Town of Aquinnah

BEER & WINE LICENSING POLICIES
RULES & REGULATIONS

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TOWN OF AQUINNAH

ALCOHOL LICENSING POLICIES, RULES & REGULATIONS:

The Board of Selectmen, the alcohol licensing authority for the Town of Aquinnah, hereby establishes the process and standards for issuing beer and wine beverage licenses.

STATEMENT OF PURPOSE AND FINDINGS

As authorized by Chapter 187 of the Acts of 2007 and the applicable provisions of State law, the Town may issue licenses to sell beer and wine beverages to qualified individuals or businesses that have an acceptable plan of operation. In addition to demonstrated character, successful applicants must satisfy all zoning, septic, and other public health and safety requirements as a precondition to the issuance of a license to sell beer and wine.

- As approved by the voters at the Annual Town Election of 2008, the Board of Selectmen is authorized to grant annual and seasonal licenses for the sale of all beer and wine beverages to be consumed on the premises of restaurants, including those within inns and hotels.

- Prior to the issuance of a license or a renewal of a license, an applicant must submit certificates of inspection from the Building Inspector, Fire Department and Board of Health.

- These rules and regulations are supplementary to any statutory requirements of the Commonwealth of Massachusetts and to the rules of the Commonwealth's Alcoholic Beverages Control Commission.

Filing of Applications

• All license application forms, including but not limited to: the Alcohol Beverages Control Commission Application for Beer and Wine Beverage License for Retail Sale; forms for financing; criminal record release form, and the Department of Revenue release form, must be complete before being processed. A complete list of the forms and fees required is available in the office of the Board of Selectmen.

• Complete application material must be provided for each individual whose name appears on the application. Application filing fees must be paid prior to processing. All such fees shall be paid by certified bank or attorney check, or money order. Filing fees are not refundable once the Board of Selectmen accepts an application.

• If a license is granted, an annual license fee shall be payable immediately in the form of a certified bank check or attorney check. Fees are not refundable.

• Duplicate copies of all application materials and documents are required.

APPLICATION PROCESS - GENERAL REQUIREMENTS

Applications
The Board of Selectmen shall consider all applications for licenses in an open process.

Application Processing Fee
An application processing fee of $200.00 is to be paid when a new application is filed. Check must be made payable to "Town of Aquinnah".

Public Hearing
The Board of Selectmen will hold a public hearing on new license applications.

Standard for Evaluation of Applications
The Board of Selectmen shall not approve any application for a license unless it determines that such application and its accompanying "Plan of Operation" and other documentation present clear and convincing evidence that issuance of the license will serve the public need and protect the common good.

Notification of Abutters
The applicant will be required to comply with the appropriate provisions of M.G.L. c. 138 relative to notification of abutters within 300' of the premises proposed to be licensed. The list of abutters is to be certified by the Board of Assessors. The Board reserves the right to order further notice requirements at its discretion. In accordance with M.G.L. c. 138, §16C, no license shall be issued for premises located within a radius of five hundred (500) feet of a school or church unless the Board of Selectmen determines, in writing and after hearing, that the operation of the licensed business on the premises will not be detrimental to the education or spiritual activities of said school or church. The Board of Selectmen may impose conditions on the granting of a license to ensure that the operation of a licensed business at the premises will not be so detrimental.

Plan of Operation
Every applicant shall file as part of the application a plan of operation setting forth in detail a description of the type of facility existing or proposed and the applicant's experience or qualifications to operate such a business; a proposed opening date; any zoning, traffic or public health or safety issues presented by the application; and the applicant's plans to address or mitigate such issues. Applicants shall also file with the plan of operation a menu or proposed menu, and the manner in which such food shall be served and a scaled floor plan of the premises to be licensed.

Duration of License
All licenses granted are valid until December 31 of each year and must be renewed prior to that date. It is the responsibility of the licensee to file a renewal application within the month of November. Licensees are encouraged to file renewal applications at least 45 days prior to expiration of the existing license on the forms provided by the ABCC or approved Board of Selectmen form. Seasonal licenses are effective April 1 to November 1st of the following year, or such other period as the Board of Selectmen may designate.

License Fee Schedule
The Town's annual fees for sale of beer and wine beverage licenses (seasonal or year-round) issued pursuant to these regulations shall be as follows:

Restaurant- $350?

Inn or Hotel - $350?

Annual renewal fee- same as above
The license fee may be prorated for applications filed after January 1, by a vote of the Board of Selectmen. The Board reserves the right to adjust the license fee from year to year.

License Application Rejections
If the Board of Selectmen rejects an applicant for a license, the Board shall not accept or consider a new application for such license for a period of six months.

Compliance with Laws, Regulations and Conditions
Licensees shall maintain their premises and operations in compliance with all applicable State and local building and sanitary codes, laws and regulations and all conditions attached to any license. All taxes and charges owed the Town must be paid in accordance with applicable law.

OPERATING RULES FOR LICENSEES

Regulations Available
A licensee shall keep a copy of these rules and regulations on the premises at all times and make them available for inspection upon request by a member of the public or an agent of the Board of Selectmen.

Employee Awareness
Each licensee is responsible for ensuring that all employees who work in the public areas of the premises read the rules and regulations of the licensing authority and comply with all rules, regulations and laws. Employees should sign a letter of acknowledgement.

License Posted
A licensee shall post a copy of the license in a conspicuous place where it can be easily seen by the public and read without difficulty.

Other Permits
A licensee shall post all other licenses, permits and certificates affecting the premises in a conspicuous place. No such document shall be posted in such a way as to cover over any part of the license issued by the Board of Selectmen.

Admission to the Premises
A licensee shall not permit any rule, policy, or action, express or implied, which makes any distinction, discrimination, or restriction on account of race, color, religious creed, national origin, sex, or ancestry, physical or mental disability, relative to the admission or treatment of persons from the general public or employees at the premises; provided, however, that such licensee may make rules regulating the admission of minors to the premises when such rules are not inconsistent with other rules and regulations stated herein. No license holder shall require any patron to pay a cover charge of any kind.

Unruly Persons
A licensee shall refuse entrance to the premises to a person who appears to be intoxicated or unruly; and shall evict such a patron, except that in such a case the licensee should call the police and should offer assistance to an intoxicated person when possible.

Maximum Occupancy
A licensee shall not permit entrance to the premises by more persons than the maximum occupancy limit established by the Building Inspector.

Waiting Lines
If a licensee permits persons to wait in line for a table or a seat, it shall keep such persons in an orderly line without blocking aisles or exits.

No Locked Doors
A licensee shall not lock the front door of the premises until the last patron has exited.

Hours of Sales and Service of Alcohol
The hours during which sales or service of beer and wine beverages may be made by any licensee shall be from 11:00 a.m. to 11:00 p.m. (12 a.m. on New Year's Eve) on Monday through Saturday. Hours for Sunday sales shall be set by the Board of Selectmen in accordance with the provisions of the General Laws. The hours during which the sales of beer and wine beverages may be made are further limited to the hours of operation as designated on the Common Victualler's license and furthermore when the dining room is open and food service is available. All beverages/glasses/bottles or other containers must be removed from tables and the service bar area by 11:30 p.m. (1 a.m. on January 1.)

INSURANCE

All licensees shall be required to provide to the Town a certificate of insurance providing coverage for fire, premises liability, and liquor liability in amounts acceptable to the Board of Selectmen, after license has been issued and prior to service.

RESTAURANT SERVICE AREAS

There shall be no bar at which beer and wine is served to patrons. Beer and wine must be stored in a service area, and wait staff must order and pick up beer and wine drinks from such service area and deliver them to seated patrons. No food or beer and wine beverages may be served at a service bar. The location of service bars shall not be changed unless approved by the Board of Selectmen and unless an amended floor plan is submitted showing the proposed change.

RESTAURANT DINING AREAS-SERVICE OF A MEAL

No patron shall be served a beer and wine beverage until such time as the patron is seated for a meal. The Board reserves the right to approve a licensee's menu and further define what constitutes a meal consistent with these policies, rules, and regulations, in particular that the service of beer and wine beverages shall be secondary to the primary purpose of service of food. Single servings of soups, side salads, other side dishes, or desserts shall not be considered a meal, except that this requirement shall not preclude multiple servings to a

patron from the above list or like items from constituting a meal. A meal shall not consist of items such as potato chips, corn chips, nuts, pretzels or other so-called "snack foods" customarily served with beer and wine beverages in a bar or cocktail lounge or any other edibles that are served gratuitously with beer and wine beverages. Menus shall reflect the requirement that beer and wine beverages may only be ordered in conjunction with the consumption of a meal. Meals must be served on solid dinnerware with flatware. No disposable plates or plastic cutlery are permitted, except where State law requires. In all cases, however, beer and wine beverages must be delivered to the table by a waitperson.

PHYSICAL PREMISES

Floor Plan
The premises shall conform to a plan approved by the Board of Selectmen with regard to the layout of the facility including its dining area, toilet facilities, railing partitions, storage of beer and wine and empty containers, location of televisions, and any other barriers. Any changes in the floor plan or any renovations of any kind shall not be made without notification and written approval of the Board of Selectmen. The floor plan must be kept available on the site.

Cleanliness
All premises covered by the license shall be kept in a clean and sanitary condition.

Lighting
All public areas of the premises shall be lighted in a manner to assure the safety of patrons and to allow the agents of the Board of Selectmen to make observations without the need to identify themselves or seek assistance.

No Access to Private Areas
A licensee shall not allow the general public access to private areas of the premises approved by the Board of Selectmen for storage, office use, a kitchen or any other nonpublic use. Only the licensee and its employees shall be in these areas.

No Screens
No advertising matter, screen, curtain or other obstruction which in the opinion of the Board of Selectmen, or its agents, prevents a clear view of the interior of the premises shall be maintained in or on any window or door thereof after the Board of Selectmen has ordered the removal of such obstruction.

Restrooms
Every licensed facility must have toilet facilities on the premises and available to the patrons while the facility is open.

Exit Lighting
All exits from the premises shall be properly designated by lighted signs reading "Exit", as may be mandated by the Building Inspector or the Fire Department of the Town.

BUSINESS ARRANGEMENTS OF LICENSEES

Site Control
An applicant shall not be issued a new or renewal license unless it can demonstrate proof of a legal right to use the premises proposed for the term of the license. Such proof may include

evidence of fee ownership, a lease, a management contract or a binding commitment for purchase or lease; provided, however, that all parties participating in such ownership, leasehold interest or management contract shall be made known to the Board of Selectmen and the terms of such agreements or contracts shall be fully disclosed to the Board of Selectmen. Failure to have the legal right to use and control the premises may result, after public hearing, in the revocation or non-renewal of the license.

Contracts
A licensee shall not hire any employee or contract for goods or services in any name other than its own, nor shall the licensee pay for any such employment, goods, or services by any means other than its own bank accounts standing in its own name. Cash transactions shall be recorded in a manner suitable for review by the Board of Selectmen. Such records shall be kept for a period of three years.

No Undisclosed Interests
A licensee shall not permit any undisclosed person or entity to have a direct or indirect financial or beneficial interest in the licensed business or to receive any revenue from the business.

No Undisclosed Principals
A licensee shall not permit any undisclosed person to work at the premises or to hold him or herself out as being in a position of authority unless such person is an owner, officer or salaried employee for whom payroll records are available. A licensee shall not pay an employee any percentage of the profits of the business or pay an employee in any manner other than by salary or hourly rate except upon approval of the Board of Selectmen.

No Percentage Arrangements
A licensee shall not pay any landlord or creditor a percentage of the profits of the business unless complete disclosure has been made to the Board of Selectmen and the Board's approval received.

No Subleases
A licensee shall not lease out or otherwise license any part of the premises or its food or beverage service without the prior approval of the Board of Selectmen.

No Concessions
A licensee shall not enter into an agreement with an independent contractor to provide beverages or food or management at the premises without the prior approval of the Board of Selectmen.

No Security Interest
A licensee shall not pledge any stock in the licensee, or grant any security interest in its license or the assets of the licensee without the approval of the Board of Selectmen pursuant to M.G.L. c.138, §15A or §23. This includes kitchen equipment, furniture, or any other type of equipment.

Change in Manager
A licensee shall not change its manager until the Board of Selectmen and the Alcoholic Beverages Control Commission have both approved such change. The owner or other

responsible party may be appointed to act as manager until a new manager has been appointed, with the Board of Selectmen's approval.

Opening Required
A licensee may not close its place of business or cease selling beer and wine beverages without first notifying the Board of Selectmen in writing before such closing or cessation and stating the reason therefore.

No Assignee Rights
An assignee or creditor who succeeds to the interest of a licensee may not conduct the business of the licensee at the premises without the approval of the Board of Selectmen. A licensee shall immediately notify the Board of Selectmen when an assignee or creditor succeeds to its rights or when foreclosure or other legal proceedings are brought that affect the economic and financial rights and abilities of the licensee.

No Minimum Sales
A licensee shall not enter into an agreement or understanding which sets a minimum requirement for gross sales of beer and wine beverages at the premises.

Trade Name
A licensee shall not use any trade name, assumed name or abbreviated name in connection with the licensed business unless the same appears on the license issued by the Board of Selectmen or unless written permission is first obtained from the Board. A licensee shall not use an unauthorized name on the books, records, stationery or interior or exterior of the premises or for advertising purposes or telephone listing without written permission from the Board.

Financial Statement
The Board of Selectmen will determine whether the service of beer and wine beverages has become more than incidental to the service of food by any licensee. The Board shall require a licensee to furnish an annual financial statement from a Certified Public Accountant indicating the percentage of gross sales for food and the percentage of gross sales for beer and wine beverages for the preceding year with any license renewal application with a minimum sales ration of 65% food to 35% alcohol. The license holder shall provide annually, a Certificate of Condition and a Certificate of Good Standing, as required by the Secretary of State for the Commonwealth of Massachusetts, to the Board of Selectmen.

Manager Present
At all times that the licensed premises are open for service of beer and wine beverages, the licensee shall have on the premises a manager or assistant manager who has successfully completed a beer and wine beverage server training program satisfactory to the Board of Selectmen. These names shall be listed on the license.

Games of Chance
A licensee shall not operate nor permit any other person to operate a Keno or similar game at the licensed premises. Electronic games, mechanical games, arcade-type games and manual games of chance for reward or entertainment are specifically prohibited from all licensed premises.

No Below Cost Sales
A licensee shall not sell beer and wine beverages for less than actual cost.

Prices
A restaurant licensee shall maintain a schedule of the prices charged for all drinks to be served and drunk on the premises. Such prices shall be effective for not less than one calendar week.

Take-out
Licenses will not be granted to establishments whose principal business activity is fast food, take out, or which have any drive-in aspect.

Prohibited Practices
A restaurant licensee or employee or agent shall not:

- Offer or deliver any free drinks to any person or group of persons;
- Deliver more than one drink to one person at one time;
- Sell, offer to sell or deliver to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the general public;
- Sell, offer to sell or deliver drinks to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public;
- Sell, offer to sell or deliver beer and wine beverages by the pitcher;
- Encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes.

No Other Alcohol
A restaurant licensee shall not permit any alcoholic beverages to be brought onto the premises by patrons or employees under "bring your own bottle" arrangements or otherwise. A hotel licensed to sell beer and wine beverages shall not permit (a) employees to bring their own alcoholic beverages onto the licensed premises; and (b) patrons to bring their own alcoholic beverages onto an area of the licensed premises while beer and wine beverage service is available in that area. Patrons shall not be permitted to consume their own alcoholic beverages in any common area of the licensed hotel prior to 11 a.m. or after 11 p.m..

Service to Minors Prohibited
A licensee shall be responsible for ensuring that minors are not served beer and wine beverages and are not drinking beer and wine beverages on the premises, whether served to them by an employee or handed to them by another patron.

Posting of Penalties
A licensee shall conspicuously post at the premises a current copy of the penalties for driving a motor vehicle under the influence of alcohol set forth in M.G.L. c.90 § 24.

No Removal of Alcoholic Beverages
A licensee shall not allow patrons or employees to leave the premises with beer and wine beverages, except the remains of a bottled wine purchased by a patron in conjunction with a meal as permitted by M.G.L. c. 138, §12 .

Disturbances
When any noise, disturbance, misconduct, disorder, act or activity occurs in the premises, or in the area in front of or adjacent to the premises, or in any parking lot provided by the licensee for the use of its patrons, which in the judgment of the Board of Selectmen adversely affects the protection, health, welfare, safety or repose of the residents of the area in which the premises are located, or results in the premises becoming the focal point for police attention, the licensee shall be held in violation of the license and subject to proceedings for suspension, revocation or modification of the license.

ADVERTISING

There shall be no commercial products, displays, and/or signs, which advertise the sale of beer and wine beverages on the exterior of the licensed premises. Any commercial products, displays, and/or signs inside the licensed premises that are visible from the exterior of said premises are also prohibited. The use of commercial products, advertising devices, displays, and/or signs for the sale of beer and wine beverages, which are of a neon or illuminated tube (gaseous discharge) type is prohibited on the interior and exterior of all licensed premises; lighting of any sign advertising device shall be continuous, not intermittent nor flashing nor changing; use of iridescent or luminescent types of paint on sign advertising devices is not permitted.

Any licensed establishment may display its menu, as well as its beverage list on the exterior of the premises or on the inside glass of a window of the premises, so long as the size of the menu and/or display complies with the Town's bylaws.

INSPECTIONS AND INVESTIGATIONS

Inspections
Licensed premises shall be subject to inspection by the licensing authority or its duly authorized agents. Licensed premises shall be subject to regular inspections by police or other authorized agents of the Board of Selectmen. Any licensee found in violation of a law or Town regulation may be subject to suspension or revocation of the alcohol license. It shall be the responsibility of the licensee to ensure that procedures are in place to allow police and authorized agents of the Board of Selectmen immediate entrance into the premises at any time employees are present.

Employees
The licensee shall maintain a current list of all employees and shall have it available at all times for inspection upon the request of an authorized agent of the Board of Selectmen.

Complaints
All complaints regarding operation of licensed premises and investigation reports shall continue in force until they have been reviewed and disposed of by the licensing authority.

STANDARDS OF CONDUCT ON THE PREMISES

No Employee Consumption
No manager or employee of a licensee shall consume any beer and wine beverages while on duty.

Illegal Activity
The licensee shall make all reasonable and diligent efforts to ensure that illegal activities do not occur at the premises. Such efforts shall include frequent monitoring of restrooms and other nonpublic areas of the premises.

Disruptive Patrons
Employees are to call the police to have patrons removed from the premises if they are being disruptive and refusing to leave voluntarily.

CAUSES FOR REVOCATION, SUSPENSION, AND MODIFICATION

A license may be modified, suspended, or revoked for noncompliance with the requirements of Chapter 138 of the General Laws, the regulations of the Alcoholic Beverages Control Commission, and these policies, rules and regulations, and any of the following:

Violations of Law
Violation by the licensee of any provision of the relevant General Laws of the Commonwealth, of the regulations of the Alcoholic Beverages Control Commission or of the regulations or by-laws of the Town.

Misrepresentation
Fraud, misrepresentation, false material statement, concealment or suppression of facts by the licensee in connection with an application for a license or other permit or for renewal thereof or in connection with an application for the renovation or alteration of the premises or in connection with any other petition affecting the rights of the licensee under the license or in any interview or hearing held by the Board of Selectmen in connection with such petition, request, or application affecting the rights of the licensee;

Failure to Operate
Failure to operate or cessation of the sale of beer and wine beverages at the premises covered by the license for more than 21 days without approval of the Board of Selectmen;

Failure to Furnish Information
Failure or refusal of the licensee to furnish or disclose any information required by any provision of the General Laws or by any rule or regulation of the Alcoholic Beverages Control Commission or any rule or regulation of the Board of Selectmen.

PENALTY GUIDELINES

Penalties
A licensee who violates the applicable laws of the Commonwealth, regulations of the Alcoholic Beverage Control Commission and/or these regulations shall be subject to a range of disciplinary measures, including warnings, license suspension or revocation.

No Renovations
Suspension periods shall not be used as a time to do renovations at the premises unless such renovations have previously been approved by the Board of Selectmen.

PERMISSION TO CLOSE PREMISES REQUIRED

Notice
A licensee intending to close its place of business, or cease the sale of beer and wine Beverages, whether on a temporary or permanent basis, must notify the Board of Selectmen in writing before such closing, stating the reason and length of such closing, and obtain the Board of Selectmen's approval. Failure to provide such notice or obtain approval for such closing or cessation for more than 21 days may result in the suspension or revocation of the alcohol license.

Emergencies
The restriction in the preceding paragraph shall not apply to a closing due to an act of God, natural disaster, illness or some other business problem for which request had been made to the Board of Selectmen and approval granted.

Bankruptcy and Court Proceedings
A licensee shall immediately notify, in writing, the Board of Selectmen 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.

MANAGEMENT AND SERVICE TRAINING

Manager Required
A licensee must appoint a manager by a properly authorized and executed delegation. The responsibilities of every licensee and its manager shall include the following: to obey all statutes of the Commonwealth, rules of the Alcoholic Beverages Control Commission, Town by-laws, and Rules and Regulations of the Board of Selectmen; and to promptly notify the police of any disturbances or illegal activity on the premises of which he or she becomes aware.

Transfers Restricted
A licensee shall not change managers, officers or directors, sell or transfer corporate stock, pledge corporate stock or its license as security, or accept a loan as permitted by state law or regulations or credit from another licensee, without first obtaining the approval of the Board of Selectmen. No person or entity may have a direct or indirect beneficial interest in a license without first obtaining the approval of the Board of Selectmen.

Service Training
The licensee shall provide an employee training program on the proper procedures for verifying that patrons are at least 21 years of age and not intoxicated. A written description of such program, along with a written policy outlining the employees' responsibilities and the disciplinary measures which will be taken against any employee for violating said policy, shall be provided to the Board of Selectmen as part of the original or renewal application materials and maintained on the premises at all times. Each new employee who handles alcohol shall obtain server training within thirty (30) days of commencing employment.

Certification
The licensee shall maintain a signed certification for each employee who handles alcohol, indicating that the employee has received the described training and has reviewed and understands the written policy describing his or her responsibilities.

Retraining
Upon a finding by the Board of Selectmen of a violation of the laws or regulations concerning service of alcohol to a minor or intoxicated person, the employees involved in the violation who continue to be employed by the licensee shall be retrained forthwith and receive a new server training certification.

Approval Program
The training and certification shall be pursuant to a training program approved by the Board of Selectmen [e.g. TIPS (Training for Intervention Procedures) or other similar program].

PRIVATE FUNCTIONS

For the purpose of this regulation, the term "private function" shall mean an event or gathering in an area of a licensed establishment where the general public is excluded. Private functions where beer and wine is to be served may be held in a portion of the licensed premises. The area for the private function must be unavailable to the general public while the private function is taking place and no beer and wine from the function may be served to any member of the general public. Notwithstanding any other rule or regulation herein:

1. Food service is required at a private function where beer and wine beverages are to be served. For the purpose of this regulation, the term "food service" shall be the preparing, sale, service, dispensing, distribution, and/or delivery of food which shall include hors d'oeuvres, sandwiches, soups, prepared foods, salads or desserts.

2. The sale and/or service of beer and wine beverages at a private function may be made (a) by wait staff and/or by bartenders to patrons who are seated or standing; and/or (b) by a bartender at a service bar or at a temporary function bar to patrons who are standing. Stools or chairs at any bar are prohibited.

3. No licensee or employee or agent of a licensee shall deliver more than two drinks to one person at one time (204 CMR 4.03(1) (b).

4. Service of beer and wine beverages at a private function shall not begin prior to 11 a.m.; "last call" shall not be after 10:45 p.m.; at 11:30 p.m. all tables, counters, and bars shall be immediately cleared of all glasses, bottles, and containers of beer and wine beverages; and, there shall be no service of beverages permitted after 11 p.m. However, notwithstanding the foregoing, on New Year's Eve "last call" may be at 12 a.m.; at 1 a.m. all tables, counters, and bars shall be immediately cleared of all glasses, bottles, and containers of beer and wine beverages; and, there shall be no drink consumption permitted after 1 a.m.

Approved by the Aquinnah Board of Selectmen on , 2011

Jim Newman, Chairman	Spencer Booker	Beverly Wright