

# **CITY OF FRAMINGHAM RULES AND REGULATIONS GOVERNING ALCOHOLIC BEVERAGES**

Effective Date: September 1, 2008

1<sup>st</sup> Revision: October 2, 2008

2<sup>nd</sup> Revision: December 16, 2008

3<sup>rd</sup> Revision: November 3, 2009

4<sup>th</sup> Revision: May 4, 2011

5<sup>th</sup> Revision: September 17, 2013

6<sup>th</sup> Revision: January 1, 2016

7<sup>th</sup> Revision: September , 2019

By virtue of the authority contained in Chapter 138 of the Massachusetts General Laws (“**Chapter 138**”), and Article V, Section 1 of the City of Framingham General Ordinances (the “**Ordinance**”), the Board of License Commissioners of the City of Framingham, serving as the City’s Liquor Licensing Authority (the “**Board**”)Board hereby promulgates these Rules and Regulations Governing Alcoholic Beverages (“**Regulations**”). The Regulations shall supersede all previous regulations or policies issued by the City of Framingham (the “**City**”), or, collectively as the preceding licensing authority, the Town of Framingham and/or Board of Selectmen . The Board has the power under the Ordinance and the laws of the Commonwealth of Massachusetts to amend these Regulations periodically from time to time as it sees fit. For the purposes hereof, the Regulations, Ordinance, and Chapter 138 shall be collectively referred to as the “**Laws**”.

Any license issued for the sale in any manner of any alcoholic beverages (a “**License**”)shall be issued on the condition of full compliance with these Regulations. The failure to comply with the Laws and other ordinances or rules issued by the City and/or the Board and shall constitute sufficient cause or grounds for refusing to grant the license, or for suspending, canceling, modifying or revoking such license or permit already granted, in accordance with Article XV herein. Any individual, organization, or company licensed by the Board pursuant to the Laws shall be referred to herein as a “**Licensee**”. Any premises licensed by the Board pursuant to the Laws shall be referred to as the “**Licensed Premises**”.

## **I. Consumption of Alcoholic Beverages**

No person shall drink any alcoholic beverages (as defined in Section 1 of Chapter 138) 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 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. **Licensure Requirements.** The applicant for any type of License must meet the requirements of the Laws and any other applicable City or state law.

2. **Alcohol Training Program.** The Licensee shall require all employees serving alcohol or viewing identifications cards to determine age to successfully complete an alcoholic beverage server training program which has been approved by the Framingham Police Department, Licensing Bureau (the “**Alcohol Training Program**”). The requirement set forth in the preceding sentence shall include and apply to the Manager (as defined below), assistant manager, and all persons responsible for viewing identification cards to determine the age of patrons for service of alcoholic beverages.

The Alcohol Training Program may not be completed on-line.. The Licensee shall require all employees engaged in serving alcoholic beverages and/or viewing of identification cards to obtain Alcohol Training Program certification within thirty (30) days of employment. To the extent an employee serves alcohol or views identifications cards prior to obtaining Alcohol Training Program certification, the Manager of Record, as defined by Section 26 of Chapter 138 (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 and/or Licensee had committed the violation. Managers and Assistant Managers shall obtain Alcohol Training Program certification prior to assuming the duties of Manager or Assistant Manager. The Licensee shall strongly encourage all alcohol servers to attend periodic retraining programs at least bi-annually that reinforce the certification training described herein. 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. **Management ID Cards.** City of Framingham Alcohol Management Identification Cards (the “**Management ID Card**”) shall be required for all Managers and Assistant Managers, who shall be registered with the Framingham Police Department prior to assuming the duties as Manager or Assistant Manager. The Management ID Card shall be carried on the Manager and Assistant Manager’s person or otherwise be available for inspection at the Licensed Premises. The Licensee shall keep on file at the Licensed Premises photocopies of the Management ID Cards. Any Manager or Assistant Manager who allegedly violates any provision of Chapter 138, the Ordinance 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 Manager or Assistant Manager’s ID Card by the Framingham Police Department. Violation of this section shall further subject Licensees and management to penalties under Article XV as may be imposed by the Board.
4. **Identification of Patrons.** Licensees shall ensure that the identification of persons purchasing alcoholic beverages occurs at the point of sale or service. Wrist-Bands, stickers or any other kind of markings/markings devices are prohibited as a method of identifying persons to be served alcoholic beverages.
5. **Prohibition Against Happy Hours and Discounted Sales.** “Happy Hours” are prohibited at any Licensed Premises. As used herein, Happy Hours shall be defined as

the sale of alcoholic beverages at a “two-for-one” price or any promotion or discount on the sale of alcoholic beverages. Further:

- A. No alcoholic beverages shall be sold for less than the actual cost of the beverage to the licensee. An admission charge shall not be credited towards the purchase price of any alcoholic beverage.
  - B. All licensees shall maintain a schedule of the prices charged for all drinks to be served and drunk on the licensed premises. Prices shall be effective for not less than one calendar week.
  - C. No licensee, employee or agent of a licensee shall:
    - i. Offer or deliver any free drinks to any person or group.
    - ii. Deliver more than two drinks to one person at one time.
    - iii. Sell, offer to sell, or deliver to any person or group any drinks at a price less than the price regularly charged during the same calendar week, except at private functions not open to the general public.
    - iv. Sell, offer to sell, or deliver to any person an unlimited number of drinks during a set period of time for a fixed price, except at private functions not open to the general public
    - v. Sell, offer to sell or deliver drinks to any person or group of persons on any one day at prices less than those charged to the general public on that day, except at private functions not open to the public;
    - vi. Sell, offer to sell, or deliver malt beverages except to two or more persons at any one time.
    - vii. Increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged the drink during the same calendar week.
    - viii. Encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes.
    - ix. No licensee shall advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under this section.
6. Nothing contained in this Section II.5 shall be construed to prohibit Licensees from offering free food or entertainment at any time; including a drink as part of a meal package; the sale or delivery of wine by the bottle or carafe when sold with meals or to more than one person; or to prohibit those licensed under Chapter 138, section 15, from offering free tastings as allowed under Chapter 138.

7. **Cover Charges.** Cover charges are not permitted except in compliance with MA General Laws Chapter 140, Section 183D and 204 CMR 2.16.
8. **Public Need; Discretion of the Board.** The licensing of establishments and vendors serving an selling alcoholic beverages, and the determination of public need and convenience in the City is subject to the informed discretion of the Board, consistent with the Laws.
9. **Inspection of Licensed Premises.**
  - 8.1. The Licensed Premises shall be subject, at all times, to inspection by the Mayor or his/her designee(s), the Board of Health or its designee, the City Health Agent, the Department of Public Works, Police, Fire, or any other department or official of the City of Framingham.
  - 8.2. The Police Department shall have the authority to investigate potential violations of Chapter 138, the Ordinance, these Regulations, and any other state or local law on or about the Licensed Premises on behalf of the Board, 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 Ordinance, these Regulations, and other state and local laws.
  - 8.3. The Board shall have the authority to refer potential violations of any Laws to the Framingham Police Department, which shall be handled in accordance with subsection 8.2 above.
10. **No Employee Consumption of Alcohol.** No employee or person holding an ownership interest in the Licensee, or any employee acting in any type of management capacity shall consume alcohol on the Licensed Premises prior to going on duty or during their respective on duty hours.
11. **Common Victualer; Prohibition Against Keeping Alcoholic Beverages Onsite.** Common Victualer Licensees operating without a duly authorized alcoholic beverages license are not permitted to keep alcoholic beverages on its Licensed Premises, except for a commercially reasonable quantity used exclusively in preparation of certain specialty foods
12. **Annual Education Seminar.** The City 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 City Hall at least (10) days prior to the date of the seminar. Each Licensee is recommended to attend the Annual Education Seminar. Failure to attend the seminar shall not constitute a defense to any alleged violation of state law, the Ordinance, or these Regulations. Each Licensee is required to have knowledge of the requirements of Chapter 138, the Ordinance, 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 City.

### **III. Hours of Operation**

1. In accordance with Chapter 138, §12, the “Official Opening and Closing Hours” are those which are designated on the Licensee’s alcoholic beverages license. “Last call” for alcoholic beverages shall be at least fifteen (15) minutes before the Licensee’s “Official Closing Hour.”
2. No alcoholic beverages may be served after the Licensee’s “Official Closing Hour.”
3. With the exception of any Licensee primarily operating as a movie theater, all tables and bars must be cleared of all glasses, bottles and containers of alcoholic beverages within thirty (30) minutes after the “Official Closing Hour” and all customers must be off the Licensed Premises by that time. Subject to Article III Section 5, owners and employees of the Licensee must be off the Licensed Premises no later than sixty (60) minutes after the Licensee’s “Official Closing Hour.”
4. For any Licensee primarily operating as a movie theater, all tables and bars must be cleared of all glasses, bottles and containers of alcoholic beverages and all customers must be off the Licensed Premises within thirty (30) minutes after the conclusion of any movies in progress at the time of the Licensee’s “Official Closing Hour.”
5. Owners and their employees and contractors may be on the Licensed Premises at any time for the purpose of cleaning, making emergency repairs, providing security for the Licensed Premises, or preparing food for the next day’s business or opening or closing the business in an orderly manner.
6. No alcoholic beverage shall be served or consumed on the Licensed Premise before the Licensee’s approved and official opening hours or after approved and “Official Closing Hours.” Patrons of any Licensed Premises are not permitted to bring alcoholic beverages on the Licensed Premises..
7. A violation of any of the restrictions contained in Article III shall constitute a violation of the Regulations and shall subject the Licensee to possible discipline and/or penalties by the Board in accordance with the procedure set forth in Article XV.

### **IV. Change of Manager**

1. **Timeline Requirements for Filing a Change of Manager Application.** An application for Change of Manager of Record or Assistant Manager must be filed with the Board at least two (2) weeks before the proposed effective date of the change (“**Change of Management Notice Deadline**”), unless the Manager of Record has terminated his or her employment without prior notice to the Licensee or is terminated by Licensee under circumstances which do not reasonably allow for advance Change of Management Deadline Notice (“**Early Management Termination**”). In the event of Early Management Termination, the Licensee must, within thirty (30) days of such termination, notify the Board of: (a) the basic facts surrounding such termination; (ii) the name of the person who

will discharge the duties of manager pending selection and approval of a new Manager of Record; and (iii) shall file the application for a Change of Manager no more than thirty (30) days after the departure of the approved Manager of Record. If the Board finds that the circumstances justify the noncompliance with the Change of Manager Notice Timeline, no penalty will be imposed so long as the Licensee complies with subsections (i) through (iii) above. If the circumstances for the delay are not found to be sufficient, or if the application for a Change of Manager 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 (1) 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. **Manager Background Checks.** Upon receipt of an application for an original license, or in the case of a new Manager of Record or Assistant Manager, upon being advised of the new Manager of Record or assistant manager's identity, the Framingham Police Department will conduct a background check of any proposed Licensee, Manager of Record or assistant manager, and such check will include a review of any existing criminal record. The Board may reject any application where the Licensee's, Manager of Record's or assistant manager's criminal record indicates, theft, unlawful drug offense(s) (with the exception of any criminal arrest or conviction relating to possession of marijuana which predate the enactment of M.G.L.c. 94G), alcohol-related offenses, a propensity for violence, or other behavior, that, in the opinion of the Board, might disqualify the individual from responsibly carrying out their duties as Manager of Record or would otherwise put the public at risk.

3. **Violations.** 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 of Record:**

1. **Authority & Control of License Premises.** The Board regards the Manager of Record 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 of Record must be listed on the license by the Licensee. This will allow for continuity of the Manager position, should either the Manager of Record or Assistant Manager positions become vacant during the course of the year.

2. **Responsibilities.** Without limiting the scope of the previous subsection, the Board will hold the Manager of Record 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 and 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 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 Licensed Premises, including within any parking area ancillary to or serving 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 Ordinance and these Regulations with respect to the operation of the licensed business.
- g. Ensuring that the Licenses Premises, including the exterior, are kept clean, neat and sanitary at all times;
- h. The Board strongly encourages the Manager of Record 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 Ordinance, and these Regulations.

3. **Hours on Licensed Premises.** Except as provided herein, the Manager of Record 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 of Record shall not undertake any non-managerial position(s) (i.e. bartender, server, cook) or any other role which interferes with the Manager of Record's oversight of the Licensed Premises. The Manager of Record 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 of Record is not upon the Licensed Premises, the person actually in charge of the business must be an Assistant Manager or a qualified seller or server of

alcoholic beverages registered with the Framingham Police Department and designated by the approved Manager of Record to have charge of the business in the Manager's absence. The Manager of Record will continue to be responsible for the operation of the business whether or not on the Licensed Premises. When the Manager of Record is not upon the Licensed Premises a method of contacting the Manager of Record promptly must be arranged so that the Manager of Record can be reached at all times by the person designated to be actually in charge of the Licensed 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 of Record 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 License of any type should submit a letter to the Board 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 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 City is to provide a copy of this Ordinance to each Licensee at the time when they pick up their annual license. Licensee shall sign a receipt to be maintained at the City offices evidencing their receipt of a copy of the Ordinance.

Pursuant to 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 Licensed 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 Licensed 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 veterans' organization and seeks a club license.
2. Subject to applicable zoning requirements, 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 the City of Framingham at the time of the application.

4. The applicant demonstrates the elements for public need for the particular location.
5. The applicant proposes an establishment that offers a substantial economic benefit to the City of Framingham.
6. In addition to alcoholic beverages, the applicant offers a variety of non-alcoholic beverages (or beverages containing only trace amounts of alcohol), such as mocktails, craft sodas, teas, kombucha, and non-alcoholic beer and wine, which are distinct from traditional non-alcoholic beverages (water, soda, juice, etc.)
7. Proposals for off-premises retail 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 or is similar to what is presently located in the area.

### **VIII. Modifications to Licensed Premises**

Once a License is issued, no material physical changes to the Licensed Premises shall be made without the prior approval of the Board. For the purpose of this regulation, a material physical change shall be considered a change in location or number seating, location of bar, addition or reduction in square footage, or any other change sufficient to require a building permit from the City of Framingham.

### **IX. Transfers of License**

Licenses may request that their License 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 processed similarly to an original License application and the Board is not required to grant such transfer requests. 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. Distribution of Regulations**

These Regulations, in their most updated form, shall be provided to all Licensees upon issuance of their License and, further, shall be regularly available at the City of Framingham Licensing Department and online at the City of Framingham Board of License Commissioner's webpage. 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.

**XI. Filing Fees and Annual Licensing Fees**

1. Annual Licensing Fees

Board of License Commissioners

**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

**XII. Miscellaneous Operating Provisions**

1. **Exterior Doors.** Exterior doors to the Licensed Premises must remain closed, but not locked, during all times that the Licensed Premises are open for business.
2. **Access to Licensed Premises.** The Licensee shall ensure that the Framingham Police Department, the Framingham Fire Department, and authorized agents of the Board shall have immediate access to the Licensed Premises at all times and under all circumstances.
3. **Underage Service.** 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. **Responsible Operations.** 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 City 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 Licensed Premises.
5. **Sale to Intoxicated Persons.** No alcoholic beverages shall be sold or delivered to an intoxicated person.
6. **Signage.** No Licensee may display any advertisement or sign on the outside facade upon which appears any brand name of an alcoholic beverage product.
7. **Off Premise Alcoholic Beverages.** No patron may remove any alcoholic beverage from any Sec. 12 on-premises 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.
8. **Size of Glassware.** No alcoholic beverages shall be served in any container in excess of 24 fluid ounces, except for the following, which may exceed 24 fluid ounces and are intended to be shared by more than one patron: pitchers of beer, bottles of wine, carafes of wine and bottles of beer from the manufacturer.
9. **Entertainment.** No Licensee shall provide or allow entertainment unless an entertainment license has been obtained from the Board (or Mayor of Framingham, if on a Sunday)..
10. **No Discrimination.** No Licensee shall make any distinction, discrimination or restriction on account of race, color, creed, sex, sexual/gender orientation or designation, or ancestry relative to the admission or treatment of any person.
11. **Bottle Service.** "Bottle Service" (i.e. the sale and/or service of an entire bottle of hard alcohol or spirits) shall be strictly prohibited unless expressly authorized in advance by the Board. Any licensee authorized for Bottle Service shall have the term "Bottle Service," along with any relevant conditions included on the physical License displayed at the Licensed Premises. The Board shall have the authority to deny or condition an application for Bottle Service in its sole discretion.

### **XIII. One Day 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

**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 City 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 City Manager by the officer of the Framingham Police Department designated to review applications for one day licenses and shall be determined by the City 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.

6. Insurance:

When a one-day license is granted to be exercised on City-owned land or a City-owned facility, the Licensee shall procure policies of insurance as provided herein. The Licensee shall furnish certificates in form and substance satisfactory to the City evidencing each such insurance coverage to the City prior to the issuance of the license.

- (a) A Comprehensive General Liability policy on an occurrence basis endorsed to include broad form comprehensive general liability including coverage for service of alcoholic beverages with a combined single limit of liability of not less than \$1,000,000.00. The policy shall name the City, and its officers, agents, servants, officials, representatives, employees and consultants as additionally insured parties.
- (b) The Licensee shall provide Workers' Compensation Insurance required by law.
- (c) An Umbrella/Excess Liability insurance policy on an occurrence basis "following form" of the primary coverage with a limit of liability of \$5,000,000.00. The Umbrella/Excess Liability insurance policy shall include but not be limited to the following coverage for bodily injury, property damage and personal injury: (i) Premises - Operations Liability; (ii) Contractual Liability; (iii) Automobile Liability for owned, non-owned and hired vehicles. The City, its officers, agents, servants, officials, representatives, consultants and employees shall be named as additional insureds.
- (d) All insurance shall be issued by insurance companies authorized to do insurance business in Massachusetts and rated not less than A-VIII in Best's Insurance Guide, and will not be subject to cancellation or modification without thirty days prior written notice to the City.
- (e) Each policy of insurance obtained by Licensee hereunder shall contain a clause denying the insurer any right of subrogation against the City.

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 City 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 City 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 City Manager may be brought to the Board for approval and shall be accompanied by the City 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. Penalties, Procedure and Structure for Violations of the Ordinance and Regulations**

### **A. Purpose**

The purpose of this penalty structure is to improve the ability of the Board to prevent alcohol abuse and violation of the Laws 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 Illegality on Premises. No Licensee shall permit any illegality to occur on the Licensed Premises, regardless of whether such illegality relates to the sale and service of alcoholic beverages. The Manager of Record shall at all times maintain order and decorum on the premises and in the immediately surrounding area of the premises and shall cooperate with City officials in ensuring safe and orderly facilities.
2. Reporting of Incidents. All violations of Massachusetts General Laws, Chapter 138 and City 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; Generally. Penalties for offenses shall be in line with the City'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 Ordinance) may give rise to the issuance of penalties pursuant to this Article to the extent permitted under law. 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. 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.

- a. Types/Categories of License Penalties. Penalties by the Board may consist of any one or more of the following as appropriate: (a) Revocation of License; (b) Suspension of License; (c) Modification of License; (d) Imposition of New Conditions on the License; (e) Imposition of Monetary Fines; (f) Mandatory Participation in Alcohol Abuse and Offense Prevention Programs; and/or (g) any other reasonable penalty, in the Board's reasonable discretion.
  - b. Penalty Guidelines. 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.
4. Police Department Recommendation; Negotiation Procedure; Record Keeping. The Police Department is authorized to negotiate with any authorized representative of the Licensee the terms upon which the Police Department will recommend to the Board that an offense be resolved.
- a. Any such negotiated recommended resolution must be in writing, signed by the Manager or Record or designated representative of the Licensee 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 City unless and until approved by the Board.
  - b. If the Police Department and the Manager of Record and/or authorized representative of the Licensee 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.
  - c. 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.
  - d. 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.
5. Notice to Licensee. Notice is to be provided to a Licensee of an alleged violation of Chapter 138, the Ordinance and these Regulations. The notice provided to Licensee may contain the Police Department's recommendation to the Board 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), Ordinances 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.

6. Written Statement of Disciplinary Action. In the event that the Board decides to take disciplinary action against the Licensee for a violation of the City's Ordinance, 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 City 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 (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 (Chapter 138, 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 (Chapter 138, Sec. 34);
5. Sale to an intoxicated person (Chapter 138, Sec. 69);
6. Hindering or delaying investigation (Chapter 138, Sec. 63A);
7. Failure to post notice of penalty for driving under the influence and driving while drinking from open container of alcoholic beverage (Chapter 138, 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 leverages 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. (Chapter 138, 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 City'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 when making their respective recommendation and decision in response to a License violation. The Board, 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 License
Under 3 Years
3-5 Years
5-7
7 + Years

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

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

###