

## **ALCOHOL POLICY**

**Adopted 12/3/12 BOS meeting**

The purpose of this policy is to assist the Board of Selectmen, the public, current and prospective liquor licensees accomplish the goal of responsible alcohol consumption. This is primarily a preventative policy. License holders and their employees are in the best position to prevent violations of alcoholic beverages laws, regulations and policies from occurring on licensed premises. Some of the following considerations outlined for prospective applicants are subjective and will be interpreted and given weight according to the judgment of the Board of Selectmen and public demand. Prospective applicants are advised that meeting any or all of the considerations will not guarantee approval of a license. This policy is not intended to and does not create or supersede any rights already controlled by any relevant laws or regulations.

Any violation of the provisions of this Policy may lead to penalties being imposed by the Board of Selectmen as licensing authority, pursuant to Massachusetts General Laws (M.G.L.) and this Policy.

### **Applicants:**

Applicants should file the appropriate Alcoholic Beverages Control Commission (ABCC) application forms with the Board of Selectmen. Forms are available at [mass.gov/abcc](http://mass.gov/abcc). The applicant is responsible for the public notice of the hearing date. At the public hearing the Board will consider the application for a liquor license and the input of any interested members of the public.

### **Distribution of Policy:**

This policy, in its most updated form, shall be mailed to all licensees with their annual renewal application and with each application for change of the licensed manager.

### **I. Statement of Policy:**

1. The applicant must meet the requirements of M.G.L., Chapter 138, and all other applicable state laws and regulations, town bylaws and Board of Selectmen policies.
2. All employees serving alcoholic beverages to the public are required to have successfully completed an alcoholic beverage server training program which has been approved by the Town. This shall include the manager, assistant manager, and persons responsible for viewing identification cards to determine age of patrons for service of alcoholic beverages. All employees engaged in serving alcoholic beverages and/or viewing of identification cards shall be certified within twenty-one days of employment. Managers and assistant managers shall be certified prior to assuming the duties of manager or assistant manager. All alcoholic beverages servers shall attend periodic re-training programs at least bi-annually that reinforce the certification training. Records of retraining shall be submitted to the Board of Selectmen annually in December. The licensee shall maintain a current list of all employees in an accessible place during operation hours, and either the original or a copy of the training certificate for each employee. Said listing and certificates shall be made available for examination by the Board of Selectmen, or their agents, i.e. Police Chief, Medway Police Officers, Fire Chief or his designee, Building Inspector, and the Board of Health Inspector.

Said Listing shall include:

- a. Employee's Name
- b. Position
- c. Date hired

- d. Type of training and certificates
  - e. Date of training
  - f. Expiration date of certification
3. Wrist-Bands or any other kind of markings are prohibited as a method of identifying persons to be served alcoholic beverages.
  4. "Happy Hours" are prohibited.
  5. Cover charges are not allowed, except in compliance with M.G.L. Ch. 140, §183D and 204 CMR 2.16.
  6. Licensees shall not permit alcoholic beverages to be brought onto the licensed premises, by patrons or anyone other than a licensed distributor and shall not permit patrons to consume alcoholic beverages on the licensed premises that were not purchased on the licensed premises.
  7. No patron may remove any alcoholic beverage from the licensed premises, unless the patron is taking off the premises of a restaurant or hotel a resealed bottle of partially consumed wine, as regulated by MGL Ch. 138, §12 and ABCC regulations.
  8. The licensing of liquor establishments and what constitutes the public convenience will be subject to the informed discretion of the Board of Selectmen.

## II.

**This Policy Applies to all licensees issued alcoholic beverages licenses in Medway, except the sections pertaining to "Managers" and "Assistant Managers", which apply to annual licensees only. (Food service establishments that do not have an alcoholic beverages license may refer to the Board of Selectmen's "Common Victualler BYOB Policy").**

## III.

### A. One-Day or Special Licenses:

The following types of organizations and individuals are eligible for one-day alcoholic beverage licenses under this policy. Other organizations or individuals may submit applications for consideration.

- Civic or municipal organizations
- Commercial establishments (beer and wine only)
- Fraternal organizations
- Non-profit organizations
- Non-profit unincorporated associations
- Individuals holding social events
- Unincorporated groups or organizations not engaged in the sale for profit of alcoholic beverages.
- Service clubs
- Veterans' organizations

### CRITERIA FOR APPROVAL:

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

1. **ADMISSION AGE:** The Board will require that sufficient responsible servers are present at a function so as to assure compliance with the sale or furnishing of alcoholic beverages to eligible attendees only.

2. **FREQUENCY:** The Board considers one-day licenses to be primarily for the purpose of sponsoring a function that would be considered a special occasion. One-day licenses are not intended as an alternative to an annual license.
3. **ACCEPTANCE OF CONDITIONS:** Acceptance of a one-day license under this policy will be deemed to be an acceptance of the conditions of the license and an agreement with the Town of Medway to be bound thereby.

#### **CONDITIONS TO BE CONTAINED IN ONE-DAY LICENSES:**

1. **CERTIFICATION OF SERVERS:** All persons engaged in furnishing alcoholic beverages at a licensed function, whether by sale or without charge are required to be certified servers. All servers must be certified as having completed an alcoholic beverage training program approved by the Town and have evidence of such valid certification in their possession. Waiver of this requirement may be granted by the Board of Selectmen based upon the following criteria:
  - a. Size of gathering
  - b. Type of event
  - c. Age of anticipated attendees
  - d. Alcoholic beverage server must be at least 21 years of age
  - e. Server must be identified on one-day alcohol license application
2. **HOURS OF SERVICE OF ALCOHOLIC BEVERAGES:** The hours of sale and service for all one-day licenses shall conclude by 1:00 a.m. The “last call” for all such licenses shall be no later than 12:30 a.m. The function shall conclude at 1:00 a.m., at the same hour as the license. Entertainment licenses shall state that the function shall conclude at 1:00 a.m.
3. **NUMBER OF PERSONS ON PREMISES:** The number of persons may not exceed the occupancy limits allowed by law for the premises on 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 within the licensed premises and, if required, for orderly parking and traffic control will be recommended by the Police Department. Generally those hours will include the entire duration of the function, including after service hours. The factors to be considered include 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.

#### **ADDITIONAL PROVISIONS:**

**Departmental Approvals:** The Board of Health and the Building Inspection Department must approve the licensed premises. For any function to which the general public will be admitted, the Building Inspection Department must approve the licensed premises as meeting handicap accessibility requirements.

**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 structure 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. 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.

**Submission of Applications:** Applications must be complete with all necessary endorsements when submitted to the Licensing Office and shall be submitted sufficiently in advance of the day upon which the licensed function is to begin so that it can be reviewed and approved or denied by the Board of Selectmen.

A one-day liability policy or bond may be required.

## **B. Change of Manager**

Applies to annual license holders only

An application for change of manager must be filed with the Board of Selectmen 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, by the close of the next business day following the termination of employment, the licensee must notify the Board in writing of the name of the person who will discharge the duties of manager pending selection and approval of a new manager.

Termination, replacement, transfer or other action pertaining to the approved manager requires submission of an application for change of manager at least two weeks prior to the intended action. The licensee must obtain approval 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 circumstances. If the Board finds that the circumstances justify the non-compliance, no penalty will be imposed. If the circumstances are found to be insufficient, the Board may impose a penalty of suspension that may be up to one day of suspension for each day of unjustified non-compliance.

When submitting an application for change of manager, the proposed manager shall be certified as an alcoholic beverages server and registered with the police department prior to submitting the application.

## **C. Responsibilities of Manager:**

Applies to annual license holders only

1. The Board of Selectmen regards the Manager of the licensed premises as the principal representative of the licensee and as having full authority and control of the licensed premises and of the conduct of all business therein relative to alcoholic beverages, per General Laws c. 138, § 26.
2. Without limiting the scope of the previous subsection, the Board will hold the Manager, as well as the licensee, responsible for the following:
  - a. Selection of qualified employees of the licensed business, including servers, clerks and persons who are engaged 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 alcoholic beverages to the public have successfully completed an alcoholic beverage training program for serving alcoholic beverages responsibly.
  - d. Promptly reporting to the 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, and appropriate action taken by the licensee in response thereto.

e. Enforcement of the liquor laws and the Alcohol Policy of the Town of Medway with respect to the operation of the licensed business.

3. Except as provided herein, the manager must be a full time employee or a corporate officer of the licensee, must be engaged exclusively in the management of the licensed business, and must be a qualified seller or server of alcoholic beverages. The manager must be on the licensed premises regularly in the course of business, consistent with the permitted hours of operation. When the manager is not upon the premises, the person actually 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. When the manager is not upon the premises a method of contacting the manager promptly must be arranged so that the Manager can be reached at all times by the person designated to be actually in charge of the premises.

The provisions of the first sentence of this sub-section 3 shall not apply to any license issued to a veterans' organization under Mass. Gen. Laws c. 138, Section 12 or to a licensee holding a license issued to a club under Mass. Gen. Laws c.138, Section 17.

4. Failure of the Manager to comply with this policy or to properly discharge the duties of manager may result in revocation of Board's approval as manager or suspension or revocation of the license may be appropriate to the circumstances.

#### **IV. Penalty Structure:**

##### **A. Purpose**

The purpose of this section is to assist with the prevention of alcohol abuse and violation of the liquor laws of the Commonwealth. This procedure supports reasonable uniformity in the imposition of penalties resulting from liquor law violations and the terms of liquor licenses.

##### **B. General Statement of Policy**

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 premises, including any outdoor areas that are under the licensee's control such as parking lots, and shall cooperate with Town Officials in ensuring safe and orderly facilities.
2. All violations of the liquor laws and the terms of liquor licenses are to be reported to the Board by the Police Department and/or by any licensee or manager that becomes aware of an offense involving the licensed premises within two weeks of said violation.
3. Penalties for offenses will be imposed so as to promote compliance with the Town's objective of preventing future offenses as well as appropriate penalties for offenses that have occurred.
4. The nature and severity of the penalties will be decided according to the nature of the offense and the presence of mitigating or aggravating circumstances that are described in this policy.
5. All offenses by licensees will result in the imposition of a penalty of some degree. This will impress upon licensees, managers, and servers their responsibility for ensuring compliance with this policy, for prevention of offenses and for compliance with the terms of licenses and the liquor laws of the Commonwealth.
6. Penalties may consist of any one or more of the following as appropriate: revocation of license; cancellation of license; suspension of license; modification of license; criminal prosecution of offenders, including customers and patrons as deemed appropriate by the police chief; written warning; mandatory participation in alcohol abuse and offense prevention programs as more

- fully described in Section I, revocation of registration of server for a specified period of time; appropriate publicity of the offense and disposition.
7. The Police Department/ Town Administrator's Office will provide a copy of the report to the manager and/or license holder charged if requested before the hearing on the offense.
  8. The penalty guidelines stated in this policy are intended to create a clear and definite expectation as to the penalty the Board will impose if a hearing is held on any offense. The Board will refer to these guidelines when deciding whether to approve a negotiated recommended resolution.

### **C. Determination of Penalties**

Penalties will be determined according to the following procedure:

1. The base level offense(s) will be determined from those offenses described in Section D.
2. Adjustments according to the presence of factors that warrant an increase in the penalty ("aggravating factors") described in Section E, or decrease ("mitigating factors") described in Section F will be considered.
3. Adjustments according to the number of violations involved in the particular offense will be considered.
4. Adjustments according to the offender's acceptance of responsibility described in Section F.2 will be considered.
5. Increases according to the number and circumstances of prior violations and penalties previously imposed upon the offender will be considered.

### **D. Base level offenses**

1. Sale outside of permitted hours (MGL Ch. 138 § 12). All references are to Sections of M.G.L. Ch.138, unless otherwise noted.
2. Purchase by person under age 21 (§ 34A).
3. Sale or delivery to a person under age 21 for own use or use of another (§ 34).
4. Employment by licensee of person under age 18 for direct sale or handling of alcohol.
5. Sale to an intoxicated person (§ 69).
6. Hindering or delaying an investigation (§ 63 A).
7. Failure to post notice of penalty (§ 34D).
8. Failure to comply with provisions of § 204 CMR 4.03 of the ABCC regulations as follows:
  - a. No licensee or employee shall offer or deliver any free alcoholic drinks to any person or group of persons.
  - b. Deliver any more than two drinks to one person at one time.
  - c. Sell, offer to sell, or deliver to any person or group any alcoholic 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 alcoholic drinks to any person or group 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 or mixed drinks by the pitcher, except to two or more persons at a time.

- g. Increase the volume of alcoholic beverages contained within a drink without increasing proportionately the price regularly charged for said drink during the same calendar week.
- h. Encourage or permit, on the licensed premises, any game or contest which involves consumption of alcoholic beverages or the awarding of alcoholic beverages as prizes.
- i. Permitting an illegality to occur on the premises.
- 9. Any other violation of applicable law, regulation, or this Policy.

#### **E. Aggravating factors**

- 1. Failure to request identification card, operator's license or passport.
- 2. Juvenile appearance of purchaser.
- 3. Use of altered identification.
- 4. Refusal to cooperate in investigation.
- 5. Multiple sales on same occasion.
- 6. Quantity of alcoholic beverage sold.
- 7. Unregistered server.
- 8. Underage Server.
- 9. Server not properly trained.
- 10. Violation of other laws such as: gambling, narcotics, cigarette sales to minors, solicitation, disorderly conduct, etc.
- 11. Concealing violation or furnishing false information to investigator.
- 12. Exceeding lawful capacity of premises.
- 13. Offense occurring while under suspension of penalty.
- 14. Sale occurring while license suspended.

#### **F. Mitigating factors**

- 1. Reasonable reliance upon identification card or operator's license for proof of identity or age (M.G.L. Ch. 138, § 34B).
- 2. Acceptance of responsibility as demonstrated by:
  - Substantial voluntary assistance offered in investigation.
  - Public acknowledgement of responsibility.
  - Agreement to participate in training program.
  - Prompt notice of decision not to contest charge and agreement to proposed recommended resolution.
  - Licensee agreement to participate in an effective program to prevent future offenses.

#### **G. Previous violations**

The number and nature of previous offenses will be considered, including:

- 1. Same offense
- 2. Recent prior offense
- 3. Same manager
- 4. Same server
- 5. Severity of prior penalty
- 6. Offense while under suspension of prior penalty

#### **H. Consequential factors related to an offense**

The Board, in determining the imposition of a penalty, will weigh the nature of consequential factors. Factors shall include:

1. Operating under the influence
2. Causing personal injury or death
3. Causing property damage
4. Disturbance of the peace
5. Domestic violence

**I. Imposition of Penalties or Other Outcomes**

**A. Purpose:** The purpose of this section is to establish a standard by which the Board of Selectmen determines the penalties for violations of this policy, including length of license suspension and the propriety of revocations. This shall apply to all premises licensed under G.L. c. 138 by the Board. These penalties are presumed to be appropriate for the offenses listed; however, the Board of Selectmen may deviate in an individual case where the board finds that there exists substantial reasons making it more appropriate to deviate, based on the standards set forth in Sections A-H.

**B. Presumptive Penalties for Violations:** As a general policy, the minimum penalties for convictions or violations will be presumed to be as follows (unless specified, numbers below indicate consecutive days' suspension).

Type of Violation	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>
1.Commission of a felony related to the licensed activity	Revocation	N/A	N/A	N/A
2. Sale of alcoholic beverages while license is under suspension	Revocation	N/A	N/A	N/A
3. Sale/Purchase of alcoholic beverages to/by under-age person	Written warning	1 day suspension	3 day suspension	6 day suspension
4. Sale of alcoholic beverages to obviously intoxicated person	Written warning	1 day suspension	3 day suspension	6 day suspension
5. After hours sale of alcoholic beverage	Written warning	1day suspension	3 day suspension	6 day suspension
6. After hours consumption of alcoholic beverages	Written warning	1 day suspension	3 day suspension	6 day suspension
7. Refusal to allow members of the Board of selectmen or their agents admission to inspect premises	Written warning	1 day suspension	3 day suspension	6 day suspension



8. Illegal gambling on premises	Written warning	1 day suspension	3 day suspension	6 day suspension
9. Failure to take reasonable steps to stop person from leaving premises with alcoholic beverages.	Written warning	1 day suspension	3 day suspension	6 day suspension
10. Any other violation	To be determined according to severity of violation	To be determined according to severity of violation	To be determined according to severity of violation	To be determined according to severity of violation

#### **J. Review of policy**

The Board of Selectmen will review this policy in one year prior to August 31, 2013.