

TOWN OF ORLEANS
RULES & REGULATIONS
OF THE
LIQUOR LICENSING AUTHORITY

Adopted: December 21, 1994

Amended: August 9, 1995

Amended: February 10, 2010

Amended: April 29, 2010

Amended: October 15, 2014

Amended: April 1, 2015

Amended: June 10, 2015

PREAMBLE

The Orleans Board of Selectmen, as the licensing authority of the Town of Orleans, will provide a reasonable number of restaurant, innholder, club and package goods store licenses for the sale and/or service of all alcoholic and/or wine/malt beverages to the public.

The number of licenses issued for off-premises consumption is regulated by quotas as established by the General Laws of the Commonwealth. The number of licenses for on-premises consumption is not governed by quotas (adoption of M.G.L. Ch 138, S. 17A at Special Town Meeting 5/3/82). There is no compelling reason for the Board of Selectmen to issue licenses if in the opinion of the Board, the public need and the public good will not be served.

The Orleans Board of Selectmen requires that those holding a financial interest as well as a beneficial interest in a licensed business be not only of sound character, but also qualified to hold such a license. Qualifications of applicants and managers shall include but not be limited to the following: the ability to demonstrate to the Board that they will operate a closely supervised business and that the manager of record or his designee of record will be on the licensed premises at least forty (40) percent of the time the licensed premises are open. Holders of restaurants, innholders and club licenses must serve a full line of food so the sale of alcoholic or wine/malt beverages will represent only a minor portion of the business as stated on the initial license application form. Failure to have adequate service of food available could be cause to have the license revoked, suspended or canceled. Holders of innholder licenses must also have available rooms available for rent by the general public.

The Orleans Board of Selectmen strictly regulates the closing hours of premises. The rights of residents will be given every consideration by the Board in the setting of closing hours. If any form of entertainment is to be provided, weekdays or Sundays, appropriate entertainment licenses must be obtained.

The Board of Selectmen or its designated agent may inspect the licensed premises to ensure that the conduct of the business conforms to all existing state and local laws and bylaws. The manager of record is responsible for the conduct of the business, whether present or not.

The following rules and regulations have been promulgated with the sole objective of having quality restaurants, inns, clubs and packaged goods stores within the Town of Orleans. New rules and regulations may be added from time to time to ensure that these objectives are met. Please note that these regulations are not intended to be all-encompassing, and the license holder is responsible for ensuring compliance with all state regulations governing the operation of the establishment. Should a licensee intend to implement a change in operating procedures, which circumstances are not clearly defined in these rules and regulations, an inquiry to the licensing office is suggested. Employees of a licensed establishment are required to be familiar with the rules contained herein as well as the obligations mandated by them.

SECTION A – APPLIES TO ALL LICENSES

1. LICENSING AUTHORITY

These regulations are adopted, and may be amended from time to time, by Orleans Board of Selectmen, pursuant to the provisions of Massachusetts General Laws, Chapter 138 and Chapter 140. All licenses for the sale of alcoholic beverages on and off premises as well as common victualler, club and innholder licenses issued by the Board shall be governed by these regulations, M.G.L. Chapter 138 and Chapter 140, and by the rules and regulations of the Alcoholic Beverage Control Commission (ABCC) of the Commonwealth of Massachusetts.

2. FILING OF APPLICATION

All license applications must be completed before being submitted to the Board of Selectmen. Action will follow a public hearing when required. The office of the Selectmen has provided an instruction form for the filing of applications which lists the required information as well as the specific forms required. An applicant wishing to withdraw his/hers application must do so in writing.

3. FILING FEES

Filing fees must be paid at the time an application is filed at the office of the ABCC. Fees will vary depending upon type of application submitted. Town of Orleans filing fees, if paid for by check, must be made payable to: Town of Orleans and must be a certified check, money order or bank treasurer's check. Filing fees required by the Alcoholic Beverage Control Commission must be made payable to: Alcoholic Beverage Control Commission and must be a certified check, money order or bank treasurer's check. Filing fees are not returnable once an application has been accepted by the offices of the Town and/or the ABCC.

4. ANNUAL LICENSE FEES

Annual license fees must be paid prior to the issuance of the license. If the license is transferred during the year, there shall be no additional fee paid beyond the license fee paid for the year.

Pro-rating of new license fees

If an applicant applies the last quarter of the year (October through December), the new license fees will be prorated at 25% of the full fee and the renewal fee for the following year will be paid in full.

5. COMPLIANCE WITH ALL LAWS AND REGULATIONS

All licensees shall maintain their premises and operations in full compliance with all applicable state and local building codes, all health and sanitary codes, laws and regulations including but not limited to Article V of the Orleans Code Grant or Renewal of License or Permit as Affected by Nonpayment of Local Taxes and Fees. Failure to comply with any of these laws and regulations shall be sufficient cause for revocation, suspension or modification of license.

6. CORPORATE AND TRADE NAMES

No licensee shall assume obligations for licensed premises under any corporate or trade name other than that under which he/she is licensed. Any change in corporate name or any change in trade name (DBA) shall require the prior approval of the Orleans Board of Selectmen and the ABCC.

7. BANKRUPTCY AND COURT PROCEEDINGS

The licensee shall immediately notify, in writing, the Board of Selectman if 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.

8. CORPORATE TRANSACTIONS AND CHANGE OF MANAGERS

The licensee shall not change manager, corporate officers, sell or transfer corporate stock, pledge corporate stock or a liquor license as security, or accept a loan or credit from another licensee, without first obtaining the approval of the Selectmen.

9. FORECLOSURE ON LOANS

Assignment of corporate stock of a license holder licensee for the purpose of collateralizing loans or notes, etc., gives no right to such assignee to conduct the business of the licensee; therefore, licensees must notify the Board of Selectmen immediately when the assignee forecloses under such assignment of stock.

10. MANAGER

No corporation shall be approved for a license unless the corporation, by vote of its Board of Directors, has appointed a Manager who is a United States citizen and who has been vested with full authority and control of the premises and the business to be licensed. The manager of Record, as registered with the Board of Selectmen must be on the premises at least forty (40) percent of the time the premise is open. The Manager shall have total responsibility for the proper operation of the licensed premises, whether present or not. No appointment of a Manager shall be effective unless and until approved by the Board of Selectmen.

11. MANAGER'S RESPONSIBILITIES

The Manager shall at all times maintain order and decorum on the premises and in the immediately surrounding area accessory to said premises. The Manager shall cooperate with town officials in every way so as to provide safe and orderly facilities. There shall be no disorder, indecency, prostitution, and lewdness or illegal gambling on the licensed premises. The Manager shall notify the Police of any illegal activity. The Orleans Board of Selectmen reserves the right to condition any license to ensure same.

12. SERVICE PROHIBITED TO CERTAIN INDIVIDUALS

- ◆ No alcoholic beverages shall be sold to anyone under twenty-one (21) years of age.
- ◆ No service of alcoholic, wine/malt beverages shall be made to anyone under twenty-one (21) years of age.

- ◆ No service of alcoholic beverages shall be made to intoxicated customers.
- ◆ No service of alcoholic beverages shall be made to a legal age customer known to be purchasing it for any underage person. This is known as a second party sale.

13. IDENTIFICATION CARDS

In accordance with M.G.L. Chapter 138, section 34B, any licensee who reasonably relies on a liquor purchase identification card, motor vehicle license issued by the Massachusetts Registry of Motor vehicles, valid passport issued by the U.S. or a foreign government recognized by the U.S. or a valid (interpreted as active service) military ID for proof of a person's identity and age shall be presumed to have exercised due care in making a delivery or sale of alcohol or alcoholic beverages to a person under twenty-one (21) years of age and shall not suffer any modification, suspension, revocation or cancellation of such license. Said presumption is rebuttable however. A licensee is at his/her own risk if licensee or employee accepts any other type of I.D.

14. DISCRIMINATION PROHIBITED

No licensee shall make any distinction, restriction or otherwise discriminate on account of race, color, creed, sex, sexual orientation or ancestry relative to the admission or treatment of any person.

15. SUSPENSION, REVOCATION OR MODIFICATION OF LICENSE

All licenses are subject to suspension, revocation or modification for breach of any condition, regulation or law of the Town or State. The Board of Selectmen reserves the right to change or add to any license conditions or any regulations after notice to the licensee.

16. PUNITIVE ACTION GUIDELINES

The following are guidelines the Orleans Board of Selectmen will consult to determine consequences of violations of M.G.L. Chapters 138 and 140 and the rules and regulations of the Orleans Board of Selectmen and the ABCC. These are only guidelines and the Board reserves the right to use discretion in applying them to specific situations.

When the Board is made aware of a violation at a licensed liquor establishment, the license holder will be summoned to a public hearing. The summons notice will include the date of the hearing, a description of the violation, the law or regulation violated, the names of the people involved, or a police report number, if appropriate.

Note: only the Orleans Police department can release copies of police reports. The summons notice will inform the licensee that they have a right to be represented by an attorney and that there may be action taken against their license. The licensee will be allowed to present a defense of the allegation including presenting witnesses. They will have an opportunity to question witnesses presented by the Board. The Licensing Board may request the Town Counsel to be present and assist in questioning witnesses. Member of the public may be allowed to speak at the hearing after being recognized by the Chairman.

First Offense: (either action may be taken)

- a. Letter of warning placed in Licensee file.
- b. License suspension for 1-3 days (Suspension or part of suspension may be held in abeyance for predetermined timeframe pending no further violations).

Second Offence within 12 calendar months: (either or both actions may be taken)

- a. License suspension for 1-4 days plus any days held in abeyance.
- b. Change of operating hours.
- c. Restrictions placed on license for occupancy numbers.
- d. Suspension or restrictions placed on entertainment license.

Third Offence within 12 calendar months: (multiple actions may be taken)

- a. License suspension for 3-14 days plus any days held in abeyance.
- b. Change of operating hours.
- c. Restrictions placed on license for occupancy numbers.
- d. Suspension or restrictions placed on entertainment license.
- e. Revocation of license.

The penalties are only a guide and are based on the severity and type of offence and number of prior offenses. The Licensing 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. The penalties shall not be construed as to limit the Licensing Authority's ability to consider alternative dispositions or further conditions on a license, or even alternative penalties (e.g. rolling back of the licensee's operating hours, suspension of the licensee's Common Victualler license, and/or suspending the licensee's entertainment license.). These rules supersede any prior rules issued by the Licensing Board and shall remain in effect until canceled or modified.

17. DISPLAY OF LICENSES AND PERMITS

All licenses and permits issued by the Town shall be displayed on the premises in a conspicuous place where the public has access and is able to read same.

18. CHARGE FOR ALCOHOLIC BEVERAGES

No alcoholic beverages shall be sold for a fee less than the actual cost of the beverages to the licensee. An admission charge shall not be credited toward the purchase price of any alcoholic beverage. The price charged for alcoholic beverages shall not be discounted for any particular hours(s) of the day or day(s) of week. No minimum charge shall be made for alcoholic beverages.

19. SERVICE TRAINING – FOR MANAGERS AND OTHERS

Prior to being appointed as manager and/or bartender, the person shall have successfully completed an alcoholic beverage server training program such as the Intervention Procedures by Servers of Alcohol Programs (TIPS), or its equivalent. Such programs are sponsored by the Barnstable's Sheriff Department on annual basis (early spring) and

agencies. Such training shall be required for all managers and/or bartenders, employed prior to December 21, 1994, within one year of this date, at all establishments with a bar or if hired after December 21, 1994 prior to April 30th. All other employees who serve alcoholic beverages shall receive, at a minimum, in-house training similar to that received under the TIPS program within ninety (90) days of hire. A current list of employees shall be made available upon the request of authorized agents of the Board of Selectmen.

20. VERIFICATION OF SERVER TRAINING

Verification for "Server Training" shall be maintained for each employee and shall be available for inspection on the premises at all times.

21. ENTERTAINMENT (i.e. live music, recorded music, dancing, juke box, pool tables, pinball machines, video machines, etc.) requires an Entertainment license issued by the Board of Selectmen in accordance with M.G.L. Chapter 140. Changes to the entertainment license must be requested in writing and approved by the Board of Selectmen. A State license is also required for entertainment on Sundays. New licenses require a public hearing before the Board of Selectmen.

22. POLICE REPORTS – DISTURBANCES

Copies of all police reports indicating a pattern of fights/disturbances/problems in the vicinity of a licensed establishment shall be forwarded to the Board of Selectmen annually, by the Police Chief, in conjunction with license renewals.

23. REVOKING THE LICENSE – CRIMINAL CONVICTION

Whenever a license holder is convicted of a crime involving the use, possession, sale or distribution of a controlled substance as defined in Chapter 94C of the Massachusetts General Laws or a felony involving injury to a person or property of another, it shall be considered grounds to revoke the license.

Whenever a manager named on a license is convicted of a crime involving the use, possession, sale or distribution of a controlled substance as defined in Chapter 94C of the Massachusetts General Laws or a felony involving injury to a person or property of another, it may be considered grounds to remove the manager and suspend or revoke the license as the Selectmen shall determine.

24. ACCESSIBLE TO THE PUBLIC

No application for any new alcoholic common victualler license or for the transfer of such a license shall be approved by the Local Licensing Board unless the Board determines that the licensed premises are accessible to the public. Factors to be considered by the Licensing Board shall include, without limitation, whether such premises have handicapped accessible ramps, toilets and parking spaces which comply, at a minimum, with applicable requirements, and have appropriate signs which designate such parking spaces.

SECTION B – APPLIES TO RETAIL PACKAGE STORE LICENSES

1. SERVICE TRAINING – IN-HOUSE PROGRAM FOR EMPLOYEES

Employee training program on the proper procedures for verifying that patrons are at least 21 years of age and not intoxicated shall be carried out by the employer. 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 maintained on the premises at all times. A certification signed by each employee, 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.

2. HOURS OF SALE

No delivery of alcoholic beverages shall be made except during the legal hours of sale stated on a given license, which should be prominently displayed. There shall be no off-hour sales.

3. CONSUMPTION ON PREMISES PROHIBITED

Consumption on the premises of alcoholic beverages is prohibited for retail package store license holders except in accordance with M.G.L. Ch 138 Sec 15 which states "Any licensee may provide, without charge, on premises sample wine tastings for prospective customers of wine available for sale on such premises; provided, however, that no single serving may exceed one ounce."

4. PREMISES' DESCRIPTION

No licensee shall keep for sale, store or sell alcoholic beverages in any part of the premises not specified on the license. Any increase in size of the premises must be approved by the Board of Selectmen and the Alcoholic Beverage Control Commission.

5. DELIVERIES OFF PREMISES OR PICK-UP – KEGS OF BEER (MALT BEVERAGES)

A written record shall be maintained listing the name and address of every person to whom a delivery of any size keg(s) of malt beverages is made outside the premises or pick-up from the premises. Such record shall include the amount of the beverages that were delivered or picked-up, the date and time of delivery, and the signatures of the person receiving the delivery. Such records shall be maintained for a period of not less than a year and must be available for inspection by the Board of Selectmen or its agent(s) at all times.

6. SUNDAY AND HOLIDAY OPERATIONS

Sunday sales for Package Stores are permitted, pursuant to M.G.L. c. 138, §15, subject to the following conditions:

- ◆ No sales may be made prior to 10:00 a.m. on Sunday (per M.G.L. c. 136, § 6 (52), effective October 23, 2014).
- ◆ No sales may be made after 11:00 p.m. on Sunday, except that no sales may be made after 11:30 p.m. on a Sunday that immediately precedes a legal holiday;

- ◆ Employees must be paid for working on Sunday at a rate not less than 1½ of the employees' regular rate;
- ◆ No employee may be required to work on a Sunday; refusal to work on a Sunday is not grounds for discrimination, dismissal, discharge, deduction of hours or any other penalty;

7. HOLIDAY OPERATING HOURS

Package stores MAY NOT sell or deliver alcoholic beverages on Memorial Day (the last Monday in May), Thanksgiving or Christmas Day and the day following when Christmas Day occurs on a Sunday.

8. TEMPORARY CLOSING

All licensees are required to remain open year round. Temporary closings of short duration may be allowed at the discretion of the Board of Selectmen for maintenance or repairs of the premises or for an emergency as determined by the Board. Any request to close must be made in writing to the Board before closure and shall detail in the request the reason and length of such closing.

9. SERVICE PROHIBITED TO CERTAIN INDIVIDUALS

No alcoholic beverages shall be sold to anyone under twenty-one (21) years of age. No service of alcoholic wine/malt beverages shall be made to anyone under twenty-one (21) years of age.

SECTION C – APPLIES TO RESTAURANTS, INNS AND/OR CLUB LICENSES

1. PREMISES' DESCRIPTION

No licensee shall keep for sale, store or sell alcoholic beverages in any part of the premises not specified in the license. Any change in description of the licensed premises requires the filing of a petition by the licensee and approval of the new plans by the Board of Selectmen and the Alcoholic Beverage Control Commission. Every License of a common victualler, club and/or innholder shall specify the street and number of the building where the business is to be carried on or give some other particular description thereof, and the license shall not protect a licensee who carries on his business in any other place. Such licenses shall expire on December thirty-first of each year. The capacity set for the premises by the Building Department constitutes maximum potential capacity of the premises.

2. TEMPORARY CLOSING OF RESTAURANTS AND/OR INNS

Any business intending to close a place of business on a temporary basis, must notify the Board of Selectmen and request approval for said closure, in writing, one month prior to the requested temporary closing date. A business may request to close anytime during the period December 1 through March 31 for an extended period not to exceed ninety (90) days. All requests will be considered on an individual basis and on the public need in a given area and individual license holder's circumstances.

Any business requesting to close on a temporary basis outside of period December 1 through March 31 must notify the Board of Selectmen and request approval for said closure, in writing, fourteen days prior to the requested temporary closing date. Allowable reasons for such closures would include renovations, business purposes, or illness.

Unless an establishment has been granted a temporary closing by the Board of Selectmen they shall be open to the public as follows:

ANNUAL ALCOHOLIC LICENSE HOLDERS

- a) At least six (6) days each week from the last Saturday in June to the first Monday in September.
- b) At least three (3) days each week during all other times.

SEASONAL ALCOHOLIC LICENSE HOLDERS

- a) May be open from April 1 to November 30, subject to the requirements of Sections b) and c) below. Upon written request, the Board may delay opening from April 1 up to June 1, and/or change the closing date from November 30 to as early as September 1 or as late as January 15.
- b) Shall have their establishments open to the public at least six (6) days each week from the last Saturday in June to the first Monday in September.
- c) At least three (3) days each week from opening to the last Saturday in June and from the first Monday in September to closing.

3. HOURS OF OPERATIONS – (SEE HOURS OF OPERATION PRINTED ON YOUR LICENSE)

No alcoholic beverages shall be served after the closing hours indicated on the license and all glasses, bottles, or other containers used for or containing alcoholic beverages shall be removed from all table, bars, counters, patrons and public areas no later than fifteen minutes after the approved closing time on the license for the sale of alcoholic beverages. No alcoholic beverages shall be consumed thereafter.

No patron, licensee, or employee shall be served any alcoholic beverages after the legal hour for sale of same.

All patrons must be off the licensed premises within twenty (20) minutes after closing, employees must be off the premises within sixty (60) minutes after closing except for the purpose of cleaning, making emergency repairs to, or providing security for, such premises or preparing for the day's business or opening and closing the business in an orderly manner.

In regards to opening hours, no alcoholic beverages shall be sold or served prior to 8:00 a.m. on secular days and 10:00 a.m. on Sundays (per M.G.L c. 138, § 33B, effective July 1, 2010).

4. HOLIDAY OPERATING HOURS

No on-premise licenses may make sales on Christmas Day (or the day following when Christmas Day is on a Sunday), or Memorial Day, between 1 a.m.-12 noon.

5. FOOD SERVICES REQUIRED

Licenses issued under M.G.L. 138, Section 12, which are restaurants licenses, may be issued only to those who have been granted a common victualler license under M.G.L. Chapter 140. Common Victuallers must have adequate and sanitary kitchens and dining room equipment and capacity for preparing, cooking and serving suitable food for strangers, travelers and other patrons as required by M.G.L. Chapter 130, Section 5 and 6. This section also applies to holders of Innholder Licenses. An Innholder shall also have upon his premises suitable rooms, with beds and bedding, for the lodging of his guests.

If a licensee as a common victualler, club or innholder ceases to be engaged in the business he/she is licensed to pursue at a given location, or fails to maintain upon his/her premises the implements and facilities required by M.G.L. Chapter 138 and 140, the licensing authority shall immediately revoke his license. If a licensee at any time conducts his/her licensed business in an improper manner, the licensing authority, after notice to the licensee and reasonable opportunity for a hearing, may suspend or revoke the license.

6. CONSUMPTION ON PREMISES

In any establishment licensed to serve alcoholic beverages under the provisions of Massachusetts General Laws Chapter 138, Section 12 (pouring license) all alcoholic beverages shall be served in open containers and no such beverages shall be allowed to be

removed from the premises. Further, no patron or customer of such an establishment shall be allowed to bring alcoholic or wine/malt beverages on the premises for the purpose of consumption on the premises.

7. LIST OF OFFICERS

The licensees shall annually submit to the Selectmen within three months after January first, a listing of the names and addresses of all the club's directors or officers, and employees, as of January 1st. Such list shall be maintained current during the year and be available for such inspection on the premises at all times.

8. ONLY MEMBERS AND GUEST TO BE SERVED

Only members and their guests shall be served alcoholic beverages.

9. LIQUOR LIABILITY INSURANCE REQUIREMENT

Licensees are required to have, or otherwise provide, liquor liability insurance in the minimum amount of \$250,000 on account of injury to or death of 1 person, and \$500,000 on account of any 1 accident resulting in injury to or death of more than 1 person (required by Chapter 116 of the Acts of 2010). This requirement is applicable regardless of whether the licensee rents, or otherwise provides the licensed premises to a third party. Licensees shall provide the Board of Selectmen with a copy of the Certificate of Insurance upon the issuance or renewal of a license.

Adopted on December 21, 1994, amended on August 9, 1995, amended on February 10, 2010, amended on April 29, 2010, amended on April 1, 2014, and amended on June 10, 2015.

David M. Dunford, Chairman
Jon R. Fuller
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ORLEANS BOARD OF SELECTMEN