

TOWN OF TOPSFIELD, MASSACHUSETTS

BOARD OF SELECTMEN

**RULES AND REGULATIONS
RELATIVE TO
ALCOHOLIC BEVERAGE LICENSES**

**Adopted September 27, 2004
With Amendments Through November 27, 2006**

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TOPSFIELD BOARD OF SELECTMEN

Rules and Regulations Relative to Alcoholic Beverage Licenses

**Adopted on September 27, 2004
With Amendments Through November 27, 2006**

INTRODUCTION

In issuing these regulations, the Board of Selectmen, as the licensing authority of the Town of Topsfield, is setting forth the expectations of the citizenry as to (a) the process and standards for issuance of the single alcoholic beverage licenses authorized by Chapters 58 and 61 of the Acts of 2003, and by Chapter 225 of the Acts of 2006 and (b) the conduct of those licenses. The significant objectives of these regulations are the assurance that the holders of the Chapter 58 and Chapter 61 licenses respectively operate a restaurant with broad appeal to the citizens of Topsfield and a food store which sells fresh food products and that the holder of the Chapter 225 license operates a store which sells beer and wine pursuant to legal requirements and incidental to the sale of food or other products. In familiarizing themselves with these regulations, both applicants and license holders will realize that much is expected of them. The Board of Selectmen believes that these regulations will require license holders to operate in accordance with a clearly defined, high standard.

I. STATEMENT OF PURPOSE AND FINDINGS

A. Procedural History

The Board of Selectmen ("Selectmen") of the Town of Topsfield appointed a Special Alcohol License Advisory Committee ("Advisory Committee") on September 22, 2003 to study and make recommendations on the implementation of Chapters 57, 58 and 61 of the Acts of 2003 in the Town of Topsfield.

The Advisory Committee studied these issues extensively for one year and filed reports with the Selectmen on January 26, 2004 and August 17, 2004. The January 26, 2004 Report dealt with the issuance of "special" or one day licenses for the sale of wine and/or malt beverages by non-profit organizations and made certain recommendations

to the Selectmen regarding the process for issuance of such Licenses pursuant to Chapter 57 of the Acts of 2003. The Selectmen studied the first Report and on March 15, 2004 adopted the Rules and Regulations suggested by the Advisory Committee with some modifications.

The Second Report of the Advisory Committee related to the issuance and administration of the licenses to sell or serve wine and/or malt beverages authorized by Chapters 58 and 61 of the Acts of 2003. The Advisory Committee also proposed an initial draft of these regulations. The Selectmen studied the Second Report and solicited public comment with respect to the issuance and administration of the licenses. A public hearing was held by the Selectmen relative to the adoption of Regulations to implement Chapters 58 and 61 of the Acts of 2003 on August 17, 2004. The Selectmen adopted these Regulations on September 27, 2004.

Following the passage of Chapter 225 of the Acts of 2006, the Advisory Committee proposed modifications to these Regulations to incorporate the provisions of Chapter 225. Those modifications were adopted by the Selectmen after public hearing on _____.

B. Factual Findings

In issuing these Regulations, the Selectmen make the following factual findings:

1. There is no traditional restaurant in Topsfield open to the public and where adults can congregate for purely social purposes on a daily basis for the service of a meal after 5:00 p.m.
2. A major factor contributing to the absence of any traditional restaurant in Topsfield is that it is a "dry" town which has not accepted the provisions of Chapter 138 of the General Laws.
3. There is no market or grocery store in Topsfield which sells fresh produce, meats, fish or poultry or fresh bakery goods. Topsfield does not have a traditional grocery store. Every grocery store in the last 20 years operating in Topsfield has closed. Townwide surveys have indicated a widespread belief that the presence of a restaurant or a grocery store would help rejuvenate the downtown area. The majority of citizens in Topsfield believe the downtown business area lacks a more complete range of businesses.
4. The citizenry of Topsfield generally believes that the public good would be served and the quality of life in Topsfield be enhanced by the presence of a restaurant and a food store.
5. The citizenry of Topsfield generally believes that it is highly unlikely that either a restaurant or food store can attract sufficient business to operate profitably unless allowed to augment revenue by selling beer and wine.

6. The citizens of Topsfield have been reluctant to accept Chapter 138 of the General Laws in its entirety for fear that multiple alcoholic beverages licenses would significantly and adversely change the character of the Town.

7. The citizens of Topsfield desire the licenses authorized by Chapters 58 and 61 of the Acts of 2003 be issued to businesses which will provide services (*i.e.*, a restaurant and a food-type store) desired generally by the citizens but which cannot function profitably without the ability to augment revenues from the sale of beer and wine.

8. The citizens of Topsfield desire that licenses authorized by Chapter 58 and 61 of the Acts of 2003 be issued to qualified individuals or businesses who are both responsible and have an acceptable plan of operation which is likely to enhance the quality of life in Topsfield. An acceptable "plan of operation" is an indispensable requirement to the issuance of either license.

9. There are only single licenses authorized by Chapters 58 and 61 of the Acts of 2003. Applications will be accepted for these licenses using a competitive process if there are multiple applicants. The Authority is not required to issue a License if only one application is submitted and the authority decides that the grant of the application is not in the public interest. In addition to site control and demonstrated character, a successful applicant will be expected to produce an acceptable plan of operation and to satisfy all zoning, parking, septic, Board of Health and other public health and safety requirements as a precondition to the issuance of any license. The Selectmen shall reject any application which does not meet all such requirements. The Selectmen will not issue any licenses pursuant to Chapter 58 or 61 of the Acts of 2003 if all requirements are not satisfied.

10. The single licensed authorized by Chapter 225 of the Acts of 2006 is a license for a limited purpose and is non-transferable. The license authorized by Chapter 225 to James H. Gilford shall not require a competitive process but only a determination that Mr. Gilford is a responsible individual who will operate his premises in accordance with all legal requirements pursuant to an acceptable plan of operation which is likely to improve the quality of life in Topsfield.

C. Statement of Purpose

The following policy statement sets forth the goals and objectives of the Selectmen for the issuance and regulation of licenses for the sale of beer and wine pursuant to Chapter 58 and 61 of the Acts of 2003:

It is the goal of the Topsfield Board of Selectmen, as the licensing authority, to provide for (a) one quality restaurant with a seating capacity of 100 or less for the responsible sale and service of

food and drink to the public, and (b) one quality establishment for the sale of beer and wine incidental to the sale of food and other products and to regulate such establishments to insure they are operated responsibly, do not detract from the quality of life in the surrounding neighborhood or in the Town of Topsfield as a whole. The Selectmen believe the licensing for sale of beer and wine is a serious matter. Accordingly, they consider location of any proposed licensed establishment or gathering and its potential impact on the surrounding neighborhood, particularly when in proximity to a school or religious institution. In addition, the potential traffic and noise impact created by licensing an establishment for the sale of alcoholic beverages is also a consideration.

In particular, the Selectmen recognize the public's need for a quality restaurant for dining and socializing and for at least one quality food store and believe that the beer and wine licenses afforded the Town by Chapter 58 and 61 of the Acts of 2003 should fulfill the public need and be issued only upon compelling evidence that their issuance will be in the common good and significantly improve the quality of life in the Town by facilitating the availability of a restaurant and food store.

Applications or transfers shall be scrutinized closely to insure that principals and managers are of good character and qualified. They must show the Selectmen that they will operate a closely supervised restaurant or food store which will present some new or continued, in the event of a transfer, benefits to the citizens of Topsfield. Past performance of owner and management in the operation of a restaurant or food service establishment will also be considered.

Hours of operation shall be regulated so as to protect the quality of life in Town and discourage excessive drinking. Server training and other conditions may be imposed to insure the responsible service of alcoholic beverages.

Any licensed premises may be subject to regular inspections by the police or other authorized agents of the Selectmen. Violators may be subject to possible suspension or revocation of license.

Discipline for violations may also include reducing hours or other suitable restrictive conditions.

With respect to the ability to grant a license to James Gilford pursuant to Chapter 225 of the Acts of 2006:

It is the goal of the Topsfield Board of Selectmen, as the licensing authority to issue any license pursuant to Chapter 225 of the Acts of 2006 only if the applicant provides an acceptable plan of operation in which beer and wine are sold incidental to the sale of other products and consistent with the public interest and welfare and subject to appropriate conditions consistent with chapter 138 of the General Laws and these regulations.

The following Rules and Regulations have been promulgated to achieve these goals and objectives.

II. SCOPE OF AND STATUTORY BASIS FOR PROMULGATION OF RULES

- A. The statutory basis for the promulgation of these rules is set forth within the applicable sections of G.L. c.138, Chapters 58 and 61 of the Acts of 2003 and Chapter 225 of the Acts of 2006. Each reference to a statute shall include any amendment thereto. These regulations are adopted, and may be amended from time to time, by the Selectmen. All alcoholic beverage and common victuallers licenses issued by the Selectmen shall be governed by these regulations.
- B. These rules are supplementary to any statutory requirements and to the rules of the Alcoholic Beverages Control Commission.
- C. Pursuant to the provisions of Chapter 58 of the Acts of 2003, accepted by the voters of the Town of Topsfield at the Town Election held May 7, 2002, the Selectmen are authorized to grant a single license for the sale of wines and malt beverages to be drunk on the premises in a restaurant having not more that 100 seats.
- D. Pursuant to the provisions of Chapter 61 of the Acts of 2003, the Selectmen are also authorized to grant a single license for the sale of wines and malt beverages not to be drunk on premises and incidental to the sale of food products.
- E. Pursuant to the provisions of Chapter 59 of the Acts of 2003, the Board of Selectmen is also authorized to grant special or "one day" licenses for the

sale of wines and malt beverages by non-profit organizations. These Regulations do not apply to the issuance of any such licenses.

- F. Pursuant to the provisions of Chapter 225 of the Acts of 2006, the Board of Selectmen is also authorized to grant a single license for the sale of wines and malt beverages not to be drunk on premises and incidental to the sale of food and other products.

III. IDENTIFICATION OF THE TOWN OF TOPSFIELD LICENSING AUTHORITY

The Licensing Authority for the Town of Topsfield shall consist of the Board of Selectmen. This authority is granted to the Board of Selectmen by G.L. c.138 and Chapters 58 and 61 of the Acts of 2003.

IV. LICENSE APPLICATION PROCEDURAL SUMMARY

A. Filing of Applications

All license applications must be “complete” to be considered by the Selectmen. An application shall be considered “complete,” and eligible for consideration, when it has been filed in accordance with the Town’s procedural instructions, all forms required have been fully completed and executed and the plan of operation and all required supporting documentation have been filed. Application filing fees must be paid prior to processing of the application by the Selectmen. Annual license fees shall be payable immediately upon approval of the license by the Selectmen. All filing fees shall be paid by certified check or money order. Filing fees are not refundable once the Selectmen have accepted an application. License fees shall not be prorated and are not refundable.

B. License Fee Schedule

Effective January 1, 2007, the annual fee for Licenses issued pursuant to these regulations shall be as follows:

Restaurant License – Sale of Wine and Malt Beverages \$1,200.

Food Store License – Sale of Wine and Malt Beverages \$1,200.

The **application filing fee** for Licenses issued pursuant to these regulations shall be as follows:

Restaurant License – Sale of Wine and Malt Beverages \$300.

Food Store License – Sale of Wine and Malt Beverages \$375.

C. License Application Rejections

If the Selectmen reject all applicants for a License in a competitive process pursuant to Section IV F, they shall not accept or consider new applications for such License for a period of six months. If the Selectmen reject Mr. Gilford's application for a license pursuant to Chapter 225 of the Acts of 2006, they shall not accept or consider a new application for such license for a period of six months.

D. 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 granted pursuant to these Regulations. All taxes and charges owed the Town of Topsfield must be paid in accordance with applicable law. Failure to comply with any of these laws, regulations and conditions shall be deemed an illegality or disorder and may result in disciplinary action.

E. Multiple Applicants

If more than one applicant seeks the Restaurant License or the Food Store License, prior to the initial issuance of those Licenses, the Selectmen shall consider all such applications for those Licenses in an open, competitive process. As part of such process, every applicant shall be given an opportunity to comment upon the strengths of its application vis a vis other applications. (This provision shall not apply to the Chapter 225 License, if granted.)

F. Competitive Process

The Selectmen may hold a competition among applicants to apply for the Restaurant License and the Food Store License using a uniform time frame and set of rules. If the Selectmen determine that no application for a License satisfies the standard for evaluation of applications set forth in Section IV G, they shall reject all such applications. (This provision shall not apply to the Chapter 225 License, if granted.)

G. Standard for Evaluation of Applications

The Selectmen shall not approve any application for a Restaurant License or a Food Store License unless they determine that such application and its accompanying plan of operation and other documentation present clear and convincing evidence that it is in the public interest of the citizens of the Town of Topsfield and its issuance will promote the public welfare, result in net new benefits (independent of the sale of wine and malt beverages) and otherwise significantly improve the quality of life in the Town. Applications failing to meet this standard will be rejected. The Selectmen may impose such conditions as they determine to be appropriate in connection with the grant of any License. The Selectmen shall not approve any application for the Chapter 225 License unless they determine that such application and its accompanying plan of operation and other documentation are in the public interest of the citizens of the Town of Topsfield and that its issuance will promote the public welfare.

H. Licenses for Premises Near a School or Church

In accordance with G.L. c. 138, §16C, no License shall be issued for Premises located within five hundred (500) feet of a school or church unless the Selectmen determine, 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 Selectmen may impose conditions on the grant of a License to ensure that the operation of a licensed business at the Premises will not be so detrimental.

I. Definitions

1. “**Agent**” means a member of the Police Department or any other authorized licensing agent of the Town of Topsfield.
2. “**Authority**” means the Board of Selectmen.
3. “**Food Store License**” means the License authorized by Chapter 61 of the Acts of 2003.
4. “**Chapter 225 License**” means the License potentially authorized by Chapter 225 of the Acts of 2006.
5. “**Incidental to**” means, with respect to the Food Store License, that wine and malt beverage products shall not constitute more than 30% of the total interior display or shelf space of the Premises (gasoline products shall be disregarded in determination as to whether wine and malt beverages are incidental to the sale of food) and, with respect to the Restaurant License, that wine and malt beverage products are served as part of a meal in a traditional restaurant environment.
6. “**Licensee**” means an individual licensee, each member of a partnership or limited liability company licensee, each officer, director, member, manager, and stockholder of a corporate licensee and any agent of a licensee including those employees who work in the public areas of the Premises.
7. “**License**” means a revocable privilege granted by the Authority. When used in these Regulations, the term collectively refers to the Food Store License, the Restaurant License and, where applicable, the Chapter 225 License.
8. “**Patron**” means a customer who is legally on the licensed premises.
9. “**Premises**” means the store or restaurant at which the licensed business is operated, including all land and buildings associated with the operation of the licensed business.

10. “**Restaurant License**” means the License authorized by Chapter 58 of the Acts of 2003.

11. “**Rules and Regulations**” means these Rules and Regulations and compilation of regulations, ordinances and laws set up by a licensing authority to regulate the manner in which businesses under its authority shall operate.

V. APPLICATION PROCESS – GENERAL REQUIREMENTS

A. Proof of Citizenship

Every applicant for a license either individually or as a member of a partnership, association, or business shall furnish proof of U.S. citizenship by production of a certificate of birth, naturalization or as a registered voter.

B. Application Formats

1. **Individual**. Every application for a License made by an individual shall be signed by the applicant, who shall give his or her full name and home address.

2. **Partnership**. Every application for a License made by a partnership shall state the full names and home addresses of all the members of the partnership and shall be signed by a majority thereof.

3. **Corporation/LLC**. Every application for a license made by a corporation or limited liability company shall state the full names and home addresses of the president, treasurer, clerk, manager, and/or members and be signed by an officer or manager duly authorized by a vote of its board of directors or members. A copy of such vote certified by the clerk or secretary of the corporation or limited liability company, together with a copy of the certificate of its organization, shall accompany the application.

C. Certificate of Real Name of Person Conducting Business

Every applicant for a license required by the provisions of Section 5, Chapter 110 of the General Laws to file a certificate stating the real name of a person conducting a business, shall file with its application a certified copy thereof.

D. Qualifications and Appointment of Manager

Every applicant for a License made by a partnership, limited liability company or corporation, pursuant to subsections B(2)-(3) above, shall include the name, home address and telephone number, and all previous relevant experience, if any, of a duly qualified manager or other principal representative who is a citizen of the United States and resident of the Commonwealth of Massachusetts and who is of character satisfactory to the Authority. A copy of the vote appointing its manager or other

principal representative, and vesting in such person as full authority and control of the proposed Premises and of the conduct of all business therein relative to alcoholic beverages, shall also accompany the application.

E. List of Other Alcoholic Beverage Licenses

An applicant for a License shall disclose all other alcoholic beverage licenses presently or formerly held in any capacity, individually or as part of a corporate or other entity. An applicant shall also disclose any previous denials of an application for a license.

F. Submission of Financial Records and Statements

The Authority may require an applicant for a license to supply complete financial records and statements relating to the proposed licensed business and/or the applicant's ability to operate the proposed licensed business.

G. Plan of Operation

Every applicant for a License shall file as part of its application a plan of operation setting forth in detail

1. a description of the type of restaurant or food store the applicant proposes to operate and the applicant's experience or qualifications to operate such a business;
2. the capital investment and other financial commitments and resources the applicant is willing to commit to the licensed restaurant or food store;
3. any net new benefits which the restaurant or food store proposed by it will bring to the Town of Topsfield;
4. the location where the applicant proposes to operate the licensed business and satisfactory evidence of site control for the proposed location;
5. a proposed opening date;
6. any zoning, parking, traffic or public health or safety issues presented by the application or raised by the Authority or other Town boards and the applicant's plans to address or mitigate such issues; and
7. the reasons why the applicant believes its application presents compelling evidence that its issuance will (i) be in the public interest of the citizens of the Town of Topsfield, (ii) promote the public welfare, (iii) result in any net new benefits (independent of the sale of wine or malt beverages) to Topsfield, and (iv) otherwise significantly improve the quality of life in Topsfield.

(Items 3 and 7(iii) of this Sections IV.G. shall not apply to the Chapter 225 License.

H. Description of Food Served and/or Sold

1. Restaurant. Every applicant for the Restaurant License shall file with its plan of operation, a summary of its proposed menu, description of food to be served and the manner in which such food shall be served and a floor plan of the Premises where the restaurant will operate.

2. Food Store. Every applicant for a Food Store License or the Chapter 225 License shall file with its plan of operation a detailed description of food and other non-alcoholic products it proposes to sell and the conditions under which such food and other non-alcoholic products shall be sold, and a floor and shelf space plan of the Premises showing (i) the amount of shelf space; and (ii) the allocation of such space among food products, licensed wine and malt beverages and other products; and (iii) the shelf space for wine and malt beverage products will be incidental to (*i.e.*, less than 30% of shelf/display space) the sale of food or non-alcoholic beverage products.

I. Preparation of Application Forms

All applications for licenses shall be made upon forms approved by the Authority, shall be fully answered in detail and shall be typewritten or legibly printed in ink. Applications which are not complete will not be accepted.

J. Penalties for False Statements on Applications

All applications shall be made under the penalties of perjury. Any false statement contained in any application, including but not limited to the true names of those with a beneficial interest in the application for a license, shall be cause for refusing to grant the license or for suspending, canceling, modifying or revoking a license already granted.

K. Filing of Forms in Quadruplicate

Every application for a License other than an application for the renewal of such License, shall be filed with the Authority in quadruplicate (original and three copies).

VI. OPERATING RULES FOR RESTAURANT AND FOOD STORE LICENSES

A. Applicability of Rules and Regulations

This section shall apply to all Licensees, unless specifically provided otherwise.

B. Availability of Rules and Regulations

1. 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 Authority.

2. Employee Awareness. A 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 and laws.

C. Posting and Signs

1. 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.

2. 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 Authority.

D. Admissions to the Restaurant Premises

1. No Discrimination. A Restaurant 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.

2. Dress Codes. A Restaurant Licensee shall not institute dress requirements of any kind except according to the following rules:

- (i) A sign shall be posted at the entrance stating dress requirements or dress restrictions with specificity which may also include restrictions as to footwear.
- (ii) No signs shall be posted which state that, "Proper dress required" or which otherwise announce a dress policy without stating specifically, item by item, what dress is required or what dress is prohibited.

3. No Cover Charge. A Restaurant Licensee shall not require any patron to pay an admission fee, a minimum charge or cover charge of any kind.

4. Unruly Persons. A Restaurant 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.

5. Maximum Occupancy. A Restaurant Licensee shall not permit entrance to the Premises by more persons than the maximum occupancy limit established by the Building Inspector.

6. Waiting Lines. If a Restaurant Licensee permits persons to wait in line for a table or a seat or for entrance to the Premises, it shall keep such persons in an orderly line without blocking aisles or exits.

7. No Locked Doors. A Restaurant Licensee shall not lock the front door of the Premises until the last patron has exited.

8. After Hours Access. A Restaurant Licensee shall not allow any patron, or guest to enter the Premises after the closing hour posted on the License or prior to the opening hour posted on the License.

E. Hours of Operation

1. Hours Restricted. The hours of operation shall be restricted to those set by the Licensing Authority and stated on the face of the License. No patron shall be on the Premises before the official opening hour nor after the official closing hour.

2. Employee Access. Employees of the Restaurant Licensee must be off the Premises no later than sixty (60) minutes after the "Official Closing Hour," provided however, that such employees or other hired personnel may be on the Premises at any time for the purpose of cleaning, making emergency repairs, providing security for the Premises, or preparing food for the next day's business in opening or closing the business on an orderly manner.

3. Departure of Patrons. A Restaurant Licensee shall ensure that its patrons leave the Premises in a quiet and orderly manner.

F. Physical Premises - Restaurant

1. Floor Plan. The premises for any Restaurant License shall conform to the floor plan approved by the Authority with regard to the layout of the facility including its tables, chairs, booths, railing partitions, and any other barriers. There shall be no bar, bar stools, or television at the premises. Any changes in the floor plan or any renovations of any kind shall not be made without notification and approval of the Authority. This includes any substantial change in the arrangement of moveable furniture.

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

3. No Outside Gatherings. No outside area shall be used as a gathering place for patrons unless approved by the Authority.

4. 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 Authority to make observations without the need to identify themselves or seek assistance.

5. No Access to Private Areas. A Restaurant Licensee shall not allow the general public access to private areas of the Premises approved by the Authority for storage, office use, a kitchen or any other non-public use. Only the Licensee and its employees shall be in these areas.

6. No Screens. No advertising matter, screen, curtain or other obstruction which in the opinion of the Authority, 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 Authority has ordered the removal of such obstruction.

7. Lighting; Exits. All exits from the Premises shall be properly designated by lighted signs, "Exit" as same may be mandated by the Building Inspector or the Fire Department of the Town of Topsfield.

8. Plates and Glasses. All food and drink service at the Premises shall conform to the following:

- (i) Food shall be served on china, pottery or other solid dinnerware with metal utensils. No plastic or paper dinnerware or utensils are permitted.
- (ii) Wine or malt beverages shall be served in glass or pottery containers. No paper, plastic or other containers are permitted.
- (iii) Pitchers or carafes of beer or wine shall not exceed 750 ml capacity.

Nothing in this paragraph shall apply to take out sales of meals or be construed to prohibit the Restaurant Licensee from selling food or meals on a take out basis.

G. Physical Premises – Food Store License / Chapter 225 License

1. Incidental Sales. A Food Store License and the Chapter 225 License to sell wine and malt beverages shall not be granted unless the sale of such products is "incidental to" the sale of food or other approved non-

alcoholic products (excluding gasoline). The shelf space used to display wine or malt beverages products shall not be more than 30% of the total shelf space in the premises. The Authority may further limit or condition the amount of shelf space available for the sale wine and malt beverages if an applicant's inventory of food products falls below 40% of shelf space and applicant does not sell fresh food products on a minimum of 15% of shelf space.

2. Cleanliness. All Premises covered by the License shall be kept in a clean and sanitary condition.

3. No Outside Gatherings. No outside area of the Premises shall be used as a gathering place for patrons unless approved by the Authority.

4. Lighting. The Premises shall be lighted in a manner to assure the safety of the patrons and to allow the agents of the Authority to make observations without the need to identify themselves or seek assistance.

5. Segregated Displays. Wine and malt beverages shall be kept in separate displays or cases and shall be covered or locked at times when the Licensee is open for business but the sale of such products is not authorized.

H. Business Arrangements of Licensees – All Licenses

1. Site Control. An applicant shall not obtain or renew a License unless it can demonstrate proof of a legal right to use the Premises proposed for the restaurant or food store 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 known to the Authority and the terms of such agreements or contracts shall be fully disclosed to the Authority. 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.

2. 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 Authority. Such records shall be kept for a period of three years.

3. No Undisclosed Statements. A Licensee shall not permit any person to have a direct or indirect financial or beneficial interest in the licensed business or to receive any revenue from the business or to manage the Premises other than the persons properly approved of by the Authority and the salaried employees of such persons.

4. No Undisclosed Principals. A Licensee shall not permit any person to work at the Premises or to hold himself 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 Authority.

5. 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 Authority and the Authority's approval received.

6. 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 Authority.

7. 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 Authority.

8. No Security Interest. A Licensee or owner thereof 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 Authority pursuant to G.L. c.138, §15A. This includes kitchen equipment, furniture, or any other type of equipment.

9. Change in Manager. A Licensee shall not change its manager until the Authority and the Alcoholic Beverages Control Commission have both approved such change.

10. Opening Required. A Licensee may not close its place of business or cease selling wine and malt beverages without first notifying the Authority in writing before such closing or cessation and stating the reason therefor.

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

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

13. 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 Authority or unless written permission is first obtained from the Authority. 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 Authority.

14. Common Victualler's License. The Restaurant Licensee shall also be licensed as a common victualler under G.L. c.140 as a condition of the Restaurant License.

15. Annual Statement. A Licensee shall furnish an annual financial statement indicating the gross sales for food and gross sales for alcoholic beverages for the preceding calendar year with any renewal application.

16. Games of Chance. A Licensee shall not operate nor permit any other person to operate a Keno or similar game at the licensed premises.

17. Entertainment. A Licensee shall not permit any form of entertainment at the Restaurant Premises including live entertainment, television or recorded or live music without first obtaining an entertainment license from the Authority.

I. Wine and Malt Beverages Sales and Laws - Restaurant

1. No Below Cost Sales. A Restaurant Licensee shall not sell wine or malt beverages for less than its actual cost.

2. 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.

3. Prohibited Practices. A Restaurant Licensee or employee or agent shall not:

- (i) offer or deliver any free drinks to any person or group of persons;
- (ii) deliver more than one drink to one person at one time;
- (iii) deliver more than four drinks to one person on any one day without the approval of the Manager;
- (iv) 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;

- (v) sell, offer to sell, or deliver to any person an unlimited number of drinks during a set period of time for a fixed price, except at private functions not open to the general public;
- (vi) 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;
- (vii) sell, offer to sell or deliver malt beverages or wine by the pitcher except to two or more persons at any one time;
- (viii) encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes; or
- (ix) advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under this section.

4. Authorized Practices. Nothing in the preceding paragraph shall be construed to prohibit a Licensee from offering free food at any time or including a drink as part of a meal package; or to prohibit the sale or delivery of wine by the bottle or carafe when sold with meals or to more than one person; or to prohibit free wine tastings.

5. No Other Alcohol. A Restaurant Licensee shall not permit alcoholic beverages to be brought onto the Premises by patrons or employees under "bring your own bottle" arrangements or otherwise.

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

7. Posting of Penalties. A Licensee shall conspicuously post at the Premises a current copy of the penalties for driving under the influence set forth in section 24 of General Laws Chapter 90.

8. No Removal of Alcoholic Beverages. A Licensee shall not allow patrons or employees to leave the Premises with alcoholic beverages.

J. Environs of Licensed Premises - All Licenses

1. Responsibility. A Licensee is obligated to ensure that a high degree of supervision is exercised over the conduct of the licensed establishment at all times. The Licensee shall be accountable for all violations

that occur on the Premises in any determination by the Licensing authority as to whether or not the Licensee acted properly in the given circumstances.

2. Amusement Machines. A Licensee shall not allow any automatic amusement machine upon the Premises unless same has been approved and separately licensed by the Town of Topsfield.

3. Loiterers. A Licensee shall act promptly and diligently to disperse loiterers or patrons who attempt to congregate in front of or at the Premises. Failure of the Licensee to keep persons from congregating at the Premises may lead to disciplinary action against the Licensee for allowing a public nuisance. Actions expected to be taken by the Licensee shall include: (1) maintaining the front door in a closed position; (2) asking loiterers to disperse; (3) promptly notifying the police if loiterers refuse to disperse; (4) hiring a security guard or stationing a security employee at the front door to disperse loiterers; (5) refusing to allow patrons to walk in and out of the Premises at short intervals; (6) maintaining order in lines of patrons awaiting entry; and (7) announcing that no further patrons will be allowed into the Premises if lines become too long, disorderly or loud.

4. 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 Authority 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.

K. Inspections and Investigations

1. Inspections. The Premises shall be subject to inspection by the Licensing Authority or its duly authorized agents. It shall be the responsibility of the Licensee to ensure that procedures are in place to allow police and authorized agents of the Authority immediate entrance into the Premises at anytime employees are on the Premises.

2. 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 Authority.

3. Complaints. All complaints and reports shall continue in force until they have been reviewed and disposed of by the Licensing Authority.

L. Standards of Conduct on the Premises

1. No Service to Minors. No wine or malt beverages shall be served or sold to anyone under twenty-one (21) years of age.
2. No Employee Consumption. No manager or employee of a Licensee shall consume any alcoholic beverages while on the Premises.

M. Illegal Activity on the Licensed Premises

1. 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:
 - (i) Frequent monitoring of restrooms and other nonpublic areas of the premises for signs of drug activity or other illegalities;
 - (ii) Calling for police assistance as necessary to protect patrons against injury or to evict unruly patrons or to uncover unlawful conduct or to give medical assistance and providing police with requested information;
2. No Disorder. There shall be no disorder, prostitution, illegal gambling, illegal drug use or sales or possession or other illegal activity on the Premises.

N. Injuries to Persons at the Premises

1. Disruptive Patrons. The Licensee shall instruct employees not to make bodily contact with an unruly patron except to protect other patrons or themselves from being subjected to body blows from that unruly patron. In all circumstances, employees are to call the police to have such patrons removed from the Premises when being disruptive and refusing to leave voluntarily.
2. Inquiries. Licensee shall call the police or 911 and take all other reasonable steps to assist patrons or persons who are injured in or on the Premises or whose injuries have occurred outside the Premises but have been brought to the attention of the Licensee.

O. Other Causes for Revocation, Suspension, and Modification

A License may be modified, suspended, or revoked for any of the following causes:

1. 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 of the Authority;

2. 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 or in any interview or hearing held by the Authority in connection with such petition, request, or application affecting the rights of the licensee;

3. Failure to Operate. Failure to operate or cessation of the sale of wine or malt beverages at the Premises covered by the License for more than 30 days without approval of the Authority;

4. 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 Authority;

5. Bribery. Extension of a bribe, gift or offer of any money or any thing of value or payment for or reimbursement or forgiveness of a debt for services provided to any employee or agent of the Authority either as a gratuity or for any service;

6. Non-compliance. Failure by the Licensee to comply with any condition, stipulation or agreement upon which any license was issued or renewed by the Authority or upon which any application or petition relating to the Premises was granted by the Authority. It shall be the duty of the Licensee to ensure that all appropriate personnel at the Premises are familiar with these Rules and Regulations and with any conditions on the License;

7. Failure to Appear. Failure or refusal by any Licensee or any manager, officer, or director thereof to appear at an inquiry or hearing held by the Authority with respect to any application or matter bearing upon the conduct of the licensed business or bearing upon the character and fitness of such Licensee to continue to hold a License; or

8. Non-adherence. Failure by the Licensee to properly serve final suspension and modification orders.

P. Penalty Guidelines

1. Penalties. A Licensee who violates the applicable laws of the Commonwealth, regulations of the Alcoholic Beverage Control Commission and/or these regulations may be subject to the following range of discipline:

- (i) First offense: warning to seven-day suspension.
- (ii) Second offense: warning to thirty-day suspension.

(iii) Third offense: seven-day suspension to revocation.

2. Prior Violations. Offenses which occurred more than two years prior to the date of violation shall not be used in calculating the number of offenses for purposes of these guidelines.

3. Authority Discretion. The Authority may use its discretion in determining whether the facts surrounding a violation warrant a penalty which is more lenient or severe than that suggested by the guidelines.

4. Alternative Dispositions. These guidelines shall not be construed so as to limit the Authority's power to consider alternative dispositions, impose further conditions on a License, or even assess alternate penalties (e.g., roll back of operating hours).

Q. Service of Suspension Orders

1. Posting of Suspensions. When the Authority suspends the License of any Licensee, it shall provide the Licensee with an order of suspension for public display that must contain the words, "No alcohol served per order of the Board of Selectmen for the Town of Topsfield." Such order shall be publicly displayed by the Licensee.

2. Defacement of Orders. Suspension orders of the Authority, as above, shall remain affixed throughout the entire period of suspension.

3. 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 Authority.

R. Permission to Close Premises Required

1. Notice. A Licensee intending to close its place of business, or cease the sale of wine or malt beverages whether on a temporary or permanent basis, must notify the Authority in writing before such closing stating the reason and length of such closing and obtain the Authority's approval. Failure to provide such notice or obtain approval for such closing or cessation for more than 30 days may result in the suspension or revocation of the License.

2. 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 Authority and approval granted.

S. Bankruptcy and Court Proceedings

The Licensee shall immediately notify, in writing, the Authority of any proceedings brought by or against the Licensee under the bankruptcy laws or of any other court proceedings which may affect the status of the License.

T. Management

1. Manager Required. A Licensee who is not a natural person must appoint a manager by a properly authorized and executed delegation.

2. Responsibilities. The responsibilities of every Licensee and its manager shall be as follows:

- (i) To obey all statutes of the Commonwealth, rules of the Alcoholic Beverages Control Commission, Rules and Regulations of the Authority;
- (ii) To promptly notify the police of any disturbances or illegal activity on the Premises of which he or she becomes aware;
- (iii) As to Licensees which are not natural persons, to sign the annual application for renewal of License, unless unavailable; and
- (iv) To cooperate with authorized agents of the Authority, including the police, in their investigation or inspection of the Premises.

3. Notice. Any such notice sent to the manager as named in the records of the Authority or the owner at the address of the Premises shall constitute valid legal notice to the Licensee.

4. Transfers Restricted. A Licensee shall not change managers, officers or directors, sell or transfer corporate stock, pledge corporate stock or license as security, or accept a loan or credit from another licensee, without first obtaining the approval of the Authority. No person or entity may have a direct or indirect beneficial interest in a License without first obtaining the approval of the Authority.

U. Service Training

1. Training Program. 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 Authority as part of the original or renewal application materials and maintained on the Premises at all times.

2. Certification. A signed certification of 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 and the disciplinary action which will be taken for violations, shall be maintained on the premises at all times. Copies of all such documents and certifications shall be available to the licensing authority, or any authorized agent thereof, upon demand.

3. Training Requirement. Each new employee who handles alcohol shall obtain server training within thirty (30) days of commencing employment.

4. Retraining. Upon a finding by the Authority 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.

5. Approval Program. The training and certification referenced in Section VI (U) shall be pursuant to a training program approved by the Authority (e.g. TIPS or equivalent).