

TOWN OF FRAMINGHAM RULES AND REGULATIONS GOVERNING ALCOHOLIC BEVERAGES

Effective Date: September 1, 2008

1st. Revision: October 2, 2008

2nd. Revision: December 16, 2008

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5th Revision: September 17, 2013

6th Revision: January 1, 2016

By virtue of the authority contained in Chapter 138 of the Massachusetts General Laws, as amended (“Chapter 138”), and Article V, Section 1 of the Town of Framingham General Bylaws (“the Bylaw”), the Board of Selectmen of the Town of Framingham, serving as the Town’s Liquor Licensing Authority (hereinafter, the “Board” or “licensing authority”) hereby promulgates these Rules and Regulations Governing Alcoholic Beverages (“Regulations”). The Regulations shall supersede all previous regulations or policies issued by the Town of Framingham (“the Town”). The Board has the power under the Bylaw to amend these Regulations periodically from time to time as it sees fit, upon the provision of advance notice.

All licenses issued for the sale in any manner of any alcoholic beverages shall be issued on the condition of full compliance with these Regulations. The failure to comply with these Regulations and the Bylaw and other bylaws or rules issued by the Town and shall constitute sufficient cause or grounds for refusing to grant the license, or for suspending, canceling, or revoking a license or permit already granted, in accordance with Article XV herein.

I. Alcoholic Beverages

No person shall drink any alcoholic beverages as defined in Chapter 138, Section 1 of the Massachusetts General Laws while on, in or upon any public way or upon any way to which the public has a right of access, or any place to which members of the public have access as invitees or licensees, park or playground, or private land or place without consent of the owner or person in control thereof. All alcoholic beverages used in violation of this Bylaw shall be seized and safely held until final adjudication of the charge against the person or persons arrested or summoned before the court, at which time they shall be returned to the person entitled to lawful possession.

II. General Provisions Regarding the Administration of Licensed Premises

1. The applicant for any type of liquor license must meet the requirements of Chapter 138, the Bylaw, these Regulations, and any other applicable town or state law.
2. All employees serving alcohol or viewing identifications cards to determine age are required to successfully complete an alcoholic beverage server training program which

has been approved by the Framingham Police Department, Licensing Bureau. The requirement set forth in the preceding sentence shall include and apply to the manager, assistant manager, and persons responsible for viewing identification cards to determine the age of patrons for service of alcohol.

As of January 1, 2010 on-line alcohol computer training will no longer be accepted when applying for new server ids or for renewals. All employees engaged in serving alcoholic and/or viewing of identification cards shall be certified within thirty (30) days of employment. To the extent an employee serves alcohol or views identifications cards within the first thirty days of his or her employment, the Manager will be personally responsible for that employee, and any violation of these regulations committed by the employee will be treated as if the Manager had committed the violation. Managers and Assistant Managers shall be certified prior to assuming the duties of Manager or Assistant Manager. All alcohol servers are strongly encouraged to attend periodic retraining programs at least bi-annually that reinforce the certification training. Records of retraining may be submitted to the Framingham Police Department annually in December, and will be kept on file. The retraining programs underscore the importance of proper server training on the dangers associated with alcohol abuse on licensed premises.

3. Town of Framingham Alcohol Server Identification Cards shall be required for **all** certified servers that are employed in the direct sale and service of alcoholic beverages. The list of all certified servers shall include, but not be limited to, manager, assistant manager, and persons responsible for viewing identification cards to determine age of patron for service of alcohol. All servers shall be registered with the police department within thirty (30) days after employment. The Manager and Assistant Manager shall be registered prior to assuming the duties as Manager or Assistant Manager. The Town of Framingham Alcohol Server identification cards shall be carried on the server's person or otherwise be available for inspection. The licensee shall keep on file at the premises photocopies of the server identification cards of all those employees to whom server identification cards have been issued. Any server who allegedly violates any provision of Chapter 138, the Bylaw or these Regulations is required to attend the Board hearing conducted in accordance with Article XV herein. Failure to attend said hearing may result in the revocation of the server's Alcohol Server Identification Card by the Framingham Police Department. Violation of this section shall further subject licensees and servers to penalties under Article XV as may be imposed by the Board.
4. All employees of licenses establishments that have been issued an Alcohol Server Identification Card that does not have an expiration date are required to obtain a new one by by October 1, 2008. Any server identification card with an expiration date on it need not be renewed until the date of the expiration currently five years from date of issue. However, all Framingham alcohol server training identification cards issued after January 1, 2010 will have expiration dates which coincide with the date of expiration of the approved training class server

successfully passed. As of January 1, 2010 server identification cards will cost twenty dollars paid for in cash or bank check.

5. Wrist-Bands, stickers or any other kind of markings/markings devices are prohibited as a method of identifying persons to be served alcoholic beverages.
6. “Happy Hours” are prohibited.
7. Cover charges are not permitted except in compliance with MA General Laws Chapter 140, Section 183D and 204 CMR 2.16.
8. The licensing of liquor establishments and vendors and what constitutes the public convenience in Framingham will be subject to the informed discretion of the Board of Selectmen.
9. The licensed premises shall be subject, at all times, to inspection by the Town Manager or his designee(s), the Board of Health or its designee, the Town Health Agent, the Department of Public Works, Police, Fire, or any other department or official of the Town of Framingham.

The Police Department shall have the authority to investigate potential violations of Chapter 138, the Bylaw, these Regulations, and any other state or local law on or about the licensed premises on behalf of the licensing authority, and to conduct other such enforcement as the Chief of Police deems appropriate, including the use of plainclothes police officers for the purposes of ensuring compliance with Chapter 138, the Bylaw, these Regulations, and other state and local laws.

10. The Town shall conduct an annual Alcohol Education Seminar. Notice of said seminar will be provided to each Licensee no less than ten (10) days prior to the date of said seminar, and shall be posted at Town Hall at least (10) days prior to the date of the seminar. While attendance at the seminar is not mandatory, each licensee is recommended to attend. Failure to attend the seminar shall not constitute a defense to any alleged violation of state law, the Bylaw, or these Regulations. Each licensee is required to have knowledge of the requirements of Chapter 138, the Bylaw, these Regulations, and other pertinent state and local laws, and such knowledge will be imputed to licensees regardless of their attendance or non-attendance at the annual Alcohol Education Seminar sponsored by the Town.
11. The Police Department will create and maintain a database of persons who, while employed as an Alcohol Server at a licensed premises, have violated any provision of these regulations, chapter 138, or the regulations of the Alcoholic Beverages Control Commission (ABCC). This database will contain only information that is a public record, and the information contained in the database will be made available to Licensees.

III. Hours of Operation

In accordance with G.L. c. 138, §12, the “Official Opening and Closing Hours” are those which are designated on the licensee’s liquor license. Last call shall be at least fifteen (15) minutes before the “Official Closing Hour.” No alcoholic beverages may be served after the “Official Closing Hour.” All tables and bars must be cleared of all glasses, bottles and containers of alcoholic beverages within one-half hour after the “Official Closing Hour” and all customers must be off the premises by that time. Owners and employees must be off the premises no later than sixty (60) minutes after the “Official Closing Hour,” provided that owners and their employees and contractors may be on the premises at any time for the purpose of cleaning, making emergency repairs, providing security for such premises, or preparing food for the next day’s business or opening or closing the business in an orderly manner. No employee or business owner in any type of management capacity shall consume alcohol on the premise prior to going on duty or during their respective on duty hours. No alcohol can be served or consumed by anyone on the premise before official opening hours or after official closing hours. Patrons are not permitted to bring alcoholic beverages on the premises for their own consumption. Common Victualer Licensees are not permitted to keep alcoholic beverages on the premises except for a reasonable small quantity that is used in preparation of certain specialty foods.

A violation of any of the afore-mentioned restrictions regarding the hours of operation shall constitute a violation of this Bylaw and shall subject the licensee to possible discipline and/or penalties in accordance with the procedure set forth in Article XV.

IV. Change of Manager

1. An application for change of manager or assistant manager must be filed with the Board of Selectmen at least two (2) weeks before the proposed effective date of the change, unless the approved manager has terminated his or her employment without prior notice to the licensee. In that case, the licensee must notify the Board of the name of the person who will discharge the duties of manager pending selection and approval of a new manager by the close of the next business day following the manager’s termination of employment. If the employment of the approved manager is terminated by the licensee, or if the approved manager is replaced, transferred, or for other reason due to action by the licensee is no longer serving as manager, the licensee must file an application for change of manager at least two weeks before the action is taken by the licensee and must obtain approval of the application before changing the manager. If circumstances other than those stated above require a licensee to make a change in manager or assistant manager, or if a manager or assistant manager leaves unexpectedly, then the licensee shall give prompt written notice to the Board as soon as possible, but in no event more than ten (10) days after the departure of the manager or assistant manager. The licensee shall file the application for a change of manager no more than thirty (30) days after the departure of the approved manager of record, and said application must include a detailed statement of the circumstances requiring approval of a new manager after the departure of the approved manager of record. If the Board finds that the circumstances justify the noncompliance, no penalty will be imposed so long as said application is filed within thirty (30) days after the departure of the approved manager of record. If the circumstances for the delay are not found to be sufficient, or if the application is filed more than thirty (30) days after the departure of the manager of record,

the Board may impose a penalty or suspension of up to one day of suspension for each day of unjustified non-compliance or for each day that passes beyond the passage of thirty (30) days after departure of the manager of record before the application for a new manager is filed, or such other penalty permitted by Article XV. In addition to the foregoing, the Board shall also have the right to impose penalties for the failure to provide timely notification of the departure of an assistant manager. When submitting an application for change of manager or assistant manager, the manager or assistant manager shall be certified as an alcohol server and registered with the police department prior to submitting the application. Further, approval of a change in manager may be conditioned upon proof of payment of all outstanding local, state and federal taxes and fees.

2. Upon receipt of an application for an original license, or in the case of a new manager or assistant manager, upon being advised of the new manager or assistant manager's identity, the Framingham Police Department will conduct a background check of any proposed licensee, manager or assistant manager, and such check will include a review of any existing criminal record. The licensing authority may reject any application where the licensee's, manager's or assistant manager's criminal record or reputation indicates, theft, unlawful drug use or distribution, alcohol-related offenses, association with known felons or individuals involved in organized crime, a propensity for violence, or other behavior, that, in the opinion of the licensing authority, might put the public at risk.

3. A violation of any of the aforementioned restrictions regarding change of manager shall constitute a violation of these Regulations and shall subject the licensee to possible discipline and/or penalties in accordance with this section or with Article XV.

V. Responsibilities of Manager:

1. The Board of Selectmen regards the Manager of licensed premises as the principal representative of the licensee and as having full authority and control of the licensed premises and of the conduct of all business therein relative to alcoholic beverages, all as provided in Chapter 138, § 26 and these Regulations. In addition, an Assistant Manager or other suitable managerial employee capable of fulfilling the duties of Manager must be listed on the license by the Licensee. This will allow for continuity of the Manager position, should either the Manager or Assistant Manager positions become vacant during the course of the year.

2. Without limiting the scope of the previous subsection, the Board will hold the Manager responsible for the following:

- a. Careful selection of qualified employees of the licensed business, including servers, clerks and persons who are engaged with the public in any capacity;
- b. Training of employees in all matters relating to the sale or service of alcoholic beverages;
- c. Assuring that employees serving alcohol to the public have successfully completed an alcoholic beverage training program for serving alcohol

responsibly, possess a valid Town of Framingham Alcohol Server identification card referred to in Article II, Section 3 of these Regulations, and provide for continual training of employees engaged in serving and selling alcoholic beverages;

- d. Ensuring that no criminal activity, including the sale and distribution of narcotic drugs, takes place on the licensee premises, including within any parking area on the licensed premises;
- e. Promptly reporting to the Police Department all instances of attempted purchases or procurement of service of alcoholic beverages by minors, including attempts to gain access to premises upon which alcoholic beverages are served and from which minors are excluded, and appropriate action taken by the licensee in response thereto. Such appropriate action shall include (1) Reporting to the Registry of Motor Vehicles instances involving possession or use of a false, forged or counterfeit license to operate motor vehicles or identification card issued by the Registry of Motor Vehicles (2) confiscation of liquor identification cards or motor vehicle operator's license presented by the minor; and (3) if a purchase was made or service was procured, the name of the licensee's employee participating therein;
- f. Enforcement of state law, the Bylaw and these Regulations with respect to the operation of the licensed business.
- g. Ensuring that the licensee premises, including the exterior, are kept clean, neat and sanitary at all times;
- h. The Board strongly encourages the Manager and/or Assistant Manager to attend the recommended Annual Alcohol Education Seminar. Failure to attend such seminar shall not constitute a defense to any violation of Chapter 138, other state laws, the Bylaw, and these Regulations.

3. Except as provided herein, the Manager must be a full time employee or a corporate officer of the licensee, must be engaged exclusively in the management of the licensed business, and must be a qualified seller or server of alcoholic beverages registered with the Framingham Police Department. The Manager must be on the licensed premises at least forty (40) hours per week in the course of business, consistent with the permitted hours of operation. When the Manager is not upon the premises, the person actually in charge of the business must be a qualified seller or server of alcoholic beverages registered with the Framingham Police Department and designated by the approved Manager to have charge of the business in the Manager's absence. The Manager will continue to be responsible for the operation of the business whether or not on the premises. When the Manager is not upon the premises a method of contacting the Manager promptly must be arranged so that the Manager can be reached at all times by the person designated to be actually in charge of the premises. The provisions of the first sentence of this subsection shall not apply to any licensee holding a license issued under

Mass. Gen. Laws c. 138, Section 12 to a veterans organization or to a licensee holding a license issued to a club under Mass. Gen. Laws c.138, Section 17.

4. Failure of the Manager to comply with this policy or to properly discharge the duties of manager may result in removal as manager or suspension or revocation of the license as may be appropriate to the circumstances.

VI. Procedure for Obtaining Liquor Licenses

The applicant for a liquor license of any type should submit a letter to the Board of Selectmen outlining the proposal and include a request for a hearing with the Board. The applicant should request to be placed on the agenda and publish a public notice of the date selected for the hearing in accordance with Chapter 138. At the public hearing the Board will consider the application for a liquor license and the input of any interested members of the public. The Board will then consider the application and respond in a timely manner to the applicant. The Town is to provide a copy of this Bylaw to each Licensee at the time when they pick up their annual license. Licensee shall sign a receipt to be maintained at the town offices evidencing their receipt of a copy of the Bylaw.

Pursuant to General Laws chapter 138, section 15A, where there are no premises actually in existence at the time the application for a license is made, the applicant shall file a plan showing the actual dimensions of premises which are to be constructed on which the license is to be exercised. A license granted under this provision shall be upon the condition that such license shall not issue until completion of the premises in accordance with the plan, and the decision of the Board as to whether the plan has been complied with shall be final. The Board may include as a condition of such license that the premises be completed in accordance with the plan within a specified period of time, or the license shall be deemed null and void. Said time period may be extended by the Board in its sole discretion upon written request by the applicant submitted to the Board at least 45 days prior to the expiration of the time period for completion.

VII. Considerations for Approval of New License or Transfer:

The Board will consider any or all of the following that can be reasonably offered in support of a particular license application:

1. The applicant is a qualified veteran's organization and seeks a club license.
2. The applicant proposes an establishment that offers a regular forum for music and musicians to play and obtain exposure for their work.
3. The applicant offers variety, or uniqueness, in its proposed establishment or shop, in contrast to what exists in Framingham at the time of the application.
4. The applicant proposes an establishment that offers a substantial economic benefit to the Town of Framingham.
5. Proposals for establishments to be located in shopping malls or high density retail areas, either as new licenses or transfers, are discouraged, if the proposed location duplicates what is presently located in the area.

VIII. Modifications to Licensed Premises

1. Once a liquor license is issued, no substantial physical changes to the licensed premises shall be made without the prior approval of the licensing authority. For the purpose of this regulation, a substantial physical change is a change sufficient to require a building permit.

IX. Transfers

Licensees may request that their liquor licenses be transferred to a third party. A \$500 fee shall accompany each application for ownership or transfer of location. Applications for transfer of ownership or location shall be considered an original application and processed as such. Current holders of liquor licenses hold no property rights in said license and the Board is not required to grant such transfer requests. To the extent permissible under law, the Board reserves the right to impose penalties pursuant to Article XV upon existing licensees who attempt to transfer their licenses for compensation. Approval of a transfer of majority ownership further may be conditioned upon the proof of payment of all outstanding local, state and federal taxes including, without limiting, the following: the remission to the proper taxing authorities of sales taxes, excise taxes and withheld federal and state income taxes. Transfers of ownership to trustees in bankruptcy, court appointed receivers or assignees for the benefit of the creditors, and those taking title or possession of the licensed premises by, through or under them will not be deemed to transfer or convey any rights to the license or the renewal or transfer of such license, unless provided by contrary superior law. Bona fide mortgagees in possession who are listed in the application as holding such interest shall be treated in the same manner as the original majority ownership license. A public hearing shall be required for any transfers of ownership or location, including, but not limited to transfers to mortgagees.

X. One Day or Special Licenses:

The following types of organizations and individuals are eligible for one-day alcoholic beverage licenses under this policy. Other organizations or individuals may submit applications for consideration:

- Civic or municipal organizations
- Commercial establishments
- Fraternal organizations
- Non-profit organizations
- Non-profit unincorporated associations
- Individuals holding social events
- Unincorporated groups or organizations not engaged in the sale of alcoholic beverages for profit.
- Service clubs
- Veteran's organizations

The process of applying for a one day liquor license and the conditions that will attach to such license are fully outlined in the Rules and Regulations Governing Alcoholic Beverages.

XI. Distribution of Regulations

These Regulations, in their most updated form, shall be mailed to all licensees with their annual renewal application and with each application for change of the licensed manager. These Regulations shall be appended to each annual license issued by the Board. The licensee may not pick up his/her annual license until the licensee has signed a receipt acknowledging that a copy of these Regulations has been received. A copy of the most updated Regulations shall be maintained on the licensed premises at all times, and shall be available for inspection upon request. Prior to the effective date of January 1, 2010 the Police Department or Licensing Coordinator shall deliver a copy of said Regulations to each licensee and obtain a signed receipt acknowledging receipt of the same.

XII. Filing Fees and Annual Licensing Fees

1. Annual Licensing Fees

Board of Selectmen	
LIQUOR LICENSE FEES	
All Alcohol Restaurant	\$3,000
Innholder’s All Alcohol License	\$3,750
All Alcohol Retail	\$2,000
All Alcohol Retail Sunday	\$100
All Alcohol Club	\$1,250
All Alcohol Veteran’s Club	\$250
Wine & Malt Restaurant	\$1,750
Wine & Malt Retail	\$1,200
Wine & Malt Retail Sunday	\$100
Wine & Malt Club-Framingham State	\$1,200
Wine & Malt General	\$1,200
Special One Day Alcohol	\$50. per day

For new licenses with an effective starting date of January 1-June 30 in a given calendar year, the Annual Licensing Fees shall be as set forth herein. For new licenses with an effective starting date of July 1-December in a given calendar year, the Annual Licensing Fees shall be one-half (50%) of the fees set forth herein. (The Special One Day Alcohol fee shall remain \$50 per day for whichever day selected by the applicant.)

2. Filing Fees

- Initial Application for Liquor License: \$500
- Filing Fee at time of Annual Renewal: \$100
- Transfer Fee: \$500
- Filing Fee for Change of Manager or Assistant Manager: \$100

XIII. Miscellaneous Operating Provisions

1. Exterior doors to the licensed premises must remain closed, but not locked, during all times that the licensed premises are open for business.
2. The licensee shall ensure that the Framingham Police Department, the Framingham Fire Department, and authorized agents of the licensing authority shall have immediate access to the licensed premises at all times and under all circumstances.
3. No alcoholic beverages shall be sold to anyone under the age of 21 years. It shall be a defense to any alleged claim of sale of alcohol to a minor if the licensee can show that the patron produced a valid Massachusetts driver's license, a valid Massachusetts Liquor Identification Card, a valid Passport issued by the United States or by a government of a foreign country recognized by the United States government, or a valid U.S. issued Military ID card or a valid U.S. Passport Card. Licensees may accept out of state licenses as proof of age but licensees shall bear the risk that such licenses are real and valid.
4. The licensee shall ensure that all business within the licensed premises, and within areas under the licensee's control that abut the licensed premises, is conducted in a responsible manner so that no activity shall detract from the quality of life in the Town generally, or in the neighborhood in which the licensed premises is located. This shall include, but not be limited to, ensuring that there shall be no disorder, unlawful use or sale of drugs, indecency, prostitution, assaults, lewdness or gambling on or about the premises.
5. No alcoholic beverages shall be sold or delivered to an intoxicated person.
6. Alcoholic beverages may be consumed only from open containers.
7. No licensee may display any advertisement or sign on the outside façade upon which appears any brand name of an alcoholic beverage product. Signs on the inside of the premises are subject to approval by the licensing authority at its discretion.
8. No patron may remove any alcoholic beverage from the licensed premises, unless the patron is taking off the premises of a restaurant or hotel a resealed bottle of partially consumed wine as regulated by Massachusetts General Laws c. 138, § 12 and the Rules and Regulations of the Alcoholic Beverages Control Commission.
9. With the exception of pitchers of beer, bottles of wine, carafes of wine and bottles of beer not in excess of twenty three (23) ounces from the manufacturer, no alcoholic beverages shall be served in any container, the capacity of which is in excess of 16 fluid ounces. With the exception of pitches of beer, bottles of wine, or carafes of wine, no alcoholic beverages may be shared by more than one person. For pitchers of beer, carafes of wine, and bottles of beer not in excess of twenty three (23) ounces from the manufacturer, these beverages must be consumed from a vessel or container not in excess of 16 fluid ounces.
10. No licensee shall provide or allow entertainment unless an entertainment license has been obtained from the Board of Selectmen.

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

XIV. Criteria for Approval for One Day or Special Licenses:

A. The following matters will be taken into account in approving one-day licenses:

1. **ADMISSION AGE:** The Board will not deny a one-day license for a function at which individuals to whom alcoholic beverages may not be supplied are present, but will require that sufficient trained servers are present to assure compliance with the laws governing the sale of furnishing of alcoholic beverages to such persons.
2. **FREQUENCY:** One day licenses are to be issued primarily to applicants sponsoring functions that are not held more than once annually. Except for applicants that are in the business of catering or accommodating individual functions, one-day licenses are not intended as an alternative to an annual license.

B. Acceptance of Conditions. Acceptance of a one-day license under this policy will be deemed to be an acceptance of the following conditions of the license and an agreement with the Town of Framingham to be bound thereby:

1. Certification of Servers:

All persons engaged in furnishing alcoholic beverages at a licensed function, whether by sale or without charge, are required to be certified servers. All servers must be certified as having completed an approved alcoholic beverage training program and have evidence of such valid certification in their possession. Commercial caterers and accommodators must be registered with the Framingham Police Department.

2. Number of Service Providers:

The number of bartenders and servers shall be recommended to the Town Manager by the officer of the Framingham Police Department designated to review applications for one day licenses and shall be determined by the Town Manager as appropriate for the number of persons estimated to be in attendance and the nature of the event. For functions at which attendance is by invitation only, the number of persons included in the invitations shall be used.

3. Hours of Service of Alcoholic Beverages:

The hours of sale and service shall for all one day licenses be 1:00 a.m. The “last call” for all such licenses shall be no later than 12:30 a.m. The function shall conclude at 1:00 a.m., at the same hour as the license. Entertainment licenses shall state that the function shall conclude at 1:00 a.m.

4. Number of Persons on Premises:

The number of persons may not exceed the occupancy limits allowed by law for the premises on which the license will be exercised.

5. Police Detail:

The number of officers, if any, and the hours during which a police detail will be required within the licensed premises and, if required, for orderly parking and traffic control will be recommended by the Police Department. Generally those hours will include the entire duration of the function, including after service hours. The factors to be considered include the location of the premises, availability of on-site parking, the number of persons estimated to be in attendance and the time and duration of the function.

C. Additional Provisions. The following additional provisions shall apply to one day licenses.

1. Departmental Approvals:

The Board of Health and the Building Inspection Department must approve the licensed premises, including, where applicable, food service equipment. For any function to which the general public will be admitted, the Building Inspection Department must approve the licensed premises as meeting handicap accessibility requirements.

2. Neighborhood Impact:

The applicant or such other person designated by name, address and local telephone number in the application will be responsible for the orderly conduct of the function for which the license is issued. Consumption of alcoholic beverage outside of the structure within which the licensed function is to be held will not be permitted. Music, noise, or other function-related activities must not create an undue imposition upon any adjacent residences. Police detail officers will be instructed to respond appropriately to complaints. Such response may include an order to terminate the event or otherwise limit the offending activity.

3. Submission of Applications:

Applications must be complete with all necessary endorsements when submitted to the Licensing Office and shall be submitted sufficiently in advance of the day upon which the licensed function is to begin so that it can be reviewed and approved. Applicants should note that if an application is denied by the Town Manager, and review by the Board is sought, the application must have been submitted sufficiently in advance of the event to allow review of the denial at a regular meeting of the Board as provided below.

When submitted each application must be endorsed with the approval of the Board of Health, the Building Inspection Department (including issues of handicap accessibility if

required) and the Police Department (as to police detail required and number recommended of bar tenders and servers). The Town Manager is hereby authorized to approve on behalf of the Board one-day licenses meeting the requirements of this policy. Applications that are not approved by the Town Manager may be brought to the Board for approval and shall be accompanied by the Town Manager's summary of reasons for declining approval. The office of the Board must receive such requests for Board approval not later than noon on the Tuesday of the calendar week before the day on which the licensed function is to begin.

4. License Application Fee:

- a. No fee will be charged for one day licenses for charitable fund raisers, etc., whether or not the application is submitted by the real party in interest or by a caterer or accommodator or other commercial provider.
- b. One day licenses for events associated with commercial activities such as business promotional activities, business meetings, conventions, trade association events, etc., will be charged a fee of \$50.00 for each license application.

XV. Penalty Structure for Violations of the Bylaw and These Regulations

A. Purpose

The purpose of this penalty structure is to improve the ability of the Board of Selectmen to prevent alcohol abuse and violation of the liquor laws of the Commonwealth and the requirements of these Regulations. This Article XV will help to achieve reasonable uniformity in the imposition of penalties and to avoid confusion in the minds of the public, patrons and licensees due to a lack of understanding of the consequences of violating the liquor laws and the terms of liquor licenses. This Article is intended to empower the Board to consider the circumstances of each case and provide a mechanism for which licensees can improve their compliance with these Regulations in the future.

B. General Provisions

- 1. No licensee shall permit any illegality to occur on the licensed premises. The manager shall at all times maintain order and decorum on the premises and in the immediately surrounding area of the premises and shall cooperate with Town officials in ensuring safe and orderly facilities.
- 2. All violations of Massachusetts General Laws, Chapter 138 and Town of Framingham Rules and Regulations Governing Alcoholic Beverages are to be reported to the Framingham Police Department by the owner, management or employee of the establishment that becomes aware of an offense involving the licensed premises within twenty four hours of said violation unless the incident is serious enough to comprise public safety and needs immediate attention at which

time Framingham Police shall be notified forthwith. Failure to report a violation involving the licensed premises constitutes a violation of these Regulations and will subject the licensee to appropriate discipline in accordance with the procedure set forth herein.

3. Penalties for offenses shall be in line with the Town's general goals of protecting public safety and the general welfare. Penalties will also be imposed with the goal of preventing future offenses. A violation of these Regulations alone (rather than state law or the Bylaw) may give rise to the issuance of penalties pursuant to this Article to the extent permitted under law.

4. The nature and severity of the penalties imposed will be decided according to the nature of the offense and the presence of mitigating or aggravating circumstances as further described herein.

5. All offenses by licensees will result in the imposition of a penalty of some degree. This will impress upon licensees, managers, and servers their responsibility for ensuring compliance with these Regulations, for prevention of offenses and for compliance with the terms of licenses and the liquor laws of the Commonwealth.

6. Penalties may consist of any one or more of the following as appropriate: revocation of license; suspension of license; criminal prosecution of offenders, including customers and patrons as deemed appropriate by the police chief, imposition of monetary fines, and/or mandatory participation in alcohol abuse and offense prevention programs.

7. The Police Department is authorized to negotiate with any person the terms upon which the Police Department will recommend to the Board that an offense be resolved. Any such negotiated recommended resolution must be in writing, signed by the manager or license holder charged with the offense and approved by the Police Chief. The recommendation must include a statement detailing the facts determined in the Police Department investigation. The recommended resolution is not binding upon the Town unless and until approved by the Board of Selectmen.

8. If the Police Department and the manager and/or license holder charged cannot agree on a recommended resolution, the Police Department will make any additional investigation it deems necessary for a complete presentation of the facts and will file a written report with the Board.

9. Notice is to be provided to a licensee of an alleged violation of Chapter 138, the Bylaw and these Regulations. The notice provided to licensee will contain the Police Department's recommendation to the Board of Selectmen concerning the punishment for the alleged violation. The notice will include the date of the event giving rise to the possible disciplinary action, a description of the event, and

a clear identification of the statute(s), bylaws or Regulations that are alleged to have been violated as a result of the event. Said notice will also provide licensee with the date upon which the Board will hold a hearing concerning the licensee's alleged violation. A notice containing the above-mentioned information shall be sent to Licensee via certified mail return receipt requested no less than ten (10) days prior to the date of the hearing before the Board. Licensees are entitled to retain counsel to represent them at the hearing if they so desire.

10. The penalty guidelines stated in these Regulations are intended to provide indication of the range of penalties the Board will impose if a hearing is held on any offense. The Board will refer to these guidelines by deciding whether to approve a negotiated recommended resolution.

11. The Board may consider but is not required to accept a negotiated resolution recommended by the Police Department. The Board is empowered to consider alternative penalties consistent with this Article XV, these Regulations, and state law.

12. The Police Department and the Board will maintain a public record of offenses and their disposition that will be indexed according to the licensee/manager, server and purchaser involved.

13. In the event that the Board decides to take disciplinary action against the Licensee for a violation of the Town's bylaw, the Board will provide the Licensee with a statement of reasons why disciplinary action was taken against Licensee. The above-mentioned statement a reasons will be included with the notice of the Board's disciplinary action.

C. Determination of Penalties

Penalties will be determined according to the following procedure.

1. The base level offense(s) will be determined from those offenses described in Article XV, Section D.
2. Adjustments according to the presence of factors that warrant an increase in the penalty described in Article XV, Section E ("aggravating factors") or decrease described in Article XV, Section F ("mitigating factors") will be considered.
3. Adjustments according to the number of violations involved in the particular offense will be considered.
4. Adjustments according to the offender's acceptance of responsibility described in Article XV, Section F will be considered.

5. Increases according to the number and circumstances of prior violations and penalties previously imposed upon the offender described in Article XV, Section G will be considered. The Board is entitled to consider fines or suspensions issued by the Alcoholic Beverages Control Commission in evaluating said prior violations and penalties.

6. Increases based on any previous written warnings given by the Town to the licensee will be considered. Such increases will consider the date(s) of the written warning(s), the reasons therefore, and the similarity of the incident resulting in the warning with the incident at issue.

7. Adjustments according to the consequential misconduct described in Article XV, Section H that is related to the base level violation will be considered.

D. Base level offenses

1. Sale outside of permitted hours (Gen. Laws Chapter 138 Sec. I 2) (All references in this subsection are to sections of Chapter 138 unless otherwise noted);

2. Purchase by person under age 21 (Sec.34A);

3. Employment by licensee of person under age 18 for direct handling or selling of alcohol;

4. Sale or delivery to a person under age 21 for own use or for use of another (Sec. 34);

5. Sale to an intoxicated person (Sec. 69);

6. Hindering or delaying investigation (Sec. 63A);

7. Failure to post notice of penalty for driving under the influence and driving while drinking from open container of alcoholic beverage (Sec. 34D);

8. Failure to comply with section 204 CMR 4.03 of the ABCC regulations, which provide as follows in pertinent part:

(a) No licensee or employee shall offer or deliver any free drinks to any person or group of persons;

(b) deliver more than two drinks to one person at one time;

(c) sell, offer to sell or deliver to any person or group of persons any drinks at a price less than the price regularly charged for such drinks

during the same calendar week, except at private functions not open to the public;

(d) sell, offer to sell or deliver to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public;

(e) sell, offer to sell or deliver drinks to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public;

(f) sell, offer to sell or deliver malt beverages, wine or mixed drinks by the pitcher or in other community type containers such as a “scorpion bowl” (Nothing in this subsection shall be construed to prohibit the sale of pitchers of beer);

(g) increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week; and/or

(h) encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes.

E. Aggravating Factors

1. Failure to request identification card, operator's license or passport;
2. Juvenile appearance of purchaser;
3. Use of altered identification;
4. Refusal to cooperate in investigation;
5. Multiple sales on same occasion;
6. Quantity of beverage sold;
7. Staff not suitably trained;
8. Unregistered server;
9. Server unable to provide Server ID card upon request;
10. Underage server;

11. Violations of other laws such as: prostitution, solicitation, drugs gambling, disorderly conduct, cigarette sales to minor;
12. Concealing violation(s);
13. Furnishing false information to investigator;
14. Exceeding lawful capacity of premises;
15. Intimidating or coercing witnesses or attempting to do so;
16. Offense occurring while under suspension of penalty;
17. Sale occurring while license suspended; and/or
18. The occurrence of any personal injuries or fatalities related to the underlying violation.

F. Mitigating Factors

1. Reasonable reliance upon an identification card or operator's license for proof of identity or age. (Sec. 34B);
2. Acceptance of responsibility as shown by:
 - Substantial and voluntary assistance offered in investigation
 - Public acknowledgment of responsibility
 - Agreement to participate in training program by licensee, manager, and servers
 - Prompt notice of decision not to contest charge and agreement to proposed recommended resolution.
 - Agreement to participate in an effective program to detect and prevent future offenses.
3. Attendance at the Town's Annual Alcohol Education Seminar.
4. Successful passing of alcohol compliance stings.
5. Random compliance checks without violations.

G. Previous Violations

1. Same offense.
2. Different offense.
3. Recent prior offense.
4. Same manager.

5. Same server.
6. Severity of prior penalty.
7. Offense while under suspension of prior penalty.

H. Consequential Misconduct Related to an Underlying Violation

1. Operating under the influence.
2. Causing personal injury or death.
3. Causing property damage.
4. Disturbance of the peace.
5. Domestic violence.

I. Imposition of Penalties or Other Outcomes

The Board will impose penalties for offenses consistent with this policy. Offenders may expect one or more of the following consequences as appropriate in the judgment of the Board.

1. Suspension of license for a stated number of days and specified dates. Licensees are advised that the following chart only represents guidelines for use by the Chief of Police and the Board by the Selectmen when making their respective recommendation and decision in response to a liquor license violation. The Board of Selectmen, in accordance with the mitigating and aggravating factors presented above, retain the authority to deviate from these penalty guidelines where the circumstances are appropriate.

First violation: 1-3 day suspension, regardless of amount of penalty suspended, if any;

Second violation: 4-6 day suspension, regardless of amount of penalty suspended, if any;

Third violation: 7-15 day suspension, regardless of amount of penalty suspended, if any;

Fourth violation: 16-30 day suspension, regardless of amount of penalty suspended, if any;

Fifth violation: 31 days to one year suspension, or revocation, regardless of amount of penalty suspended, if any;

Sixth violation: Revocation of license for remaining period of current license and one year beyond.

The Board will consider the longevity of a licensee when determining suspensions and penalties based on the following chart:

Years Without a Violation	Relief
Under 25 Years	Subject to the rules and regulations/Police Chief's recommendation
25 - 30 Years	One day relief (i.e. from three days to two)
30 – 35 Years	Two days relief (i.e. from three days to one)
35 + Years	Full relief with the proviso that no other violations occur within the coming year or the full suspension will be implemented

2. Suspension of license for a stated number of days and specified dates with a portion of the suspension deferred upon condition that no further offenses occur within a specified period of time and that licensee waives right to hearing upon such further offense.

3. Revocation of liquor license or suspension of registration of server for a specified period of time after a due process hearing for cause, and thereby limiting or preventing the employment of a server by a licensee within the Town.

4. Mandatory participation in prevention programs by licensee/manager and server as appropriate.

5. Appropriate publicity of offense and disposition.

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

J. Reporting of Violations and Penalties Imposed

The Board shall receive bi-annual reports from the Police Department and/or Licensing Administrator detailing violations of these Regulations from the date of the previous reporting period, and the penalties imposed by the Board for said violations. Reports shall be submitted to the Board no later than May 1 and November 1 of each year. The Board will use these reports to analyze the factors are commonly associated with violations, such as over serving, underage serving, failure of serving training or registration, etc. This process will allow the Board to periodically review this policy and recommend any areas of the policy that need to be amended, and/or updated.

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