



**OFFICE OF THE  
TOWN ADMINISTRATOR**

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TO: Select Board

DATE: 6/6/2022

SUBJECT: Issuance of Special Licenses (AKA One Day Beer and Wine/Liquor)

On June 6, 2022, I spoke with Ralph Sacramone, Executive Director of the Alcoholic Beverage Control Commission (ABCC) regarding a complaint he received from a resident of Grafton. The resident alleges that the Town of Grafton Select Board is improperly authorizing Special Licenses for Beer, Wine, Liquor, or other alcoholic beverages. Upon review of the Select Board's practices, with specific attention to the issuance of Special Licenses to Houlden Farms/Sunflower Shanty, I offer the following guidance for the Board to base its decision.

Special Licenses are issued under the authority of MGL Chapter 138 § 14 and 204 CMR 7.00, both of which are attached to this MEMO for your review. The pertinent point for the Select Board revolves around 204 CMR 7.04: Duration which states:

*No special license, other than a special license for a dining hall maintained by an incorporated educational institution authorized to grant degrees, shall permit sales on more than 30 days, **nor may any person be granted special licenses permitting sales on an aggregate of more than 30 days in any calendar year, except as authorized by 204 CMR 7.04.** A special license may permit sales on an aggregate of more than 30 days, but not more than 245 days, in any calendar year in or from any municipally owned building that is operated in conjunction with an 18-hole regulation golf course.*

Thus, 7.04 tells us that a "person" can only be issued a Special License for 30 days in any calendar year. The interpretation of a "person", according to the ABCC, is any individual, entity, address, or group which benefits from the proceeds of the sales of said Special License. In the case of Houlden Farms/Sunflower Shanty, the ABCC's position is that the benefactors of the Special Permits is the farm, and the Houldens, regardless of a change in applicant to a brother, separate manager, etc.

When asked about the interpretation of the ABCC, the underlying premise comes from an issue in Boston where "Beer Gardens" would pop-up and serve alcohol for 30-days, and then return to the local authority with a different manager and be granted 30 more. The brick-and-mortar establishments of Boston threatened a class action suit against the City of Boston alleging harm from the issuance of Special Permits in this matter as it

side steps the formal process and requirements of MGL 138 § 12.

Given this conversation with Mr. Sacramone at the ABCC, I find it unlikely that the Select Board will/would find itself in jeopardy of any action from the State. This is a local matter which does not seem to be actionable by the ABCC or any other regulatory authority. However, given this interpretation by the ABCC, I believe that the Select Board will be opening the Town to significant legal jeopardy should the Board choose to ignore the guidance issued by Mr. Sacramone and the ABCC.

Should you have any questions or concerns, please feel free to contact me.

Thank you,



Evan Brassard, Town Administrator

CC. Ginny Kremer, Town Counsel  
Robert Berger, Inspector of Buildings  
Christopher McGoldrick, Town Planner  
Normand Crepeau, Chief of Police

**Part I** ADMINISTRATION OF THE GOVERNMENT

**Title XX** PUBLIC SAFETY AND GOOD ORDER

**Chapter 138** ALCOHOLIC LIQUORS

**Section 14** SPECIAL LICENSES TO MANAGERS OF INDOOR OR  
OUTDOOR ACTIVITIES; FEES

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Section 14. In a city or town wherein the granting of licenses to sell all alcoholic beverages or wines and malt beverages only is authorized under this chapter, special licenses for the sale of wines and malt beverages only, or either of them, may be issued by the local licensing authorities, to the responsible manager of any indoor or outdoor activity or enterprise; provided, however, in any city or town wherein the granting of licenses to sell all alcoholic beverages is authorized under this chapter, special licenses for the sale of all alcoholic beverages or wine and malt beverages only, or any of them, may be issued by the local licensing authorities to the responsible manager of any nonprofit organization conducting any indoor or outdoor activity or enterprise. Special licenses for the dispensing of wines and malt beverages in dining halls maintained by incorporated educational institutions authorized to grant degrees may be granted by the local licensing authorities in such a city or town to such institutions; provided, that such beverages shall be served only to persons

over twenty-one years of age. The fees for licenses granted under this section shall be fixed from time to time by the local licensing authorities and need not be uniform.

A nonprofit charitable corporation organized pursuant to chapter 180 and registered with the division of public charities in the department of the attorney general and licensed pursuant to this section may accept free alcoholic beverages donated to the nonprofit charitable corporation by an individual, by a person licensed to manufacture alcoholic beverages or by a person licensed to sell alcoholic beverages at wholesale or retail pursuant to this chapter for the purpose of serving such donated alcoholic beverages at fundraising events for the benefit of the nonprofit charitable corporation.

A license under this section shall not be granted to any person while his application for a license under section twelve is pending before the licensing authorities.

204 CMR: ALCOHOLIC BEVERAGES CONTROL COMMISSION

204 CMR 7.00: SPECIAL LICENSES

Section

7.01: Notice by Local Authority

7.02: Licensee

7.03: Hours of Sale

7.04: Duration

7.05: Authorized Suppliers

7.06: Local Supervision

7.07: Commission Supervision

7.08: Severability

7.01: Notice by Local Authority

Not more than ten days after approving a license pursuant to the provisions of M.G.L. c. 138, § 14 (Special License), the local licensing authority shall notify the Commission of such approval in writing. Such notice shall include the name of the city or town, the name and address of the licensee, date of the local authority's approval, the date or dates for which the license is effective, the hours during which sales are authorized, a description of the licensed premises, whether the license is for all alcoholic beverages, wines and malt beverages only, or either of them, whether the licensed activity or enterprise is for profit or nonprofit, whether the license is for a dining hall maintained by an incorporated educational institution authorized to grant degrees, and any restrictions attached to the license by the local authority. The Commission may require use of a form approved by the Commission for this purpose.

7.02: Licensee

A special license, other than a special license for a dining hall maintained by an incorporated educational institution authorized to grant degrees, may be issued only to a natural person, although the licensee may be a responsible manager acting on behalf of a corporation, partnership, or other entity.

7.03: Hours of Sale

The hours during which sales of alcoholic beverages may be made by a special licensee shall be fixed by the local authorities, but no special licensee may sell or deliver any alcoholic beverage between the hours of 2:00 A.M. and 8:00 A.M.

7.04: Duration

No special license, other than a special license for a dining hall maintained by an incorporated educational institution authorized to grant degrees, shall permit sales on more than 30 days, nor may any person be granted special licenses permitting sales on an aggregate of more than 30 days in any calendar year, except as authorized by 204 CMR 7.04. A special license may permit sales on an aggregate of more than 30 days, but not more than 245 days, in any calendar year in or from any municipally owned building that is operated in conjunction with an 18-hole regulation golf course.

7.05: Authorized Suppliers

No special licensee may sell any alcoholic beverage other than those purchased from a licensee under M.G.L. c. 138, §§ 18, 19, 19B, or 19C or from a holder of a special permit to sell issued under M.G.L. c. 138, § 22A.

## 204 CMR: ALCOHOLIC BEVERAGES CONTROL COMMISSION

### 7.06: Local Supervision

Whenever, in the opinion of the local licensing authorities, any applicant for a special license fails to establish to their satisfaction his compliance with the requirements of M.G.L. c. 138, duly promulgated state or local regulations, or any reasonable requirements which the local authorities may from time to time make with respect to such licenses or to the conduct of business by such licensees, said authorities may refuse to issue or reissue to any such applicant such license. Whenever in their opinion any special license holder fails to maintain compliance with the requirements of M.G.L. c. 138, regulations, and requirements, they may, after hearing or opportunity therefor, modify, suspend, cancel or revoke such license. The licensing authorities shall mail a notice of such action to the applicant or licensee, stating the reasons such action and shall at the same time mail a copy of such notice to the Commission.

### 7.07: Commission Supervision

The Commission may investigate the granting of any special license and the conduct of the business being done thereunder, and shall, after hearing, modify, suspend, or revoke or cancel such license if, in its opinion, circumstances warrant.

### 7.08: Severability

The provisions of 204 CMR 7.00 are severable, and if any provision or the application thereof is held by a court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision of 204 CMR 7.00.

## REGULATORY AUTHORITY

204 CMR 7.00: M.G.L. c. 138, § 24; c. 30A, §§ 2 and 3.