

**TOWN OF OAK BLUFFS
BOARD OF SELECTMEN
OAK BLUFFS, MA 02557**

POLICY STATEMENT

ALCOHOLIC BEVERAGES CONTROL

The Board of Selectmen as the licensing authority for the sale of alcoholic beverages within the Town of Oak Bluffs hereby establishes the following as rules and regulations for all licensees:

1.00: Licenses and Permits

- (1) Every applicant for a license or permit, either individually or as a member of a partnership or corporate officers or association, shall furnish proof of his citizenship by production of a certificate of birth, naturalization or as a registered voter.
- (2) Every application for a license or permit made by an individual shall be signed by the applicant therefore, who shall give his or her full name and home address.
- (3) Every application for a license or permit 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.
- (4) Every application for a license or permit made by an association shall be signed by a majority of the members of the governing body thereof, who shall state their full names and home addresses.
- (5) Every applicant for a license or permit required by the provisions of Section 5, Chapter 110, General Laws, to file a certificate stating the real name of a person conducting a business, shall file with his application a certified copy thereof.
- (6) Every application for a license or permit made by a corporation shall state the full names and home addresses of the president, treasurer, clerk and secretary, directors and manager or other principal representative of the corporation. It shall be signed by some officer duly authorized by a vote of its board of directors or other similar board. A copy of such vote certified by the clerk or secretary of the corporation, together with a copy of the certificate of its organization, shall accompany the application. A copy of the vote appointing its manager or other principal representative shall also accompany the application.
- (7) All applications for licenses and permits shall be made upon blanks furnished by the Town of Oak Bluffs. The applications shall be fully answered in detail and shall be typewritten or legibly written in ink. Applications written in pencil, in whole or in part, will not be accepted.
- (8) All applications shall be made under the penalties of perjury and any false statement contained in any application shall be a cause or ground for refusing to grant the license or permit or for suspending, canceling or revoking a license or permit already granted.
- (9) Every application made to the Town of Oak Bluffs which in any way has to do with a license for the sale of alcoholic beverages, other than an application for the straight renewal of such license, shall be filed in duplicate.

- (10) Every license shall be displayed on the premises covered by the license or permit, in a conspicuous place where it can easily be read.

2.00: Price Lists

- (1) Hotels, restaurants, taverns and clubs may keep posted in each room where any alcoholic beverages are sold a price list of such beverages. Wherever a price list is posted all sales of alcoholic beverages shall be made at the prices stated on current posted price list.
- (2) No licensee shall print, post, publish or use any false or fictitious price list; nor shall any invoice given or accepted by any licensee contain any statement which falsely indicates prices, discounts, or terms of sale; nor shall there be inserted in any invoice given or accepted by any licensee any statement which makes the invoice a false record, wholly or in part, of the transaction represented therein; nor shall there be withheld from any invoice given or accepted by any licensee any statements which properly should be included therein, so that in the absence of such statements the invoice does not truly reflect the transaction involved.

3.00: Advertising

- (1) The use of any advertising matter of an improper or objectionable nature is prohibited. The use of recipe books or pamphlets for mixed drinks, which contain obscene or suggestive toasts or other offensive matter, is prohibited.
- (2) No licensee shall use, or permit to be used, any advertising matter which is false or untrue in any particular. Any advertising matter which directly, or by ambiguity or omission tends to deceive or to create a misleading impression shall be deemed to be false or untrue.
- (3) No signs or other printed matter advertising any brand or kind of alcoholic beverages shall be displayed on the exterior or interior of any licensed premises wherein such beverages are not regularly and usually kept for sale.
- (4) No licensee shall make or permit to be made by his agent or employee, any false or misleading statement concerning any other licensee, his products, or the conduct of his business.
- (5) The use of vehicles equipped with either radio or loud speakers for the advertising of alcoholic beverages is prohibited. The use of radio or loud speaker equipment in any licensed premises for the purpose of attracting attention to the sale of alcoholic beverages therein is also prohibited.

4.00: Sales

- (1) No holder of a license issued by the Town of Oak Bluffs shall sell or offer to sell any alcoholic beverages at a price less than invoiced cost. Cost is defined as net cost appearing on the invoice for said alcoholic beverages. The use of any device, promotion or scheme which results in the sale of alcoholic beverages at less than invoiced cost is prohibited.
- (2) Donations of alcoholic beverages by licensees for the purpose of having the same used as prizes in any game of chance are prohibited.
- (3) No licensee shall buy or sell, or offer or contract to buy or sell, any alcoholic beverages on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a sale or purchase in good faith. This regulation shall not prohibit the return, or acceptance of the return, of alcoholic beverages for ordinary and usual commercial reasons arising after the merchandise has been sold.
- (4) No hotel, restaurant, club, tavern or "package goods" store shall buy, or contract to buy, any alcoholic beverages from any manufacturer or wholesaler and importer on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a sale in good faith;

provided, that this regulation shall not prohibit the return of alcoholic beverages for ordinary and usual commercial reasons arising after the alcoholic beverages have been purchased.

5.00: Licensed Premises

- (1) Slot machines or any other devices which furnish anything besides merchandise of a quantity and quality commensurate with the price deposited therein are prohibited on licensed premises. Gambling of any sort, except those games of chance authorized by the Legislature and/or the Town of Oak Bluffs, shall not be permitted on any licensed premises.
- (2) No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not.
- (3) The person in charge of any vehicle used for the delivery of alcoholic beverages or alcohol shall carry an invoice or sales slip, stating the names and addresses of the purchaser and seller, the date and the amount of the purchase, and also itemizing the number of the various kinds of containers and the kinds, quantities and brands of alcoholic beverages or alcohol.
- (4) Manufacturers and wholesalers and importers, may sell and deliver alcoholic beverages to other licensees on any day except Sunday, the last Monday in May, Thanksgiving day or Christmas day or on the day following when Christmas day occurs on a Sunday.
- (5) "Package goods" store licensees shall not sell alcoholic beverages to be consumed on their licensed premises.
- (6) "Package goods" store licensees shall not sell alcoholic beverages, other than wines and malt beverages, in individual containers of over one gallon capacity.
- (7) No club licensed to sell alcoholic beverages shall use any signs, printed matter or other means publicly or on outside of building to advertise the sale of alcoholic beverages. This shall not prohibit the use of reasonable and proper signs relating to alcoholic beverages within the licensed premises.
- (8) All premises covered by a license or storage permit shall be kept in a clean and sanitary condition at all times.

No service of alcoholic beverages shall be made to any person in a hotel, restaurant, tavern or club in a glass or any other container which has not been thoroughly cleansed and properly sterilized prior to such service.

Hotels, restaurants, taverns and clubs, licensed to sell alcoholic beverages, shall be provided with an adequate supply of running hot and cold water and soap and towels, at all times readily accessible, to thoroughly cleanse the hands of persons employed in such licensed premises.

All glasses, dishes, silverware and other utensils used in such licensed places for service of food or alcoholic beverages shall be thoroughly cleansed after use.

- (9) Noise: The licensing authority recognizes the right of neighboring property owners to the quiet enjoyment of their homes or businesses. Each license holder shall be responsible for limiting the noise generated inside their establishment or on outside property that is under their control. A violation punishable by Section 11.00 shall be deemed to occur if noise is clearly audible at a distance of 100 feet away from the inside or outside source at any time of day or night. Noise shall be definition include, but not be limited to, sound produced by guests or employees through human outcry or disturbance, music produced or reproduced whether or not amplified, operation of machinery, equipment or cleanup associated with the sale of alcohol or operation of the establishment.

Licensed premises shall keep doors, windows and sky lights closed to limit noise. The doors and windows shall be of such solid construction as to effectively stop the exchange of noise. The use of screens, screen doors and swinging saloon style doors is prohibited. Establishments shall maintain internal ventilation or cooling capacity sufficient for their climate control needs. Equipment breakdown or insufficient capacity shall not be deemed proper reason to deviate from these regulations.

- (10) The Licensee must notify the licensing authority before commencing any structural change, expansion or improvement that will affect the layout, footprint or legal occupancy limit of the area where alcohol may be served or consumed. The licensing authority will conduct a public hearing to determine if the change should be allowed and is in the best interest of the Town. A violation punishable by Section 11.00 shall be deemed to occur if such action is undertaken without prior approval.
- (11) All violations of Massachusetts General Laws occurring inside the licensed premises, or on outside property under the licensee's control, shall be reported to the Oak Bluffs Police Department forthwith. Failure to report violations or cooperate fully with any investigation into activities occurring on premises shall be punishable under Section 11.00.
- (12) All amusement devices present on the licensee's property must have the proper permits obtained through the Board of Selectmen. Unlicensed devices are subject to a fine of \$75.00 (seventy-five Dollars) per device per day.
- (13) Licenses and permits shall be framed and displayed as follows. Occupancy limits for each room and/or floor shall be publicly posted near the main entrance to the establishment. Liquor license, along with any special restrictions placed by the licensing authority, Sunday Entertainment and/or Sunday Dancing License, Amusement Device License shall all be publicly displayed in an area easily accessible for inspection by the local licensing authority, its agents and Alcohol Beverages Control Commission inspectors. Failure to properly display licenses shall be subject to a fine of \$100.00 (One Hundred Dollars) per day.
- (14) An establishment found being in excess of its occupancy limit shall be subject to punishment as noted in Section 11.00.
- (15) No establishment shall be open later than the closing hour set by the licensing authority. The following shall constitute a violation, the presence of any person not performing the duty of their employment, the presence of any person more than one (1) hour after the closing. Violations shall be subject to the penalty of Section 11.00.
- (16) All establishments collecting a cover charge shall comply with state regulations requiring that the "Cover Charge" and the amount thereof be posted outside the establishment and that each customer shall receive a numbered receipt with the business records thereof kept for not less than two (2) years.
- (17) The local licensing authority may order licensees to stop the sale or delivery of alcohol for up to three (3) days in the event of a public emergency.
- (18) Licensee's holding club licenses may not hold a function, where alcohol is served, for a private party who is not a club member or a public function where alcohol is served where the club is not the exclusive benefactor of the funds raised. Clubs must keep an accurate guest book listing the guest and the club member accompanying them. Guest books shall be available for inspection at any time. A violation shall be subject to the penalties of Section 11.00.
- (19) Card games, games of chance, sports pools and all other forms of gambling are strictly prohibited. The licensing authority may, at their discretion and under such restrictions as they deem proper, issue a permit for a Las Vegas style charity event. Violations of gambling regulations shall, after a public

hearing by the licensing authority, be subject to immediate suspension of liquor and entertainment licenses for a period determined by the licensing authority.

- (20) The regulations of the local licensing authority herein does not contain all the laws and regulations pertaining to this industry. Compliance with these regulations does not absolve the license holder of his responsibility to learn of and comply with all the laws, rules and regulations set forth in Chapter 138 and others of the Massachusetts General Laws or the Code of Massachusetts Regulations. Violations of which are enforceable under Section 11.00. Parties aggrieved by a decision of the local licensing authority may have rights of appeal to the Massachusetts Alcoholic Beverages Control Commission.
- (21) The local licensing authority reserves all it's statutory rights to issue or not issue licenses and may apply restrictions or conditions to individual license holders if it deems under the circumstances presented that this is in the best interest of the Town.

6.00: Hours of Operation

- (1) Every applicant for a license or permit shall state the desired hours of operation upon the application form.
- (2) All applicants may be open for business during all hours authorized by their license, except in emergency or as authorized by the licensing authority.
- (3) Any establishment that closes beyond a 48 hour (two day) time frame must receive approval from the Board of Selectmen, prior to closure. A written explanation of establishment closing (whether it be cleaning, repairs, early season - weekends only, etc.), date and times must be submitted to the Board for approval. This policy will be adhered to whether the establishment has an Annual Liquor License (where it must be open year round) and a Seasonal License (where the establishment must be open from April 1st to December 31st).

7.00: Required Records

- (1) All licensees shall maintain a schedule of the prices charged for all drinks to be served and drunk on the licensed premises or in any room or part thereof. Such prices shall be effective for not less than one calendar week.
- (2) The Oak Bluffs Police Department shall endeavor to ascertain the establishment in which any individual arrested for liquor related incidents was last served. A report of any such incident shall be placed in the licensee's file with the Board of Selectmen's office.

8.00: Certain Practices Prohibited

- (1) No licensee or employee or agent of a licensee shall:
 - (a) offer or deliver any free drinks to any person or group of persons;
 - (b) deliver more than two drinks to one person at a time;
 - (c) sell, offer to sell or deliver to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the public;
 - (d) sell, offer to sell or deliver to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public;
 - (e) sell, offer to sell or deliver drinks to any person or group of persons on any one day at prices less than those charged the general public on

that day, except at private functions not open to the public;

- (f) sell, offer to sell or deliver malt beverages or mixed drinks by the pitcher except to two or more persons at any one time;
 - (g) increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week;
 - (h) encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes; or
 - (i) serve intoxicated individuals.
- (2) No licensee shall advertise or promote in any way or act in any other way, whether within or without the licensed premises, any of the practices prohibited under 204 CMR.

9.00: Exceptions

Nothing contained in Section 8.00 shall be construed to prohibit licensees from offering free food or entertainment at any time; or to prohibit licensees from 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 those licensed under M.G.L. c.138, s.15, from offering free wine tasting; or to prohibit those licensed under M.G.L. c.138, s.12, from offering room services to registered guests.

10.00: Application

The provisions of 204 CMR 4.00 shall be deemed to be a condition of every license issued under M.G.L. c.138 to sell alcoholic beverages to be drunk on the premises, and said provisions may be enforced by the local licensing authorities or their agents and by the Alcoholic Beverages Control Commission or its investigators.

11.00: Violations

This policy is intended to be used primarily as a guideline by the Board of Selectmen. Individual circumstances should be the primary consideration in arriving at a fair and equitable determination in any alleged violation proceeding. The Board of Selectmen acting as the local licensing authority may increase the following dependent upon the individual circumstances.

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|-----------------|---|
| 1st Violation - | Suspension of license up to five (5) days and/or a fine up to \$300.00 (Three Hundred Dollars). |
| 2nd Violation - | Suspension of license from five (5) to ten (10) days and/or a fine up to \$500.00 (Five Hundred Dollars). |
| 3rd Violation - | Suspension of license from ten (10) to twenty (20) days and/or fine up to \$1000.00 (One Thousand Dollars). |
| 4th Violation - | Revocation of license. |

11.10: Procedure for violations hearings

1. Notification

- a. License holder is notified of the hearing in writing. The notice must include:
 - A description and date of the incident.
 - The date, time and place of the hearing.
 - Statement what licensee has the right to have counsel present, witnesses to testify on their behalf, and the right to question witnesses.
- b. Notice should be received no less than seven days prior to hearing.

- c. Copies of the notice should be sent to the Chief of Police and Town Counsel.
- d. The Chief of Police should notify the officer(s) involved and other parties to the complaint.

2. Conduct of the hearing

- a. The chair calls the hearing to order, reads the notice, and swears the witnesses.
- b. The police officer testifies from the incident report and offers his/her statement of the incident.
- c. The license holder is asked by the Board if he/she will stipulate to the facts as presented by the officer. If he/she agrees, then the Board may allow a statement by the license holder and close the hearing.
- d. If the license holder does not stipulate to the facts, testimony will be taken from the license holder and other witnesses. Licensee may cross-examine town's witnesses.
- e. While the public may attend the hearing, no questions or public comment should be allowed during the hearing. Questions may be asked by Board members only. The license holder should be given a reasonable opportunity to offer evidence, examine witnesses, and make a concluding statement.
- f. If a minor is involved (for purpose of this statute, a minor is anyone under 21 years of age), then the parents of the minor must be notified of the hearing. If the minor is under the age of 18, then that testimony must be taken in executive session. Note: only the minor's testimony is taken in executive session. If the child is under guardianship, then the guardian must be informed.

3. Closing the hearing

- a. After all testimony has been taken and questions from the Board answered, a motion should be made to close the hearing.
- b. Following the vote on closing the hearing, a motion of finding should be made (i.e., that a violation did or did not occur). The motion should be discussed and a vote taken.
- c. If the motion that a violation occurred carries then a motion regarding sanctions should follow. Discussion on the extent /appropriateness of the sanction may then occur.

4. Enforcing the decision

- a. The license holder must be notified in writing of the Board's decision, including his/her rights to appeal the decision to the Alcoholic Beverages Control Commission
- b. If the decision is to suspend, modify or revoke the license, the Board must set a date or dates for the action to occur. The license holder must be given a minimum of five days notice of the action to allow the license holder time to file an appeal.
- c. If a decision is made to suspend the license, the Board may require the license holder to surrender the license at the Town Clerk's office on the date(s) and time(s) specified. If the decision to suspend the license is for more than one day, then the dates of the suspension need not be consecutive.
- d. The Board may instruct the Chief of Police to cause an inspection on the premises to insure that the Board's order is complied with.

11.20: Suspension

It is the policy of the Board of Selectmen that a suspension of license shall be on or start on the same day of the week as the violation occurred.

For Example: A violation which occurred on a Saturday and a one day suspension is given, the day suspended shall be a Saturday.

-or-

A violation which occurred on a Thursday and a three day suspension is given, the suspension would be for a Thursday, Friday and Saturday in sequence.

11.30: Appeals Process

A license has five (5) days from receipt of the written decision from the Board of Selectmen (Local Licensing Authority) to appeal to the Alcoholic Beverage Control Commission.

If the Alcoholic Beverage Control Commission denies an appeal from a licensee, the licensee has thirty (30) days from receipt of the written decision from the Alcoholic Beverage Control Commission to appeal to the Superior Court.

11.40: Policy Time Frame for Violations

It is the intent of this policy that the Board of Selectmen take such action within the above recommended guidelines on all such violations that occur within three calendar years after the effective date of enforcement for said violations.

11.50: Responsibilities of License Holders

It is the responsibility of the license holder to properly train and inform all of his/her employees in the disbursement of liquor to customers to insure that all possible safeguards are taken to insure this policy and all State Laws and Regulations are adhered to.

THIS Policy shall take effect immediately.

TOWN OF OAK BLUFFS
BOARD OF SELECTMEN

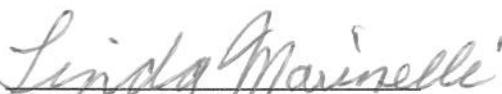
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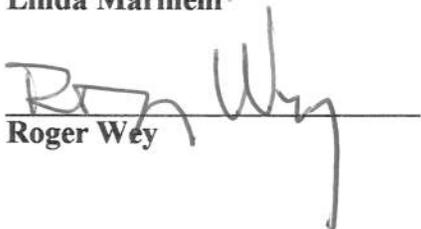

Kenneth Rusczyk, Chairman

First Revision Signed: August 11, 1998


Richard Combra

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INFINITY: POLICY'S & PROCEDURES
alcohol regs