

# **Amherst Board of License Commissioners BYOB (Bring Your Own Bottle) Regulations**

Adopted by the Board of License Commissioners on July 29, 2019.

## **Section 1: Purpose**

The purpose of these regulations is to allow patrons to bring alcoholic beverages into an establishment holding a Common Victualler license for their personal consumption in a manner that is compliant with Chapter 138 of the General Laws of the Commonwealth, promotes the responsible use of alcohol by adults, and protects the health and safety of the inhabitants of the Town of Amherst.

## **Section 2: Authority**

These regulations are adopted under authority of Massachusetts General Laws c.138 and Amherst Home Rule Charter §6.3.

## **Section 3: Definitions**

As used throughout these regulations, the terms contained within M.G.L. c. 138 and M.G.L. c. 140 will have the meaning as defined by statute. In addition, and to the extent not inconsistent with M.G.L. c.138 and c.140, the following terms will have the following meanings:

**“Alcoholic Beverages”** – all liquids intended for human consumption as a beverage which contain one half of one percent or more of alcohol by volume at sixty degrees Fahrenheit, including malt beverages;

**“Board”** – the Amherst Board of License Commissioners.

**“BYOB”, “Bring Your Own Bottle”** – the act or practice of bringing alcoholic beverages into an establishment by a patron for consumption on the premises by the patron;

**“BYOB Designation”** – a designation on the Common Victualler License issued by the Amherst Board of License Commissioners which allows establishments to allow patrons to bring wine & malt beverages onto the premises for BYOB.

**“Establishment”** – an entity within the Town of Amherst holding a Common Victualler License, or the premises thereof.

**“Malt Beverages”** – all alcoholic beverages manufactured or produced by the process of brewing or fermentation of malt, with or without cereal grains of fermentable sugars, or of hops, and containing not more than twelve percent alcohol by weight, including beer.

**“Wine”** – all fermented alcoholic beverages made from fruits, flowers, herbs or vegetables and containing not more than twenty-four per cent of alcohol by volume at sixty degrees Fahrenheit, except cider containing not more than three per cent, or containing more than six per cent, of alcohol by weight at sixty degrees Fahrenheit.

## **Section 4: Applicability**

### **Section 4.00 Designation**

BYOB Designations may be granted to establishments by the Board of License Commissioners and are an addendum to the Common Victualler License. BYOB Designations allow establishments to permit patrons to bring in and consume malt beverages and/or wine on the premises.

### **Section 4.01 Eligibility**

BYOB Designations may be applied for by establishments holding a Common Victualler License that wish to allow their patrons to bring malt beverages and/or wine for their personal consumption as they consume a meal. Establishments seeking BYOB Designation must have tables or counters and seating available for these patrons.

Establishments which hold an alcohol license under M.G.L. c. 138 §12 or §15 may not apply for or be granted a BYOB Designation.

### **Section 4.02 Undesignated Establishments**

Establishments holding a Common Victualler License that do not hold a BYOB Designation or an alcohol license under M.G.L. c. 138 §12 may not permit patrons to consume alcohol on the premises.

Establishments holding a liquor license under M.G.L. c. 138 §12 or §15 may not permit patrons to bring alcohol into the establishment to consume on the premises.

Violations of this section will be enforced in accordance with Section 7, as well as any additional penalties that may apply to §12 or §15 licenseholders.

## **Section 5: Application Procedure**

### **Section 5.01 On-Cycle Applications & Renewals**

Applicants who wish to apply for a BYOB Designation at the same time as they apply for a Common Victualler License or conduct their annual renewal shall indicate as such on their Common Victualler License application and fill out the information required.

BYOB Designations shall be eligible to renew annually at the same time as the Common Victualler License.

### **Section 5.02 Off-Cycle Applications & Renewals**

Applicants who already hold a Common Victualler License and wish to apply for a BYOB Designation off-cycle from their renewal shall contact Amherst Inspection Services to be placed on the agenda for the Board of License Commissioners.

### **Section 5.03 Application Fees**

Applicants applying for a BYOB Designation shall pay a \$20.00 fee to the Town of Amherst. This fee is not refundable once the application has been put on the agenda for a meeting of the Board.

## **Section 5.04 Review Procedure**

### **Section 5.040 Establishments with Table Service Waitstaff**

Establishments in which patrons are seated at a table by staff and are waited upon at that table by staff throughout the entire length of their stay at the establishment (to include taking orders, delivering food, and taking payment) are presumed to have a direct method of monitoring patrons and are not required to submit any additional information with their application unless the Board or Town officials so request.

### **Section 5.041 Establishments with Counter Service**

Establishments in which patrons order food at a counter or register and seat themselves, or any establishment that does not meet the direct table service standards in Section 5.040, may still seek BYOB designation, but must fill out a BYOB Management Plan in addition with their application detailing how they will verify the age of patrons consuming alcohol and monitor patrons for safety and compliance with these regulations.

## **Section 5.05 Board of License Commissioners Review**

The Board of License Commissioners will review BYOB applications at the same time as the Common Victualler License application for an establishment, if on-cycle, or within 45 days of receipt, if off-cycle.

The Board or Town officials may, at their discretion, require additional information from applicants to determine the suitability of the applicant and the establishment's plan to manage BYOB activity.

Review will happen at a regular Public Meeting of the Board of License Commissioners. A majority of Board members present shall rule.

## **Section 5.06 Transfer**

BYOB Designation expires upon transfer of ownership of the establishment and the new owner, if he or she wishes to continue to offer BYOB, must reapply to the Board. The fee shall be waived for this application unless it is the annual renewal.

There shall be a grace period of 45 days after the transfer of ownership of an establishment holding a BYOB designation where, if the management and operation of the establishment is substantially the same, the new owner may continue BYOB activities while he or she seeks transfer of the Common Victualler License and BYOB Designation.

## **Section 5.07 Discretion**

BYOB Designations are a privilege, not a right, and are granted at the sole discretion of the Board of License Commissioners.

## **Section 6: Operational Regulations for BYOB Designees**

### **Section 6.00 General Regulations**

- 1) Alcoholic beverages may only be consumed between the hours of 12:00pm and 11:00pm.
- 2) Patrons consuming alcohol must be seated at a table or counter and must order food.

- 3) Only malt beverages or wine may be consumed by patrons. All other alcoholic beverages, including hard liquor and cordials, are prohibited.
- 4) No alcoholic beverages may be purchased from or provided by the establishment.
- 5) The establishment may not charge patrons either directly or indirectly to consume alcoholic beverages on the premises. Any service fee, glass fee, table fee, corkage fee, or other fee or charge associated with alcohol consumption would be considered an indirect sale and is illegal without a §12 license.
- 6) The establishment or its employees may not handle or serve alcoholic beverages: This includes storing, refrigerating, or pouring alcoholic beverages. This would be considered a delivery of alcohol and is illegal without a §12 license. This does not preclude the establishment from disposing of alcoholic beverages left on the premises by the patron, or from providing glasses, bottle chillers, bottle openers, or the like free of charge.
- 7) Patrons may only carry in alcoholic beverages for the personal consumption of themselves and their party members.
- 8) Alcoholic beverages brought into the premises must be in previously unopened containers.
- 9) Wait staff serving and bus staff clearing tables of patrons with carry-in alcoholic beverages must be 18 years of age or older.
- 10) Patrons may not leave the premises with open containers of alcoholic beverages in violation of the Amherst Open Container Bylaw. Any open containers of alcoholic beverages ~~must be~~ left on the premises must be disposed of immediately by staff. Staff and management may not accept alcohol as a gift or gratuity from patrons. Patrons wishing to leave the premises with a partially consumed bottle must reseal (“recork”) the bottle before leaving in order to comply with the Amherst Open Container Bylaw.
- 11) The establishment is responsible for training employees in the correct procedures with respect to this policy.
- 12) BYOB designees must allow inspection by members of the Amherst Police Department or other agents of the Board of License Commissioners any time they are open for business.
- 13) BYOB designees must post a notice detailing BYOB regulations provided by the Town of Amherst on their premises.
- 14) The manager listed on the Common Victualler License must be trained and certified in alcohol service best practices from TIPS or a similar training program.
- 15) The staff and management of any designated establishment will not encourage or allow patrons to rapidly consume any alcoholic beverages to avoid disposing of the beverages.

## **Section 6.01 Limit on Quantity of Alcohol**

For the purposes of this section, a group of patrons 21 years of age or older who are seated together at a table, or who are attendees of a private event, are considered a party.

Minors under the age of 21 may be seated with older patrons who are consuming alcoholic beverages, but they are not members of the party for the purposes of this section.

Patrons may carry in no more than one standard bottle of wine (750 mL) for every two members of the party. (or, if packaged in containers other than a standard bottle, no more than 375 mL of wine per party member.)

Alternatively, patrons may carry in no more than 36 fl. oz. of malt beverages per party member.

Parties may bring both wine and malt beverages, but the allowed quantity of alcohol granted to an individual patron cannot apply to both wine and malt beverages. (For example, a party of three could bring in a 750 mL bottle of wine and 36 fl.oz. of malt beverages, but not a 750 mL bottle of wine and 72 fl.oz. of malt beverages).

## **Section 6.02 Age Verification**

It shall be the responsibility of the establishment to ensure each patron consuming alcoholic beverages on premises is 21 years of age or older. The age of each patron consuming alcoholic beverages shall be verified by employees of the establishment promptly after those patrons enter the premises.

## **Section 6.03 Establishment Rules**

Establishments may set their own rules regarding BYOB practices not in conflict with these regulations, including but not limited to more limited hours of BYOB availability or designated seating for BYOB patrons.

These rules may not include any direct or indirect fees for BYOB patrons, such as minimum charges or minimum orders for patrons to participate in BYOB.

## **Section 6.04 Temporary Suspension of BYOB for Public Safety**

The Amherst Police Chief may, for reasons of public safety, temporarily suspend BYOB privileges for all designees townwide for a limited period of hours or days. Designees shall be informed of this suspension period at least 7 days in advance unless there are exigent circumstances.

## **Section 7: Enforcement**

The provisions of this regulation may be enforced by any available means in law or equity, including but not limited to M.G.L. c.138, 204 CMR, and non-criminal disposition pursuant to M.G.L. c.40 §21D. When enforced through non-criminal disposition, the penalties shall be not less than \$100.00 per each violation, with each calendar day constituting a separate violation.

Any designee violating any provision of these regulations or any of the conditions of their Designation will be subject to a civil penalty of \$100.00 for the 1st offense, \$200.00 for the 2nd offense within a 12-month period, and \$300.00 for the 3rd and subsequent offenses within a 12-month period.

The Board, in their discretion, may suspend and/or revoke the BYOB designation of an establishment after one or several violations of these regulations.

The Board, in their discretion, may suspend and/or revoke the common victualler license of any establishment, including those without a BYOB designation or a license under M.G.L. c. 138 §12 or §15, that permits the unlawful consumption of alcohol by patrons on premises.

In the discretion of the Board, an establishment lacking such a license or designation that permits the consumption of alcohol by patrons on premises will be subject to a civil penalty of \$100.00 for the 1st offense, \$200.00 for the 2nd offense within a 12-month period, and \$300.00 for the 3rd and subsequent offenses within a 12-month period.

The Amherst Police Chief, for reasons of public safety, may immediately suspend BYOB privileges at an establishment pending review at the next meeting of the Board of License Commissioners.

## **Section 8: Validity**

These regulations shall take effect upon their approval by the Board of License Commissioners and shall supersede all previous regulations dealing with BYOB.

## **Section 9: Severability**

If any section, paragraph, subdivision, clause, or provision of these regulations shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause, or provision so adjudged and the remainder of these regulations shall be deemed valid and in effect.