

**Town of Mashpee Board of Selectmen
Policy 068**

Alcoholic Beverages Licenses

I. POLICY

The Board of Selectmen is the Local Licensing Authority for the Town for all purposes under M.G.L. c. 138 and Section 3-2(c) of the Mashpee Home Rule Charter ("Charter") and has sole authority for the issuance and regulation of all alcoholic beverage licenses within the Town. By virtue of this authority, the Board hereby establishes these rules and regulations governing alcoholic beverage licenses. The Board takes very seriously the responsibility of granting liquor licenses and expects all applicants to adhere to this Policy's requirements. All licenses issued for the sale of alcoholic beverages, shall be issued on the condition of full compliance with the terms hereof. Failure to so comply shall constitute sufficient cause for refusing to grant or renew the license, or for suspending, cancelling, or revoking a license previously granted. This Policy shall supersede all previous policies issued by the Town of Mashpee relative to Alcoholic Beverage Licenses. The Board may exercise its authority to amend these Regulations from time to time with proper notification to licensees.

II. PURPOSE

This Policy exists solely for the assistance of the Board, the general public, licensees and prospective liquor license applicants, to enable them to work together to accomplish the goal of responsible alcohol service and consumption. It also provides the applicant with the penalty structure to be followed if liquor violations occur. It should be emphasized that the purpose of this Policy is primarily preventative, not punitive. It is the Town's position that license holders and their employees are ultimately responsible for preventing alcohol abuse on the licensed premises.

The issuance of liquor licenses and the sale of all alcoholic, wine, and malt beverages in the Town of Mashpee is governed by the Town's liquor regulations, Chapter 204 of the Code of Massachusetts Regulations as promulgated by the Alcoholic Beverage Control Commission ("ABCC"), and Chapter 138 of the Massachusetts General Laws. The licensee is responsible for enforcing and complying with these laws and regulations. To that end, this Policy shall apply to:

- New Licenses
- Change/Transfer of License or Licensed Premises
- One-Day Licenses

III. TYPES OF ALCOHOL LICENSES GRANTED

The Town of Mashpee issues several types of alcoholic beverage licenses. All licenses shall comply with M.G.L. c. 138, and Chapter 204 CMR, as those laws and regulations relate to the specific type of licenses, including, but not limited to, those listed below.

Restaurant All Alcohol: Issued to qualified applicants to sell all alcoholic beverages in a restaurant and/or function room under the applicable regulations of Massachusetts General Laws, the ABCC, the Town of Mashpee, and any and all conditions set forth in the specific license.

Restaurant Wine and Malt: Issued to qualified applicants to sell only wine and malt beverages in a restaurant under the applicable regulations of Massachusetts General Laws, the ABCC, the Town of Mashpee, and any and all conditions set forth in the specific license.

Innholder All Alcohol: Issued to qualified applicants to sell all alcoholic beverages in a hotel dining area under the applicable regulations of Massachusetts General Laws, the ABCC, the Town of Mashpee, and any and all conditions set forth in the specific license.

Club and Veterans Organization All Alcohol: Issued to qualified applicant Clubs existing under Chapter 180 of Massachusetts General Laws and Veterans' Organizations duly chartered or authorized by the Laws of the United States or the Commonwealth of Massachusetts to sell all alcoholic beverages under the applicable regulations of Massachusetts General Laws, the ABCC, the Town of Mashpee, and any and all conditions set forth in the specific license.

Package Store All Alcohol: Issued to qualified applicants to sell all alcoholic beverages in packages not to be consumed on the premises under the applicable regulations of Massachusetts General Laws, the ABCC, the Town of Mashpee, and any and all conditions set forth in the specific license.

Package Store Wine and Malt: Issued to qualified applicants to sell wine and malt beverages in packages not to be consumed on the premises under the applicable regulations of Massachusetts General Laws, the ABCC, the Town of Mashpee, and any and all conditions set forth in the specific license.

One-day Special Event: Issued to qualified applicants with-non-profit status to sell all alcoholic beverages; or to sell wine and malt beverages only; or to qualified applicants with for profit status to sell wine and malt beverages only under the applicable regulations of Massachusetts General Laws, the ABCC, the Town of Mashpee, and any and all conditions set forth in the specific license.

IV. RETAIL LIQUOR LICENSE APPLICATION PROCEDURE

All license applications must be submitted in complete form on applications provided by the ABCC, in order to be processed for consideration by the Board and the ABCC. In most instances, a legal notice, paid for by the applicant, and notification to direct abutters by the applicant will be required. While the Office of the Board of Selectmen will assist any individual with the filing of an application, it is not the responsibility of the office staff to prepare the application and other required forms; accordingly any deficiencies and/or omissions in an application shall be deemed the responsibility of the applicant.

New License: The applicant shall prepare and compile all documents required by General Law, the ABCC and the Town of Mashpee, and submit them to the Board. A public hearing will be scheduled and placed on an upcoming Selectmen meeting agenda, and notice will be published

in a newspaper of local circulation at least 10 calendar days in advance of said hearing. Within three days of publication of the notice, the applicant shall send a copy of the notice, by certified mail, to all direct abutters. At the hearing, the Board will consider input from the applicant and interested members of the public relative to the application. Should the Board vote to approve the new license, the application will subsequently be forwarded to the ABCC for its consideration.

License Renewals: The applicant shall be responsible for meeting all renewal requirements and deadlines established by General Law and the ABCC. In addition, the applicant shall provide to the Office of the Selectmen, annually, the address and phone number of the licensed premises; updated contact information for the licensee and manager of record, to include personal address, phone and email, and the mailing address at which the licensee wishes to receive correspondence related to the liquor license. The applicant shall submit a completed Liquor Liability Statement (Under Chapter 138, Section 15A), a completed Workers' Compensation Insurance Affidavit, and a Certificate of Insurance showing the policy number and expiration date. The applicant shall be responsible for ensuring the licensed premises has successfully passed all building/fire inspections, and that all taxes are paid to date.

V. LICENSE FEES

No license shall be issued until payment in full of all applicable fees is received by the Town, including fees for publication of the hearing notice. Payments shall be made by cash, bank or personal/business check. Fees may vary depending upon the type of application submitted, but shall be in accordance with the Liquor License Fee Schedule adopted by the Board. Said fee schedule may be amended from time to time. License fees are non-refundable. License fees may be prorated for new license applications filed after September 30th, only upon written request by the licensee which is subsequently approved by the Board at a regularly scheduled meeting.

VI. LICENSE PERIOD

When properly granted or renewed, annual licenses shall be effective from January 1st through December 31st of the same year. When properly granted or renewed, seasonal licenses shall be valid from April 1st through January 15th of the following year. Any new license issued after January 1st shall expire on December 31st of the same year. Likewise, any seasonal license issued after April 1st shall expire on January 15th of the following year.

VII. CESSATION OF OPERATION

Any licensee intending to close a licensed premises, whether on a temporary or permanent basis, must notify the Board in writing at least 30 days prior to such closing, stating the reason for and length of said closing.

Temporary Closure: Licensees may close a licensed premises for up to seven (7) calendar days without notification to the Board. Licensees may close a licensed premises for a maximum of thirty (30) days upon written request to and approval by the Board. Licensees intending to close a licensed premises for more than thirty (30) days shall do so only after written notification to and approval of the Board following a public hearing. Any licensee intending to change hours of

operation may do so only after written notification to and approval by the Board. No licensed premises shall be open for business less than 25 hours per week from December through April.

VIII. APPLICATIONS FOR CHANGE OR TRANSFER OF LICENSE

Application must be made to the Board prior to any of the below listed actions taking effect relative to an existing license and/or licensed premises. Upon receipt of application for any such change/transfer, and following any required public hearing, the Board will vote on the matter and, if approved, the application will be forwarded to the ABCC for its approval. All required fees shall be paid in full prior to the issuance of any new or modified license.

- Change of Manager
- Pledge of License/Stock/Inventory
- Change of Corporate Name
- New Officers/Directors
- Transfer of Stock or New Stockholders
- Alteration of Premises
- Change of Location
- Transfer of License
- Change of DBA
- Change of Hours
- Seasonal to Annual
- Wine & Malt to All Alcohol

IX. SPECIAL "ONE-DAY LIQUOR LICENSE"

Unlike an annual liquor license, a special one-day license that is granted under M.G.L. c. 138, §14 does not require the approval of the ABCC. One-day licenses for sale of all alcoholic beverages may be issued only to the manager/representative for a non-profit organization and the applicant will be required to provide proof of the organization's 501(c)(3) status. One-day liquor licenses for the sale of wine and malt beverages may be issued to the manager/representative for any for-profit or nonprofit enterprise. This special license authorizes its holder to sell alcoholic beverages at any indoor or outdoor activity, subject to certain restrictions. Pursuant to M.G.L. c. 138, §23 and 204 CMR 7.05, the holder of a one-day special license must purchase alcohol from authorized wholesalers only, and must comply with all alcohol storage requirements. As ABCC approval for one-day license is not necessary, the local licensing authority may impose additional regulations/conditions with respect to these licenses, consistent with local interests. A police detail, a well-defined plan/diagram of the premises showing the proposed serving area sectioned off from the general public (so people will not be free to wander off the licensed premises with open containers), liquor liability insurance and a Certificate of Inspection may be required, at the discretion of the Selectmen, as a condition of such a license. The holder of a special one-day liquor license must abide by all regulations imposed by the ABCC relating to the sale of alcoholic beverages as if it was an annual licensee.

A. Application

Eligibility: An applicant who has applied for or is in the process of obtaining an annual alcoholic beverage license under M.G.L. c. 138, §12, may not be granted a one-day license under M.G.L. c. 138, §14. Examples of the types of organizations and individuals who are eligible for one-day alcoholic beverage licenses under this Policy include civic or municipal organizations, non-profit organizations, commercial establishments, fraternal organizations, service clubs, veterans organizations, and individuals holding social events not held at a private residence.

Application Procedure: The applicant shall submit its application to the Board at least 30 days in advance of the date of the proposed function/event. Said application will include the General License Application, and a copy of the alcohol provider's Certificate of Liability Insurance, including the Liquor Liability Declarations.

B. Criteria for Approval

The following criteria will be taken into account in approving one-day licenses:

Admission Age: The Board will not deny a one-day license solely because individuals under the legal drinking age will be in attendance at a function, but will require that sufficient trained servers are present to ensure compliance with the laws governing the sale or furnishing of alcoholic beverages to such persons.

Frequency: 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. The Board considers that one-day licenses are to be issued primarily to applicants sponsoring functions that are not held more than once annually.

C. Conditions of Issuance

Hours of Service of Alcoholic Beverages: The hours of sale and service shall not deviate from those permitted for retail pouring licenses. The "last call" must occur not later than 30 minutes before the expiration of permitted service hours. The function need not end at the expiration of service hours, but no alcoholic beverages may be sold, served or consumed on the licensed premises, or in adjacent premises such as parking or recreational areas, after that expiration time.

Number of Persons on Premises: The number of persons on the licensed premises shall not exceed the occupancy limits allowed by law for the premises to which the license relates.

Neighborhood Impact: The applicant, or such other person designated by name, address, and telephone number in the application, will be responsible for the orderly conduct of the function/event for which the license is issued. Consumption of alcoholic beverage outside of any structure within which the license was intended to be exercised will not be permitted. Music, noise, or other function-related activities must not create an undue imposition upon any adjacent residences. Police officers will be instructed to respond appropriately to any such complaints.

Such response may result in an order to terminate the event or otherwise limit the offending activity.

Police Detail: The Board, at its discretion, may require that the licensee hire a police detail for the event/function at which the license will be exercised. The number of officers, if any, and the hours during which a police detail will be required shall be determined by the Board in cooperation with the Police Department. The factors to be considered would include the location of the premises, availability of on-site parking, the number of persons estimated to be in attendance, potential traffic impacts and the time and duration of the event/function.

Departmental Approvals: The Board of Health, Fire Department, Police Department, Department of Public Works, and the Building Inspection Department may be asked to review the application and make their recommendation to the Board.

X. GENERAL PROVISIONS REGARDING THE ADMINISTRATION OF LICENSED PREMISES

License: The license and any permits required for premises operations must be posted in a conspicuous location within the licensed premises, clearly visible and accessible for inspection by regulators, enforcement officers and the general public. The licensed premises shall at all times be subject to inspection by the Town Manager, the Police and/or Fire Department, Building Inspector, Board of Health and other authorized Town agents. The licensee and manager shall fully cooperate with such agents and shall not, in any way, hinder or delay access to the licensed premises or otherwise interfere with any agent in the conduct of any inspection or investigation. The licensee must maintain and promptly make available to the Board and its authorized agents for inspection and copying, records of all transactions involving the sale or purchase of alcoholic beverages. If such records are maintained at a location other than the licensed premises, the licensee shall provide written notice to the Board specifying the location and any change thereof.

Hours of Operation: In accordance with the Town's regulations, the "Official Opening and Closing Hours" are those which are designated on the licensee's alcohol license. A violation of any of the following restrictions shall constitute a violation of this Policy, and shall subject the licensee to possible discipline and/or penalties.

1. Last call shall be at least thirty (30) minutes before the Official Closing Hour. No alcoholic beverages may be served after the Official Closing Hour.
2. All tables and bars must be cleared of all glasses, bottles, and containers of alcoholic beverages within one-half hour after the Official Closing Hour and all customers must be off the premises by that time.
3. Owners and employees must be off the premises no later than sixty (60) minutes after the Official Closing Hour, provided that owners and their employees and contractors may be on the premises at any time for the purpose of cleaning, making emergency repairs, providing security for such premises, preparing food for the next day's business, or opening or closing the business in an orderly manner.

4. No employee or business owner serving in any type of management capacity shall consume alcohol on the premises prior to going on duty or during their respective on duty hours.
5. No alcohol can be served or consumed by anyone on the premise before Official Opening Hours or after Official Closing Hours. Employees and patrons are strictly prohibited from bringing alcoholic beverages from outside the premises onto a licensed premises for the purpose of consumption.
6. Restaurants and other food service establishments not licensed under M.G.L. c. 138 are not permitted to keep alcoholic beverages on the premises except for a reasonable small quantity that is used in preparation of certain specialty foods.

Responsibilities of Manager: The Board regards the Manager of the 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, as provided in M.G.L. c. 138, §26. To that end, the Board will hold the Manager responsible for the following:

1. Selection, upon due diligence, of qualified employees of the licensed business, including bartenders, servers, host/hostesses, runners, and persons who are engaged with the public in any capacity.
2. Proper training of employees in all matters relating to the safe and responsible sale, service, and consumption of alcoholic beverages. Any violation of this Policy committed by an employee shall be treated as if the Manager had committed the violation.
3. Ensuring that only forms of identification as described in M.G.L. c. 138, §34B shall be relied upon as proof of legal age.
4. Enforcement of the liquor laws and the Alcoholic Beverages License Policy of the Town of Mashpee with respect to the operation of the licensed business, including hours of operation.
5. Prohibiting any illegal or unlawful act from occurring on the licensed premises.
6. Except as provided herein, the Manager must be a full-time employee or a corporate officer of the licensee and must be engaged exclusively in the management of the licensed business. The Manager must be on the licensed premises regularly in the course of business, consistent with the permitted hours of operation. When the Manager is not upon the premises, the person temporarily responsible for the business must be designated by the approved Manager to have charge of the business in the Manager's absence. When the Manager is not upon the premises, a protocol for contacting the Manager promptly must be arranged so that the Manager can be reached at all times by the person designated to be temporarily in charge of the business. The Manager shall maintain full responsibility for the operation of the business whether or not he/she is on the premises.

7. The Manager shall, at all times, maintain order and decorum on the premises and in the immediate surrounding area of the premises, and shall cooperate with Town officials in ensuring safe and orderly facilities.

Failure of the Manager to comply with this Policy or any other applicable laws or regulations or to properly discharge the duties of Manager may result in removal as Manager or suspension or revocation of the license, as may be deemed appropriate to the circumstances by the Board.

XI. PENALTY STRUCTURE

The purpose of this penalty procedure is to improve the ability of the Board to prevent alcohol abuse and violation of the liquor laws of the Commonwealth. This penalty structure will help to achieve reasonable uniformity in the imposition of penalties and to avoid confusion in the minds of the public, patrons and licensees.

A. General Statement of Policy

1. All violations of the liquor laws and the terms of liquor licenses are to be reported to the Board by the Town Manager, Police Department, or any licensee or manager who becomes aware of an offense involving the licensed premises, as soon as reasonably possible or upon notice of request by the Board.
2. Penalties for offenses will be imposed so as to promote the Town's objective of preventing future offenses and imposing appropriate penalties for offenses that have occurred.
3. The nature and severity of the penalties will be decided according to the severity of the offense, and the presence of mitigating or aggravating circumstances as determined by the Board. Examples of base-level offenses are as follows:
 - a) Sale outside of permitted hours
 - b) Purchase by person under age 21
 - c) Employment of person under age 18 for direct handling/selling of alcohol
 - d) Sale or delivery to a person under age 21 for own use or for use by another
 - e) Sale to an intoxicated person
 - f) Hindering or delaying investigation
 - g) Failure to post notice of penalty for driving under the influence and driving while drinking from open container of alcoholic beverage
 - h) Failure to comply with Chapter 204 CMR, Section 4.03
4. Penalties may consist of any one or more of the following, as deemed appropriate: revocation of license; suspension of license; criminal prosecution, as deemed appropriate by the Police Department; and/or mandatory participation in alcohol abuse and offense prevention programs.

5. The Town Manager is authorized to negotiate with any licensee, or his/her representative, the terms upon which resolution of any offense will be recommended to the Board. Any such negotiated recommended resolution must be in writing, signed by the Manager or license holder charged with the offense, and approved by the Town Manager. The recommendation must include a statement detailing the facts determined in the report of the Police Department. A copy of said report will be provided to the Manager and/or licensee upon request. The recommended resolution is not binding unless and until approved by the Board.
6. The Town Manager and the Board will maintain a public record of offenses and their disposition.

B. Determination of Penalties

Penalties will be determined according to the following procedure:

1. The severity of the offense, including aggravating or mitigating factors, is to be determined by the Board.
2. The number and nature of previous violations at the licensed premises or by the licensee shall be determined.

C. 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 deemed appropriate in the judgment of the Board:

1. Suspension of license for a stated number of days and specified dates.
2. Suspension of license for a stated number of days and specified dates with a portion of the suspension held in abeyance upon condition that no further offenses occur within a specified period of time and that licensee waives right to hearing upon such further offense.
3. Mandatory participation in prevention/training programs by licensee/manager and server(s) as appropriate.
4. Revocation of license.

Licensees are advised that the following penalties only represents guidelines for use by the Board when making their decision in response to a liquor license violation. The Board, after considering any mitigating or aggravating factors, retains the authority to deviate from these penalty guidelines should it deem the established circumstances to warrant such deviation. . While the Board will endeavor to impose penalties upon licensees in a manner consistent with this Policy, where exigent or special circumstances warrant, such as a violation resulting in serious personal injury or death, the Board retains the authority to immediately order a full hearing, provide a

licensee an opportunity to present evidence, and to revoke a license where the evidence warrants a revocation.

First violation: 1-3 day suspension, regardless of the amount of penalty held in abeyance, 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.

D. Reporting of Violations and Penalties Imposed

The Board shall receive annual reports from the Police Department and/or Town Manager detailing violations of this Policy from the end date of the previous reporting period, and any penalties imposed by the Board for said violations. These reports will allow the Board to periodically review this Policy and recommend areas that need to be amended/revised.

XII. ENTERTAINMENT

No form of entertainment including recorded and live music, amplified or acoustic, with or without dancing, shall be allowed on the licensed premises until such time as the licensee has applied for and obtained a weekday and/or Sunday Entertainment License from the Board. This applies to the use of entertainment/music inside and/or outside.

XIII. AUTOMATIC AMUSEMENTS/BILLIARDS

No coin-operated automatic amusement machines shall be allowed on the licensed premises until such time as the licensee has applied for and obtained an Automatic Amusements License from the Board. This applies to the use of billiard and/or pool tables.

***Adopted and Amended by the
Mashpee Board of Selectmen
February 10, 2003
Revised: December 5, 2016***