

NEEDHAM PLANNING BOARD
Wednesday February 9, 2022
4:00 p.m.

Virtual Meeting using Zoom
Meeting ID: **826-5899-3198**
(Instructions for accessing below)

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Direct Link to meeting: <https://us02web.zoom.us/j/82658993198>

1. Discussion of Brewery Zoning.
2. Minutes.
3. Report from Planning Director and Board members.
4. Correspondence.

(Items for which a specific time has not been assigned may be taken out of order.)

ARTICLE 1: AMEND ZONING BY-LAW – SCHEDULE OF USE REGULATIONS
BREW PUB, MICROBREWERY AND NANOBREWERY

To see if the Town will vote to amend the Zoning By-Law as follows:

1. In Section 1.3 Definitions, by adding the following after the existing definition of “Basement” and before the existing definition of “Building (or part or parts thereof)”:

Brew Pub - Restaurants, licensed under the relevant state and federal statutes, to produce and sell beer and/or ale at the location and whose primary business is the sale and preparation of food to be consumed on the premises. The brew pub shall occupy no more than 5,000 square feet of gross floor area. Malt beverages including beer, ales and hard ciders produced on the premises may be sold to other establishments but shall not exceed 25 percent of the establishment’s production capacity. May include other uses such as outdoor dining and live indoor entertainment if otherwise permitted in the zoning district.

2. In Section 1.3 Definitions, by adding the following after the existing definition of “Medical Services Building”, and before the existing definition of “Mixed-Use Building”:

Microbrewery - A facility, licensed under the relevant state and federal statutes, for the production and packaging of malt, wine, or hard cider beverages for distribution retail or wholesale, on or off premise, with a capacity of not more than fifteen thousand (15,000) barrels, (a barrel being equivalent to thirty (31) gallons per year) and which may include accessory preparation and sale of food for on premises consumption. A tasting room, not to exceed 25 percent of the building’s gross square footage, is permitted as an accessory use. Any such facility may provide samples at no charge and limited in size as set forth in M.G.L c. 138 shall have a Commonwealth of Massachusetts issued Farmer Series Pouring License. The facility may host marketing events, special events, and/or factory tours. May include other uses such as a restaurant, including outdoor dining, and live indoor entertainment if otherwise permitted in the zoning district.

3. In Section 1.3 Definitions, by adding the following after the existing definition of “Motor Home”, and before the existing definition of “Needham Center Off-Street Parking Fund”:

Nanobrewery - Also considered a craft brewery, a facility, licensed under the relevant state and federal statutes, for the small scale production of malt, wine, or hard cider beverages primarily for on premises consumption and sale with limited distribution to retail or wholesale, with a capacity of not more than six thousand (6,000) barrels, (a barrel being equivalent to thirty-one (31) gallons per year) and which may include accessory preparation and sale of food for on premises consumption. May include other uses such as a restaurant, including outdoor dining and live indoor entertainment if otherwise permitted in the zoning district.

4. In Section 3.2, Schedule of Use Regulations, Subsection 3.2.2, Uses in Business, Chestnut Street Business, Center Business, Avery Square Business and Hillside Avenue Business Districts, by inserting immediately below the row that reads “medical clinic” a new entry, which shall read as follows:

<u>“USE</u>	<u>B</u>	<u>CSB</u>	<u>CB</u>	<u>ASB</u>	<u>HAB</u>
Brew Pub	N	SP	SP	SP	N”

5. In Section 3.2, Schedule of Use Regulations, Subsection 3.2.1, Uses in the Rural Residence-Conservation, Single Residence A, Single Residence B, General Residence, Apartment A-1, Apartment A-2, Apartment A-3, Institutional, Industrial, and Industrial-1 Districts, by inserting immediately below the row that reads “medical clinic” a new entry, which shall read as follows:

<u>“USE</u>	<u>RRC</u>	<u>SRB</u>	<u>GR</u>	<u>A-1,2</u>	<u>I</u>	<u>IND</u>	<u>IND-1</u>
	<u>SRA</u>		<u>&3</u>				

Nanobrewery	N	N	N	N	N	SP*	SP”
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*Applies only to the Industrial District any portion of which is located within 150 feet of the Arbor Street boundary, otherwise N.

6. In Section 3.2.4 Uses in the New England Business Center District, Subsection 3.2.4.2 Uses Permitted by Special Permit, by adding a new paragraph (k) that states “Microbrewery”.
7. In Section 3.2.5, Uses in the Highland Commercial-128 District, Subsection 3.2.5.2, Uses Permitted by Special Permit, by adding a new paragraph (q) that states “Nanobrewery” and by renumbering former paragraphs (q), (r) and (s) as paragraphs (r), (s) and (4) respectively.
8. In Section 3.2.6, Uses in the Mixed Use-128 District, Subsection 3.2.6.2, Uses Permitted by Special Permit, by adding a new paragraph (k) that states “Nanobrewery” and by renumbering former paragraphs (k) and (l) as paragraphs (l) and (m) respectively.
9. In Section 3.2.7 Uses in the Highway Commercial 1 District, Subsection 3.2.7.2 Uses Permitted by Special Permit, by adding a new paragraph (m) that states “Nanobrewery” and by renumbering former paragraphs (m) as paragraph (n).

Or take any other action relative thereto.

To: Select Board and Planning Board Members
From: Amy Haelsen, Economic Development Manager
Date: November 15, 2021
Re: Breweries

Background

In the Fall of 2020, I was contacted by a gentleman who was interested in opening a brewery at a vacant property located in the Mixed-Use 128 District where he could brew craft beer, have on-site consumption of the beer as well as conduct retail sales of the beer and branded merchandise. He was also seeking to have live programming (music, trivia nights, etc.) and allow for food trucks and/or an outside catering company to provide food for patrons. The current zoning in Needham does not allow for all of these uses at one location.

Breweries in Massachusetts

Following this inquiry, I began to research breweries throughout the state and the zoning regulations in the towns and cities in which they were located. There are currently 210 operating breweries across the Commonwealth including brewpubs, farm-breweries, and manufacturers. Of these, 174 are open to the public and 170 have tap rooms where visitors can order a pint or flight onsite. Another 20 new breweries are expected to open by the end of 2021 and there are an additional 10 plus more breweries in the planning stages.

Why a brewery in Needham?

- Breweries continue to rise in popularity and according to the Massachusetts Brewers Guild, there is no indication that the market will be oversaturated with them anytime soon.
- They are a destination business and help draw visitors from a wide geographic area which will benefit other local businesses
- A brewery would add to the diversity of our business inventory and sends a message that we are a town that is welcoming to new/unique business types
- A brewery would help infuse new energy into a commercial or industrial area in town
- A brewery would potentially generate thousands of dollars in meals tax for the Town
- There are currently no breweries located in the surrounding communities of Newton, Dedham, Wellesley, Dover/Sherborn

Where in town should a brewery be located?

Based on the research I have done, for a brewery to manufacture and sell beer on the same site, they will need a minimum of 3,000 square feet. High ceilings, proper venting, access to high-pressure water and proper drainage are also features that are highly sought after when choosing a site for a brewery. In Needham, these types of properties are most prevalent in the following Use Districts: Mixed-Use 128, Industrial, Industrial-1,

Highland Commercial-128, and New England Business Center. Generally speaking, these locations would also allow for more parking and flexibility for multiple uses.

How other towns handle zoning for breweries

Cambridge recently changed its retail zoning to allow “craft manufacturing” of both beverages and food, which includes breweries. It’s allowed by right in four zoning districts and by special permit in five zoning districts. Anything over 10,000 SF would be considered light manufacturing.

Natick added microbreweries/wineries/cideries/distilleries with accessory indoor/outdoor dining space to their allowed/permitted uses. They are allowed by right in more highway-oriented commercial areas and by special permit in downtown and industrial districts.

Medfield approved two breweries in its Industrial Extensive zoning district under a ‘manufacturing’ special permit as well as an ‘establishment selling food’ special permit. They also have a brewery in a business zone which includes a brewery, tap room and a retail store. They have food trucks come to the parking lot which are permitted separately by site plan approval from the planning board because they are in a plaza with shared parking.

Norwood allowed two breweries by special permit under the use ‘food processing, bottling or packaging’ which is allowed in four of their zoning districts which are light manufacturing and industrial.

Steps to obtain licensing to brew on site

To open a brewery in Massachusetts, the business entity must first seek federal approval from the Alcohol and Tobacco Tax and Trade Bureau (ATTTB) to manufacture alcohol. After this federal permit is obtained, the business must then apply to the state for a brewer’s license through the Massachusetts Alcoholic Beverages Control Commission (ABCC). On the ABCC’s license application, the business must indicate the physical address where the brewery will be located so a site needs to be selected before they can even apply for a license. After the business has obtained a license from the ATTTB and the ABCC they can then apply for a pouring license from the Town of Needham.

It would be prudent for the Town to amend its zoning bylaws now as a prospective brewery can’t seek federal and state licensing to operate a brewery until a site has been selected. These licensing authorities require proof that the zoning at the site allows for such use.

Issues to consider

- Is this a use which the Town wishes to pursue? If the answer is affirmative, in which zoning districts should it be permitted and under what zoning regulatory framework (i.e. by right or by special permit) should it be administered?
- In response to an inquiry as to whether or not the Select Board can issue a pouring license to a brewery if it is outsourcing the food service to a third-party (i.e. food trucks) Town Counsel determined that the Select Board has the statutory authority to issue a Farmer Series Pouring Permit to allow a brewery to sell alcohol for on-premises consumption. However, he added that if the Board is inclined to support this new use, it should amend its regulations before issuing a license, for the purposes of consistency.

Zoning for Breweries in Other Massachusetts' Cities and Towns

Cambridge - Recently changed its retail zoning to allow "craft manufacturing" of both beverages and food, which includes breweries. It's allowed by right in four zoning districts and by special permit in five zoning districts. Anything over 10,000 SF would be considered light manufacturing. Zoning definitions:

https://library.municode.com/ma/cambridge/codes/zoning_ordinance?nodeId=ZONING_OR_DINANCE_ART2.000DE

Use Regulations/Table of Uses:

https://library.municode.com/ma/cambridge/codes/zoning_ordinance?nodeId=ZONING_OR_DINANCE_ART4.000USRE

Natick - Added microbreweries/wineries/cideries/distilleries with accessory indoor/outdoor dining space to their allowed/permitted uses. They are allowed by right in more highway-oriented commercial areas and by special permit in downtown and industrial districts. Here's the recent changes they made to their zoning bylaw:

Specialty Craft Fabrication: Production of goods by the use of hand tools or small-scale, light mechanical equipment occurring solely within an enclosed building where such activity involves on-site sales of goods produced, is conducted in public view as much as practical and requires no outdoor operations or storage, and where the production, operations, sales and storage of materials related to production occupy no more than 7,500 square feet of gross floor area. Typical uses have minimal negative impact on surrounding properties and include, but are not limited to, woodworking, ceramics production, jewelry manufacturing, small electronics production, beverage or food processing, including the distillation of alcohol. Specialty Craft Fabrication sites may include a retail or dining component, not to exceed thirty-three percent (33%) of the facility's gross square footage, permitted as an accessory use, where goods and products produced on the premises may be displayed, sold and/or consumed. A seasonal outdoor area (i.e. a patio, deck or garden) is permissible as part of an accessory retail use in a Specialty Craft Fabrication site, but shall not be included in calculating the retail use's square footage for zoning compliance. Specialty Craft Fabrication sites may also include other accessory uses if such uses are otherwise permitted in the zoning district.

<https://www.natickma.gov/701/Zoning-Bylaws>

Medfield - Approved two breweries in its Industrial Extensive zoning district under a 'manufacturing' special permit as well as an 'establishment selling food' special permit. They also have a brewery in a business zone which includes a brewery, tap room and a retail store. They have food trucks come to the parking lot which are permitted separately by site plan approval from the planning board because they are in a plaza with shared parking.

Norwood - Does not have any zoning regulations that are specific to breweries. They allowed two breweries by special permit by the Board of Appeals under the use 'food

processing, bottling or packaging' which is allowed in four of their zoning districts which are light manufacturing and industrial.

Hudson - Allows breweries in their downtown and in all districts as an allowed use. There are no dimensional requirements for breweries in their zoning.

Braintree – The only brewery in town was allowed by right in the Light Manufacturing district. However, if the town were to do it over again, they would do it only by special permit, unless it was part of a restaurant, and allow in large industrial areas as the brewery tends use the outside parking areas for seasonal events.

Somerville - Breweries are allowed in every district, by right, and by special permit in the residential districts. They are classified under its Arts & Creative Enterprise use categories:

Artisanal Production The on-site production of hand-fabricated or hand manufactured parts and custom or craft consumer goods based on the skill and knowledge of the artisan and the use of hand tools or small-scale, light mechanical equipment. The Artisanal Production category includes apparel manufacturing, **breweries**, cabinetry, chocolatiers, confectionery, furniture making, glass working, jewelry making, metal working, pottery, sculpture, wood working, and their substantial equivalents. Showrooms and the ancillary sales of goods produced on-site are permitted. The following standards apply:

The production of offensive noise, vibration, smoke, dust or other particulate matter, heat, humidity, glare, or other objectionable effect is prohibited, except in the Fabrication and Commercial Industry districts.

ii. In addition to the review criteria for all Special Permits specified in §15.2.1.e. Review Criteria, the review board shall make findings considering the following in its discretion to approve or deny a special permit authorizing an Artisanal Production principal use:

- a). Appreciable methods to mitigate noise for abutting residential properties.
- b). Location of loading, trash and recycling storage, and the procedure for drop-off and pickup.
- c). The limitation of visitors and ancillary retail sales to between the hours of 7:00am to 9:00pm."

In summary, they're:

- easy to permit in their Fabrication and Commercial Industry Districts - just a building permit is necessary (and of course the appropriate alcohol and food permits)
- pretty easy to permit in most of their commercial or mixed use districts (just don't make a racket or create a lot of dust)
- a bit more difficult to permit in the residential zones (a special permit is needed and your hours will be limited to 9pm, etc.)

<https://3pb8cv933tuz26rfz3u13x17-wpengine.netdna-ssl.com/wp-content/uploads/sites/2/2019/12/20191212-Adopted-SomervilleZoningOrdinance.pdf>

Framingham - The city defines them as follows:

Brew Pub: Restaurants that are licensed by the United States Department of Alcohol, Tobacco and Firearms and the Commonwealth of Massachusetts, under the relevant statutes, to produce and sell beer and/or ale at the location and whose primary business is the sale and preparation of food to be consumed on the premises. Malt beverages including beer, ales and hard ciders produced on the premises may be sold to other establishments but shall not to exceed 50 percent of the establishment's production capacity.

Brewery, Distillery, or Winery with Tasting Room: A business located in a building where the primary use is for the production and distribution of malt, spirituous, or vinous beverages. A tasting room, not to exceed 25 percent of the building's gross square footage, is permitted as an accessory use. Any such facility may provide samples at no charge and limited in size as set forth in M.G.L c. 138 shall have a Commonwealth of Massachusetts issued Farmer Series Pouring License. The facility may host marketing events, special events, and/or factory tours. The facility may only sell beverages produced by, and commercial goods branded by, the brewery, distillery, or winery. The facility may sell permitted beverages to consumers for consumption off the brewery premises.

A business located in a building where the primary use is for the production and distribution of malt, spirituous, or vinous beverages. A tasting room, not to exceed 25 percent of the building's gross square footage, is permitted as an accessory use. Any such facility may provide samples at no charge and limited in size as set forth in M.G.L c. 138 shall have a Commonwealth of Massachusetts issued Farmer Series Pouring License. The facility may host marketing events, special events, and/or factory tours. The facility may only sell beverages produced by, and commercial goods branded by, the brewery, distillery, or winery. The facility may sell permitted beverages to consumers for consumption off the brewery premises.

Framingham allows breweries in their manufacturing districts and brew pubs in their business districts - both by special permit from the Planning Board. Restaurants and Brew Pubs over 5,000 square feet shall require a special permit from the Planning Board.

Commercial Parking Requirements i. Ground floor commercial uses within the CB district are exempt from commercial parking requirements with the following exceptions: a) Restaurants and Brew Pubs over 5,000 square feet shall provide parking at a maximum of 3 off-street spaces per 1,000 gross square feet.

https://www.framinghamma.gov/DocumentCenter/View/30651/Zoning_By-Law

Wrentham - Does not yet have a brewery but amended their zoning bylaw in November 2019 to include new definitions for Brew Pub, Brewery, Microbrewery, Nanobrewery. They are allowed by right in their more commercial/industrial districts but require a special permit from the Planning Board in their retail/business and village zones.

BREW PUB: Restaurants, licensed under the relevant state and federal statutes, to produce and sell beer and/or ale at the location and whose primary business is the sale and preparation of food to be consumed on the premises. Malt beverages including beer, ales and hard ciders produced on the premises may be sold to other establishments but shall not exceed 25 percent of the establishment's production capacity. (FTM 11/4/19)

BREWERY: A facility, licensed under the relevant state and federal statutes, for the large scale production and packaging of malt, wine, or hard cider beverages for 2-4 distribution retail of wholesale, which may include a tap room where beverages produced on the premises may be sold or consumed

MICROBREWERY: A facility, licensed under the relevant state and federal statutes, for the production and packaging of malt, wine, or hard cider beverages for distribution retail of wholesale, on or off premise, with a capacity of not more than fifteen thousand (15,000) barrels, (a barrel being equivalent to thirty (31) gallons per year) and which may include a tap room where beverages produced on the premises may be sold and consumed. May include other uses such as a restaurant, including outdoor dining if otherwise permitted in the zoning district.

NANOBREWERY: Also considered a craft brewery, a facility, licensed under the relevant state and federal statutes, for the small scale production of malt, wine, or hard cider beverages primarily for on premises consumption and sale with limited distribution to retail or wholesale, with a capacity of not more than six thousand (6,000) barrels, (a barrel being equivalent to thirty-one (31) gallons per year) and which may include accessory preparation and sale of food for on premises consumption. May include other uses such as a restaurant, including outdoor dining if otherwise permitted in the zoning district.

https://wrentham.ma.us/files/Wrentham%20Website%20Files/Planning/Forms_Regs/Zoning%20Bylaw_11-04-2019.pdf

Dedham - Does not yet have a brewery but amended its zoning bylaws in 2016 to allow for breweries, distilleries, and wineries with tasting rooms by special permit from the planning board. The zoning change was made for a company that wanted to make sake in town and warehouse and distribute Japanese rice wine. Defined as follows:

Brewery, distillery, or winery with tasting room:

A business located in a building where the primary use is for the production and distribution of malt, spirituous, or vinous beverages which includes warehousing, bottling, and distribution of the product. A tasting room is permitted as an accessory use. The facility may host marketing events, special events, and/or factory tours and serve food for the events and tours. The facility may only sell beverages produced by, and commercial goods

branded by, the brewery, distillery, or winery. The facility may sell permitted beverages to consumers for consumption off the brewery premises.

They are allowed in their limited manufacturing district and highway business district. Parking requirements include 1 parking space per 500 sq. ft. floor area, but at least 5 parking spaces. 1 parking space per 200 sq. ft. when there is a tasting room.

<https://www.dedham-ma.gov/home/showpublisheddocument/14468/637472577554170000>

Easton - Breweries are allowed by right in their Industrial District under “Industrial, Wholesale, and Transportation Uses” as a “Place for manufacturing, assembling, or packaging of goods provided that all resulting cinders, dust, flashing, fumes, gases, odors, refuse matter, smoke and vapor be effectively confined to the premises or be disposed of in a manner that does not create a nuisance or hazard to safety or health”. Food and beverage service is allowed by Special Permit in the Industrial District. Outdoor dining is allowed by Special Permit in the districts where Food and beverage service is allowed.

https://www.easton.ma.us/boards_and_committees/planning_and_zoning_board/docs/FINALRecordedBylaw%20FINAL.pdf

Canton - The Town allows Trillium Brewery to operate as a manufacturing use in town. It is located in a Limited Industrial district, and was given a special permit to manufacture, distribute, and warehouse beer from the Zoning Board of Appeals. Canton doesn't call out brewing specifically in its zoning bylaws. Blue Hills Brewery (now permanently closed) was the same situation.

Westborough – The Town allows, by special permit from the planning board, Nano and Microbreweries and Distilleries along with Brew Pubs in their commercial zoning districts as well as Breweries and Distilleries in their industrial districts. They are defined as follows:

Brewery, Distillery: A facility, licensed under the relevant state and federal statutes, for the large scale production of more than 15,000 barrels per year (a barrel being equivalent to thirty one (31) gallons) and packaging of malt, wine, hard cider beverages and/or distilled spirits for distribution retail or wholesale, which may include a tap room where beverages produced on the premises may be sold and consumed. (Added 10/16/2017, Article 12)

Brew Pub: Restaurants, licensed under the relevant state and federal statutes, to produce and sell beer and/or ale and/or distilled spirits at the location and whose primary business is the sale and preparation of food to be consumed on the premises. Beverages including malt, hard ciders, wine or distilled spirits produced on the premises may be sold to other establishments but those sales shall not exceed 25 percent of the establishment's production capacity. (Added 10/16/2017, Article 12)

Micro-brewery/Micro-distillery: A facility, licensed under the relevant state and federal statutes, for the production and packaging of malt, wine, hard cider beverages and/or distilled spirits for distribution retail or wholesale, on or off the premise, with a capacity of not more than fifteen thousand (15,000) barrels per year, (a barrel being equivalent to thirty one (31) gallons) and which may include a tap room where beverages produced on the premises may be sold and consumed. May include other uses such as a restaurant,

including outdoor dining if otherwise permitted in the zoning district. (Added 10/16/2017, Article 12)

Nano-brewery/Nano-distillery: Also considered a craft brewery, a facility, licensed under the relevant state and federal statutes, for the small scale production of malt, wine, hard cider beverages and/or distilled spirits primarily for on premises consumption and sale with limited distribution to retail or wholesale, with a capacity of not more than six thousand (6,000) barrels per year, (a barrel being equivalent to thirty one (31) gallons) and which may include accessory preparation and sale of food for on premises consumption. (Added 10/16/2017, Article 12)

See Section 2300 User Regulations Schedule and Section 5 Definitions for the distinctions for the various brew related. Each use is finitely defined.

https://www.town.westborough.ma.us/sites/g/files/vyhli5176/f/uploads/zoning_bylaws_updated_through_2020_atm_0.pdf

THE DIFFERENT TYPES OF BREWERY LICENSES IN MASSACHUSETTS



Law Offices of John P. Connell, P.C.: In order to legally produce and sell beer commercially, a brewer must be authorized to operate by obtaining both national and state approval. The Alcohol and Tobacco Tax and Trade Bureau issues "TTB permits," granting approval of a brewer's operations on the national level. All types of commercial brewers qualify for the same TTB permit, which may be filled out online at the [TTB's website](#) and should be done prior to applying for any state level license. The average processing time for the application is about 86 days and may include an on-site inspection of the proposed premises. After approved, the brewer must obtain a license on the state level. In Massachusetts, there are several types of state brewers' licenses available through the Massachusetts Alcoholic Beverages Control Commission (ABCC), depending on how the brewer intends to run its business.

The most basic brewing license in Massachusetts is the Manufacturer of Wine and Malt Beverages license. Under M.G.L. ch. 138, §19, a brewer holding this license is authorized to manufacture and blend wine and/or malt beverages. Manufacturer licenses do not allow for the self distribution of its products to retailers and therefore Manufacturers must use a wholesaler to bring their product to market.

The next type of brewing license is the Farmer Brewery license. The goal of this license is to promote the development and use of local ingredients by requiring the brewery itself to grow or buy a percentage of the ingredients used in the manufacturing or blending process from farms located within Massachusetts. Yet the law does not currently quantify just how much of the ingredients produced or purchased must be from within the state. This issue – the percentage of local ingredients required to obtain this license – is still very much an open issue.

Pursuant to M.G.L. ch. 138, §19C, a farmer-brewer is authorized to sell to licensed wholesalers, manufacturers, or retailers, as well as sell by the bottle if the brewer produced those beverages. A farmer-brewer may not sell any beverages at retail that were not produced by the brewer or produced for the brewer and sold under the brewery name. Holders of farmer-brewery licenses, may apply for a Farmer Series Pouring Permit which allows the Farmer Brewer to pour on-premise for sale and sampling to the public its own brewed beer. The Farmer Series Pouring Permit follows the same process as retail pouring licenses in that they have to be approved by the local licensing authority for the town or city where the business is to be located.

The last type of brewing license in Massachusetts is the Pub Brewery license. Unlike a farmer-brewer, a pub-brewer is authorized to produce malt beverages with the use of cereal grains or hops whether those ingredients were produced or bought by the brewer locally or not. M.G.L. ch. 138, §19D. The Pub-Brewer is authorized to sell its manufactured beverages at wholesale and retail to consumers for off-premises consumption but is not allowed to "self distribute" to retailers as Farmer Brewers are authorized to do. Similar to a farmer-brewer, a pub-brewer license is not subject to the license quota. Traditionally, a Pub Brewery License, when operated in conjunction with a Section 12 On-Premise Pouring License, is thought of as more of a pub or restaurant than a working brewery. A Pub Brewery licensee seeking to operate a pouring style establishment will need to obtain the Section 12 On-Premise Pouring License, which is subject to the license quota of the town or city where the business it to be located. When considering the pursuit of a craft beer venture, issues such as which brewing license to acquire, should be addressed early on in the process to ensure smooth sailing before the TTB and ABCC.

CONTRIBUTED BY COURTNEY MCGEE

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Section 19: Licenses to manufacture alcoholic beverages; sale by manufacturer; blending of alcoholic beverages; marks to identify manufacturer; records of manufacturer; fees

Section 19. (a) The commission may issue to any individual who is both a citizen and resident of the commonwealth and to partnerships, composed solely of such individuals, and to corporations organized under the laws of this commonwealth or organized under the laws of any other state of the United States and admitted to do business in this commonwealth and to limited liability companies and limited liability partnerships organized under the laws of the commonwealth, subject to such conditions as the commission may prescribe by regulation to address issues of citizenship and residency and the need for a license manager under section 26 as qualifications for a limited liability company or limited liability partnership to hold a license pursuant to this section and sections 15, 18, 18A, 19B and 19C, licenses to manufacture alcoholic beverages. Manufacturers of such beverages may sell the same to any licensee holding a valid license granted by the licensing authorities for the sale within the commonwealth in accordance with the provisions of this chapter, and may also sell such beverages for export from this commonwealth into any state where the sale of the same is not by law prohibited, and into any foreign country; and manufacturers of such beverages may sell the same to any registered pharmacist holding a certificate of fitness under section thirty and also as authorized by section twenty-eight.

Subject to such regulations as may be prescribed by the commission, licensees under this section may rectify or blend, but only upon such premises and under such conditions as the commission shall approve, alcoholic beverages manufactured by them. All alcoholic beverages sold by any manufacturer thereof shall be sold and delivered in such manner, and under such conditions, and with such labels or other marks to identify the manufacturer, as the commission shall from time to time prescribe by regulations; provided, that sales of such beverages may be made in kegs, casks, barrels or bottles, to holders of wholesalers' and importers' licenses; and provided, further, that sale of wines and malt beverages may be made in kegs, casks or barrels by any manufacturer licensed under this section to licensees authorized to sell such beverages under section twelve, thirteen or fourteen and, for the sole purpose of resale in the containers in which the same were delivered, to licensees under section fifteen. No licensee under section fifteen shall resell beverages delivered to him in kegs, casks or barrels under this section, except in such containers.

Every licensed manufacturer of alcoholic beverages shall keep such records in such detail and affording such information as the commission may from time to time prescribe, and shall file with the commission, whenever and as often as it may require, duplicates of copies of such records; and the commission shall at all times, through its designated officers or agents, have access to all books, records and other documents of every licensed manufacturer relating to the business which he is licensed hereunder to conduct.

The license fee for each manufacturer of alcoholic beverages, in respect of each plant, shall be such sum, not less than \$6,000 nor more than \$10,000, as under the circumstances of the licensee's probable volume of sales under this section, the capacity of his plant and the location thereof, the commission shall deem just and proper; provided, that the license fee for each manufacturer of cider or other alcoholic beverage made from apples shall be such sum, not less than twenty-five nor more than two hundred and fifty dollars, as the commission shall deem just and proper, but no such fee shall be collected from any such manufacturer for the making of cider, the sale of which is authorized by section three without a license.

No vote in any city or town under section eleven shall prevent the granting or renewal of a license under this section.

(b) Notwithstanding section 17, a local licensing authority, subject to the approval of the commission, may grant a license to sell alcoholic beverages for consumption on a manufacturer's premises to a manufacturer authorized to manufacture alcoholic beverages pursuant to this section; provided, however, that such a licensee may sell alcoholic beverages produced by the manufacturer for on-premises consumption.

Section 19C: Farmer-brewery licenses; hearing; appeal; notices to interested parties; operation of brewery; records; fees

Section 19C. (a) For the purpose of encouraging the development of domestic farms, the commission shall issue a farmer-brewery license to any applicant who is both a citizen and resident of the commonwealth and to applying partnerships composed solely of such individuals, and to applying corporations organized under the laws of the commonwealth or organized under the laws of any other state of the United States and admitted to do business in the commonwealth and to applying limited liability companies and limited liability partnerships organized under the laws of the commonwealth, subject to such conditions as the commission may prescribe by regulation to address issues of citizenship and residency and the need for a license manager under section 26 as qualifications for a limited liability company or limited liability partnership to hold a license pursuant to this section and sections 15, 18, 18A, 19 and 19B, unless: (1) such person does not comply with reasonable application procedures required by the commission; or

(2) the commission determines that such person is not of responsible character; or

(3) a church or school located within five hundred feet of the brewery premises has objected to issuance of the license in accordance with section sixteen C; or

(4) the commission determines that the applicant retains or owns an interest, directly or indirectly, in the business of a licensee under section twelve or fifteen; or

(5) the commission determines that the applicant retains or owns an interest, directly or indirectly in more than one business licensed under section eighteen; or

(6) the applicant has not furnished the requisite license fee or bond; or

(7) the commission determines that the co-partners, corporate officials or stockholders of the applicant do not meet the requirements of clauses (2), (4) and (5), or that the manager or agent intended to conduct the farmer-brewery business on the applicant's behalf does not meet such requirements, or that such co-partners, officials, stockholders, agent or manager remain undisclosed.

(b) The commission may on its own motion, and shall upon the written request of any applicant who has been refused a farmer-brewery license or has been refused transfer or renewal of such a license, hold an evidentiary hearing, notice of which shall be mailed to the applicant at the address given in his application. Such hearing shall be before the commission, or a member thereof. The commission shall present its reasons for refusing issuance. The applicant may appear in person or by counsel, may cross-examine witnesses for the commission and may present evidence. The hearing shall be stenographically or sound recorded. If the hearing is conducted by an examiner, the examiner shall report on the hearing to the commission. The commission shall decide within thirty days of the completion of the hearing whether to issue the farmer-brewery license or grant the transfer or renewal. If the commission refuses the license, transfer or renewal following the hearing, notice in writing of the refusal shall be mailed to the applicant. In all such cases, the commission shall keep on file a statement in the form of an opinion of the reasons for the refusal, and shall furnish a copy thereof to the applicant.

(c) Any applicant who has appeared before the commission at such a hearing and who has been refused a farmer-brewery license or the transfer or renewal of such a license may appeal to the superior court of the county where the applicant resides or has his principal place of business within the commonwealth, or to the superior court for Suffolk county.

(d) Every applicant for an original brewery license or for a transfer of such a license shall, within seven days after filing an application with the commission, send written notice of his application by registered mail, return receipt requested, to:

(1) each school which offers instruction and training to children of compulsory school age in accordance with sections one and four of chapter seventy-one and which is located within a radius of five hundred feet from the premises on which the brewery is to be operated; and

(2) each church as defined in section sixteen C which is located within a radius of five hundred feet from such premises.

The notice shall also state that the church or school has the right to object under section sixteen C to the issuance or transfer of the brewery license. If the authorities in charge of any such school or church complain to the commission in writing that a brewery license has been issued or transferred without the mailing of the requisite notice, and that they object to such issuance or transfer, the commission shall hold a hearing to determine whether the requisite notice was mailed. If after a hearing the commission determines that notice was not mailed as required, then the commission shall cancel the farmer-brewery license unless, such school or church had actual notice, prior to issuance or transfer, of the application and of the right to object under said sixteen C, or such school or church did not complain as soon as possible after actual notification of the application and of the right to object.

Any farmer-brewer aggrieved by the cancellation of his license or any school or church aggrieved by the commission's refusal to cancel such a license may appeal as provided herein.

(e) A farmer-brewer may operate a farmer's brewery under such conditions as the commission may prescribe by regulation.

(f) A farmer-brewer may import malt, cereal grains fermentable, sugars and hops, but may not import malt beverages or alcohol into the commonwealth.

(g) A farmer-brewer may sell malt beverages or malt beverage products:

(1) at wholesale to any person holding a valid license to manufacture alcoholic beverages under section nineteen;

(2) at wholesale to any person holding a valid wholesaler's and importer's license under section eighteen;

(3) at wholesale to any person holding a valid farmer-brewery license under this section;

(4) at wholesale in kegs, casks, barrels or bottles to any person holding a license to sell under section twelve, thirteen or fourteen, and, for the sole purpose of resale in containers in which the wine was delivered, to any person holding a license to sell under section fifteen; provided that the total annual sales to sections twelve, thirteen, fourteen, and fifteen licensees shall not exceed fifty thousand gallons;

(5) at wholesale to any registered pharmacist holding a certificate of fitness under section thirty;

(6) at wholesale to churches and religious societies, educational institutions, incorporated hospitals, homes for the aged, manufacturers of food products, and manufacturers of drugs and chemicals as authorized by, and subject to the provisions of section twenty-eight;

(7) at retail by the bottle to consumers for consumption off the brewery premises;

(8) at wholesale to any person in any state or territory in which the importation and sale of malt beverages is not prohibited by law; and

(9) at wholesale to any person in any foreign country.

(h) A farmer-brewer may not sell at retail to consumers any malt beverage or malt beverage product not produced by the brewery or produced for the brewery and sold under the brewery brand name. All retail sales must be made on the brewery premises.

(i) A farmer-brewer may be licensed by the local licensing authorities to sell malt beverages for consumption on the brewery premises in accordance with this section and such regulations as the commission may prescribe.

(j) All malt beverages sold by a licensee hereunder shall be sold and delivered in such manner and under such conditions and with such labels or other marks to identify the producer as the commission may prescribe.

(k) Every farmer-brewer under this section shall keep such records as the commission may prescribe, and shall file with the commission, whenever and as often as it may require, duplicates of copies of such records. The commission shall at all times, through its designated officers or agents, have access to all books, records or other documents of every licensed farmer-brewer relating to the licensee's brewery business.

(l) The annual license fee for each farmer-brewer in respect of each brewery shall be computed based on the malt beverage barrelage produced by the brewery as follows:

5,000 barrels or less per year: \$ 22/per year

More than 5,000 and less than 20,000 barrels per year: \$ 44/per year

More than 20,000 barrels and less than 100,000 barrels
per year: \$ 82/per year

More than 100,000 and less than 200,000 barrels
per year: \$110/per year

More than 200,000 and less than 1,000,000 barrels
per year: \$110/per year

Each additional 1,000,000 barrels per year: \$111/per year

For the above purposes, a barrel shall be thirty-one gallons.

(m) Every applicant for a farmer-brewery license shall, at the time of filing an application, pay a license fee based on a reasonable estimate of the amount of malt beverages to be produced during the year covered by the license. Persons holding farmer-brewery licenses shall report annually at the end of the year covered by the license the amount of malt beverages produced during such year. If the total amount of such malt beverages exceeds the amount permitted by the fee already paid, the licensee shall pay whatever additional fee is owing under this section.

(n) Notwithstanding section 17, a local licensing authority, subject to the approval of the commission, may grant a license to sell malt beverages for consumption on the premises at any location it deems reasonable and proper, and approves in writing, on the grounds of a farmer-brewery licensed under this section and on the grounds of the farm operated as appurtenant and contiguous to, and in conjunction with, such farmer-brewery; provided, however, that such licensees may sell for on-premises consumption only malt beverages produced by the brewery or produced for the brewery and sold under the brewery brand name. All the procedures under section 15A shall apply to the granting of a license under this subsection.

Section 19D: Pub brewery licenses; hearings; records; fees

Section 19D. (a) The commission shall issue a pub brewery license to an applicant who is a citizen or permanent legal resident of the commonwealth and to applying partnerships and to applying corporations organized under the laws of the commonwealth or organized under the laws of any other state and admitted to do business in the commonwealth and to applying limited liability companies or limited liability partnerships organized under the laws of the commonwealth unless:

- (1) such person does not comply with application procedures required by the commission;
- (2) the commission determines that such applicant is not of responsible character;
- (3) a church or school located within 500 feet of the brewery premises has objected to the issuance of such license in accordance with the provisions of section 16C and the commission finds that the pub brewery premises are detrimental to the spiritual activities of such church;
- (4) the commission determines that the applicant retains or owns an interest, directly or indirectly, in the business of a licensee under section 15 or a business which would be licensed under said section 15 if it were located within the commonwealth;
- (5) the commission determines that the applicant retains or owns an interest, directly or indirectly, in a business license under section 18 or a business which would be licensed under said section 18 if it were located within the commonwealth;
- (6) the commission determines that the applicant retains or owns an interest, directly or indirectly, in any activity or in any business directly or indirectly engaged in the business of manufacturing any alcoholic beverages either within or outside of the commonwealth, except any interest, directly or indirectly, in a pub brewery license under this section or any business which would be licensed as a pub brewery under this section if it were located within the commonwealth;
- (7) the commission determines that the applicant retains or owns an interest, directly or indirectly, in the business of a holder of a certificate issued under section 18B;
- (8) the applicant has not furnished the requisite license fee or bond; or
- (9) the commission determines that the co-partners, corporate officials or stockholders of the applicant do not meet the requirements of clauses (2), (4), (5), (6), (7) and (8), or that the manager or agent intended to conduct the pub brewery business on the applicant's behalf does not meet such requirements, or that such co-partners, officials, stockholders, agents or managers remain undisclosed.

(b) The commission may, on its own motion, and shall, upon the written request of an applicant who has been refused a pub brewery license or has been refused transfer or renewal of such a license, hold an adjudicatory hearing, notice of which shall be mailed to the applicant at the address provided in his application. Such hearing shall be conducted before the commission or a member thereof. The commission shall present its reasons for refusing to issue, transfer or renew such license. The applicant may appear in person or by counsel, cross-examine witnesses for the commission and present evidence. Such hearing shall be stenographically or sound recorded. The commission shall decide within 30 days of the completion of the hearing whether to issue the pub brewery license or grant the transfer or renewal. If the commission refuses to grant the license, transfer or renewal following the hearing, notice thereof in writing shall be mailed to the applicant. In all such cases, the commission shall keep on file a statement in the form of an opinion of its reasons for such refusal and shall furnish a copy thereof to the applicant.

(c) An applicant who has appeared before the commission at any such hearing and who has been refused a pub brewery license or the transfer or renewal thereof may appeal such refusal to the

superior court of the county wherein the applicant resides or has his principal place of business within the commonwealth or to the superior court for Suffolk county.

(d) Every applicant for an original pub brewery license or for a transfer thereof shall, within seven days after filing an application with the commission, send written notice of his application by registered mail, return receipt requested, to:

(1) each school which offers instruction and training to children of compulsory school age in accordance with sections 1 and 4 of chapter 71 and which is located within a radius of 500 feet from the premises on which the pub brewery is to be operated; and

(2) each church, as defined in section 16C, which is located within a radius of 500 feet of such premises.

The notice hereunder shall state that the church or school has the right to object under said section 16C to the issuance or transfer of the pub brewery license. If the authorities in charge of any such school or church complain to the commission in writing that a pub brewery license has been issued or transferred without the mailing of the requisite notice and that they object to such an issuance or transfer, the commission shall hold a hearing to determine whether the notice was mailed. If, after a hearing, the commission determines that adequate notice was not mailed as required, the commission shall cancel the pub brewery license unless:

(1) such school or church had actual notice of the application and of the right to object under said section 16C prior to the issuance or transfer; or

(2) such school or church did not complain as soon as possible after actual notification of the application and of the right to object. Any pub brewer aggrieved by the cancellation of his license by said commission or any school or church aggrieved by the refusal of the commission to cancel such license may appeal such decision as provided herein.

(e) A pub brewer may operate a pub brewery under such conditions as the commission may prescribe by regulation.

(f) A pub brewer may import into the commonwealth malt, cereal grains, fermentable sugars and hops but may not so import malt beverages or alcohol.

(g) A pub brewer may sell malt beverages or malt beverage products produced by the pub brewery or produced for the pub brewery and sold under the pub brewery name:

(1) at wholesale to any person holding a valid wholesalers' and importers' license under section 18;

(2) at wholesale to churches and religious societies, educational institutions, incorporated hospitals, homes for the aged, manufactures of food products and manufacturers of drugs and chemicals as authorized by and subject to the provisions of section 28;

(3) at wholesale to any person in any state or territory in which the importation and sale of malt beverages is not prohibited by law; and

(4) at wholesale to any person in a foreign country.

(h) A pub brewer may be licensed as a keeper of a pub brewery by the local licensing authorities subject to the prior approval of the commission to sell all alcoholic beverages or only wines and malt beverages, as the case may be, for consumption on the pub brewery premises in accordance with the pertinent provisions of section 12 and such rules and regulations as the commission may prescribe. A pub brewer licensed under section 12 may not sell at retail to consumers for off premises consumption malt beverages or malt beverage products not produced by the pub brewery on the pub brewery premises or produced for the pub brewery and sold under the pub brewery brand name. All retail sales shall be made on the pub brewery premises. A pub brewer may sell at

retail by the bottle, not to exceed two gallons, to consumers for consumption off the pub brewery premises, malt beverages or malt beverage products produced by the pub brewery and sold under the pub brewery brand name in accordance with such rules and regulations as the commission may prescribe.

(i) All malt beverages produced by the pub brewery or produced for the pub brewery and sold under the pub brewery brand name and sold by a licensee hereunder shall be sold and delivered in such manner and under such conditions and with such labels or other marks to identify the producer as the commission may prescribe.

(j) In no event shall less than 50 per cent of the malt beverages or malt beverage products sold under paragraphs (g) and (h) be produced on the pub brewery premises in any one calendar year.

(k) Every pub brewer licensed under this section shall keep such records as the commission may prescribe and shall file with the commission whenever and as often as it may require duplicate copies of such records. The commission shall at all times, through its designated officers or agents, have access to all books, records or other documents of every licensed pub brewer relating to the licensee's pub brewery business.

(l) The annual license fee for each pub brewer in respect of each pub brewery shall be computed based on the malt beverage barrelage produced by the pub brewery as follows:

5,000 barrels or less per year: \$1,000 per year

More than 5,000 but less than 60,000 barrels per year: \$2,000 per year

60,000 barrels or more per year: \$3,000 per year

For the above stated purposes, a barrel shall be 31 gallons.

(m) Every applicant for a pub brewery license shall, at the time of filing of an application, pay the minimum license fee. Persons holding pub brewery licenses shall report to the commission annually at the end of each year covered by the license the amount of malt beverages produced during such year together with copies of all excise filings due and payments made pursuant to the provisions of section 21. If the fee paid is less than the fee due for the total amount of such malt beverages produced, the licensee shall pay forthwith the amount of the excess fee under this section.