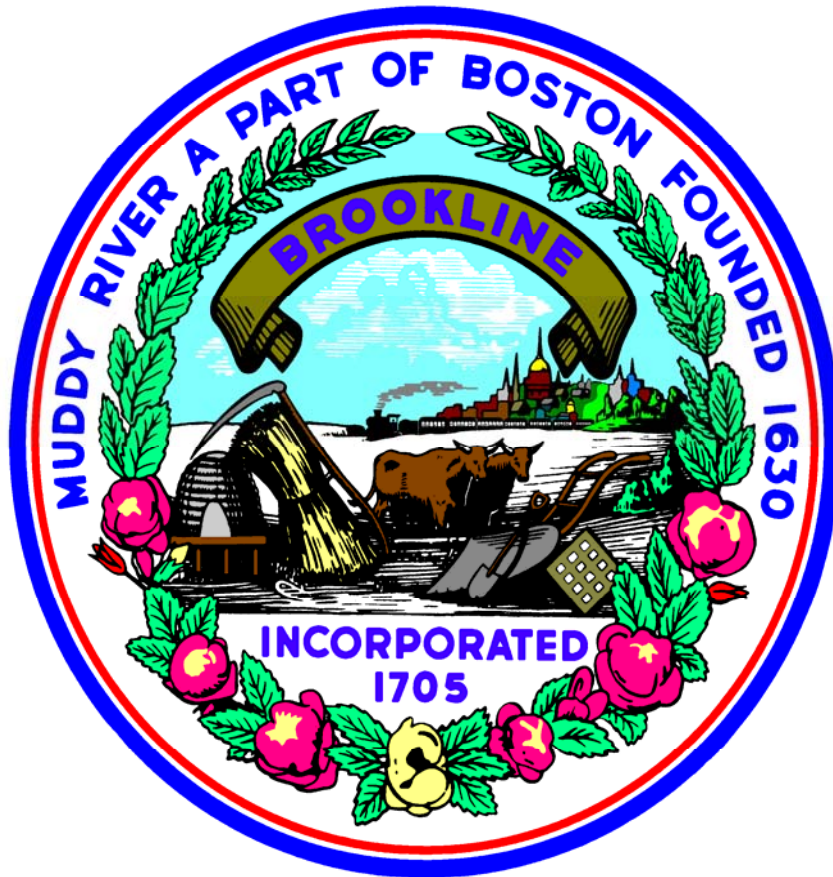


T O W N O F B R O O K L I N E
M a s s a c h u s e t t s
B O A R D O F S E L E C T M E N

SALE OF ALCOHOLIC BEVERAGES REGULATIONS



(Voted: April 17, 1990; Amended: October 25, 2011; October 29, 2013; April 24, 2014; December 17, 2014;
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Policy

It is the goal of the Board of Selectmen (“Board”), as the local liquor licensing authority, to provide for a reasonable number and variety of well-run establishments for the sale and service of food and drink as will meet the public need and serve the common good. Further, it is the goal of the Board to regulate such establishments to ensure they are operated responsibly and do not detract from the quality of life in neighborhoods or in the Town as a whole. The Board expects and requires that principals and managers are of sound character and are qualified according to legal requirements and local regulations. Common victuallers and innholders must show the Board that they will operate a closely-supervised, well-managed restaurant, with the service of alcohol as a secondary service that supports the primary function of food service.

Hours of operation shall be regulated so as to protect the quality of life in neighborhoods and to discourage excessive drinking. Server training and other conditions shall be imposed to insure the responsible service of alcoholic beverages. Entertainment appropriate to a dining atmosphere or a special event may be approved.

Strong and consistent enforcement of all liquor laws and regulations shall be maintained. Regular inspections by the police shall be conducted. Violators shall be subject to possible suspension or revocation of their license. Discipline for violations may also include reducing hours or imposing other restrictive conditions.

The rules and regulations that follow have been enacted to achieve the above-stated goals.

Section A. GENERAL — APPLIES TO ALL COMMON VICTUALLER, INNHOLDER, RETAIL PACKAGE STORE, AND CLUB LICENSES

(M.G.L. c. 138, §§ 12 and 15)

A.1.) Applicability of Town Liquor Regulations: Nature of License / Nature of License

All common victualler, innholder, retail package store, and club licenses to sell alcoholic beverages issued pursuant to Sections B, C, and D of these regulations are subject to and conditioned on compliance with the regulations contained in this Section A.

The term “license” is used in its technical sense of a license, transferable and revocable as provided in Chapter 138 of the Massachusetts General Laws and these regulations. The provisions in these regulations for the issue of licenses imply no intention to create rights generally for persons to engage or continue in the transaction of the business authorized by the licenses. No holder of such a license shall have any property right in any document or paper evidencing the granting of such license, and the Board, upon the expiration, suspension, revocation, cancellation or forfeiture of such a license shall be entitled upon demand to the immediate possession thereof.

(See M.G.L. c. 138, § 23.)

A.2.) Legislative Authority / Compliance with Laws, Regulations, By-Laws and Conditions

These regulations are adopted by the Brookline Board of Selectmen (“Board”) pursuant to the provisions of the Massachusetts General Laws (“M.G.L.”), Chapters 138 and 140. Any and all licenses issued by the Board shall be governed by, and subject to, the licensee’s compliance with all applicable federal, state and local laws, regulations and by-laws, including, but not limited to, the M.G.L., the regulations of the Alcoholic Beverages Control Commission (“ABCC,” at 204 Code of Massachusetts Regulations (“C.M.R.”)), these regulations, the Town of Brookline’s By-Laws, all applicable building, fire prevention, zoning, health and sanitary codes, and any conditions the Board imposes on specific licenses. Where there is conflict between these regulations and a condition on a license, the condition shall govern unless it is inconsistent with law. The Board reserves the right to modify and supplement these regulations and the conditions on any license after due notice and hearing.

(See M.G.L. c. 138, §§ 2, 23, 30H, 62, 64.)

A.3.) Qualified Applicants

No license for the sale of alcoholic beverages shall be issued to any person who is not, at the time of his or her application, a citizen of the United States, or to any agent of any such person, or to any corporation a majority of whose directors are in fact aliens. In addition, persons applying for licenses must be at least 21 years of age and of good character. An applicant for a common victualler or innholder liquor license must, in addition, be qualified pursuant to Section B.2 of these regulations. An applicant for a retail package store liquor license must, in addition, be qualified pursuant to Section C.2 of these regulations. An applicant for a club liquor license must, in addition, be qualified pursuant to Section D.2 of these regulations.

(See M.G.L. c. 138, §§ 12, 15, 26, 34.)

A.4.) Application for a License

All applications must contain complete and truthful information. Submission of an application containing false information shall be cause for refusing the application or for suspending, canceling or revoking a license already granted. No application will be accepted for filing by the Board until it is fully complete in accordance with the Town’s and the ABCC’s requirements. Filing fees must be paid prior to processing of the application by the Board. Annual license fees shall be payable immediately upon approval of the license by the Board. All filing fees and license fees shall be paid by certified check. Filing fees are non-returnable once an application has been accepted by the Board. License fees shall not be prorated and are not refundable.

No person or entity shall obtain or renew a license unless the applicant can demonstrate proof of a legal right to the licensed premises for the term of the license, such as ownership papers, tenancy documents, or a management contract.

Where United States citizenship is stated as a qualification by these regulations, such citizenship shall be proven by a birth or naturalization certificate or by proof of registered voter status. The Board reserves the right to request to inspect a copy of such proof containing an original seal, in the event an applicant supplies a photocopy not containing such seal.

The Board shall consider the public need and common good in determining whether or not to grant a request for a new liquor license. In considering whether the public need and common good would be served by granting a new license, the Board may consider the number and location of existing licenses, the sort of operation proposed, the qualifications of the applicant and proposed manager, any impact on the community with respect to matters such as noise, traffic, congestion, odors, sanitary and/or nuisance conditions, waste disposal requirements and facilities, parking, dust and fumes, the impact on the character of the neighborhood and the Town, and whether any articulable harm would follow from the granting of the license. The Board may refuse to grant licenses to common victuallers, innholders and clubs in certain geographic areas of the Town where the character of the neighborhood may warrant such refusal. Prior to issuing a license, the Board shall seek advisory reports from the Police Department, Fire Department, Treasurer/Collector, Health Department, Building Department, and Planning Department, as appropriate. The Board shall hold a hearing on an application for a new liquor license.

The Board may deny an application for renewal of a license where there is cause for doing so. Prior to issuing a renewed license, the Board shall seek advisory reports from the Police Department, Fire Department, Treasurer/Collector, Health Department, and Building Department, as appropriate.

The applicant's failure to comply with any federal, state or local law, regulation, or by-law shall be cause for denial of the application.

(See M.G.L. c. 138, §§ 12, 15, 15A, 16A, 23, 70; 204 C.M.R. Parts 2.01(1), (7) and (8); Article 8.10.7 of the Town of Brookline By-Laws; *Ballarin v. Licensing Bd. of Boston*, 49 Mass. App. Ct. 506 (2000).)

A.5.) Multiple Applications and Reapplications

The Board will not accept more than two applications for a common victualler, innholder, club, or retail package store liquor license to be exercised on the same premises during the same license year. The Board will not accept an application by the same applicant for the same type of license to be exercised on the same premises within one year of the date of the last application unless a Board member, who previously voted against the license application, moves to allow the resubmission and such motion prevails.

(See M.G.L. c. 138, §§ 15A, 16B.)

A.6.) Transfers in Ownership or Premises and Changes to Description of Licensed Premises

No licensee may transfer to another person any license issued pursuant to these regulations, except upon application to and approval by the Board of the transfer.

The Board may approve the transfer of a license to any person or entity who would have been qualified to receive such license in the first instance, if, in the opinion of the Board, the transfer is in the public interest. A license may not be transferred to a new location and the description of the licensed premises may not be changed except with approval of the Board.

Any such transfer shall be subject to the terms and conditions of the original license, unless stipulated by the Board.

(See M.G.L. c. 138, § 23.)

A.7.) Premises' Description

No licensee shall keep for sale, store, or sell alcoholic beverages in any part of the premises not specified on the license.

No new license shall issue until an applicant has submitted to the Board and obtained the Board's approval of a description, illustration, and/or detailed plan of the premises (drawn to scale as may be necessary) describing the placement of waiting areas, tables, chairs, stools, fixed seating, booths, service counters or bars, standing only areas, entertainment areas, dance floors, kitchen facilities, bathrooms, hallways, rooms, railing partitions

and other barriers, entrances and exits, and interior doors, and describing the premises' signage and any other exterior and interior decorations or features. Applicants must comply with the provisions of the Town of Brookline's Sign By-Law.

Where there are no premises actually in existence at the time of an application, the applicant shall submit with its application a detailed description as described above, describing the premises proposed to be constructed.

A licensee must apply for and obtain the Board's approval prior to making any a) structural change to the premises, b) change in Board-approved alcohol service areas, c) physical change that results in an increase in seating capacity, and d) physical change to the premises pertaining to the fixed placement of tables, chairs, stools, fixed seating, booths, service counters or bars, entertainment areas, dance floors, kitchen facilities, bathrooms, hallways, rooms, railing partitions and other barriers, entrances and exits, interior doors, and signage and any other exterior decorations or features. An application for any such physical change shall be accompanied by a description, illustration and/or detailed plan (drawn to scale as may be necessary) describing the premises with such proposed changes.

Prior to their approval by the Board, the Building Commissioner shall approve all plans contemplated by this Section A.7.

The Board may suspend, cancel or revoke a license in the event it determines that the licensee constructed or made changes to the premises in violation of this Section A.7.

(See M.G.L. c. 138, §§ 2, 12, 15A, 23, 30H; Article 5.8 of the Town of Brookline By-Laws.)

A.8.) Taxes and Charges

All taxes and charges owed to the Town must be paid on a current basis. The Town may place a lien on the property of any person who has an outstanding balance due the town from any fee, charge or tax, which balance is at least six months past due.

(See M.G.L. c. 40, § 57 (adopted by the Town in November 1995); Article 4.7 of the Town of Brookline By-Laws; 1986 Mass. Acts ch. 316.)

A.9.) Corporate and Trade Names

No licensee shall assume obligations for a licensed premise or conduct business under any corporate or trade name (DBA) other than that stated on the license. Any change in corporate name or status or any change in trade name (DBA) from that the Board previously approved shall require the prior approval of the Board.

A.10.) Corporate Transactions and Changes in Operations

The licensee shall not change Manager, Alternative Manager, or corporate directors or officers; sell or transfer corporate stock, control or ownership interest in the licensed entity; pledge corporate stock, an ownership interest, the liquor license, or inventory as security; change the corporate name; accept a loan or credit from another licensee; or make any significant change in the operations (such as changes to hours of food and alcoholic beverages service, and changes to food and beverages (including alcoholic beverages) offerings), without first obtaining the approval of the Board. No person may have a direct or indirect beneficial interest in a license without first obtaining the approval of the Board.

(See M.G.L. c. 138, §§ 2, 15A, 23, 25, 26.)

A.11.) Cessation of Operations / Permission Required

Any licensee intending to close a place of business or cease sales of alcoholic beverages, whether on a temporary or permanent basis, must notify the Board in writing and obtain its prior permission, stating the reason for and length of such closing or inactivity. Failure to provide such notice and to obtain such permission may, after hearing or reasonable opportunity therefor, result in cancellation of the license.

(See M.G.L. c. 138, §§ 23, 77.)

A.12.) Bankruptcy and Court Proceedings

The licensee shall immediately notify the Board in writing of any proceedings brought by or against the licensee under the bankruptcy laws and of any other court proceedings which may affect the status of the license.

A.13.) Foreclosure on Loans

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

A.14.) Access to Premises, Inspections, Required Documentation on Premises, and Requests for Information by the Board and its Agents

The Board or its agent, including the Police and other inspectional departments, may at any time enter upon the premises of the licensee to ascertain the manner in which the licensee conducts its business under such license and whether it is in compliance with the conditions of its license and all applicable federal, state, and local laws, regulations and by-laws.

Holders of common victualler, innholder and club liquor licenses under Sections B and D of these regulations shall maintain behind the bar, and holders of retail package store liquor licenses under Section C of these regulations shall maintain in the area of the cash register, a loose-leaf notebook containing an employee roster (see Section A.20) and all documentation required to be kept by such licensees pertaining to the licensee's Safe Service of Alcohol Policy, server training and Crowd Manager training (see Sections A.26, A.27, and A.28, respectively).

Licensees shall supply to the Board or its agent such information as the Board or its agent may require for purposes of the proper enforcement of these regulations. Any hindrance imposed by a licensee to an inspection, or any refusal by a licensee to supply information that is requested by the Board or its agent pursuant to this Section A.14, shall be cause for action against the license.

(See M.G.L. c. 138, §§ 12, 63, 63A.)

A.15.) Display of Licenses and Permits

All licenses and permits issued by the Town pursuant to these regulations shall be displayed on the premises in a conspicuous place where they can be easily read.

(See 204 C.M.R. Part 2.01(10).)

A.16.) Occupancy

No licensee shall vary the occupancy of the licensed premises as certified by the Building Department.

(See M.G.L. c. 138, § 12.)

A.17.) Hours of Operation

The hours of operation shall be restricted to those set by the Board. No patrons shall be on the premises except during the hours permitted by the licensee's liquor license, or by the licensee's common victualler, innholder, club or food vendor license, if different.

A.18.) Manager and Alternate Managers: Responsibilities

No corporation or other legal entity shall be approved for a license unless the entity, by vote of its board of directors, has appointed a Manager for the licensed premises whom the Board deems capable of fulfilling his or her managerial responsibilities as set forth herein and who is a United States citizen, at least 21 years of age, and of character satisfactory to the Board, and who has been vested with full authority and control of the premises and the business to be licensed as demonstrated by a copy of a vote certified by the clerk or secretary of the entity. With the approval of the Board or the Board's designee, a corporation or other legal entity may appoint Alternate Managers (who must be at least 21 years of age) to be in charge in the absence of the Manager in number sufficient to meet operational needs, however, the Manager must be on the premises the lesser of either fifty (50) percent of the time the premises are open, or forty (40) hours per week during

operational hours. At no time shall the premises be open without a duly-appointed and Board-approved Manager or Alternate Manager in charge; however, in the event of an emergency, the Manager or Alternative Manager on site who needs to leave the premises shall designate another employee who is qualified under Section A.27 below to act as the temporary manager on duty. A written record shall be kept which identifies the manager on duty for each shift.

The Manager shall have total responsibility for the proper operation of the licensed premises and shall maintain order and decorum within the premises, whether present or not, and shall cooperate in all ways with Town Officials in ensuring safe and orderly facilities. The Manager shall not permit any illegality, disorder, indecency, prostitution, lewdness or illegal gambling in or on the premises. No appointment of a Manager or Alternate Manager shall be effective unless and until approved by the Board.

The Board shall not approve a Manager or Alternate Manager who is not qualified for such position pursuant to this section and Section A.27 below.

(See M.G.L. c. 138, § 26; 204 C.M.R. Part 2.01(6).)

A.19.) Employees on Premises after Closing Hours

A licensee or manager shall not be prohibited from being on the licensed premises at any time. Employees, contractors, and subcontractors of the licensee shall not be prohibited from being on the licensed premises for the purpose of cleaning, making emergency repairs, providing security for such premises, or preparing food for the next day's business or opening or closing the business in an orderly manner.

(See M.G.L. c. 138, § 12.)

A.20.) Employee Roster and Employee Minimum Age for Service of Alcohol

An up-to-date list of all employees, including their ages, shall be available on the premises at all times for review by the Board and its authorized agents. A licensee may not permit an employee under the age of 18 years old to handle, sell, mix or serve alcohol.

(See M.G.L. c. 138, § 34.)

A.21.) Employee Consumption Prohibited

No Manager, Alternate Manager or employee of the licensee shall consume any alcoholic beverages while on duty at the licensed premises, with the exception of minor alcoholic consumption for staff training and product selection purposes under the supervision of the manager on duty.

A.22.) No Disorder, Disturbance, or Illegality on Licensed Premises

No licensee shall permit any disorder, disturbance, or illegality of any kind on the licensed premises.

(See 204 C.M.R. Part 2.05(2).)

A.23.) Service Prohibited To Under-Aged and Intoxicated Individuals

No alcoholic beverages shall be sold to anyone who is under twenty-one (21) years of age or intoxicated.

(See M.G.L. c. 138, §§ 34, 69; 204 C.M.R. Part 2.05(2).)

A.24.) Identification Cards

Any licensee who reasonably relies on the following forms of identification for proof of age shall not thereby subject the license to modification, suspension, revocation or cancellation: a) a valid Massachusetts motor vehicle driver's license with photograph, b) a valid Massachusetts Liquor Purchase Identification Card, c) a valid Massachusetts identification card issued by the Massachusetts Registry of Motor Vehicles pursuant to M.G.L. c. 90, §, 8E, d) a valid passport or passport card issued by the United States government, or a valid passport issued by the government of a foreign country recognized by the United States government, or e) a valid United States-issued military identification card. Additionally, a licensee who sells alcohol to an under-aged person may be subject to sanction against the license in the event the licensee relied on proof of age other than one of the forms of identification enumerated in this Section.

(See M.G.L. c. 138, § 34B; 204 C.M.R. Part 2.10.)

A.25.) Required Posting

All licensees shall post conspicuously a copy of the explanation of the prohibition, and penalties for violation of the prohibition, applicable to persons under the age of 21 years for purchasing or attempting to purchase alcohol, misrepresentation of one's age, and altering, defacing or falsifying identification with the intent to purchase alcohol, in the form that such posting is distributed by the Alcoholic Beverages Control Commission.

(See M.G.L. c. 138, § 34A.)

A.26.) Safe Service of Alcohol Policy

The licensee shall establish and maintain a written policy applicable to the Manager, any Alternate Manager(s) and all employees stating the licensee's prohibition on the sale or service of alcohol to any person who is under 21 years of age or who shows signs of intoxication, the proper procedures for verifying that patrons are at least 21 years of age and not intoxicated, and the disciplinary measures that will be taken for violating such policy. The licensee shall provide such written policy to all managerial personnel and employees. Each Manager, Alternate Manager and employee shall sign a certification acknowledging the person's receipt, review, and understanding of the written policy and of the disciplinary action that will be taken against him or her for a violation, which certifications shall be maintained on the licensed premises at all times. A copy of the written policy and of all such certifications shall be available to the Board and its authorized agents upon demand.

A.27.) Server Training

The Manager, any Alternate Manager(s), bartenders, and all employees selling or serving alcohol must participate in a safe-service-of-alcohol training program designed for the specific type of liquor license held by the licensee (*e.g.*, for on-premises consumption versus for retail package store sales) to train persons serving or selling alcohol in methods of observation and detection to avoid serving or selling alcohol to intoxicated persons and/or minors. Only insurance industry-approved and qualified training programs will satisfy this training requirement. Employees selling or serving alcohol must be trained within fourteen (14) days of employment by the licensee, and may satisfy this training requirement through on-line training. All persons subject to this training requirement must be retrained every three years in the manner specified by this Section for that position. The licensee shall maintain on the licensed premises and make available for inspection at all times a copy of the certification card and other proof showing that each person subject to this training requirement has been trained in the manner specified by this Section within the prior three (3) years.

A.28.) Crowd Manager

Notwithstanding any limitations on applicability otherwise described in the State Board of Fire Prevention regulations, 527 C.M.R. 10.13(2)(d)(1), (2) and (3), any licensee that has a bar on the licensed premises shall designate one or more persons as a Crowd Manager, at least one of whom shall be present during the operational hours of the restaurant. The designated Crowd Manager(s) shall be trained in accordance with 527 C.M.R. 10.13(2)(d)(5) and perform the duties and have the qualifications and responsibilities described in 527 C.M.R. 10.13(2)(d) and (e), including, but not limited to, maintaining clear paths of egress, assuring that the facility does not exceed its occupant load limit, initiating a fire alarm if necessary, directing occupants to exits, and assuring general fire and life safety awareness of employees and occupants, including assuring that exit announcements are made in accordance with law. To the extent the requirements of 527 C.M.R. 10 may exceed this regulation, the provisions of 527 C.M.R. shall pertain.

A.29.) Charge for Alcoholic Beverages

Except as may be permitted by Sections B(13) ("Tastings") and C(6) ("Consumption on Premises Prohibited Except Sample Tastings"), no alcoholic beverages shall be delivered without charge or sold for a fee 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. The price charged for alcoholic beverages shall not be discounted for any particular hour(s) of the day or day(s) of the week. No minimum charge shall be made for alcoholic beverages.

(See 204 C.M.R. Parts 2.04, 4.03.)

A.30.) Drinking Games / Donations of Alcoholic Beverages Prohibited

No licensee shall encourage or permit on the licensed premises any game or contest which involves drinking or the awarding of drinks as prizes.

Donations of alcoholic beverages by licensees for the purpose of having the same used as prizes in a game of chance are prohibited. Notwithstanding the foregoing, this Section A.29 does not prohibit donations of alcoholic beverages to the extent permitted by Section E.4(a)-(c) below.

(See 204 CMR Parts 2.04(2), 4.03(h);; 1997 Mass. Acts ch. 153, as amended by 1998 Mass. Acts ch. 450, 2002 Mass. Acts ch. 398, and 2007 Mass. Acts ch. 229.)

A.31.) Cleanliness / Refuse Removal

All licensed premises shall be maintained in a clean and sanitary condition.

(See 204 C.M.R. Part 2.05(8); Article 8.8 of the Town of Brookline By-Laws.)

A.32.) Noise

All licensees shall comply with all provisions of the Town of Brookline's Noise By-Law, including, but not limited to, with respect to entertainment, outdoor seating areas, exterior fans, vents and equipment, and delivery and loading areas and activity.

(See Article 8.15 of the Town of Brookline By-Laws.)

A.33.) Interior Lighting

All licensees shall keep the licensed premises lighted in a manner sufficient for the safety of the patrons and in a manner sufficient for the Board or its agents to make observations at the premises without the need to identify themselves or seek assistance.

(See 204 C.M.R. Part 2.05(10).)

A.34.) Discrimination Prohibited

No licensee shall engage in unlawful discrimination on the basis of race, color, national origin, creed, disability, sex, sexual orientation, or ancestry.

(See M.G.L. c. 272, §§ 92A, 98; 204 C.M.R. Part 10.01.)

A.35.) Sanctions

In the event that the Board finds, after hearing or reasonable opportunity therefor, that a licensee has failed to comply with any federal, state or local law, regulation or by-law, or with any condition imposed on the license, the Board shall take such action as it deems appropriate and as conforms with applicable law, including, but not limited to, the imposition of additional conditions on the license and/or on any of the licensee's other licenses (such as a common victualler or entertainment license), a reduction in liquor sale hours (subject to any applicable legal restrictions, and after a hearing conducted with two (2) weeks' notice to the licensee), a modification of any license, a suspension of any license of from one (1) to ninety (90) days, a non-renewal of any license (which non-renewal shall not take effect until any period for appeal to the ABCC has expired or an appeal to the ABCC has been filed), or revocation, forfeiture, or cancellation of any license.

In determining the appropriate sanction to be imposed on the licensee, the Board shall consider all factors it deems relevant, which may include, but are not limited to: the past history of findings of violation(s); the severity of the offense and egregiousness of the facts alleged; the culpability of the licensee and/or its manager(s), employee(s) and agent(s) (including the extent to which it had established and followed procedures to prevent such violations); the extent of any threat to public safety and to the public good; any steps by the licensee to remedy the violation and to prevent any reoccurrence; and any other additional factors deemed relevant by the Board.

In addition to the foregoing, where the Board finds that a common victualler, innholder or club liquor licensee sold alcohol to an under-aged or intoxicated person, the Board may, in its discretion, require as a condition precedent to any modification, reinstatement, or renewal of such license that the licensee provide a certificate of insurance for liquor liability providing security for the liability of the licensee to a limit of not less than \$100,000 to any one person and \$200,000 to all persons, which may be increased at the discretion of the Board; provided that if the licensee is required to obtain insurance under M.G.L. c. 138, § 12, the Board may increase the limits set by Section 12 (*see* Section B.5).

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

The initiation and prosecution of a criminal enforcement action under Mass. Gen. Laws ch. 138 or any other law shall not prevent or estop the Board from taking other or additional action against the licensee for the same charged violation.

In addition, a violation of these regulations may be subject to non-criminal disposition under Article 10.3 of the Town's By-Laws. After providing the licensee with a hearing or reasonable opportunity therefor and the opportunity to cure the violation, the Police Department is authorized to implement and enforce Article 10.3 without further action by the Board with respect to the following regulations:

- A.14 ("Access to Premises, Inspections, Required Documentation on Premises, and Requests for Information by the Board and its Agents")
- A.15 ("Display of Licenses and Permits")
- A.18 ("Manager and Alternate Managers; Responsibilities" (only with respect to the prohibition against conducting business without a duly-appointed and Board-approved Manager or Alternate Manager on site))
- A.20 ("Employee Roster and Employee Minimum Age for Service of Alcohol")
- A.25 ("Required Posting")
- A.26 ("Safe Service of Alcohol Policy")
- A.27 ("Server Training")

The Police Department's imposition of a penalty pursuant to Article 10.3 and this Section A.35 shall not prevent or estop the Board from taking other or additional action against the licensee for the same charged violation.

(*See* M.G.L. c. 138, §§ 2, 12, 16A, 23, 30H, 64, 64A, 65; 204 C.M.R. Parts 2.01(8), 7.06, Art. 10.3 of the Town of Brookline By-Laws.)

Section B. COMMON VICTUALLER AND INNHOLDER LICENSES
(M.G.L. c. 138, § 12)

B.1.) Applicability of Town Liquor Regulations

All licenses issued by the Board under this Section B are subject to and conditioned on compliance with the regulations contained in this Section B and in Section A.

B.2.) Applicability of Town Prepared Food Sales Licensing Regulations

All licenses issued by the Board under this Section B are subject to and conditioned on compliance with the Town's Prepared Food Sales Regulations.

B.3.) Qualified Applicants

No license shall be issued to any applicant who has been convicted of a violation of a federal or state narcotics law. No license shall be issued to any applicant who is not qualified to receive one pursuant to Section A.3 of these regulations.

(See G.L. c. 138, § 12.)

B.4.) Seasonal Licenses

In addition to, and irrespective of, any limitation of the number of licenses contained in M.G.L. c. 138, § 17, in lieu of an annual license, the Board may grant an applicant a seasonal license to be effective from April 1 to January 15 of the following year, or any portion thereof.

(See M.G.L. c. 138, § 17.)

B.5.) Annual Financial Report

Upon request, a licensee shall furnish to the Board an annual financial status report from a certified public accountant, for one or more years as the Board shall specify, indicating the gross sales for food and gross sales for alcoholic beverages.

B.6.) Required Insurance

No license shall be issued or renewed until the applicant provides proof of coverage, under a liquor legal liability insurance policy for bodily injury or death, for a minimum amount of \$250,000 on account of injury to or death of one person, and \$500,000 on account of any one accident resulting in injury to or death of more than one person. Proof shall be made by filing a certificate of insurance in a form acceptable to the Board.

(See M.G.L. c. 138, § 12.)

B.7.) Service and Consumption Limited To Approved Areas / Additional Outdoor Seating Requirements for Liquor Licensees

The service and consumption of alcoholic beverages shall be limited to those dining rooms, patios, sidewalks or other public areas pertaining to the premises that are approved by the Board.

In addition to the outdoor seating requirements stated in the Town's Prepared Food Sales Regulations, any liquor licensee applying for approval of outdoor seating must demonstrate sufficient control of the area to prevent service or delivery of alcoholic beverages to under-aged or intoxicated persons and other violations. Outdoor seating areas must be enclosed by a fence, rope or other means to prevent patrons or members of the public from wandering in or out. The licensee should have a view of the outside premises from inside the premises. Egress from the inside to the outside must be clearly established to assure safe, uninterrupted service of alcoholic beverages. No alcoholic beverages shall be served or consumed in any areas of the premises that are not included in the approved description of the licensed premises.

(See M.G.L. c. 138, § 12; ABCC's "Guidelines for Extension of Premises to Patio and Outdoor Areas;" Article 8.10.8 of the Town of Brookline By-Laws.)

B.8.) Food Service Required/Examination of Premises

Licenses issued under this Section B may be issued only to duly-licensed common victuallers and innholders that have adequate and sanitary kitchen and dining room equipment and capacity for preparing, cooking and serving suitable food for strangers, travelers and other patrons, as required by Chapter 140 of the Massachusetts General Laws. All establishments must also obtain applicable permits from the Health Department. The Board shall not grant any license under this Section B until after it or its authorized agent has conducted an examination of the premises and determined that the business satisfies the requirements for a restaurant or innholder. No license shall be renewed unless the licensee has satisfied the Board that it is in good faith operating a restaurant and has the proper equipment for the service of food.

Food service shall be available and offered in all areas and seats where alcoholic beverages are served except in an approved waiting area. Alcoholic beverages may be served to individuals in approved waiting areas.

The manager on duty shall bear ultimate responsibility for the strict enforcement of food and beverage service regulations, including, without limitation, assuring that no patron is over-served alcohol and that no alcohol is served to or consumed by underage persons.

For the purposes of these regulations, the term “food service” shall mean the preparing, sale, service, dispensing, distribution, and/or delivery of “food.” “Food” shall include meals, hors d’oeuvres, sandwiches, soups, prepared foods, and salads, and shall exclude chips, nuts, pretzels, popcorn, candy, and other snack-like foods or packaged foods that require no preparation for consumption.

(See M.G.L. c. 138, §§ 12, 12A.)

B.9.) Service of Alcoholic Beverages Limited

No licensee may offer to sell or deliver alcoholic beverages by the pitcher or carafe, with the exception of pitchers or carafes of malt or wine beverages served to two or more persons at one time. With the exception of malt and wine beverages, no alcoholic beverages shall be served in any container or glass the capacity of which is in excess of sixteen fluid ounces. No more than one alcoholic beverage drink shall be served to a patron at one time for his or her own consumption.

(See 204 C.M.R. Part 4.04.)

B.10.) Service and Consumption of Alcoholic Beverages on Premises

All alcoholic beverages shall be served directly to the patron in open containers by employees of the licensed establishment who are qualified pursuant to Section A.27. No alcoholic beverages may be served over a counter except a counter with seating at which food service is also available. No alcoholic beverages served on the licensed premises shall be allowed to be removed from the premises, except as permitted by 204 C.M.R. Part 2.18. No patron shall be allowed to bring alcoholic beverages on the licensed premises for the purpose of consumption on such licensed premises.

B.11.) Hours for Sale of Alcoholic Beverages and Operation

The Board shall establish the hours during which a licensee may sell and serve alcoholic beverages based on the public need and the common good consistent with the law. In no event shall licensees sell or serve alcoholic beverages earlier than 10 a.m. and later than 2 a.m. A licensee may petition the Board to sell and serve alcoholic beverages earlier than 10 a.m. on days other than Sunday, except that in no event shall a licensee sell or serve alcoholic beverages earlier than 8 a.m. The hours for the sale and service of alcoholic beverages shall be further restricted to the hours during which food service (as defined in Section B.7) is available, with the exception of the last hour before the closing hour that is stated on the liquor license.

“Last call” (a final opportunity to purchase alcoholic beverages) shall be at least one-half hour prior to the closing hour.

No alcohol shall be consumed on the premises after the closing hour stated on the license. No patrons shall be on the premises more than fifteen (15) minutes after the stated closing hour. All tables and bars must be cleared of all glasses, bottles and containers containing alcoholic beverages within one-half hour after the closing hour.

The Board shall not decrease a licensee's hours until after a public hearing or opportunity therefor.

Consistent with law, in no event shall the Board restrict a licensee from selling alcohol between the hours of 11 a.m. and 11 p.m. on secular days, and 12 p.m. and 11 p.m. on Sundays.

(See M.G.L. c. 138, §§ 12, 33, 33A.)

B.12.) Bar Seats Limited

With respect to applications for a new liquor license or for a change to the premises, the ratio of bar seats to table seats is subject to the review and approval of the Board. In connection with such applications, the Building Commissioner shall bring to the Board's attention a proposal, description, illustration, and/or detailed plan of a premises submitted pursuant to Section A.7 that evidences a ratio of more than 1 bar seat per 10 table seats.

B.13.) Tastings

A licensee may provide on premises tastings of sample wine (up to 1 oz. serving), malt (up to 2 oz. serving), or (in the case of holders of an All Kinds license) other alcohol (up to ¼ oz. serving) if served with food and the licensee does not solicit orders for off-premises consumption.

(See M.G.L. c. 138, § 12.)

B.14.) Price Schedules

Licensees shall maintain a price schedule showing charges for all drinks and shall make sales at the prices stated.

(See 204 C.M.R. Parts 2.02(1), 4.02.)

B.15.) Required Posting

All licensees shall post conspicuously a copy of the penalties set forth in M.G.L. c. 90, § 24(1) for operating a motor vehicle under the influence of alcohol in the form that such posting is distributed by the Alcoholic Beverages Control Commission.

(See M.G.L. c. 138, § 34D.)

B.16.) Clear View of Premises' Interior

No advertising matter, screen, curtain, or other obstruction which, in the opinion of the Board, prevents a clear view of the interior of the licensed premises from outside the premises shall be maintained in or on any window or door thereof after the Board has ordered the removal of such obstruction and has afforded the licensee a reasonable opportunity to comply.

(See M.G.L. c. 138, § 1 (re: "restaurant").)

Section C. RETAIL PACKAGE STORE LICENSES

(M.G.L. c. 138, § 15)

C.1.) Applicability of Town Liquor Regulations

All licenses issued by the Board under this Section C are subject to and conditioned on compliance with the regulations contained in this Section C and in Section A.

C.2.) Qualified Applicants – Prior Convictions / Citizenship / Residency

The Board shall not grant any license under this Section C to an applicant who has been convicted of a felony. In addition to the qualification requirements set forth in Section A.3 of these regulations, an applicant for a retail package store license under this Section C must be a resident of Massachusetts, or a partnership composed solely of citizens and residents, or a corporation organized under Massachusetts laws of which all directors are citizens and a majority are residents of Massachusetts, or a limited liability company organized under Massachusetts law.

(See M.G.L. c. 138, § 15.)

C.3.) Limitation on Licensed Premises

No premises licensed under this Section C shall include or be connected with premises that are licensed as a common victualler, innholder, or club to sell alcoholic beverages.

(See M.G.L. c. 138, § 15.)

C.4.) License Number Limitation

No person, firm, corporation, association, or other combination of persons, directly or indirectly, shall be granted more than one (1) retail package store license in Brookline. No such person or entity shall be granted more than five (5) retail package store licenses in Massachusetts.

(See M.G.L. c. 138, § 15.)

C.5.) Hours and Days of Sales

The Board shall set a licensee's opening and closing hours based on the public need and the common good consistent with the law. In no event shall the Board set an opening hour earlier than 10 a.m. on Sundays and 8 a.m. on all other days. In no event shall the Board set a closing hour later than 11 p.m. except on days preceding a legal holiday, when the closing hour shall be no later than 11:30 p.m. Sales are not permitted on the last Monday in May, on Thanksgiving Day, on Christmas Day, and on the day following Christmas when Christmas is on a Sunday. A retail package store licensee shall not be required to sell alcoholic beverages on Sundays and legal holidays. If a licensee is permitted to sell alcoholic beverages on Sundays, it shall also be permitted to cease the conduct of business on one other day of the week. Unless otherwise specified in a license, licensees may sell and deliver alcohol during polling hours on any day on which a state or municipal election is held in the Town.

(See M.G.L. c. 138, §§ 15, 33; G.L. c. 136, §§ 5 and 6(52).)

C.6.) Consumption on Premises Prohibited Except Sample Tastings

No alcoholic beverages shall be sold to be drunk on the premises, except that licensees may provide without charge on their premises sample wine or malt beverage tasting of products available for sale on their premises. Each "taste" shall be limited to 1 ounce of wine or 2 ounces of malt beverage, and, if licensed for tastings of cordials and liqueurs and other alcoholic beverages, ¼ ounce of such other beverage.

(See M.G.L. c. 138, § 15.)

C.7.) Posting of Prices / Original Packaging

Every licensee shall conspicuously post in each room where alcoholic beverages are sold a price list of such beverages. All prices that can be seen by customers in the licensee's store, whether on shelves, in circular form or otherwise, must correspond with the price charged to customers. Sales by licensees shall be made only in the original package of the manufacturer, wholesaler or importer.

(See M.G.L. c. 138, § 15.)

C.8.) Posting of Penalties for Operating While Drinking From Open Container

Every licensee shall post conspicuously a copy of the penalties set forth in Massachusetts General Laws Chapter 90, Section 24(I), for operating a motor vehicle while drinking from an open container in the form that such posting is distributed by the Alcoholic Beverages Control Commission.

(See M.G.L. c. 138, § 34D.)

C.9.) Deliveries Off Premises

A written record shall be maintained listing the name and address of every person to whom a delivery of alcoholic beverages is made outside of the premises. Such record shall include the amount of alcoholic beverages that were delivered, the date and time of delivery, and the signature of the person receiving the delivery. Such records shall be maintained for a period of not less than one year and must be available for inspection by the Board and its authorized agents at all times. All deliveries shall be made in vehicles permitted by the Alcoholic Beverages Control Commission and by persons at least 21 years of age who have received training and certification as required by Section A.27 above. The person in charge of such vehicle used for delivery shall carry an invoice or sales slip stating the name(s) and address(es) of the purchaser(s), the date and amount of the purchase, and an itemization of the number of containers of each kind, the quantities, and the brands of the alcoholic beverages purchased. Verification pursuant to Section A.24 above that the person receiving the delivery is at least 21 years of age must be made prior to delivery.

(See M.G.L. c. 138, § 22; 204 CMR 2.05(3).)

C.10.) Seating, Chairs, Stools, and Tables Prohibited

No seating, chairs, stools, or tables for use by customers or patrons shall be placed or permitted by a retail package store licensee upon or within the licensed premises, or upon any area under the direction and control of the licensee, except as permitted by the Board.

C.11.) "Nips"

Licensees shall not offer for sale "nips" (defined as a bottle of spirits containing fewer than eight (8) fluid ounces) from a location within the premises that may be accessed directly by customers. "Nips" may be offered for sale only upon the request of a customer from a location within the premises to which customers do not have direct access, such as from behind a counter.

Section D. CLUB LICENSES

(M.G.L. c. 138, § 15)

D.1.) Applicability of Town Liquor Regulations

All licenses issued by the Board under this Section D are subject to and conditioned on compliance with the regulations contained in this Section D and in Section A, and, in addition, with the following regulations contained in Section B (“Common Victuallers and Innholders”):

- B.3 (“Qualified Applicants”)
- B.4 (“Seasonal Licenses”)
- B.6 (“Required Insurance”)
- B.7 (“Service and Consumption Limited to Approved Areas / Additional Outdoor Seating Requirements for Liquor Licensees”)
- B.9 (“Service of Alcoholic Beverages Limited”)
- B.14 (“Price Schedules”)
- B.15 (“Required Posting”)
- B.17 (“Clear View of Premises’ Interior”).

D.2.) Qualified Applicants

No license shall issue to any applicant who has been convicted of a violation of a federal or state narcotics law. No license shall issue to any applicant who is not qualified to receive one pursuant to Section A.3 of these regulations.

(See M.G.L. c. 138, § 12.)

D.3.) Hours for Sale of Alcoholic Beverages and Operation

The Board shall set a licensee’s opening and closing hours based on the public need and the common good consistent with the law. In no event shall the Board set an opening hour earlier than 10 a.m. on Sundays and 8 a.m. on all other days and a closing hour later than 2 a.m.

“Last call” (a final opportunity to purchase alcoholic beverages) shall be at least one-half hour prior to the closing hour. All patrons must be off the premises by the closing hour. All tables and bars must be cleared of all glasses, bottles and containers containing alcoholic beverages within one-half hour after the closing hour.

The Board shall not decrease a licensee’s hours until after a public hearing or opportunity therefore.

Consistent with law, in no event shall the Board restrict a licensee from selling alcohol between the hours of 11 a.m. and 11 p.m. on secular days and 12 p.m. and 11 p.m. on Sundays.

(See M.G.L. c. 138, §§ 12, 33, 33A.)

D.4.) Service and Consumption of Alcoholic Beverages On Premises

All alcoholic beverages shall be served in open containers by wait or bartender staff of the licensed establishment directly to the patron. No alcoholic beverages served on the premises shall be allowed to be removed from the premises, except as permitted by 204 C.M.R. Part 2.18. No patron shall be allowed to bring alcoholic beverages on the licensed premises for the purpose of consumption on such licensed premises.

D.5.) List of Officers, Members and Employees

Annually, the licensee shall submit to the Board, within three months after January first, a listing of the names and residences of all the club’s directors or officers, members, and employees as of January first. The amount of salary or other compensation received by each employee serving or handling alcoholic beverages shall be included. Such list shall be maintained current during the year and be available for inspection on the premises at all times.

(See M.G.L. c. 138, § 1 (re: “clubs”).)

D.6.) Guest Register Book

A guest register book shall be maintained which indicates the name of the guest and the member accompanying the guest. No guest shall be allowed to enter the premises unless he or she is invited and accompanied by a member and signs the guest register. Such guest register shall be available for inspection at all times.

D.7.) Only Members and Guests to Be Served

Only members and their properly-registered guests shall be served alcoholic beverages.

D.8.) Valet Parking

Unless a licensee wishes to operate a valet service exclusively on private property, licensees are required to obtain a Valet Permit from the Transportation Board in order to offer any valet service that utilizes the public way.

(See Article V, Section VII of the Brookline Transportation Board Rules and Regulations.)

**Section E. TEMPORARY LICENSES FOR THE SALE OF ALCOHOL
AND PERMITS TO SERVE ALCOHOL ON TOWN OR SCHOOL PROPERTY**

E.1.) Applicability of Town Liquor Regulations

Unless otherwise specified, all licenses and permits issued by the Board under this Section E are subject to and conditioned on compliance with the regulations contained in this Section E, and, in addition, with the following regulations contained in Section A (“General”) and Section B (“Common Victualler and Innholder Licenses”):

- A.2 (“Legislative Authority / Compliance with Laws, Regulations, By-Laws and Conditions”),
- A.3 (“Qualified Applicants”) (except that U.S. citizenship requirements are applicable to applicants for Section 14 temporary licenses and farmer-winery licenses only),
- A.14 (“Access to Premises, Inspections, Required Documentation on Premises, and Requests for Information By the Board and its Agents”),
- A.15 (“Display of Licenses and Permits”),
- A.16 (“Occupancy”),
- A.21 (“Employee Consumption Prohibited”),
- A.22 (“No Disorder, Disturbance, or Illegality on Licensed Premises”),
- A.23 (“Service Prohibited to Under-Aged and Intoxicated Individuals”),
- A.24 (“Identification Cards”),
- A.28 (“Crowd Manager”),
- A.29 (“Charge for Alcoholic Beverages”),
- A.33 (“Interior Lighting”),
- A.34 (“Discrimination Prohibited”), and
- B.9 (“Service of Alcoholic Beverages Limited”).

E.2.) Section 14 Temporary Licenses to Sell Alcohol

Pursuant to M.G.L. c. 138, § 14, the Board may grant a temporary license a) to the responsible manager (a natural person) of any non-profit organization conducting any indoor or outdoor activity or enterprise, for the sale of all alcoholic beverages or of wine and malt beverages only, or either of them, b) to the responsible manager (a natural person) of any indoor or outdoor activity or enterprise, for the sale of wine and malt beverages only, or either of them, or c) for the sale of wine and malt beverages in the dining halls maintained by incorporated educational institutions authorized to grant degrees (hereinafter, licenses issued pursuant to this Section E.2 are referred to as “Section 14 temporary licenses”).

A Section 14 temporary license may not be granted to a person who has a pending application for a liquor license as a common victualler, innholder, or club under Section B or D, or for any premises that already has a liquor license under Section B or D in effect for the time period for which the Section 14 temporary license is sought.

Other than with respect to dining halls maintained by incorporated educational institutions authorized to grant degrees, no Section 14 temporary license shall permit sales on more than 30 days, nor may any person or organization be granted Section 14 temporary licenses permitting sales on an aggregate of more than 30 days in any calendar year. However, Section 14 temporary licenses permitting sales at the municipal golf course may permit sales on an aggregate of not more than 245 days in any calendar year.

The Board shall fix and shall specify on the license the hours during which a Section 14 temporary licensee may sell or furnish alcohol, but in no event shall a Section 14 temporary licensee sell or deliver alcoholic beverages between the hours of 2 a.m. and 10 a.m.

(See M.G.L. c. 138, §§ 14, 26; 204 C.M.R. Parts 7.02, 7.03, 7.04.)

E.3.) Section 15F Farmer-Winery Temporary Licenses

Pursuant to M.G.L. c. 138, § 15F, the Board may issue to an applicant authorized to operate a farmer-winery under M.G.L. c. 138, § 19B, or in any other state, a temporary license for the sale of wine produced by or for the licensee in sealed containers for off-premises consumption at an indoor or outdoor agricultural event (“farmer-winery license”). A farmer-winery license may be granted for an indoor or outdoor agricultural event that takes place on multiple dates and/or times during a single calendar year, but no such license shall be granted for an agricultural event that will not take place within 1 calendar year. Such licenses shall be non-transferable and shall clearly be marked non-transferable on the face. The fee for such licenses shall not exceed \$50.

(See M.G.L. c. 138, § 15F.)

E.4.) Licenses for the Sale of Wine for Charitable Purposes and/or at Auction

To the extent as may be permitted by 1997 Mass. Acts ch. 153 as amended, the Board may issue the following temporary licenses for the sale of alcoholic beverages, with the approval of the ABCC:

a. Sales by Charities of Donated Wine to be Drunk on Premises. For the sale of wine to be drunk on the premises, to applicants which are nonprofit charitable corporations organized under chapter 180 of the Massachusetts General laws and registered with the public charities division of the office of the attorney general. Any wine sold under this Section E.4(a) shall be donated at no charge to the licensee, and all proceeds shall be used for the licensee’s charitable purposes. Any wine so donated may be dispensed by the employees or agents of the donor(s) of the wine, without compensation for the dispensing services provided. The licensed premises must be either the principal place of business or headquarters of the applicant which is legally zoned to allow such sales, or the premises of a common victualler, innholder or club liquor licensee licensed pursuant to Sections B or D above. No such temporary license shall be for a duration of more than 10 consecutive calendar days and no holder shall be granted more than 2 such licenses in a calendar year. The fee charged shall not exceed the minimum fee established for holders of licenses to sell wine. The hours shall be as set by the Board, but in any event shall be limited to those permitted by Section B.7. (See Section 3 of 1997 Mass. Acts ch. 153, as amended by 1998 Mass. Acts ch. 450, 2002 Mass. Acts ch. 398, 2007 Mass. Acts ch. 229, 2012 Mass. Acts ch. 405 (with sunset provision).)

b. Joint Sales by a Charity Together With a Common Victualler, Innholder, and/or Club Primarily for Charitable Purposes of Wine to be Drunk on the Premises. For the sale of wine to be drunk on the premises, to joint applicants which consist of one or more nonprofit charitable corporations organized under chapter 180 of the Massachusetts General Laws and registered with the public charities division of the office of the attorney general together with a common victualler, innholder or club liquor licensee licensed pursuant to Section B or D above. Any wine sold under this section E.4(b) may be donated at no charge to the licensee. A majority of the proceeds from such sales shall be used for the nonprofit charitable corporation licensee’s charitable purposes. Any wine sold under this Section E.4(b) may be dispensed by the employees or agents of the donor of the wine, without compensation for the dispensing services provided. The licensed premises must be the premises of the joint applicant that is a common victualler, innholder or club liquor licensee. No such temporary license shall be for a duration of more than 10 consecutive calendar days and no holder shall be granted more than 20 such licenses in a calendar year. The fee charged shall not exceed the minimum fee established for holders of licenses to sell wine. The hours shall be as set by the Board, but in any event shall be limited to those permitted by Section B.7. (See Section 4 of 1997 Mass. Acts ch. 153, as amended by 1998 Mass. Acts ch. 450, 2002 Mass. Acts ch. 398, 2007 Mass. Acts ch. 229, 2012 Mass. Acts ch. 405 (with sunset provision).)

c. Auctions by Charities of Donated Wine to Be Drunk Off Premises. For the sale at auction of wine not to be drunk on the premises, to applicants which are nonprofit charitable organizations organized under chapter 180 of the Massachusetts General Laws and registered with the public charities division of the office of the attorney general. Any wine sold under this Section E.4(c) shall be donated at no charge to the licensee and all proceeds shall be used for the licensee’s charitable purposes. The licensed premises must be either the principal place of business or headquarters of the applicant that is legally zoned to allow such sales or a location

owned or leased by the applicant from which the applicant regularly conducts business that is legally zoned to allow such sales, or the premises of a common victualler, innholder, club or retail package store liquor licensee licensed pursuant to Sections B, C or D above. No such temporary license shall be for a duration of more than 10 consecutive calendar days and no holder shall be granted more than 5 such licenses in a calendar year. The fee charged shall not exceed the minimum fee established for holders of licenses to sell wine. The hours shall be as set by the Board but in any event shall be limited to those permitted by Section B.7. (See Section 1 of 1997 Mass. Acts ch. 153, as amended by 1998 Mass. Acts ch. 450, 2002 Mass. Acts ch. 398, 2007 Mass. Acts ch. 229, 2012 Mass. Acts ch. 405 (with sunset provision).)

d. Auctions by Retail Package Stores of Wine to be Drunk Off Premises. For the sale at auction of wine not to be drunk on the premises, to applicants which are retail package store liquor licensees licensed pursuant to Section C above. The licensed premises must be either the principal place of business or headquarters of the applicant that is legally zoned to allow such sales, or the premises of a common victualler, innholder, club or retail package store liquor licensee licensed pursuant to Sections B, C or D above. No such temporary license shall be for a duration of more than 10 consecutive calendar days and no holder shall be granted more than 2 such licenses in a calendar year. The fee charged shall not exceed the minimum fee established for holders of licenses to sell wine. The hours shall be as set by the Board but in any event shall be limited to those permitted by Section C.5. (See Section 2 of 1997 Mass. Acts ch. 153, as amended by 1998 Mass. Acts ch. 450, 2002 Mass. Acts ch. 398, 2007 Mass. Acts ch. 229, 2012 Mass. Acts ch. 405 (with sunset provision).)

E.5) Alcoholic Beverages on Town Property

Any person or entity who seeks to sell alcoholic beverages on Town property must either have a Board-issued Section 14 temporary license or a State-issued caterer's license permitting such sales.

Unless a person or entity has a Board-issued Section 14 temporary license, no alcoholic beverages may be furnished on Town property except as the Board may permit by permit. This permit requirement applies both to caterers selling alcoholic beverages under a State-issued caterer's license, and persons and entities furnishing alcoholic beverages on a non-sale basis. The Board may grant the permit to furnish alcoholic beverages on Town property after hearing, subject to such conditions as it may specify. The Board shall fix and shall specify on the permit the hours during which a permittee may furnish alcoholic beverages, but in no event shall delivery of alcoholic beverages occur between the hours of 2 a.m. and 8 a.m.

An application for a permit to furnish alcoholic beverages on Town property on a non-sale basis must be made by a person or, if an entity, an officer or duly appointed representative of the entity. Any such application shall be accompanied by an affidavit signed under the penalties of perjury by the applicant or, if the applicant is an entity, the responsible manager, stating that a) alcoholic beverages will be served free of charge to all guests over 21, b) there will be no sale of alcoholic beverages at the event or any charge imposed upon guests for alcoholic beverages, c) the event is not open to the public and tickets are not available for purchase, and d) the event is by invitation only. The Board may grant the permit to furnish alcoholic beverages on Town property if it determines that no sale of alcoholic beverages will take place at the event. In such cases, the permit shall be deemed conditional on the permittee's compliance with the factual representations recited in the affidavit.

(See Article 6.2, Town of Brookline By-Laws.)

E.6) Hours and Days of Sales or Delivery

The hours and days of sales or delivery of alcoholic beverages under any license or permit issued pursuant to this Section E are subject to Board approval based on the public need and common good. Any additional limitations. See Sections E.2-E.5 and E.13 for further limitations applicable to specific types of licenses and permits.

(See M.G.L. c. 138, § 23.)

E.7.) On-Site Responsible Manager / Responsible Individual

A responsible manager who is at least 21 years of age shall be physically present on the premises at all times during the day(s) and hours for which a license, , or permit is sought and granted pursuant to this Section E. He or she shall be responsible for ensuring compliance with all applicable federal, state and local laws, regulations, by-laws and conditions of the license, including, but not limited to, compliance with the prohibition against sale or delivery of alcoholic beverages to persons who are under the age of 21 years old or intoxicated. In addition, the responsible manager shall be responsible for maintaining order and decorum upon the licensed premises. In the alternative, a licensee or permittee may designate any individual who is at least 21 years of age to fulfill the responsibilities of the responsible manager (hereinafter, such designee is referred to as the “responsible individual.”).

(See M.G.L. c. 138, § 14.)

E.8.) Minimum Age for Service of Alcohol / Service to Intoxicated Persons

No licensee or permittee under this Section E shall permit sales or service of alcoholic beverages to persons under the age of 21 years old or who is intoxicated.

(See M.G.L. c. 138, §§ 2, 30H, 34, 69.)

E.9.) Applications / Fees

All applications for licenses and permits under this Section E must contain complete and truthful information. Submission of an application containing false information shall be cause for refusing the application or for suspending, canceling or revoking a license or permit already granted. No application will be accepted for filing by the Board until it is fully complete. Fees shall be payable immediately upon approval of the license or permit by the Board.

Applications for licenses and permits under this Section E shall be in writing. The applicant shall state, as for each person who will be selling or serving alcohol, the person’s age and whether or not the person has participated in an insurance industry-approved and qualified safe-service-of-alcohol training program designed for on-premises alcohol consumption to train persons serving or selling alcohol in methods of observation and detection to avoid serving or selling alcohol to intoxicated persons and/or minors (including any on-line training program of this type), and a description of the training received and the date of training. Applications shall be accompanied by documentation showing proof of this training. Applications shall also be accompanied by a description of the portion(s) of the premises where the sale, storage and/or furnishing of alcoholic beverages will take place, including a specification and description of all indoor and any outdoor portion(s) of the premises (e.g., in the case of a function, table areas, bars, dance floors, tented areas, etc.; in the case of an agricultural event, the specific premises). Applications shall also be accompanied by proof that the applicant has complied with Section A.28 (“Crowd Manager”), if applicable.

An application shall identify 1) the name of the responsible manager of the requesting organization or enterprise, and, if different, the responsible individual, 2) the responsible manager’s and any responsible individual’s 24-hour contact information, and 3) the date of birth of the responsible manager and any responsible individual. The Board may, at its discretion, require the filing of references as part of the application. The United States Citizenship of an applicant for a Section 14 temporary license or farmer-winery license shall be proven by a birth or naturalization certificate or by proof of registered voter status.

In the event that the application is for a license or permit to sell or furnish alcoholic beverages on Town property, the application shall be accompanied by proof that the applicant has the permission of any municipal board, agency or department that has jurisdiction over the Town property to use the Town property for such purpose. In addition, the application shall be accompanied by proof of the existence of a general liability policy in effect during all days and times for which a license or permit is sought, naming the Town as an additional insured (and, if any general liability policy in effect exempts alcohol-related incidents or occurrences, a liquor liability policy naming the Town as an additional insured), in a form and for an amount approved by the Town.

In addition, the applicant must sign an agreement absolving the Town, its officials, officers, and employees from all liability in connection with the proposed use, agreeing to indemnify the Town for any damage to the Town's personal and real property resulting from the use, and agreeing to indemnify the Town for any expenses the Town incurs in restoring the property to its condition prior to the use (in excess of any routine cleaning and maintenance service the Town would ordinarily have performed irrespective of the use).

Applications for farmer-winery licenses under Section E.3 above shall be accompanied by proof of certification from the Massachusetts Department of Agricultural Resources that the event is an agricultural event.

All applications shall be accompanied by a fee in an amount determined by the Board.

The Board reserves the right to decline to consider any application filed later than 21 days before the proposed sale or delivery of alcoholic beverages.

(See M.G.L. c. 138, §§ 14, 15F, 70; 204 C.M.R. Part 2.01(1); Article 6.2, Town of Brookline By-Laws.)

E.10.) Premises Description

No licensee or permittee under this Section E shall keep for sale, sell, store or furnish alcoholic beverages in any part of the premises not specified on the license or permit. The Board shall specify on the license or permit the specific premises covered by the license or permit.

(See M.G.L. c. 138, §§ 2, 15F, 30H.)

E.11.) Tastings

Tastings offered by farmer-winery licensees shall be offered free of charge, may be delivered only to persons at least 21 years of age by persons at least 18 years of age, and shall be consumed in the presence of the licensee's employee, agent, representative or solicitor. Tastings offered by farmer-winery licensees shall not exceed one (1) ounce of wine and no more than 5 samples shall be served to an individual prospective customer. All other licensees under this Section E are prohibited from offering tastings.

(See 204 C.M.R. Part 4.03(1); M.G.L. c. 138, §§ 12, 15, 15F (restricting tastings).)

E.12.) Section 14 Temporary Licenses - Authorized Suppliers

No Section 14 temporary licensee may sell alcoholic beverages other than those purchased from an ABCC-licensed wholesaler or importer under Mass. Gen. Laws ch. 138, § 18, an ABCC-licensed manufacturer under Mass. Gen. Laws ch. 138, § 19, an ABCC-licensed farmer-winery under Mass. Gen. Laws ch. 138, § 19B, an ABCC-licensed farmer-brewery under Mass. Gen. Laws ch. 138, § 19C, or such other person or entity who has received from the ABCC a permit to sell alcohol under Mass. Gen. Laws ch. 138, § 22A.

(See 204 C.M.R. Part 7.05.)

E.13.) Compliance with By-Laws, Policies, Procedures and Guidelines Applicable to Town Property

All licensees and permittees under this Section E who are using Town property shall abide by all applicable Town by-laws, policies, procedures, guidelines and conditions of any municipal board, commission, agency or department with jurisdiction over the property, including any applicable School Committee policies, School Department procedures, Parks and Recreation Commission policies, Parks Department procedures, and Police Department guidelines pertaining to the application process, applicable fees, use of the property and conduct of licensees or permittees and their customers or guests.

(See Article 6.2, Town of Brookline By-Laws.)

E.14.) Board Discretion to Deny Application to Use Town Property

The Board may deny a request for a license or permit under this Section E if, in its opinion and after proper investigation, it appears that a public disturbance or annoyance may be created thereby, or that the public welfare, convenience or necessity will not be served thereby, or if it is not satisfied that the applicant will comply with applicable state and local laws, regulations, by-laws, or conditions on the license or permission, or applicable Town policies, procedures or guidelines.

(See Article 6.2, Town of Brookline By-Laws.)

E.15.) Sanctions

Whenever the Board opines that a licensee or permittee under this Section E has failed to comply with applicable federal, state or local laws, regulations or by-laws or conditions on the license or permit, the Board may refuse to issue or reissue to any applicant a license or permit and it may modify, suspend, cancel or revoke a license or permit already granted (in the case of farmer-winery and Section 14 temporary licenses, only after a hearing or the opportunity therefor), and shall mail notice of such modification, suspension, cancellation or revocation to the licensee or permittee.

(See M.G.L. c. 138, §§ 2, 23, 30H, 64; 204 C.M.R. Part 7.06.)