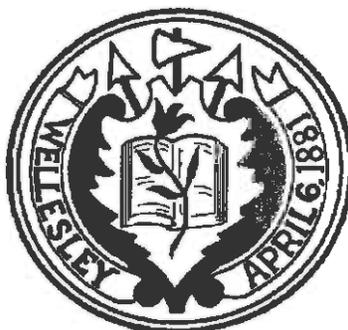


**TOWN OF WELLESLEY
COMMONWEALTH OF MASSACHUSETTS**



**RULES AND REGULATIONS GOVERNING
THE SALE OF WINES AND MALT BEVERAGES IN
FOOD STORES AND SPECIALTY FOOD STORES FOR
OFF PREMISES CONSUMPTION**

XX, 2014

It is understood that the Rules and Regulations contained herein are in compliance with and subject to the Rules and Regulations of the Commonwealth of Massachusetts Alcoholic Beverages Control Commission.

Local Licensing Authority: Wellesley Board of Selectmen

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3/14/2014

**TOWN OF WELLESLEY, MASSACHUSETTS
BOARD OF SELECTMEN**



**RULES AND REGULATIONS GOVERNING
THE SALE OF WINES AND MALT BEVERAGES IN FOOD STORES
AND SPECIALTY FOOD STORES FOR OFF PREMISES
CONSUMPTION**

POLICY STATEMENT

Under the authority of Chapter 14 of the Acts of 2014 and voter approval of March 4, 2014, the Board of Selectmen is authorized to grant six (6) licenses for the sale of wines and malt beverages not to be drunk on the premises. The Board has determined the public need for these licenses will be served by issuing up to three (3) licenses for sale by food stores, and up to three (3) licenses for sale by specialty food stores. These regulations are intended to address with some particularity the requirements pertaining to such licenses. In issuing licenses, the Board of Selectmen shall evaluate whether a license will enhance the economic vitality of a food store or specialty food store to succeed in creating enhanced opportunities for residents and customers to purchase within the Town of Wellesley, in a personal and informed service setting, wines and malt beverages to be consumed off the premises. This policy further defines the intention of the Board of Selectmen to enhance the retail shopping experience of individuals patronizing Wellesley food stores and specialty food stores, to foster economic development of appropriate business areas in the Town, to strengthen the commercial tax base by encouraging and promoting foot traffic, and to support the development of collateral businesses in those areas where food stores and specialty food stores are located. It is not the Board's intention to license food stores and specialty food stores where the sale of food is an insignificant aspect of the business or at convenience stores, pharmacy, or establishments where gasoline is sold.

I. DEFINITIONS

Abutter: Owner of a property located within a 300-foot radius of the nearest point of the licensed property.

Alcoholic Beverage: As used in these regulations, the term alcoholic beverage shall include wines and malt beverages unless otherwise indicated.

Assistant Manager: Any person charged by the Licensee to operate, manage and control the Licensed Premises in the absence of the manager.

Common Victualler License: A license, granted to an applicant, if at the time of the application, there is upon the premises the necessary implements and facilities for cooking, preparing, and serving food for strangers and travelers. (MGL c.140, § 6)

Convenience Store: An establishment that sells at retail a limited range of food and other non-durable items that are purchased frequently for immediate use, including but not limited to staple foods, household goods, snacks (including confectionery), health and beauty aids, beverages, periodicals, newspapers and tobacco products. Convenience Stores are frequently open with only one staff member on duty at a time, are often open later than 10:00 pm and may or may not sell gasoline. The Board of Selectmen reserves the right to consider these and other appropriate factors when determining whether an applicant is a Convenience Store.

Craft Beer: A malt beverage that is made by small, independent and traditional brewers producing fewer than 6,000,000 barrels annually and which is generally sold in single 22 oz. bottles.

Food Store: Grocery store or supermarket with a gross floor area of 2,000 square feet or more which sells at retail food for consumption on or off the premises either alone or in combination with grocery items or other nondurable items sold to individuals for personal, family or household use. A Food Store shall carry fresh and processed meats, poultry, dairy products, eggs, fresh fruits and produce, baked goods and baking ingredients, canned goods and dessert items. A convenience store, pharmacy, or a store which sells gasoline shall not be considered a Food Store for purposes of these regulations.

License: Unless otherwise indicated, the term "license" shall refer to a Wines and Malt Beverages Only License.

Licensed Premises: The retail space within a Food Store or Specialty Food Store in which the Licensee is permitted to sell wines and malt beverages.

Licensee: The holder of a license issued by the Licensing Authority under MGL c.138, § 15 to sell wines and malt beverages.

Licensing Authority: The Board of Selectmen of the Town of Wellesley.

Manager: The person charged by the Licensee to operate, manage and control the Licensed Premises. The name of the manager shall appear on the license.

Pharmacy: An establishment substantially devoted only to the sale of pharmaceutical items,

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supplies, and equipment such as prescription drugs.

Premises: The property owned or controlled by the Licensee in which the Licensed Premises are a part.

Retail Space: The area of a retail store in which merchandise is displayed and sales are made, which is visible to the public and to which the public has access, including checkouts, the area in front of checkouts, serving counters and the area behind used by serving staff, areas occupied by retail concessionaires, customer services areas, and internal lobbies in which goods are displayed; but not including customer toilets and storage areas.

Specialty Food Store: A retail establishment that sells, primarily for consumption off the premises, specialized types or classes of food items especially where such foods are distinguished by a focus on such foods being of a particular origin, of a particular method of agriculture such as “organic”, of a specific ethnicity, or otherwise of a premium or distinctive character. A convenience store, pharmacy, or a store which sells gasoline shall not be considered a Specialty Food Store for purposes of these regulations. Any store which sells primarily baked goods, coffee or other brewed beverages, or frozen desserts, including ice cream and frozen yogurt, shall not be a Specialty Food Store for purposes of these regulations.

Transfer: A change in ownership of a Licensed Premises.

II. DETERMINATION CRITERIA

The Board of Selectmen will consider when deciding upon a license application the extent to which the applicant and application are in furtherance of the policies set forth in the Policy Statement at the beginning of these regulations. The Board shall also consider any other matters thought appropriate including, by way of description but not limitation: proximity to residential neighborhoods, proximity to schools, playgrounds, and other places where children gather, proximity to other licensed establishments, traffic, parking, noise, and night lighting.

The Board of Selectmen shall only issue licenses to Food Stores or Specialty Food Stores as set out herein; shall determine whether an applicant or a Licensee is a Food Store or Specialty Food Store; and whether an applicant or Licensee is in compliance with any and all requirements. In making such determination the Board of Selectmen shall consider such factors as the extent and range of merchandise offered for sale, the placement of merchandise within the store, the advertising conducted by the applicant or Licensee, both outside and within the store, and the volume of sales, actual or proposed, of wines and malt beverages relative to food and other merchandise sold by the applicant or Licensee at the store.

III. LICENSE REQUIREMENTS

1. Any applicant for a Section 15 License (whether for an original application or for a Transfer at the same location) must also be properly licensed by the Board of Health prior to the issuance of any such License.
2. Any sales of wines and malt beverages shall be incidental to the sale of food or other non-alcoholic products, but the holder of a Section 15 License may sell wines and malt beverages alone or in combination with any other items offered for sale.
3. The Retail Space used to display wines or malt beverages shall not exceed the lesser of (x) twenty-five percent (25%) of the total Retail Space in a Food Store or Specialty Food Store or (y) 2000 square feet.
4. Any applicant for a Section 15 License (whether for an original application or for a Transfer at the same location) must provide simultaneously with the application materials, a floor plan evidencing the Retail Space of the Licensed Premises and the portion of the Licensed Premises dedicated to the sale or display of wines and malt beverages, and a description on the procedures for securing the area dedicated to the sale or display of wines and malt beverages to prevent public access to said area during times when sales of wines and malt beverages are prohibited.
5. Any area dedicated to the sale or display of wines and malt beverages shall be properly secured by clear signage or divider to prevent public access during those times, if any, when the sale of wines and malt beverages is prohibited as set out in Section VIII. Hours of Operation.
6. The Licensee may not materially change the portions of its Licensed Premises dedicated to sale, storage or display of alcoholic beverages without the approval of the Board of Selectmen.

7. Regular sales and operation of the Food Store or Specialty Food Store must continue during all times when sales of wines and malt beverages are permitted.
8. Employees at the Licensed Premises 21 years of age or older may sell wines and malt beverages and may directly handle, store, or prepare for display any wines and malt beverages. Employees at the Licensed Premises 18 years ~~of age or older~~ to 20 years of age may not sell, but may directly handle, store, or prepare for display any wines and malt beverages. Employees at the Licensed Premises under 18 may not sell, directly handle, store, or prepare for display any wines and malt beverages except as may be permitted by the Board of Selectmen in its discretion.
9. Consumption of wines and malt beverages, or any alcoholic beverage, within or upon the Licensed Premises, or upon any area under the direction and control of the Licensee, by any person is strictly prohibited except for sample tasting as specified in Section IX Tastings.
10. All licensed establishments must maintain an updated employee roster and list of managers and assistant managers that shall be available upon request to the Town including the Chief of Police, the Fire Chief, and the Board of Health, and members of their departments, or any other department or official of the Town of Wellesley so directed by the Licensing Authority. It is the obligation of the Licensee to inform all employees about the rules and regulations of the Board of Selectmen, the Alcoholic Beverages Control Commission, and any and all applicable Massachusetts laws.
11. Any employees engaged in the sale and handling of alcoholic beverages must complete Board-approved courses in alcohol safety training and have on file with the Licensee and available for inspection by the Town a copy of current certification and proof of age. The Licensee will provide an approved training program certificate of completion for the manager to the Town with the application.
12. Any employees engaged in the sale and handling of alcoholic beverages shall be required to be recertified once every three years by a Board- approved program. Newly hired employees shall complete a Board-approved training program within 30 days of their employment, or provide proof of training certification at a Board-approved course within the last three years.
13. As a condition of the license, the Licensee will comply with the Town of Wellesley Sign Bylaw, as from time to time amended. Signage or advertising that is not directly affixed to the exterior portion of the building or window of the Licensed Premises, but is directed to outside consumers and can be seen from the exterior of the building shall be limited to a maximum total of 6 square feet.
14. Any and all sales of single bottles or cans of malt beverages are expressly prohibited except in the case of malt beverages which meet the definition of a Craft Beer.
15. No Licensee shall sell malt beverages at retail in a container having a capacity by volume of more than two gallons of liquid, or in a keg.
16. A store having a Common Victualler's license which has a Section 15 License in accordance with these regulations may not allow consumption of alcohol on premises whether or not brought in or purchased by patrons.

IV. MANAGEMENT AND CONTROL

1. No application from a corporation shall be approved unless the corporation, by certified vote of its Board of Directors, has appointed a manager who is a United States citizen and who has been vested with full authority, management and control of the Licensed Premises.
2. Upon receipt of an application for an original license or a renewal of a license, or in the case of a new manager or assistant manager, upon being advised of the new manager's or assistant manager's identity, the Licensing Authority will conduct a background check of any proposed Licensee, manager or assistant manager, such check to include a review of any existing criminal record. The Licensing Authority may reject any application where the proposed Licensees', managers' or assistant managers' criminal record or reputation indicates theft, unlawful drug use or distribution, association with known felons or individuals involved in organized crime, a propensity for violence, or other behavior that, in the opinion of the Licensing Authority, might put the public at risk.
3. Every Licensee shall submit to the Licensing Authority the full name, residential address, and business and home telephone numbers of the manager, and any assistant manager, prior to his/her appointment to that position. Any change in manager must be approved by the Licensing Authority prior to the appointment of the new manager by the Licensee. One of the following personnel shall be on the Licensed Premises at all times the Licensed Premises is open for business: manager, authorized assistant manager, or authorized personnel approved by the Board of Selectmen.
4. The manager, any assistant manager, or authorized personnel approved by the Board of Selectmen shall at all times maintain order and decorum in the Licensed Premises and on the Premises generally, and shall cooperate in every respect with members of the Licensing Authority, the Chief of Police, the Fire Chief, the Board of Health, and members of their departments, or any other department or official of the Town of Wellesley so directed by the Licensing Authority in ensuring public safety and convenience both within the Licensed Premises and the Premises as a whole.
5. No licensed establishment shall be open for business unless a manager, assistant manager, or authorized personnel approved by the Board of Selectmen is on duty and on the Licensed Premises. The license shall be posted in public view, and a plaque bearing the name of the on duty manager or assistant manager and his/her title, in letters no smaller than one inch, shall be posted within one foot of the license at all times when the Licensed Premises is open for business.
6. The Premises must be kept clean, neat and sanitary at all times.
7. No manager, assistant manager or employee of the Licensee shall consume any alcoholic beverages or illegal drugs, or be under the influence of alcohol or illegal drugs, while on duty, or during the eight hour period preceding the beginning of his or her shift.

V. DELIVERIES

1. For all deliveries of products conducted off the Licensed Premises, the Licensee shall keep written records including the date of sale, quantities and sizes of items purchased, method of payment transaction, and name and address of purchaser. In addition to the preceding requirements, the amount of the beverages that were delivered, the date and time of delivery, the signature of the person receiving the delivery and the type of identification card used to confirm age shall be retained. Such written records shall be maintained by the Licensee within or upon the Licensed Premises for a period of not less than one year and must be readily available for inspection by the Town.
2. Deliveries must be made during the operating hours of the Food Store or Specialty Food Store.
3. Deliveries shall be made by persons 21 years of age or older.
4. A copy of an Off-Premises Transportation Permit license to deliver issued by the ABCC, shall accompany the application at the time of submittal.

VI. INSURANCE

In addition to all other requirements established by law, each Licensee shall have liquor liability insurance coverage in at least the amounts of \$1,000,000/\$3,000,000. A certificate of insurance that at least these amounts are in place shall be filed with the Licensing Authority. The Licensee shall notify the Town no less than ten days prior to the cancellation or material change of said coverage.

VII. EXERCISE OF LICENSE

The closing of the Licensed Premises for any reason for a period of seven consecutive days or more, or for any ten days during the calendar year, without prior approval of the Licensing Authority, shall be deemed to be an abandonment of the license and sufficient grounds for revocation.

VIII. HOURS OF OPERATION

1. The hours during which sales of alcoholic beverages may be made by any Licensee shall be from 8:00 a.m. to 10:00 p.m. Monday through Saturday and 12:00 noon to 10:00 p.m. on Sundays. Licensees shall not be able to sell alcoholic beverages on Thanksgiving Day, Christmas Day (or the day following when Christmas is on a Sunday), or on the last Monday in May (Memorial Day) as specified in MGL c.138, Section 33.
2. No sale shall be made to any customer within the Licensed Premises before or after the hours stated in the license. The hours within which alcoholic beverages may be sold may be adjusted by the Licensing Authority if, after a public hearing, it shall be determined by the Licensing Authority that the circumstances warrant further alteration.

3. All transactions for the sale of wines and malt beverages must be completed on or before the closing hour set out in this Section.
4. Hours for product deliveries to the Licensed Premises and/or pick-up of bottle returns shall be arranged so that activity does not interfere with the quiet enjoyment of the neighborhood.

IX. TASTINGS

1. Licensees may provide, without charge, on Licensed Premises sample wines or malt beverage tastings, for prospective customers, available for sale on such Licensed Premises.
2. No single serving of wine shall exceed one ounce and no single serving of malt beverages shall exceed two ounces.

X. INSPECTIONS

1. The Licensed Premises shall be available at all times for inspection by members of the Licensing Authority, the Chief of Police, the Fire Chief, the Board of Health, and members of their departments, or any other department or official of the Town of Wellesley so directed by the Licensing Authority.
2. The full time police officers of the Wellesley Police Department are hereby designated as agents of the Licensing Authority and they shall have the authority to investigate violations of these rules and regulations and of state law on or about any Licensed Premises on behalf of the Licensing Authority, and to conduct other such enforcement and inspections as the Chief of Police deems appropriate, including the use of plainclothes police officers, and/or investigators of the Massachusetts Alcohol Beverages Control Commission, for the purpose of ensuring compliance with state law and all aspects of these rules and regulations.

XI. DESIGN OF THE LICENSED PREMISES

1. Each applicant shall submit to the Licensing Authority, along with an application for a license, a plan drawn to scale on which shall be shown the following information:
 - a. The dimensions of the Retail Space;
 - b. The area in which wines and malt beverages are to be displayed;
 - c. The area in which wines and malt beverages are to be stored; and
 - d. All entrances and exits.
2. Each license shall be issued based on a specific design for the Licensed Premises. Once a license has been issued, no substantial physical changes to the Licensed Premises shall be made without the prior approval of the Licensing Authority.

XII. PRICES

1. No alcoholic beverages shall be sold for a fee less than the actual cost of the beverage to the Licensee.
2. The price charged by the Licensee for the sale of alcoholic beverages shall not be discounted by any particular hour(s) of the day or day(s) of the week.

XIII. GENERAL OPERATING REQUIREMENTS

1. The Licensee shall ensure that the members of the Licensing Authority, the Chief of Police, the Fire Chief, the Board of Health, and members of their departments, or any other department or official of the Town of Wellesley shall have immediate access to the Licensed Premises at all times and under all circumstances.
2. Wines or malt beverages shall not be sold to anyone under the age of 21 years. As proof of age, the Licensee shall ~~only~~ accept a valid Massachusetts driver's license; a valid Massachusetts Liquor Identification Card; a valid Passport issued by the U.S. or by the government, recognized by the United States government, of a foreign country; or a valid U. S. issued Military ID card. Acceptance of out of state licenses may be permitted by the Board of Selectmen at their discretion.
3. The Licensee shall ensure that business in the Licensed Premises, and areas under the Licensee's control that abut the Licensed Premises, is conducted in a responsible manner so that no activity shall detract from the quality of life in the Town generally, or in the neighborhood in which the Licensed Premises is located. This shall include, but not be limited to, ensuring that there shall be no disorder, unlawful use or sale of drugs, indecency, prostitution, assaults, lewdness or gambling on or about the premises.
4. Wines and malt beverages shall not be sold or delivered to an intoxicated person.
5. No Licensee may display any advertisement or sign on the outside facade upon which appears any brand name of a wine or malt beverage product.
6. No Licensee shall make any distinction, discrimination or restriction on account of race, color, creed, sex, sexual orientation, gender identity, or ancestry relative to the admission or treatment of any person.

XIV. VIOLATION OF RULES AND REGULATIONS

1. Any license issued under these rules and regulations may be suspended, modified or revoked by the Licensing Authority if any of the rules or regulations is violated or for other reasonable cause related to the public good and the Licensee's fitness to hold a license.
2. The Licensing Authority shall initiate suspension, modification, or revocation by notifying the Licensee of its intention in writing.

3. The Licensing Authority shall hold a public hearing prior to suspending, modifying or revoking any license unless the Licensing Authority declares that the suspension of the license is an emergency. Under emergency circumstances, the Licensing Authority may immediately suspend a license, but must hold a public hearing within five days of the beginning of the emergency suspension.
4. The hearing shall be commenced within two weeks of the notice of intent to suspend, modify, or revoke said license.
5. In the event of the suspension, modification, or revocation of any license, the Licensee shall not be entitled to reimbursement for any licensing fee or any portion thereof.

XV. APPLICATIONS

1. All applications for an original license or a renewal of a license must be accompanied by an application fee of \$500 in addition to the \$2000 fee for the license.
2. All fees for applications and licenses shall be in the form of a ~~bank~~-check. The application fee is not refundable if the application is denied, but the annual license fee shall be refunded if an original or renewal license is not issued.
3. Pro-ration of fees shall only be at the discretion of the Board of Selectmen.
4. The Licensing Authority reserves the right to adjust the license fee from year to year.

XVI. DURATION AND RENEWAL OF LICENSE

All licenses once issued are valid through December 31 of each year and the application to renew must be completed and signed by November 30. It is the responsibility of the Licensee to file for a renewal in a timely manner. Renewal forms may be obtained from the Board of Selectmen. Renewal applications must update all previously filed statements and plans where appropriate. Failure to renew prior to expiration shall result in a loss of license and any subsequent license request must then be treated as a completely new application.

XVII. TRANSFERS

1. Application for transfer of ownership shall be considered an original application and processed as such and the Board of Selectmen will evaluate applications as set out in Section II. Determination Criteria.
2. Except as provided below, an existing license for the sale of wines and malt beverages for off premises consumption may not be transferred.
 - a. The Board of Selectmen may approve the transfer of an existing license for the sale of wines and malt beverages for off premises consumption to a new location if sought by an existing Food Store or Specialty Food Store, and

following such transfer the Food Store or Specialty Food Store is under substantially same ownership and management as before such transfer.

- b. An application for a Transfer at the same location may be granted by the Board of Selectmen provided the ownership and management following such Transfer continues the operation of the Food Store or the Specialty Food Store in substantially the same manner as the transferring applicant.
3. Any Transfer permitted under these Regulations may only be made in compliance with the following:
 - a. A \$500 fee shall accompany each application for transfer of ownership or location.
 - b. Approval of a transfer of majority ownership may be conditioned upon the proof of payment of all outstanding local, state and federal taxes including, without limiting, the following: the remission to the proper taxing authorities of sales taxes, excise taxes and withheld federal and state income taxes.
 - c. Transfers of ownership to trustees in bankruptcy, court appointed receivers or assignees for the benefit of the creditors, and those taking title or possession of the Licensed Premises by, through or under them will not be deemed to transfer or convey any rights to the license or the renewal or transfer of such license.
 - d. Bona fide mortgagees in possession who are listed in the application as holding such interest shall be treated in the same manner as the original majority ownership license. A public hearing shall be required for any transfers of ownership or location, including, but not limited to transfers to mortgagees.

XVIII. PUBLIC HEARING

A public hearing shall be conducted within thirty (30) days of acceptance of a complete application. The public hearing shall be advertised in The Wellesley Townsman. The applicant will be required to comply with the appropriate provisions of MGL c.138 including, but not limited to, Sections 15A and 16C relative to the notification of abutters, churches, and schools within the distance prescribed by law. Notification shall be the responsibility of the applicant and shall be by certified mail with returned receipts. Prior to the public hearing, the applicant shall present to the Licensing Authority evidence of compliance with this notification requirement by furnishing an attested copy of the newspaper notice and the returned receipt cards.

An application shall be considered complete when it has been filed in accordance with procedural instructions and all forms and monies required have been fully completed and executed under such conditions and rules as determined by the Licensing Authority. All applications shall be made under penalties of perjury, and any false statement contained in any application shall be grounds for refusing to grant the license or for suspending, canceling or revoking of a license already granted.

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**APPLICABILITY of GENERAL LAWS, SPECIAL LAW and
AMENDMENTS**

These regulations are promulgated by the Licensing Authority of the Town of Wellesley to be supplementary to, and not in substitution of, all General Laws of the Commonwealth of Massachusetts governing the sale of wines and malt beverages for off premises consumption, including but not necessarily limited, to those laws set forth in MGL c.138. The Licensing Authority reserves the right to amend these regulations and unless an emergency situation requires immediate promulgation of further rules, regulations or amendments thereto, the Licensing Authority presently intends to give appropriate public notice of any such intent to amend.

Promulgated the XX day of March, 2014 by the Board of Selectmen of the Town of Wellesley, Licensing Authority pursuant to the provisions of Chapter 14 of the Acts of 2014 and voter approval on March 4, 2014.

WELLESLEY BOARD OF SELECTMEN

Terri Tsagaris

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