, and Alterations of

Existing Licensed Premises where Change in Structural Composition, Change in Board Approved Alcohol Area(s), or Increase in Seating Capacity”).

**(B) Alcohol limited to Board approved areas appearing in Board approved sketch for one-day temporary alcohol permit issued under M.G.L. c. 138, §14** - The requirements of Regulation #43A above as they relate to plans shall not apply to a one-day temporary alcohol permit issued under M.G.L. c. 138, §14 but instead the sale, service, dispensing, distribution, and/or consumption of alcoholic beverages upon or within a one-day temporary licensed premises shall be strictly limited to those areas of the licensed premises which appear clearly delineated on the 8 and ½ inch by 11 inch sketch submitted by the licensee and approved in writing by the Board (hereinafter “sketch”) as required under Regulation #20F (entitled “Sketch required in lieu of plans for one-day temporary alcohol permit issued under M.G.L. c. 138, §14”) and under Regulation #31(B)7b. The Board approved location, manner of service, control of, and confined physical area for the service, sale, delivery, dispensing, and consumption of alcoholic beverages shall be strictly enforced. The sale, service, dispensing, distribution, and/or consumption of any alcoholic beverage in any area(s) outside the area designated for such by the licensee contained in the sketch and approved in writing by the Board is strictly prohibited. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**44. CONSUMPTION ON PREMISES** (204 CMR 4.03)

All alcoholic beverages served, sold, dispensed, distributed, and/or consumed within or upon the licensed premises shall be in open containers. No patron shall remove any alcoholic beverage from the licensed premises and no licensee, manager, server, bartender, agent, employee or individual responsible for the orderly and safe conduct of an event under a one-day temporary alcohol permit issued under M.G.L. c. 138, §14 (hereinafter “responsible individual”) shall knowingly permit such removal. No person shall be in possession of more than 2 (two) glasses of an alcoholic beverage at any one time and no licensee, manager, server, bartender, agent, employee, or responsible individual shall knowingly permit such possession over the maximum permissible number. No person shall carry, transport, possess, or deliver alcoholic or wine/malt beverages into or upon the licensed premises except as permitted under M.G.L. c. 138 and no licensee, manager, server, bartender, agent, employee or responsible individual shall knowingly permit any person to carry, transport, possess, or deliver alcoholic or wine/malt beverages into or upon the licensed premises. This regulation shall not apply to a retail package store license issued under M.G.L. c. 138, § 15. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**45. SERVING CONTAINERS** (204 CMR 4.03)

No alcoholic beverages, with the exception of wine and specialty drinks, shall be sold, served, dispensed, or distributed in any container or glass, the capacity of which exceeds sixteen (16) fluid ounces. The sale, service, dispensing, or distributing of malt beverages, beer or ale in pitchers shall be to 2 (two) or more persons at any one time. This regulation shall not apply to a retail package store license issued under M.G.L. c. 138,

§ 15. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**46. CHARGE FOR ALCOHOLIC BEVERAGES** (204 CMR 2.16, 4.03)

No alcoholic beverages shall be sold for a fee less than the actual cost of the beverage to the licensee. An admission charge to enter into or upon the licensed premises, including but not limited to a cover charge, shall not be credited towards the purchase price of any alcoholic beverage. The price charged for alcoholic beverages shall not be discounted for any particular hour(s) of the day or day(s) of the week. No minimum charge for the purchase of alcoholic beverages or minimum alcoholic beverage drinking requirement shall be imposed upon any person at any time. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**47. SERVICE OF ALCOHOLIC BEVERAGES LIMITED** (204 CMR 4.01)

No more than 2 (two) alcoholic or wine/malt beverage drinks shall be sold, delivered, dispensed, distributed, or served to any person within or upon a licensed premises at any one time. This paragraph shall not apply to a retail package store license issued under M.G.L. c. 138, § 15.

In all instances of the sale, delivery, dispensing, distribution, furnishing, or service of alcoholic beverages, a one on one, direct face to face encounter between server and consumer is required. For purposes of this regulation, the term "server" shall be any and all persons who serve, sell, dispense, distribute, furnish, or deliver alcoholic beverages to a consumer, including but not limited to bartenders, waitresses, waiters and persons under a retail package store license.

Bartenders shall serve only persons seated in bar stools at the Board approved bar(s), or persons standing between Board approved bar stools who are facing and physically touching the Board approved bar(s), except that Bartenders may serve patrons seated at tables during off-peak hours only. For purposes of this regulation, the term "off-peak hours" shall be Monday through Friday from 8:00 a.m. to 3:00 p.m. only, legal holidays excepted. All other persons standing due to the lack of available seats or otherwise, or persons seated at tables within or upon the licensed premises, must be served by a waitress or by a waiter who are to be provided in sufficient numbers by the Licensee and Manager.

In addition to the above, as to one-day temporary alcohol permits issued under M.G.L. c. 138, §14, the one-day temporary alcohol licensee is strictly limited to the utilization of those persons to serve, sell, deliver, and/or dispense alcoholic beverages who have been designated and identified in writing as part of the licensee's application and who have been approved by the Board to serve, sell, deliver, and/or dispense alcoholic beverages, and to no one else, in accordance with Regulation #31(B)7h. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

#### **48. SERVER TRAINING & WRITTEN VERIFICATION**

**(A) Server Training for all managers and all servers** - The manager of all alcohol licensed premises and all persons who serve, sell, dispense, distribute, furnish, or deliver alcoholic beverages to a consumer within or upon a licensed premises, including but not limited to bartenders, waitresses, waiters and persons under a retail package store license (hereinafter "servers"), shall complete and shall renew every three years 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. Said training shall be valid for a period not to exceed three years.

Written verification for Manager and Server Training shall be maintained on the licensed premises for the manager and for all servers within or upon the licensed premises. Written verification shall include the attendee's name & address, date of completion of course, identity of course completed, and location of course. Said written verification shall be kept upon or within the licensed premises and shall 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 shall be forwarded by the licensee to the Office of the Board upon request.

**(B) Server training generally not required under one-day temporary alcohol permit issued under M.G.L. c. 138, §14** - The requirements of Regulation #48A above relating to server training and written verification shall generally not apply to a one-day temporary permit issued under M.G.L. c. 138, §14 unless the Board in specific instances for an individual event determines that public need and common good require otherwise, in which case all servers utilized shall comply with server training and written verification as recited in Regulation #48A above. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

#### **49. SAMPLE TASTINGS PERMITTED** – (204 CMR 2.05 (5))

All alcohol licensed premises may provide customers, free of charge, "sample tastings" of wines (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), liqueurs and cordials (1/4 ounce maximum single serving restricted to 1 liter per 30 day period), and all other kinds of alcoholic beverages (1/4 ounce maximum single serving restricted to 1 liter per 30 day period), and further restricted to those alcoholic beverages which are lawfully available for sale on the licensed premises, and further provided that food service shall be made at the same time available. Sample tastings of any alcoholic beverages other than as herein described, or in an amount which exceeds the limits herein described, within or upon the alcohol licensed premises shall be strictly prohibited. The allowance of sample tastings under this regulation shall not apply to a one-day temporary alcohol permit issued under M.G.L. c. 138, §14 where instead sample tastings are prohibited. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**50. ANNUAL FINANCIAL REPORTS – RESTAURANTS ONLY** - (M.G.L. c. 138, §12)

All holders of restaurant licenses only under Chapter 138, § 12, shall deliver by March 1st of each year 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. In addition, a current and accurate copy of same shall be forwarded by the licensee to the Office of the Board upon request. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**51 – 59.** Purposely left blank.

### **SECTION III**

#### **RETAIL PACKAGE STORE LICENSES**

##### **60. APPLICABILITY OF SECTION III - APPLIES TO ALL RETAIL PACKAGE STORE LICENSES ISSUED BY THE BOARD**

Section III which includes the following regulations number 60 (sixty) through 69 (sixty-nine) inclusive shall apply to any and all retail package store licenses issued by the Board under M.G.L. c. 138, §15 but shall not apply to Restaurants, Clubs, Seasonal Clubs, Innholders, Educational Institutional licenses, All-Alcohol licenses, Wine/Malt licenses, One-Day Temporary All-Alcohol permits, One-Day Temporary Wine/Malt permits, and General On-Premises All-Alcohol licenses, Entertainment licenses, automatic amusement machine licenses, billiard licenses, and Common Victuallers as defined hereunder.

Retail package stores are holders of a license issued under MGL Ch. 138, §15 (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

##### **61. HOURS AND DAYS OF OPERATION** - (M.G.L.c. 136, § 6 (52); c. 138, §§ 15, 33 (a-c))

**(A) Monday through Saturday** - The hours of operation of a retail package store licensed premises shall be restricted to those approved by the Board and specified upon the face of the license which shall constitute the official opening and official closing hours of the licensed premises. In addition, a retail package store licensee is permitted to make sales of alcoholic beverages between 8:00 A.M. and 11:00 P.M. Monday through Saturday, and between 8:00 A.M. and 11:30 P.M. on the day before a legal holiday if the holiday does not occur on a Sunday. However, no retail package store licensee may sell or deliver any alcoholic beverages on Memorial Day, Thanksgiving Day, or Christmas Day (or the Monday following when Christmas occurs on a Sunday), except and to the extent permitted under State Law.

**(B) Sunday Permits** - In addition to the hours of operation permitted in Regulation #61A above, for those retail package store licensees which have been granted a Sunday permit by the Board, a Sunday permit retail package store licensee is allowed to make sales of alcoholic beverages between noon and 11:00 P.M. Sundays. However, no Sunday permit retail package store licensee may sell or deliver any alcohol beverages on Sunday Christmas Day (if Christmas Day falls on a Sunday). (Public hearing conducted October 21, 2003 and January 20, 2004; Adopted by vote of the Board on January 20, 2004 and February 17, 2004.)

**62. CONSUMPTION ON PREMISES PROHIBITED EXCEPT SAMPLE TASTINGS** –  
(204 CMR 2.05 (5); M.G.L. c. 138, § 15)

Consumption of alcoholic beverages within or upon the retail package store licensed premises, or upon any area under the direction and control of the licensee, by any person is strictly prohibited except for “sample tasting” as herein described. No licensee, manager, server, agent, or employee shall knowingly permit such consumption of alcoholic beverages within or upon the retail package store licensed premises, or upon any area under the direction and control of the licensee, except for “sample tasting” as herein described.

Retail Package Store licensees may provide customers, free of charge, “sample tastings” of wines (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), liqueurs and cordials (1/4 ounce maximum single serving restricted to 1 liter per 30 day period), and all other kinds of alcoholic beverages (1/4 ounce maximum single serving restricted to 1 liter per 30 day period), and further restricted to those alcoholic beverages which are lawfully available for sale on the licensed premises, and further provided that food service shall be made at the same time available. Sample tastings of any alcoholic beverages other than as herein described, or in an amount which exceeds the limits herein described, within or upon the retail package store licensed premises shall be strictly prohibited. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**63. DONATIONS PROHIBITED** - 204 CMR 2.04(2)

Donations of alcoholic beverages by a retail package store licensee to be used as prizes in a game of chance are strictly prohibited. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**64. TAG-A-KEG / DELIVERIES OFF PREMISES - KEGS OF BEER (MALT BEVERAGES)** – (204 CMR 9.00)

The licensee shall keep written records in the licensed premises of each keg sale which must include the date of sale, size of the keg, keg identification number, amount of container fee and registration fee, and name and address of the purchaser. For all deliveries conducted off the licensed premises, such written record shall also include, in addition to the preceding requirements, the amount of the beverages that were delivered, the date and time of delivery, and the signature of the person receiving the delivery. Such written records shall be maintained by the licensee within or upon the licensed premises for a period of not less than one year and 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 shall be forwarded by the licensee to the Office of the Board upon request. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**65. BOTTLE & KEG RETURNS** – (M.G.L. c. 94, §§ 323, 323D; 204 CMR 9.06)

No licensee shall refuse to redeem any can, barrel, keg, bottle, case or other container upon which a deposit has been made and is of type and brand that the licensee sells if it is returned in good condition. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**66. SEATING, CHAIRS, STOOLS, AND TABLES PROHIBITED**

No seating, chairs, stools, or tables for use by customers or patrons shall 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. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**67 – 69.** Purposely left blank.



## **SECTION IV**

### **CLUB LICENSES**

#### **70. APPLICABILITY OF SECTION IV - APPLIES TO ALL CLUB AND SEASONAL CLUB LICENSES ISSUED BY THE BOARD**

Section IV which includes the following regulations number 70 (seventy) through 79 (seventy-nine) inclusive shall apply to any and all club and seasonal club licenses issued by the Board under M.G.L. c. 138, §12 but shall not apply to Retail Package Stores, Restaurants, Innholders, Educational Institutional licenses, All-Alcohol licenses, Wine/Malt licenses, One-Day Temporary All-Alcohol permits, One-Day Temporary Wine/Malt permits, General On-Premises All-Alcohol licenses, Entertainment licenses, automatic amusement machine licenses, billiards licenses, and Common Victuallers as defined hereunder.

Clubs are holders of an alcohol license issued under M.G.L. c. 138, § 12, who has been granted written permission by the Board and the Commission to restrict admission to the licensed premises to its members and to guests introduced by members, and to no others. Seasonal Clubs are clubs which conduct business for only a portion of the year. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

#### **71. LIST OF OFFICERS**

All Club licensees must file annually with the Board and with the Commission, within three months after January 1st in each year, a written list of the names and addresses of the Club's officers, together with the amount of salary or compensation received by each employee engaged in the handling, dispensing, distribution, service, or selling of alcoholic beverages. Such written list shall be maintained current during the year, be kept upon or within the licensed premises, and shall be readily available for inspection on the licensed premises 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 shall be forwarded by the licensee to the Office of the Board upon request. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

#### **72. 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 shall be strictly limited to Club members and guests of Club members only, and to no other persons. Club door(s) shall be kept closed and secured in a manner which will restrict access to members only, but shall be in proper working order at all times to provide for immediate emergency egress. Entrance(s) to the Club's licensed premises shall be by key, card or ringing of bell by Club member. Admittance to the Club's licensed premises shall be restricted to Club members and to guests introduced by such Club member and to no other persons.

The Club licensee shall keep an accurate and current written list of its members (including name, address, dates of membership, & position held) within or upon the licensed premises which list shall 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 shall be forwarded by the licensee to the Office of the Board upon request. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**73 - 79.** Purposely left blank.

## SECTION V

### ENTERTAINMENT, AUTOMATIC AMUSEMENT MACHINES, BILLARDS

#### 80. APPLICABILITY OF SECTION V - APPLIES TO ALL ENTERTAINMENT LICENSES, AUTOMATIC AMUSEMENT MACHINE LICENSES, AND BILLIARD and/or POOL TABLE LICENSES ISSUED BY THE BOARD

Section V which includes the following regulation number 80 (eighty) through 89 (eighty-nine) inclusive shall apply to any and all entertainment licenses issued by the Board under M.G.L. c. 140, §§ 181, 183A, to any and all automatic amusement machines licenses issued by the Board under M.G.L. c. 140, §177A, and to any and all billiard and/or pool table licenses issued by the Board under M.G.L. c. 140, §177. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

#### 81. ENTERTAINMENT & NOISE(M.G.L. c. 140, §§ 181, 183A)

No forms of entertainment, including but not limited to amplified music, radio, television, recorded or live music, special effects, or dancing, shall be conducted without first obtaining an entertainment license for weekday and/or Sunday use. There shall be no entertainment nor amplified music permitted outside the interior of the licensed premises.

All entertainment licensees shall comply with the Noise Control Ordinance of the City of Newton, Newton Code, Article II, Sec. 20-13, entitled "Noise control." (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

#### 82. SPECIAL EFFECTS - (M.G.L. c. 148, §§ 9, 13, 33; 527 CMR § 1 et seq.)

Any applicant for an entertainment license which, to any degree, consists of the use of special effects, including but not limited to fireworks, pyrotechnics, and the like, must hold a current and valid Certificate of Competency from the State Fire Marshall. No entertainment license for the use of special effects shall issue by the Board without the express written authorization of the City's Fire Department Chief. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

#### 83. COIN-OPERATED AUTOMATIC AMUSEMENT MACHINES (M.G.L. c. 140, § 177A)

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. Chapter 140, Section 177A. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**84. BILLIARDS & POOL TABLES** (M.G.L. c. 140, § 177)

The existence of, type, and location of any billiard and/or pool table within or upon the licensed premises must be first approved in writing by the Board. Any change in location or change in type of billiard and/or pool table 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. Chapter 140, Section 177. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**85. WEEKDAY & SUNDAY LICENSES**

No restaurant, club, innholder, business, firm, corporation, partnership, association, society, organization, entity, or licensee within the City of Newton may possess or display any coin-operated automatic amusement machine, billiard and/or pool table within or upon the licensed premises, nor may conduct any form of entertainment, without being properly licensed by the Board for weekday use, or by the Mayor of the City of Newton and the Public Safety Department of the Commonwealth of Massachusetts for Sunday use, as the case may be. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**86. MAYOR, PUBLIC SAFETY DEPARTMENT, AND CHIEF OF POLICE** – (M.G.L. c. 140, §§ 181, 181A; c. 149, §§ 104, 105)

All exhibitions of every description including theatrical exhibitions, movie theatres, public shows, concerts, dance exhibitions, cabarets, traveling amusements, carnivals, circuses, and public amusements must obtain a license from the Mayor of the City of Newton, the Public Safety Department of the Commonwealth of Massachusetts, and/or the City of Newton Chief of Police, as the case may be. As a courtesy to the applicant, the Office of the Board may accept applications for any and all of the exhibitions enumerated above, and then shall forward said applications to the appropriate licensing authority for their consideration. (Public hearing conducted October 21, 2003; Adopted by vote of the Board on February 17, 2004.)

**87 - 89.** Purposely left blank.