

**BOARD OF SELECTMEN REGULATION**

***Alcoholic Beverage License Regulations Applicable to Restaurants***

Date Approved by BOS:

Signature of Chair:

March 15, 2010

*Norman P. Cohen*

**I. PURPOSE**

The Board of Selectmen is duly authorized by statute to issue and to regulate alcoholic beverage licenses. These regulations set the standards by which the Selectmen will review requests by holders of Common Victualler licenses for All Alcohol and for Wine and Malt only licenses. It is the intent of the Board of Selectmen that alcoholic beverage service in restaurants should be incidental to food service and that establishments whose primary purpose is the service of alcoholic beverages will not be licensed.

**II. GENERAL REQUIREMENTS**

1. The issuance of an All Alcohol or a Wine and Malt Beverage only license is an accommodation to a duly licensed Common Victualler who serves food to the public in a restaurant.
2. An alcoholic beverage license shall not be issued to any applicant unless such applicant is the licensee named and operates the dining facility identified in the Common Victualler License.
3. An alcoholic beverage license shall not be granted to establishments that have their primary business derived from fast-food service, as defined in the Zoning Bylaw.
4. Restaurants must have a minimum seating capacity of 18 to be granted an alcoholic beverage license.
5. Food service must be provided to seated patrons and served by wait staff.
6. Unless the Board of Selectmen elects to reduce such hours as a condition of a license, the hours for serving alcoholic beverages shall not exceed the following: 11:00 a.m. to 12:00 midnight seven days a week. Restaurants may serve alcoholic beverages past 12:00 midnight on New Year's Eve until 1:00 a.m. on January 1, subject to a written request to and the prior approval in writing from the Town Manager. In determining whether to approve such request, the Town Manager shall take into consideration any objections or complaints concerning restaurant operations that may have been received by the Town or the Town police.

7. The hours during which sales of alcoholic beverages may be made in a restaurant are further limited to the times when the dining room is open and food service is available. No alcoholic beverages shall be sold or served in a restaurant before it is open and food service is available, nor after the restaurant has been closed or food service has ended. Food service is defined as the service of any food, including appetizers, desserts and snacks.
8. Automatic amusement devices in compliance with Massachusetts General Laws Chapter 140, § 177A may be kept in licensed premises, provided that each such device is properly licensed by the Town of Lexington as an automatic amusement device, and is installed on the premises so as to be kept in open view at all times while in operation, and shall at all times be available for inspection. No device designed or intended for gambling, gaming or betting for money or property shall be permitted in a licensed premise, nor shall any other automatic amusement device be permitted to be used for such purpose. The term “automatic amusement device” shall mean any mechanism whereby, upon the deposit therein of a coin or token, any apparatus is released or set in motion or put in a position where it may be set in motion for the purpose of playing any game involving, in whole or in part, the skill of the player, including but not limited to such devices commonly known as pinball machines and video or electronic games.
9. All alcoholic beverages must be bought, served and drunk on the premises. No person shall be allowed to take or consume alcoholic beverages on the sidewalks of any licensed establishment or on the public sidewalks, unless an application to extend the licensed premises has been approved by the Board of Selectmen. Such extension must meet guidelines for extension of premises to patio and outdoor areas established by the ABCC.
10. No license shall be sold, transferred or surrendered without the prior approval of the Board of Selectmen.
11. All alcoholic beverage licenses are conditioned on the compliance with all applicable state and local laws, including but not limited to M.G.L. Chapters 138 and 140, the state building code, the ABCC Regulations and Lexington’s bylaws and regulations.
12. No corporation, organized under the laws of the Commonwealth or any other state or foreign country, shall be issued a license to sell in any manner any alcoholic beverages unless such corporation shall have first appointed, by vote of its Board of Directors or other similar board, as manager or other principal representative, a citizen of the United States, and shall have vested in him by properly authorized and executed written delegation full authority and control of the premises described in the license of such corporation and of the conduct of all business therein relative to alcoholic beverages nor unless such manager or representative is, with respect to his character, satisfactory to the licensing authorities.

13. Such manager or representative shall be present in the licensed premises and shall be available to the licensing authorities at all times during which alcoholic beverages are being sold pursuant to the license of such corporation, unless some other person, similarly qualified, authorized and satisfactory to the licensing authorities, and whose authority to act in place of such manager or principal representative shall first have been certified to the licensing authorities as set forth in paragraph 14, is present in the premises and acting in the place of such manager or principal representative.
14. All managers listed on the license must provide the Board with proof of successful completion of an accredited alcoholic beverage server training program (such as Training for Intervention Procedures by Servers (TIPS)). All other employees must complete similar in-house training within 30 days of hire.
15. No alcoholic beverage license shall be granted unless toilet facilities are generally available to the patrons of the restaurant.
16. The alcoholic beverage license must be prominently displayed and available for public viewing inside the premises.
17. The manager or representative is responsible for the order and decorum kept in the premises and in the immediate surrounding exterior area and must cooperate with Town Officials. The property is subject to inspection by appropriate Town Officials.
18. If the licensed establishment is closed for more than 7 consecutive days or 10 days in a calendar year without prior approval, it shall be considered abandonment of the alcoholic beverage license and is cause for the suspension or revocation of the license.
19. Alcoholic licenses issued shall be conditioned on strict compliance with these regulations, and any failure to comply may be cause for refusing to grant or renew a license or for suspending, canceling, or revoking a license already granted, at the discretion of the Board of Selectmen after consideration of all relevant circumstances.

### III. THE APPLICATION

20. Alcoholic beverage licenses are issued for one year only, subject to annual review and renewal by the Board.
21. No action shall be taken by the Board of Selectmen on an application until the information requested on the application form is complete and all license fees are paid.

22. All applicants must submit to the Board of Selectmen with the application a floor plan of the building on which is clearly marked and designated the location of proposed service bars and the dining rooms, function rooms, restrooms, or other rooms in which approval of the Board of Selectmen for the sale of alcoholic beverages is requested. Sales and service of alcoholic beverages are prohibited in any areas or locations not expressly approved by the Board of Selectmen, and no change in such area or location may be made without prior approval of the Board of Selectmen.
23. Every application for an alcoholic beverage license made by a corporation shall state the full names and home addresses of the president, treasurer, clerk and secretary, directors and manager or other principal representative of the corporation. The application shall be signed by a corporate officer duly authorized by a vote of the corporation's board of directors or other similar board. A copy of such vote certified by the clerk or secretary of the corporation, together with a copy of the certificate of its organization, shall be submitted with the application. A copy of the vote appointing the corporation's manager or other principal representative shall also be submitted with the application.
24. All applications for licenses shall be made upon blanks furnished by the licensing authorities, shall be fully answered in detail and shall be typewritten or legibly written in ink. Applications written in pencil, in whole or in part, will not be accepted.
25. Statements and information provided in all applications shall be made under the pains and penalties of perjury and any false statement contained in any application shall be cause for refusing to grant or renew the alcoholic beverage license or for suspending, canceling or revoking an alcoholic beverage license already granted.
26. The annual license fee is due at the time of applying for or renewing an alcoholic beverage license. Annual fees are as follows:
  - (a) All Alcohol - \$3,500, and;
  - (b) Wine and Malt Only - \$2,500.
27. For a new license or change of license, a \$100 administrative fee is due at the time of application.
28. If an applicant is denied a license, a new application shall not be received for 12 months unless a Board of Selectmen member, who previously voted against the application, moves to allow resubmission and such motion prevails.

#### IV. BACKGROUND

The Town of Lexington, by a vote of its citizens, had earlier established alcoholic beverage licenses for restaurants with a minimum seating capacity of 99. In 2002, the Lexington Center Committee began to discuss ways to attract more businesses to the commercial district. They found that surrounding communities such as Arlington and Waltham had revitalized their commercial areas by attracting smaller chef-owned restaurants. The ability to sell alcohol made these restaurants economically viable. Town Meeting passed a home rule petition seeking to eliminate the 99-seat minimum seating capacity. That petition was approved by the Legislature and then overwhelmingly approved by the citizens on March 2, 2004 by a vote of 7022 to 1224.

#### V. REFERENCES

Adopted by the Board of Selectmen June 13, 1967.

Amended rules adopted May 24, 1971

Amended rules adopted May 10, 1977

Amended rules adopted December 18, 1978

Vote of citizens of 3/2/04 (no minimum seating required)

Amended rules adopted by the Board of Selectmen on September 13, 2004.

Amended rules adopted February 15, 2005.

Amended rules adopted by the Board of Selectmen on March 15, 2010.

MGL Chapter 138