

CHAPTER 250

TOWN OF NANTUCKET

RULES AND REGULATIONS GOVERNING ALCOHOLIC BEVERAGES

Effective Date: March 1, 2010

By virtue of the authority contained in Chapter 138, Section 23, and Chapter 140 of the Massachusetts General Laws, as amended, the Board of Selectmen of the Town of Nantucket, serving as the Town's Liquor Licensing Authority (hereinafter, the "Board" or "local licensing authority") hereby promulgates these Rules and Regulations Governing Alcoholic Beverages (hereinafter, the "Regulations"). The Regulations shall supersede all previous applicable regulations or policies issued by the Town of Nantucket (the "Town"). The Board reserves the right to amend the Regulations periodically as it sees fit, upon advance notice.

All licenses issued for the sale in any manner of any alcoholic beverage shall be issued by the Board on the condition of full compliance with the Regulations. The failure to comply with the Regulations and other applicable bylaws or rules issued by the Town or state shall constitute sufficient cause or grounds for refusing to grant said licenses, or for suspending, canceling, or revoking any license already granted by the Board.

I. Alcoholic Beverages

No person shall drink any alcoholic beverages as that term is defined in Chapter 138 of the Massachusetts General Laws, as amended ("Chapter 138"), Section 1, while on, in or upon any public way or upon any way to which the public has a right of access, or any place to which members of the public have access as invitees or licensees, park or playground, or private land or place without consent of the owner or person in control thereof. All alcoholic beverages used in violation of the Regulations and/or Chapter 54 of the Nantucket Code may be seized.

No person shall sell, furnish or provide alcohol to any person under the age of 21. In addition to the 'rules and regulations' pertaining to the licensing and sale of alcoholic beverages that follow, Nantucket residents and visitors should be aware of the principle of social host liability under Massachusetts law (MGL Chapter 138, section 34). A "social host" is an individual who provides alcoholic beverages to guests in his or her home, or other property (s)he owns or manages. The law defines 'furnish' as 'to knowingly or intentionally supply, give or provide to or allow a person under 21 years of age (except for the children and grandchild of the person being charged) to possess alcoholic beverages on premises or property owned or controlled by the person charged.'¹ Under Massachusetts law, a social host may under certain circumstances be held liable (criminally and/or civilly) for injuries caused by a guest who, having consumed alcohol at the host's premises (even if the property owner is not present at the time), does harm to himself or herself or to a third party. If the guest is not of legal drinking age (i.e., under 21 years of age) and the host knew or reasonably should have known that he/she was furnishing alcohol to an underage youth, the host may be held responsible for injuries or damage to the underage youth, or to third parties caused by the his/her alcohol influenced actions. Furthermore, even if the guest was not an underage youth, a social host may be liable for injuries to third parties if the host knew or should have known that the guest was intoxicated but, nevertheless, gave him or her, or permitted him or her

to take an alcoholic drink.

The State Liquor Control Act, G.L. Chapter 138, regulates "alcoholic beverages" as that term is defined by law. The law defines "alcoholic beverages" to be "any liquid intended for human consumption as a beverage and containing one half of one percent or more of alcohol by volume at sixty degrees Fahrenheit." Thus, if a product is composed or manufactured so that it contains 1/2% or more of alcohol by volume at sixty degrees Fahrenheit, it is an "alcoholic beverage" and subject to the Liquor Control Act. If a product is composed or manufactured so that it contains less than 1/2% of alcohol by volume at sixty degrees Fahrenheit, it is not an "alcoholic beverage" and is not subject to the Liquor Control Act

II. General Provisions Regarding the Administration of Licensed Premises

(1) An applicant for a liquor license must meet the requirements of Chapter 138, the Regulations, and any other applicable local or state law.

(2) All employees serving alcohol to the public are required to successfully complete an alcoholic beverage server training program approved by the Town. The requirement set forth in the preceding sentence shall include and apply to the manager, assistant manager, and persons responsible for viewing identification cards to determine the age of patrons for service of alcohol. All employees engaged in serving or selling alcoholic beverages and/or viewing of identification cards shall be certified within thirty (30) days of employment at the licensed premises. To the extent an employee other than the manager or assistant manager serves alcohol or views identifications cards within the first thirty (30) days of his or her employment without having successfully completed an alcoholic beverage server training program, the manager, manager of liquor license, or Manager on Duty will be personally responsible for that employee, and any violation of the Regulations committed by that employee will be treated as if the said manager had committed the violation. Managers and assistant managers shall have successfully completed an alcoholic beverage server training program prior to assuming the duties of manager or assistant manager. All alcohol servers are strongly encouraged to attend periodic server retraining programs at least once per calendar year. Server Training Certification must be current/valid and the employee must renew *prior* to expiration of certification. Retention of the records of training and retraining is the responsibility of the manager and must be made available to the Nantucket Police Department upon request.

(3) Certain practices, including, without limitation, "Happy Hours", are prohibited per Chapter 138, Sections 12 and 14, 204 CMR 4.00, et seq.

(4) Cover charges are not permitted except in compliance with Massachusetts General Laws Chapter 140, Section 183D and 204 CMR 2.16.

(5) The Board has very broad discretion to determine whether or not to issue a license in the Town of Nantucket and whether such license would serve a public need in such a manner as to protect the common good.

(6) The licensed premises shall be subject, at all times, to inspection by the Nantucket Town Manager or his/her designee(s).

(7) The Nantucket Police Department shall have the authority to investigate potential violations of the Regulations and to conduct other such enforcement as the Chief of Police deems appropriate, including the use of plainclothes police officers for the purposes of ensuring compliance with Chapter 138, the Regulations, and other state and local laws as may be applicable.

(8) Any prior restrictions or conditions placed upon a property housing a liquor license establishment by another Town Board or Commission will be construed as also having the agreement of the local licensing authority.

III. Hours of Sale

(1) In accordance with Chapter 138, Section 12, the "Official Opening and Closing Hours" are those which are designated on the licensee's liquor license issued by the Board. Last call shall be at least fifteen (15) minutes prior to the "Official Closing Hour." No alcoholic beverages may be served after the "Official Closing Hour". All tables and bars must be cleared of all glasses, bottles and containers of alcoholic beverages and all customers must be off the licensed premises within one-half hour after the "Official Closing Hour". Owners and employees must be off the licensed premises no later than sixty (60) minutes after the "Official Closing Hour," provided that owners and their employees and contractors may be on the licensed premises at any time for the purpose of cleaning, making emergency repairs, providing security for such premises, or preparing food for the next day's business. No employee or owner shall consume alcohol on the premises nor serve any alcoholic beverages at the licensed premises before the "Official Opening Hour" or after the "Official Closing Hour." Patrons are not permitted to bring alcoholic beverages into the licensed premises for their own consumption. Common Victualler Licensees 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.

(2) A violation of any of the afore-mentioned restrictions regarding the hours of operation shall constitute a violation of the Regulations and may subject the licensee to modification, suspension, revocation or cancellation of its license in accordance with Chapter 138.

IV. Change of Manager

(1) An application for change of manager of the licensed premises must be filed with the Board at least two (2) weeks before the proposed effective date of the change, unless the approved manager has terminated his or her employment without prior notice to the licensee. In that case, the licensee must notify the Board of the name of the person who will discharge the duties of manager while he or she is absent pending selection and approval of a new manager by the close of the next business day following the manager's termination of employment. If the employment of the approved manager is terminated by the licensee, or if the approved manager is replaced, transferred, or for other reason due to action by the licensee is no longer acting as manager, the licensee must file an application for change of manager at least two (2) weeks before the action is taken by the licensee and must obtain approval by the Board of the application before changing the manager. If circumstances other than those stated above require a licensee to make a change in manager without timely filing the required application, the licensee shall file the application at the earliest practicable time and must include a detailed statement of the reasons for its delay. If the Board finds that the circumstances of the delay justify the noncompliance, no sanction will be imposed. If the circumstances are not found to be sufficient, the Board may impose a

day of suspension for each day of unjustified noncompliance, or such other sanction as permitted by Section XV of the Regulations. When submitting an application for change of manager, the manager shall be certified as an alcohol server prior to submitting the application. Furthermore, approval of a change in manager may be conditioned upon proof of payment of all outstanding local, state and federal taxes and fees.

(2) Upon receipt of an application for an original license, or in the case of a new manager, upon being advised of the new manager's identity, the Nantucket Police Department will conduct a background check of any proposed licensee, manager, and such check will include a review of any existing criminal record. The licensing authority may reject any application where the licensee's or manager's criminal record indicates theft, unlawful sale, use or distribution of controlled substances, alcohol-related offenses, 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, puts the public at risk.

(3) Violation of any of the aforementioned restrictions regarding change of manager shall constitute a violation of the Regulations and shall subject the licensee to possible sanctions.

V. Manager Responsibilities

(1) The Board regards the manager of licensed premises as the principal representative of the licensee and, as such, having full authority and control of the licensed premises and of the conduct of all business taking place therein relative to alcoholic beverages, as referred to in Chapter 138 and the Regulations.

(2) Without limiting the scope of the previous subsection, the Board will hold the manager of the licensed premises responsible for the following:

a. Selection of qualified employees, including servers, clerks and persons who are engaged in dealing with the public in any capacity;

b. Training of employees in all matters relating to the sale or service of alcoholic beverages;

c. Assuring that employees serving alcohol to the public have successfully completed an alcoholic beverage server training program for serving alcohol responsibly, and provide for continual training of employees engaged in serving and selling alcoholic beverages;

d. Ensuring that no criminal activity, including the illegal sale, use or distribution of controlled substances, takes place on the licensed premises or on any parking area of the licensed premises;

e. Promptly reporting to the Nantucket Police Department all instances of attempted purchases or procurement of service of alcoholic beverages by minors, including attempts to gain access to premises upon which alcoholic beverages are served and from which minors are excluded. In such instances, the licensee is expected to take appropriate action, which shall include: (1) reporting to the Registry of Motor Vehicles instances involving possession or use of a false, forged or counterfeit license to operate motor vehicles or identification card issued by the Registry of Motor Vehicles; (2) confiscation of liquor identification cards or motor vehicle

operator's license presented by the minor, and: (3) if a purchase was made or service was procured, the name of the licensee's employee participating therein;

f. Enforcement of the Regulations and any applicable state law with respect to the operation of the licensed premises; and

g. Ensuring that the licensed premises, including the exterior, are kept clean, neat and sanitary at all times.

(3) Except as provided herein, the manager of the licensed premises must be a full-time employee or a corporate officer of the licensee, must be engaged exclusively in the management of the licensed premises, and must be a qualified seller or server of alcoholic beverages. When the manager is not present at the licensed premises, the person in charge of the business must be a qualified seller or server of alcoholic beverages and designated by the approved manager to have charge of the business in the manager's absence. The manager will continue to be responsible for the operation of the business whether or not he/she is present at the licensed premises. When the manager is not at the premises a method of contacting him/her promptly must be arranged so that he/she can be reached at all times by the person designated to be in charge of the premises in his/her absence. The provisions of the first sentence of this subsection shall not apply to any licensee holding a license issued under Chapter 138, Section 12, to a veterans organization or to a licensee holding a license issued to a club under said chapter.

(4) Failure of the manager to comply with the Regulations may result in his or her removal as manager or suspension or revocation of the liquor license as the Board finds appropriate given the specific circumstances.

VI. Procedure for Obtaining New Liquor Licenses

(1) In addition to submitting all of the liquor license application documents as may be required by the Alcoholic Beverages Control Commission ("ABCC"), the applicant for a liquor license of any type must submit a letter to the Board summarizing its proposal and requesting a public hearing before the Board. The Town Manager and Chairman of the Board will jointly assign a date for such public hearing. As part of the application process, the applicant must provide payment for the publication of a legal notice to appear in a local newspaper for two (2) consecutive weeks prior to the assigned public hearing, in accordance with Chapter 138. At the public hearing, the Board will consider the application for a liquor license and the input of any interested members of the public. The Board's decision on the application will be communicated to the applicant in a timely manner. The Town will provide a copy of the Regulations to each licensee at the time the new liquor license is issued and at the time of license renewal. The licensee shall sign a receipt to be maintained at the town offices evidencing their receipt of a copy of the Regulations.

(2) The Board in reviewing applications has very broad discretion to determine whether to issue a license in the Town of Nantucket and whether such license would serve a public need in such a manner as to protect the common good.

VII. Additional Considerations for Approval of New License or Transfer

The Board will also consider any or all of the following additional information that can be reasonably offered in support of a particular license application:

- a. The applicant is a qualified veteran’s organization and seeks a club license.
- b. The applicant proposes an establishment that offers a regular forum for music and musicians to play and obtain exposure for their work.
- c. The applicant offers variety, or uniqueness, in its proposed establishment or shop, in contrast to what exists in Nantucket at the time of the application.
- d. The applicant proposes an establishment that offers a substantial economic benefit to the Town of Nantucket.
- e. Proposals for establishments to be located in high density retail areas, either as new licenses or transfers, are discouraged if the proposed location duplicates what is presently located in the area.

VIII. Modifications to Licensed Premises

Once a liquor license is issued by the Board, no substantial physical changes to the licensed premises shall be made without the prior approval of the licensing authority, which requires the filing of an Alteration of Premises Application. For the purpose of the Regulations, a “substantial physical change” is defined as a change sufficient to require a building permit.

IX. Transfers of License Ownership or Location (Chapter 138, Section 23)

(1) Applications for transfer of ownership or location of a liquor license shall be considered an original application and processed as such. Current holders of liquor licenses hold no property rights in said license and the Board is not required to grant such transfer requests. To the extent permissible under law, the Board reserves the right to impose sanctions pursuant to Section XV upon existing licensees who attempt to transfer their licenses for compensation. Approval of a transfer of majority ownership further 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. 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, unless provided by contrary law. 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 before the Board shall be required for any transfers of ownership or location, including, but not limited to transfers to mortgagees.

(2) In the case of a license transfer, as in the case of an issuance of a license, the decision to approve the transfer of location or ownership, or both, is at the Board’s sole discretion.

X. One-Day or Special Licenses (Chapter 138, Section 14)

(1) Holders of liquor licenses issued pursuant to the Regulations are not eligible to hold one-day or special licenses. Any person or establishment that has submitted an application for a liquor license to the licensing authority is likewise not eligible to simultaneously hold a one-day or special license. The following types of organizations are eligible for one-day alcoholic beverage licenses under the Regulations:

- Civic or municipal organizations;

- Commercial establishments;
- Fraternal organizations;
- Non-profit organizations;
- Unincorporated groups or organizations not engaged in the sale of alcoholic beverages for profit;
- Service clubs; and
- Veteran’s organizations.

(2) Other organizations may submit applications for consideration by the Board. The fee for a One-Day License shall be established by the Board from time to time pursuant to Chapter 40, Section 22F of the Massachusetts General Laws.

(3) Applicants for a Nantucket Temporary Pouring License (a one-day license) must complete the required application form, pay a \$20.00 application fee, provide a valid insurance liability certificate and obtain all signature approvals before being considered for the granting of a one-day license

XI. Criteria for Approval for One-Day or Special Licenses

(1) The following matters will be taken into account by the Board in approving one-day licenses:

Admission Age. The Board will not initially deny a one-day license for a function at which minors are present, and require compliance with the laws governing the sale or furnishing of alcoholic beverages.

Frequency. One-day licenses are to be issued primarily to applicants sponsoring functions that are not held more than once annually. Except for applicants that are in the business of catering or accommodating individual functions, one-day licenses are not intended as an alternative to a seasonal or annual liquor license.

(2) Acceptance of Conditions. Acceptance of a one-day license by an applicant under the Regulations will be deemed to be an agreement on behalf of the licensee to abide by the following conditions of the license:

1. Certification of Servers:

All commercial caterers must be licensed by the Nantucket Health Department.

2. Hours of Service of Alcoholic Beverages:

The hours of sale and service shall for all one-day licenses be no later than 1:00 A.M. The “last call” for all such licenses shall be no later than 12:30 A.M. The function shall conclude no later than 1:00 A.M., at the same hour as the license.

3. Number of Persons on Premises:

The number of persons may not exceed the occupancy limits allowed by law for the premises at which the license will be exercised.

4. Police Detail:

The number of officers, if any, and the hours during which a police detail will be required at the licensed premises and, if required, for orderly parking and traffic control, will be determined by the Nantucket Police Department. Generally, these hours will encompass the entire duration of the function. The Nantucket Police Department will consider the location of the premises, availability of on-site parking, the number of persons estimated to be in attendance and the time and duration of the function in making its determination.

(3) Additional Provisions. The following additional provisions shall apply to one-day licenses:

1. Departmental Approvals:

The Board of Health and the Building Department must approve the licensed premises, including, where applicable, food service equipment. For any function to which the general public will be admitted, the Building Department must approve the licensed premises as meeting handicap accessibility requirements.

2. Neighborhood Impact:

The applicant or such other person designated by name, address and local telephone number in the application will be responsible for the orderly conduct of the function for which the license is issued. Consumption of alcoholic beverages outside of the premises within which the licensed function is to be held will not be permitted. Music, noise, or other function-related activities must not create an undue imposition upon any adjacent residences, inns, guest houses and the like (Refer to Chapter 101 of the Nantucket Code.). Police detail officers will be instructed to respond appropriately to complaints. Such response may include an order to terminate the event or otherwise limit the offending activity.

3. Submission of Applications:

Applications must be complete with all necessary endorsements when submitted to the Town Administration Office and must be submitted a minimum of ten (10) business days in advance of the date on which the licensed function is scheduled to take place.

(4) Application Requirements. When submitted, each application must be approved by the Town's Health Department, Fire Department, Building Department, and Police Department (as to whether a police detail required). Final approval is given by the Town Manager, who is authorized to approve, on behalf of the Board, one-day licenses meeting the requirements of the Regulations. Applications that are denied by the Town Manager may be appealed to the Board for approval and shall be accompanied by the Town Manager's summary of reasons for declining approval. The Board must receive such appeals for approval no later than Noon (12:00PM) on the Tuesday of the calendar week before the week in which the function is to be scheduled to take place. A hearing must take place during a regularly scheduled meeting of the Board. The applicant shall receive notice of the date and time of the hearing.

XII. Distribution of Regulations

The Regulations, in their most current form, shall be mailed to all licensees with their renewal application and with each application for change of the licensed manager. The Regulations shall be

appended to each liquor license issued by the Board. The licensee may not pick up his/her license until the licensee has signed a receipt acknowledging that a copy of the Regulations has been received. A copy of the most current Regulations shall be maintained at the licensed premises at all times, and shall be available for inspection upon request. On, or as soon as possible after the effective date of the Regulations, the Town Administration Office shall mail a copy of said Regulations to each licensee in the Town.

XIII. Filing Fees and Annual Licensing Fees

(1) Licensing Fees.

Town of Nantucket Annual and Seasonal Liquor Licenses for:

ANNUAL LICENSES

- All Alcohol Restaurant \$2,750.00
- All Alcohol Innholder \$2,750.00
- All Alcohol Club \$1,000.00
- All Alcohol Package Store \$2,000.00

ANNUAL LICENSES

- Wine & Malt Restaurant \$1,500.00
- Wine & Malt Innholder \$1,500.00
- Wine & Malt Club \$ 825.00
- Wine & Malt Package Store \$ 800.00

- Farmer-Brewer \$1,500.00
- Farmer-Winery \$1,500.00
- Farmer-Distiller \$2,750.00

SEASONAL LICENSES

- All Alcohol Restaurant \$2,900.00
- All Alcohol Inn \$2,900.00
- All Alcohol Club \$2,900.00
- All Alcohol Package Store \$2,150.00

- Wine/Malt Restaurant \$1,600.00
- Wine/Malt Inn \$1,600.00
- Wine/Malt Club \$1,200.00
- Wine/Malt Package Store \$1,000.00

(2) Application Filing Fees.

- Application for Liquor License \$ 20.00
- Application for a Change to a License \$ 20.00

XIV. Miscellaneous Operating Provisions

1. The licensee shall ensure that the Nantucket Police Department, the Nantucket Fire Department, and authorized agents of the licensing authority have immediate access to the licensed premises at all times and under all circumstances.
2. No alcoholic beverages shall be sold to anyone under the age of 21 years. It shall be a defense to any alleged claim of sale of alcohol to a minor if the licensee can show that the minor produced a valid Massachusetts driver's license, a valid Massachusetts Liquor Identification Card, a valid Passport issued by the United States or by a government of a foreign country recognized by the United States government, or a valid U.S. issued Military ID card. Licensees may accept out of state licenses as proof of age but licensees shall bear the risk that such licenses are invalid.
3. A delivery of alcohol is considered a sale, and must be received by an individual 21 years of age or older, with proper identification (off premise license holders/establishments).
4. The licensee shall ensure that all business taking place within the licensed premises, and within areas under the licensee's control, 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 specifically . This shall include, but not be limited to, ensuring that there is no disorder, unlawful use or sale of drugs, indecency, prostitution, assaults, lewdness or gambling on or about the licensed premises.
5. No alcoholic beverages shall be sold or delivered to an intoxicated person.
6. Alcoholic beverages may be consumed only from open containers (on premise license holders/establishments).
7. No licensee may display any advertisement or sign on the outside façade of the licensed premises upon which appears any brand name of an alcoholic beverage product. Signage on the exterior of the premises is subject to advance approval by the Historic District Commission.
8. No patron may remove any alcoholic beverage from the licensed premises, unless the patron is removing from the premises a resealed bottle of partially consumed wine as regulated by Chapter 138 and the regulations of the ABCC (on premise license holders).
9. No patron may purchase more than two drinks at one time (on premise license holders/establishments).
10. No licensee shall provide or allow entertainment unless an entertainment license has been obtained from the Board of Selectmen.
11. No licensee shall make any distinction, discrimination or restriction on account of race, color, creed, sex, sexual orientation or ancestry relative to admission to the licensed premises or treatment of any person within the licensed premises.

XV. Sanctions for Violations of the Regulations

A. Purpose

The purpose of this section is to improve the ability of the Board to prevent alcohol abuse and violation of the liquor laws of the Commonwealth and the requirements of the Regulations. It is the intent of the Board that this section will help to achieve reasonable uniformity in the imposition of sanctions and to avoid confusion in the minds of the public, patrons and licensees due to a lack of understanding of the consequences of violating the liquor laws and the terms of liquor licenses. This section is intended to empower the Board to consider the circumstances of each case and provide a mechanism for which licensees can ensure their compliance with the Regulations.

B. General Provisions

1. No licensee shall permit any illegality to occur on the licensed premises. The manager shall at all times maintain order and decorum on the licensed premises and in the immediately surrounding area and shall cooperate with Town officials in ensuring safe and orderly licensed premises.
2. All violations of the liquor laws and the terms of liquor licenses are to be reported to the Board by the Nantucket Police Department or by any licensee or manager that becomes aware of an offense involving the licensed premises within two weeks of said violation. Failure to report a violation involving the licensed premises constitutes a violation of the Regulations and may subject the licensee to sanctions in accordance with the procedure set forth herein.
3. Sanctions for offenses shall be consistent with the Town's general goals of protecting public safety and the general welfare. Sanctions will also be imposed with the goal of preventing future offenses.
4. The nature and severity of the sanctions imposed by the Board will be decided according to the nature of the offense and the presence of aggravating or mitigating circumstances as further described herein.
5. Sanctions may consist of any one or more of the following as appropriate: revocation of license; suspension of license; criminal prosecution of offenders by the Nantucket Police Department, including customers and patrons as deemed appropriate by the Police Chief, and/or mandatory participation in alcohol abuse and offense prevention programs.
6. The Nantucket Police Department is encouraged to recommend to the Board the terms under which an offense be resolved. Any such recommended resolution must be in writing, signed by the manager of the licensed premises or license holder charged with the offense and approved by the Police Chief. The recommendation must include a statement detailing the facts determined in the Police report and found as part of the Department's investigation. The recommended resolution is not binding upon the Town unless and until approved by the Board.
7. Depending upon the nature of the violation, if the Police Department and the manager of the licensed premises and/or license holder charged cannot agree on a recommended resolution, the Police Department will make any additional investigation it deems necessary for a complete presentation of the facts and will file a detailed written report with the Board.
8. Notice is to be provided to a licensee of an alleged violation of the Regulations. The notice will include the date of the event giving rise to the possible disciplinary action, a description of the event, and a clear identification of the provision(s) of the Regulations that is/are alleged to have been violated as a result of the event. Said notice will also provide the licensee with the date upon which the Board will hold a

hearing concerning the licensee's alleged violation. A notice containing the above-mentioned information shall be sent to the licensee via certified mail/return receipt requested no less than ten (10) days prior to the date of the hearing before the Board. Licensees are entitled to retain counsel to represent them at the hearing if they so desire.

9. The procedures stated in the Regulations shall be an indication of the range of sanctions available to the Board. The Board will refer to these guidelines in deciding whether to approve a negotiated recommended resolution.

10. The Board may consider, but is not required to accept a negotiated resolution recommended by the Nantucket Police Department. The Board is empowered to consider alternative sanctions consistent with Section XV of the Regulations, and applicable state law.

11. The Nantucket Police Department and the Board will maintain a public record of offenses and their dispositions that will be indexed according to the licensee/manager, server and purchaser involved.

12. In the event that the Board decides to deny an application for a new license, refuse to issue a license or modify, suspend, revoke or cancel a license, the Board will provide the licensee with a written statement of reasons such action was taken against the licensee, a copy of which will be simultaneously mailed to the ABCC.

C. Determination of Sanctions

Sanctions will be determined according to the following procedure:

1. Offenses for which the Board may issue sanctions include, without limitation, those offenses as listed in Section XV, Subsection D.

2. The Board may make adjustments according to the existence of factors that warrant an increase in the sanction described in Section XV, Subsection E ("Aggravating Circumstances") or a decrease in the sanction as described in Section XV, Subsection F ("Mitigating Circumstances").

3. The Board may take into consideration the number of violations involved in the particular offense.

4. The Board may take into consideration the alleged offender's acceptance of responsibility as described in Section XV, Subsection F.

5. The Board shall also consider any relevant actions taken by the ABCC.

6. The Board may take into consideration previous written warnings issued by the Town to the licensee. The Board may consider the date(s) of the written warning(s), the reasons therefore, and the similarity of the incident resulting in the warning with the incident at hand.

D. Common Offenses

1. Sale outside of permitted hours (Chapter 138, Section 12 – Note that all references in this subsection are to sections of Chapter 138.);

2. Purchase by person under age 21 (Sec. 34A);

3. Employment by licensee of person under age 18 for direct handling or selling of alcohol (Sec. 34);

4. Sale or delivery to a person under age 21 for own use or for use of another (Sec. 34);
5. Sale to an intoxicated person (Sec. 69);
6. Hindering or delaying an investigation by the ABCC or authorized agent of the Board (Sec. 63A);
7. Failure to post notice of penalty for driving under the influence and driving while drinking from open container of alcoholic beverage (Sec. 34D); and
8. Failure to comply with section 204 CMR 4.03 of the ABCC regulations, which, in pertinent part, provides as follows:

- (a) No licensee or employee shall offer or deliver any free drinks to any person or group of persons;
- (b) deliver more than two (2) drinks to one person at one time;
- (c) 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 public;
- (d) sell, offer to sell or deliver to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public;
- (e) 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;
- (f) sell, offer to sell or deliver malt beverages, wine or mixed drinks by the pitcher or in other community type container commonly referred to as a "scorpion bowl" (Nothing in this subsection shall be construed to prohibit the sale of pitchers of beer);
- (g) increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week; and
- (h) encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes.

9. Failure to comply with section 204 CMR 9.00 of the ABCC regulations pertaining to retail sale of malt beverages in kegs.

E. Aggravating Circumstances

1. Failure to request identification card, operator's license or passport;
2. Juvenile appearance of underage purchaser;
3. Use of altered identification;
4. Refusal to cooperate in investigation;

5. Multiple sales to an underage purchaser on same occasion;
6. Quantity of beverage sold;
7. Staff not suitably trained;
8. Underage server;
9. Violations of other laws such as: prostitution, solicitation, drugs, gambling, disorderly conduct, cigarette sales to minor;
10. Concealing violation(s);
11. Furnishing false information to investigator;
12. Exceeding lawful capacity of licensed premises;
13. Intimidating or coercing witnesses or attempting to do so;
14. Offense occurring while under suspension of penalty;
15. Sale occurring while license suspended; and
16. The occurrence of any personal injuries or fatalities related to the underlying violation.

F. Mitigating Circumstances

1. Reasonable reliance upon identification card, an apparently valid motor vehicle operator's license, US passport, passport issued by a country recognized by the United States government or United States issued military identification card for proof of identity or age. (Sec. 34B);
2. Acceptance of responsibility by the licensee as shown by:
 - Substantial and voluntary assistance offered in investigation;
 - Acknowledgment of responsibility;
 - Agreement to participate in additional training; and/or
 - Agreement to participate in a program to detect and prevent future offenses.

G. Imposition of Sanctions

The Board's imposition of sanctions will be consistent with the Regulations and any applicable state statutory provisions. Note that these are guidelines only. Those persons who violate said Regulations or state statutes may expect one or more of the following consequences as appropriate in the sole discretion of the Board:

- (1) Suspension of license for a stated number of days. Licensees are advised that the following chart only represents guidelines for use by the Board when making its final decision in response to a liquor license violation. The Board, in accordance with the aggravating or mitigating factors as presented above, shall retain the authority to deviate from these guidelines in such cases as it deems appropriate.

First violation: written warning;

Second violation: 1-2 day suspension;

Third violation: 3-4 day suspension;

Fourth violation: 5-6 day suspension, regardless of amount of penalty suspended, if any;

Fifth violation: 7-15 day suspension;

Sixth violation: 16-30 day suspension;

Seventh violation: 31 days to one (1) year suspension, or revocation; or Revocation of license and prohibition on reapplying for a one (1) year period.

- (2) Suspension of license for a stated number of days with a portion of the suspension deferred upon condition that no further offenses occur within a specified period of time and that licensee waives its right to hearing upon such further offense.
- (3) Revocation of liquor license or suspension for a specified period of time after a hearing for cause.
- (4) Mandatory participation in prevention program(s) by licensee/manager and server as appropriate.
- (5) Public notice of the offense and disposition.

While the Board will endeavor to impose sanctions upon licensees in a manner consistent with the Regulations, where exigent or special circumstances warrant, such as a violation of the Regulations resulting in serious personal injury or death, the Board retains the authority in such circumstances to immediately order a full hearing, provide the licensee an opportunity to present evidence, and to revoke a license where the evidence so warrants such an action by the Board.

H. Reporting of Violations and Penalties Imposed

- (1) The Board shall receive annual reports from the Nantucket Police Department detailing violations of the Regulations from the reporting period, and the sanctions imposed by the Board for said violations. Reports shall be submitted to the Board no later than November 1st of each year. The Board will use these reports to analyze the factors that are commonly associated with violations, such as over-serving, underage serving, absence of serving training or registration, etc.
- (2) As previously stated, the Board reserves that right to amend the Regulations as it deems necessary. It is the responsibility of the licensee to keep abreast of any changes to the Regulations that may affect its establishment.

As adopted by the Board of Selectmen on 20 January 2010:

Chairman, Board of Selectmen

Selectman

Selectman

Selectman

Selectman

Effective Date: 1 March 2010