

SELECTMEN'S MEETING AGENDA*

Donn B. Griffin Room, Town Hall

732 Main Street, Harwich, MA

Public Hearings 4:00 P.M.

Tuesday, December 14, 2021

I. **CALL TO ORDER**

II. **PLEDGE OF ALLEGIANCE**

III. **PUBLIC COMMENTS/ANOUNCEMENTS**

IV. **PUBLIC HEARINGS (NO EARLIER THAN 4:00 P.M.)**

- A. Brax Restaurant Management, Inc. d/b/a Brax Landing, 705 Main Street - Public hearing on alleged violations of the Annual, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.
- B. Port Restaurant and Bar, Inc., 541 Route 28 - Public hearing on alleged violations of the Seasonal, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.
- C. Wychmere Harbor Functions Lp d/b/a Wychmere Harbor Beach and Tennis Club, 23 Snow Inn Road - Public hearing on alleged violations of the Seasonal, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.
- D. Lucky Labrador, Inc. d/b/a Perks, 545 Route 28 - Public hearing on alleged violations of the Seasonal, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.
- E. Beachlight LLC d/b/a Seal Pub, 703 Main Street - Public hearing on alleged violations of the Annual, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.

V. **NEW BUSINESS**

- A. Summation of the Show Cause Hearing process and discussion on the future hearing process going forward presented by the Town Administrator

VI. **ADJOURNMENT**

****Per the Attorney General's Office: The Board of Selectmen may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting following "New Business." If you are deaf or hard of hearing or a person with a disability who requires an accommodation contact the Selectmen's Office at 508-430-7513.***

Authorized Posting Officer:

Danielle Delaney, Executive Assistant

Posted by: _____
Town Clerk

Date: _____
December 10, 2021

**HARWICH BOARD OF SELECTMEN
NOTICE OF HEARING**

**ALLEGED VIOLATIONS OF CONDITIONS OF ENTERTAINMENT LICENSE
DECEMBER 14, 2021**

The Board of Selectmen will hold a hearing on Tuesday, December 14, 2021 at 4:00 P.M., for the purpose of consideration of entertainment license violations by Wychmere Harbor Functions Lp, d/b/a Wychmere Harbor Beach and Tennis Club, located at 23 Snow Inn Road, Harwich. The Hearing Officer will consider possible penalties including modifications, suspension, revocation or cancellation of said license. All members of the public having an interest in the topic are cordially invited to attend the Public Hearing which will be held in the Griffin Room at the Harwich Town Hall, 732 Main Street, Harwich MA 02645

Joseph F. Powers
Town Administrator

Cape Cod Times
November 30, 2021

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039



Joseph F. Powers, Town Administrator
Meggan M. Eldredge, Assistant Town Administrator

732 MAIN STREET, HARWICH, MA

MEMO

TO: Board of Selectmen

FROM: Joseph F. Powers, Town Administrator *JF*

CC: Meggan M. Eldredge, Assistant Town Administrator
Jeffrey T. Blake, Esq. - KP Law

RE: Wychmere Harbor Functions LB DBA Wychmere Harbor Beach and Tennis Club, 23 Snow Inn Road Public hearing on alleged violations of the Seasonal, All Alcoholic Beverages License

DATE: December 10, 2021

The Board of Selectmen as Local Licensing Authority (LLA) for the town received a memorandum from Chief David Guillemette of the Harwich Police Department on September 9, 2021 (see attached) outlining a violation alleged to have occurred on September 2, 2021 at the licensed establishment known as Wychmere Harbor Beach and Tennis Club at 23 Snow Inn Road in Harwich Port.

On September 20, 2021, the Board of Selectmen voted to remand the allegation to me, as Town Administrator, to conduct a show cause hearing for the purpose of determining whether there is cause for the LLA to hold a hearing to determine whether the facts support a finding of allegation(s) and to recommend to the LLA any potential discipline if the facts so warrant.

Based on the Board's vote, a show cause hearing was convened on November 22, 2021 at 1:00pm in the Griffin Room at Harwich Town Hall. **Please note:** the original hearing date of November 9, 2021 was rescheduled to the date above.

Allegation(s) of violations:

The Town, acting through Attorney Jeffrey T. Blake, presented witnesses and exhibits supporting the claim of violation. Specifically, that the establishment failed to prevent noise emanating from the establishment from being plainly audible between 10:00pm and 7:00am.

The establishment, acting through Attorney Andrew L. Singer, presented witnesses and testimony refuting the alleged violation.

Finding(s)/Determination(s):

I find that the Town did not provide sufficient evidence and testimony to confirm the allegation of violation. Additionally, I find that the witness testimony indicates that the noise emanating

from within the establishment was not plainly audible until the witnesses were well within one hundred fifty (150) feet of the establishment.

Recommendation of discipline (if any):

Whereas I do not find that the Town demonstrated that the establishment was in violation of the noise bylaw and thusly not in violation of their liquor license, I find that there are no grounds for discipline.

Hearing Summary
November 22, 2021 1:00 p.m.
Wychmere Harbor Beach and Tennis Club

Attendees

Joseph F. Powers
Attorney Jeffrey Blake
Danielle Delaney
Jamie Goodwin
Chief David Guillemette
Sergeant Amy Walinski
Lt. Adam Hutton
Officer James Connery
Attorney Andrew Singer
Chris Kolwicz
Mike Sharlet

Joseph F. Powers, Hearing Officer opened the hearing at 1:00 p.m., introduced himself for the record and explained the hearing process. The Hearing Officer introduced Town of Harwich staff and asked all parties to sign in. The Hearing Officer read the Hearing Notice into the record and explained the original hearing was continued to this date.

Attorney Jeffrey Blake explained that he will go through and mark the following exhibits: Hearing Notice – Exhibit A, Notice to licensee – Exhibit B-1, Notice of continuance – Exhibit B-2, Wychmere’s Liquor License - Exhibit C-1, Wychmere’s Weekday Entertainment License - Exhibit C-2, Wychmere’s Sunday Entertainment License - Exhibit C-3, Memorandum to the Board of Selectmen from the Town Administrator on recommended action from the June 23, 2021 hearing - Exhibit D, Warning Letter sent to Wychmere – Exhibit E, Memorandum to Board of Selectmen and Town Administrator from Chief of Police – Exhibit F-1, Call Log dated September 2, 2021 –Exhibit - F-2, Police Narrative from Officer James Connery – Exhibit – F-3, Harwich Liquor License Regulations – Exhibit - G.

The Hearing Officer proceeded to swear in all parties who will offer testimony. Total of four individuals were sworn in.

Attorney Blake called Officer James Connery to provide testimony. Officer Connery proceeded to go over the details of the night in question. He shared that Sergeant Walinski arrived on scene first and spoke with management. He stated he could hear muffled sound coming from the venue and could hear the band when the staff was cleaning up from the event. Officer Connery shared that management apologized and stated they would be wrapping up in about 10 minutes. The Officer confirmed this took place after 10:30 P.M. Officer Connery explained how they could hear noise when doors were opened by staff and was standing about 20 or 30 feet away from the building. The Officer stated when he originally arrived he parked up top, which is 100 feet from the building, and could not hear anything. Attorney Blake proceeded to go over the details of the night in question again. Officer Connery stated he could not hear anything until he went down the driveway. Officer Connery shared there were no more calls for service.

Attorney Andrew Singer confirmed where Officer Connery was parked when he arrived.

Attorney Blake called Sergeant Walinski to provide testimony. Sergeant Walinski confirmed she did recall that evening, however did not draft a report. The Sergeant confirmed she was first on scene and was dispatched for a noise complaint. Sergeant Walinski proceeded to go over the details of the night in

question. She stated she could hear no noise on Snow Inn Road, she parked at the upper area where Officer Connery parked and could hear noise while on foot walking to the venue. The Sergeant shared that it was louder when the workers opened the venue doors and could not hear the noise when the doors were shut. Attorney Blake confirmed with the Sergeant that the noise was muffled when the doors were closed and could only hear noise when the doors would open. The Sergeant shared she knew the address of the complaining party and it's less than 150 feet away. Sergeant Walinski stated that she spoke with the Manager who said they were closing and would make sure doors were not going to keep opening. She confirmed no other complaints came in that night.

Attorney Singer stated he had no questions.

Attorney Blake stated he had no other witnesses to present at this time.

The Hearing officer gave the floor to Attorney Singer who called Christopher Kolwicz to provide testimony. Mr. Kolwicz confirmed he is the manager of the establishment and stated he agreed with the Police Reports. He proceeded to go over details of the evening in question and confirmed Wychmere can have inside music until 1:00 a.m. Mr. Kolwicz shared they have had a minimum of 30 events since the evening in question. He confirmed they have spoken to staff since that night about not using the back door.

Attorney Blake confirmed with Mr. Kolwicz why staff does not use that door and he explained that was where the complaint came from. He proceeded to go into detail about how staff clears the venue room and he believes this has cured the issue. Attorney Blake confirmed that the door caused the problem on the night in question.

The Hearing Officer confirmed that Mr. Kolwicz is the Manager of Record and was the Manager on Duty that evening as he is most nights.

Attorney Singer and Attorney Blake stated they have nothing further.

Attorney Blake offered his summation and stated that this is a clear cut situation where there was loud music coming from the establishment, which is a violation. He shared that this is the second time this has happened even though this issues has been cured and referenced the warning letter that the establishment received.

Attorney Singer offered his summation. He stated he agreed with Attorney Blake and shared that no other incidents occurred that evening. He stated there have been 30 events with live music and no complaints. He stated because the issue has been cured and was fleeting, that he asks for no violation to be found, merely a warning if anything.

The Hearing Officer asked if there is any other material or witnesses and both Attorneys stated they have nothing.

The Hearing Officer stated he will analyze the information and issue a determination memorandum which will be shared with both Attorneys and the Board of Selectmen. The Board of Selectmen will hold a meeting to conduct a hearing to determine if his findings are accurate and if action should be taken.

The Hearing Officer adjourned the hearing at 1:30 p.m.

EXHIBITS

A

**HARWICH BOARD OF SELECTMEN
NOTICE OF SHOW CAUSE HEARING**

**VIOLATIONS OF CONDITIONS OF ENTERTAINMENT LICENSE
NOVEMBER 9, 2021**

The Town Administrator, acting as the Hearing Officer for the Board of Selectmen, will hold a Show Cause Hearing on Tuesday, November 9, 2021 at 1:00 P.M., for the purpose of consideration of entertainment license violations by Wychmere Harbor Functions Lp, d/b/a Wychmere Harbor Beach and Tennis Club, located at 23 Snow Inn Road, Harwich. The Hearing Officer will consider possible penalties including modifications, suspension, revocation or cancellation of said license. All members of the public having an interest in the topic are cordially invited to attend the Public Hearing which will be held in the Griffin Room at the Harwich Town Hall, 732 Main Street, Harwich MA 02645

Joseph F. Powers
Town Administrator

Cape Cod Times
October 1, 2021

B-1

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Town Administrator*
Meggan Eldredge, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645



September 22, 2021

VIA CERTIFIED MAIL AND EMAIL

Christopher Clifton Kolwicz, Manager of Record
Wychmere Harbor Functions Lp
d/b/a Wychmere Harbor Beach and Tennis Club
23 Snow Inn Road
Harwich Port, MA 02646

Re: Notice of Entertainment License Disciplinary Hearing
Wychmere Harbor Functions Lp d/b/a Wychmere Harbor Beach and Tennis Club

Dear Mr. Kolwicz:

On Tuesday, November 9, 2021 at 1:00 P.M. at the Harwich Town Hall, acting on behalf of the Harwich Board of Selectmen as local licensing authority, I will conduct a Show Cause Hearing, in accordance with Massachusetts General Laws, Chapter 138, Sections 23 and 64, to determine whether you have violated the terms of your Entertainment License for Wychmere Harbor Functions Lp d/b/a Wychmere Harbor Beach and Tennis Club.

The specific charges are as follows: Violation of 204 CMR 2.05 (2): Permitting a disorder, disturbance or illegality to take place on the licensed premises. The Town reserves the right to consider and/or levy additional charges that may arise during the hearing process.

The facts underlying these allegations arise from an incident occurring on or about September 2, 2021, as described in detail in the Harwich Police Incident Report attached hereto. Also, attached are the Town of Harwich Liquor License regulations.

You are invited to participate in the hearing and be represented by counsel at your own expense if you wish. At that time you may produce any documentation and/or witnesses which show that you did not commit the violations described herein. Please provide copies of any documents and a list of participants to Danielle Delaney at ddelaney@town.harwich.ma.us by the close of business on Tuesday, November 2, 2021.

The allegations, if proven, may result in a recommendation to the Board of Selectmen for disciplinary action, including warning, suspension, revocation or modification of the above-referenced license.

Sincerely,

Joseph F. Powers
Town Administrator

CC: Board of Selectmen
Licensing File
Certified mail #7015 0920 0000 9749 1671

B-2

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Town Administrator*
Meggan Eldredge, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645



November 12, 2021

VIA CERTIFIED MAIL AND EMAIL

Christopher Clifton Kolwicz, Manager of Record
Wychmere Harbor Functions Lp
d/b/a Wychmere Harbor Beach and Tennis Club
23 Snow Inn Road
Harwich Port, MA 02646

Re: Notice of Disciplinary Hearing – Continuation
Wychmere Harbor Functions LP d/b/a Wychmere Harbor Beach and Tennis Club

Dear Mr. Kolwicz:

Please be advised that the disciplinary hearing that was scheduled for November 9, 2021 at 1:00 P.M. was rescheduled for November 22, 2021 at 1:00 P.M.

Sincerely,

Joseph F. Powers
Town Administrator

CC: Board of Selectmen
Licensing File
Certified mail #70150920000097490667

C-1

No.: 00021-RS-0506

LICENSE
ALCOHOLIC BEVERAGES
THE LICENSING BOARD, TOWN OF HARWICH, MASSACHUSETTS
HEREBY GRANTS A
COMMON VICTUALER
License to Expose, Keep for Sales, and to Sell
All Kinds of Alcoholic Beverages

.....
To Be Drunk On The Premises
.....

To: Wychmere Harbor Functions Lp

Date: 03/24/2021

DBA: Wychmere Harbor Beach and Tennis Club

License Duration Type: Seasonal All Alcohol

Manager: Christopher Clifton Kolwicz

License Conditions (description of premise)

23 Snow Inn Road, Harwich

Wood frame structure adjacent to channel into Wychmere Harbor with 5 entrances, 2 dining rooms, 2 kitchens, 4 lavatories. Deck and boardwalk adjoins channel on ground level. Deck adjoining 2nd level walking area on east side. 1st level cocktail lounge with bar and service bar off kitchen. Liquor storage in cocktail lounge, kitchen and service bars. Capacity: 625

On the following described premises:

This license is granted and accepted upon the express condition that the licensee shall in all respects, conform to all the provisions of the Liquor Control Act, Chapter 138 of the General Laws, as amended, and any rules or regulations made expires **January 15, 2022**, unless earlier suspended, cancelled or revoked.

IN TESTIMONY WHEREOF, the undersigned have thereunto affixed their official signatures.

The Hours during which Alcoholic Beverages may be sold are From:

8:00AM - 1:00AM WEEKDAYS
10:00AM - 1:00AM SUNDAYS & HOLIDAYS

LICENSE granted by:

Z Ballantyne

[Signature]

[Signature]

[Signature]

This License Shall be Displayed on the Premises in a conspicuous position where it can be easily read

LICENSING AUTHORITIES

NUMBER
19-05S

THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF HARWICH

FEE
\$75.00

**LICENSE FOR INNOLDERS, COMMON VICTUALLERS
AND OTHER KEEPERS OF RESTAURANTS AND OTHER ESTABLISHMENTS**

In accordance with the provisions of Chapter 140 of the General laws as amended by Chapter 299 of the Acts of 1926, and amendments thereto, LICENSE is hereby granted to:

Wychmere Harbor Functions Ltd. Partnership d/b/a Wychmere Harbor Beach & Tennis Club

to conduct the amusements as herein described in connection with his regular business of innholder, common victualler, or owner, manager or controller of a café, restaurant or other eating or drinking establishment, on the premises owned by Same

of Harwich Port located at 23 Snow Inn Rd.

Description of Premises: Same

Description of amusements to be conducted: Recorded or live music, dancing by patrons.

To be conducted on week days between the hours of: 11:00 A.M. to 1:00 A.M. Inside

11:00 A.M. to 10:00 P.M. Outside Mondays to Saturdays

This LICENSE is granted as subject to the provisions of the General Laws, chapter one hundred and forty, sections twenty-two to thirty-two inclusive, and of chapter two hundred and seventy-two, sections twenty-five to twenty-seven inclusive, and amendments thereto, and shall not be valid for a location other than as herein described.

Date: April 12, 2021

License granted by: J. Bullanters

[Signature]
[Signature]
[Signature]

EXPIRES DECEMBER 31, 2021

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE

Inside Entertainment - Noise from entertainment may not create a nuisance or be heard outside the boundaries of the premises.

Outside Entertainment - Noise from entertainment must be at reasonable sound levels which are not plainly audible at a distance of 150 feet from boundary line or source of sound amplification system whichever is further.

Suggested Minimum Regulations which will be required by the Licensing Authorities before approval of Licenses issued in accordance with the provisions of Chapter 299, Acts of 1926 and amendments thereto.

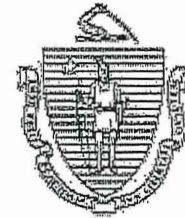
1. This license is granted and approved subject to compliance with the laws of this Commonwealth relative to the exposing, sale and keeping of liquor or other intoxicating beverages and with compliance with the following conditions: —
2. The premises shall be open at all times to inspection by any police officer or constable of the town, or by any State Police Officer.
3. No person or persons under the influence of intoxicating liquor or other intoxicating beverage, or having the appearance thereof, shall be granted admittance to or be permitted to remain in or upon any of the premises described in this license.
4. No dialogue, gesture, song, language or conversation of any description which is directly or indirectly obscene, lascivious or suggestive, shall be permitted to be used by any person or persons while in or upon the premises.
5. Muscle or suggestive dancing or any description or form is prohibited.
6. Gaming of any description, games at which a prize is offered, any game where money is exposed as a prize or inducement, wheels of change and jingle boards are prohibited.
7. Private dining rooms, booths or enclosures for the accommodation of less than four persons shall not be permitted and not less than four persons shall be allowed or permitted to occupy any such room or enclosure.
8. Rooms used for dining rooms and for dancing shall be so lighted as to render it possible to distinguish any person by every other person therein at all times.
9. The license will be suspended for non-compliance with any of the laws of this Commonwealth relating to this particular establishment, and may, after a hearing, be revoked.
10. Non-compliance with the provisions of any of the above regulations will be sufficient cause for suspension, and after hearing the license may be revoked.

By authority of and in compliance with the provisions of Chapter 299, Acts of 1926, and amendments thereto, the above minimum rules and regulations are hereby prescribed and approved.

Board of Selectmen

C-3

THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF HARWICH



State Fee: \$ 50/\$100
Municipal Fee: \$ 85/\$175

LICENSE

For
PUBLIC ENTERTAINMENT ON SUNDAY

The Name of the Establishment is Wychmere Harbor Functions LP in or on the property at No. 23 Snow Inn Road, Harwich Port MA 02646 (address)

The Licensee or Authorized representative, Michael Sharlet in accordance with chapter 136 of the General Laws, as amended, hereby request a license for the following program or entertainment:

DATE	TIME	Proposed dancing or game, sport, fair, exposition, play, entertainment or public diversion
Sundays	11AM-1AM	Inside – Recorded or live music with amplification & dancing
Sundays	11AM-10PM	Outside – Record or Live music with amplification & dancing

Hon. J. Ballantine Mayor/ Chairman of Board of Selectman, Harwich (City or Town)

Fees per occurrence (Individual Sunday(s)): Regular Hours (Sunday 1:00pm – Midnight): \$2.00 Special Hours (Sunday 12:00 am- Midnight): \$5.00. Annual Fee (For Operating on every Sunday in calendar year): Regular Hours (Sunday 1:00pm – Midnight): \$50.00 Special Hours (Sunday 12:00 am- Midnight): \$100.00

This license is granted and accepted, and the entertainment approved, upon the understanding that such entertainment that the licensee shall comply with the laws of the Commonwealth applicable to licensed entertainments, and also to the following terms and conditions: The licensee shall at all times allow any person designated in writing by the Mayor, Board of Selectmen, or Commissioner of Public Safety, to enter and inspect his place of amusement and view the exhibitions and performances therein; shall permit regular police officers, detailed by the Commissioner of Public Safety or Chief of the local Police Department to enter and be about this place of amusement during performances therein; may employ to preserve order in his place of amusement only regular or special police officers designated therefore by the Chief of Police, and shall pay to said Chief of Police for the services of the regular police officers such amount as shall be fixed by him; shall permit at all times to enter and be about his place of amusement such members of the Fire Department as shall be detailed by the Chief of the Fire Department to guard against fire; shall keep in good condition, go as to be easily accessible, such standpipes, hose, axes, chemical extinguishers and other apparatus as the fire department may require; shall allow such members of the fire department in case of any fire in such place, to exercise exclusive control and direction of his employees and of the means and apparatus provided for extinguishing fire therein; shall permit no obstruction of any nature in any aisle, passageway or stairway of the licensed premises, nor allow any person therein to remain in any aisle passageway or stairway during an entertainment; and shall conform to any

other rules and regulations at any time made by the Mayor or Board of Selectmen. This license shall be kept on the premise where the entertainment is to be held, and shall be surrendered to any regular police officer or authorized representative of the Department of Public Safety. This license is issued under the provisions of Chapter 136 of the General Laws, as amended, and is subject to revocation at any time by the Mayor, Board of Selectmen, or Commissioner of Public Safety.

Do not write in this box

This application and program must be signed by the licensee or authorized representative of entertainment to be held. No Change to be made in the program without permission of the authorities granting and approving the license

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE ON THE PREMISES

OFFICE OF THE TOWN ADMINISTRATOR

Joseph F. Powers, Town Administrator

Phone (508) 430-7513

Fax (508) 432-5039

732 MAIN STREET, HARWICH, MA



MEMO

TO: Board of Selectmen

FROM: Joseph F. Powers, ^{JP}Town Administrator

CC: David J. Guillemette, Chief – Police
Jeffrey Blake, Esq. – KP Law

RE: Recommended action following disciplinary hearing held on June 23, 2021 re:
Wychmere Harbor Functions LP d/b/a Wychmere Harbor Beach and Tennis
Club, Entertainment License Violation

DATE: June 28, 2021

The following is my report on a disciplinary hearing held on June 22, 2021 for an alleged violation of the entertainment license for Wychmere Harbor Beach and Tennis Club, 23 Snow Inn Road, Harwich Port, MA.

Violation alleged:

Specifically, the alleged violation was: one (1) violation of 204 CMR 2.05(2), permitting a disorder, disturbance or illegality to take place on the licensed premises.

Hearing summary:

The manager of record, Christopher Clifton Kolwicz and the General Manager, Michael Sharlet were present and represented by Attorney Andrew Singer.

Attorney Singer made a brief statement on behalf of the establishment wherein he stated that the licensee:

- Admitted to the facts outlined in Police Chief David Guillemette’s memo to the Board dated May 25, 2021; and
- Apologized on behalf of the licensee for the transgression.

Legal Standard:

I applied the following legal standard, as suggested by Town Counsel, in making my recommendation:

- 204 CMR 2.05(2), prohibits license holders from permitting any disorder, disturbance or illegality to take place on the licensed premises.

Statement of findings:

Whereas representatives from the licensee did not dispute the facts presented in the Chief's memo, and admitted that they were, in fact, in violation as outlined above, I find that one (1) violation of the laws of the Commonwealth has been established.

Recommended disciplinary action:

There is no record of any prior violations or alleged violations to have occurred at this establishment. As such, this finding constitutes their first offense. Given that and coupled with the licensee's full cooperation and full responsibility for the matter, I recommend that the Town impose a disciplinary action of **a warning** as outlined under 1.17 Disciplinary Guidelines within the Town of Harwich Liquor Licensing Regulations.

E

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513
Fax (508) 432-5039



Joseph F. Powers, *Town Administrator*
Megan Eldredge, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645

August 16, 2021

Mr. Christopher Clifton Kolwicz, Manager
Wychmere Harbor Functions Lp
d/b/a Wychmere Harbor Beach and Tennis Club
23 Snow Inn Road
Harwich Port, MA 02646

EMAILED & CERTIFIED MAIL

Subject: Warning Letter – Violations of Entertainment License

Dear Mr. Kolwicz:

At a meeting of the Board of Selectmen held on June 28, 2021, the Board of Selectmen voted the following discipline per the recommendation of the Town Administrator relating to a noise violation of Wychmere Harbor Beach and Tennis Club’s Entertainment License on May 16, 2021:

This letter will serve as written warning for the Noise Violation on May 16, 2021.

A copy of the Town Administrator’s Report and Recommendation is enclosed herewith for your reference.

Sincerely,

Joseph F. Powers, Hearing Officer
Town Administrator



HARWICHPolice
DEPARTMENT

183 Sisson Road, Harwich, MA 02645

Tel 508-430-7541 Fax 508-432-2530




F-1

DAVID J. GUILLEMETTE
Chief of Police

KEVIN M. CONSIDINE
Deputy Chief

Memorandum

TO: Board of Selectmen
Joseph Powers
Town Administrator

FROM: David J. Guillemette
Chief of Police 

DATE: September 9, 2021

SUBJECT: Potential Violation at Wychmere Harbor Club

Mr. Powers and members of the Board:

Attached please find a police report regarding a potential noise violation at The Wychmere Harbor Club on September 2, 2021.

Please do not hesitate to contact me should you have any questions.

F-2

For Date: 09/02/2021 - Thursday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
21-11295	2231	Noise Complaint	Investigated
Call Taker:		1608 - PSD Telecommunicator DIANE NICHOLSON	
Primary Id:		186 - Patrol James R Connery	
Location/Address:		[HAR 176] WYCHMERE HARBOR CLUB - 23 SNOW INN RD	
Calling Party:			
ID:		186 - Patrol James R Connery	
		Disp-22:34:03 Enrt-22:34:05 Arvd-22:44:02 Clrd-22:53:07	
ID:		180 - Sergeant Amy R Walinski	
		Arvd-22:41:28 Clrd-22:53:07	
Narrative:		09/02/2021 2233 PSD Telecommunicator DIANE NICHOLSON	
		Noise complaint, live band at a wedding reception	
Narrative:		09/02/2021 2253 PSD Telecommunicator DIANE NICHOLSON	
		clear, investigated, made contact with management	
Refer To Incident:		<u>21-11295-OF</u>	

F-3

This is a report submitted by Officer James R. Conner regarding the Noise Complaint at Wychmere Harbor Club

On Thursday, September 2, 2021 at approximately 10:33 p.m. Sergeant Walinski and I responded to 23 Snow Inn Road also known as the Wychmere Harbor Club for a noise complaint. The complaint was that a live band was playing at a wedding. The reporting party was calling from Snow Inn Road.

Sergeant Walinski arrived first and was speaking with management about the complaint. When I arrived I walked down to the building where Sergeant Walinski was talking to the manager just outside the venue. While outside I could hear a muffled sound of music mostly drums coming from the building. The music got louder, but only when the door opened while staff were cleaning up the room from the wedding reception. The manager apologized and stated that it should be wrapping up in about 10 minutes.

Respectfully submitted,

Officer James R. Connery # 186

**HARWICH BOARD OF SELECTMEN
LIQUOR LICENSE REGULATIONS
Adopted at a Public Hearing on June 13, 2011
Amended at a Public Hearing on January 9, 2017
Amended at a Public Meeting on August 23, 2021
Effective July 1, 2011**

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**HARWICH BOARD OF SELECTMEN
LIQUOR LICENSE REGULATIONS
Adopted at a Public Hearing on June 13, 2011
Amended at a Public Hearing on January 9, 2017
Amended at a Public Meeting on August 23, 2021
Effective July 1, 2011**

INTRODUCTION

In issuing regulations, the Board of Selectmen, as the liquor licensing authority of the Town of Harwich, is setting forth the expectations of the citizens of Harwich as to the conduct of the Town's liquor license holders. A significant objective of the regulations is the prevention of violations. In familiarizing themselves with these regulations, license holders will realize that much is expected of them. The Board of Selectmen believes that violations will be prevented because these regulations will require liquor license holders to operate in accordance with a clearly defined, higher standard.

1. Identification of the Town of Harwich Licensing Authority

1. The Licensing Authority for the Town of Harwich shall consist of the Board of Selectmen. This authority is granted to the Board of Selectmen pursuant to G.L. c.138.

2. Scope of and Statutory Basis for Promulgation of Rules

1. The statutory basis for the promulgation of these rules is set forth within the applicable sections of G.L. c.138. Each reference to a statute shall include any amendment thereto.
2. These rules are supplementary to any statutory requirements and to the rules of the Alcoholic Beverages Control Commission.

3. Definitions

1. Whenever the word "**Applicant**" is used herein it shall mean an individual applicant; each member of a partnership applicant; each officer, director, manager, and stockholder of a corporate applicant; and any agent of an applicant.
2. Whenever the word "**Licensee**" is used herein it shall mean an individual licensee and each member of a partnership licensee and each officer, director, manager, and stockholder of a corporate licensee and any agent of a licensee including those employees who work in the public areas of the premises.
3. Whenever the word "**License**" is used herein it shall mean a revocable privilege granted by a licensing authority.

4. Whenever the words “**Licensing Authority**” or “**Authority**” are used herein it shall mean those groups having legal authority to grant licenses and/or regulate the operation of the licensed premises. The specific licensing authority for the Town of Harwich shall be the Board of Selectmen.
5. Whenever the word “**Patron**” is used herein it shall mean a customer who is legally on the licensed premises.
6. Whenever the word “**Premises**” is used herein it shall mean all land and buildings associated with the operation of the license.
7. Whenever the word “**Rules and Regulations**” is used herein it shall mean a compilation of regulations and laws set up by a licensing authority to regulate the manner in which businesses under its authority shall operate.

SECTION ONE: GENERAL LICENSING RULES FOR LICENSEES

1.00 Applicability of Rules and Regulations

- a. This section shall apply to all Town licensees, unless specifically provided otherwise.

1.01 Availability of Rules and Regulations

- a. All licensees of the Licensing Authority for the Town of Harwich shall ensure that a copy of these Rules and Regulations is kept on the premises at all times and is available for inspection upon request by a member of the public or an agent of the Authority. These Rules and Regulations are to be kept in the office of the Manager or at the main cash register.
- b. The licensee is responsible for ensuring that all employees who work in the public areas of the premises read the Rules and Regulations of the Licensing Authority and comply with all rules and laws.

1.02 Liquor License Filing Procedures and Responsibility of Applicant

- a. New applications and applications for license modifications must be filed in the Town Administrator’s Office in accordance with the Alcoholic Beverages Control Commission’s Matrix for Retail Transactions along with the local filing fee and abutters list fee (when applicable). Applicant is responsible for advertising costs as well as abutter notification and associated mailing costs.
- b. Copies of applications will be submitted to the Chief of Police for appropriate background investigations.

- c. The Town Administrator will require at least 2 business days to review an application to determine whether the filing is complete. Once it is determined that the application is complete as presented, the Town Administrator will place the Advertisement and at the same time distribute copies of the filing to each member of the Authority for review.
- d. The Authority may require additional information from the applicant prior to the public hearing (i.e. lease agreements, financing information, and/or additional background information).
- e. The hearing shall not be held sooner than ten days after advertising.
- f. The Authority may, with the consent of the applicant, continue the hearing to a future date in order to allow the applicant to provide additional information, or the Authority to investigate and consider whether the application is in the best interest of the Town.
- g. The Authority reserves the right to obtain updated information about a renewal applicant/manager/owner at the time of renewal.

1.03 Posting and Signs

- a. Licenses issued by the Authority shall be posted in a conspicuous place easily seen by the public where they can read without difficulty and without the assistance of employees at the premises.
- b. All other licenses, permits, and certificates affecting the licensed premises shall be posted conspicuously; provided, however, that no such document shall be posted in such a way as to cover over any part of the license issued by the Authority.
- c. No dress code or preferred customer program or cover charge or other admissions policy shall be put into effect at the premises except upon proper posting pursuant to Section 1.04 below.
- d. The posting or presentation of any photographs, signs, posters, drawings or other matter that is of an improper or objectionable nature in the public areas of the licensed premises is prohibited. The material presented must be suitable for view by members of the general public in the same manner as if it were located in other public areas such as public ways, public parks, common carrier stations, other government offices, and business offices.

1.04 Admissions to the Premises

- a. No licensee shall permit any rule, policy, or action, express or implied, which makes any distinction, discrimination, or restriction on account of race, color, religious creed, national origin, sex, or ancestry, physical or mental disability, relative to the admission or treatment of persons from the general public or employees at the licensed premises; provided, however, that premises licensed pursuant to G.L. c.138, §12 may make rules regulating the admission of minors to the premises when such rules are not inconsistent with other rules and regulations stated herein; provided further that private club licensees shall not discriminate, as aforesaid, with regard to guests at the licensed premises or with regard to who may be invited to the premises as a guest.
- b. No licensee shall institute dress requirements of any kind except according to the following rules:
 - 1. A sign shall be posted at the entrance stating dress requirements or dress restrictions with specificity which may also include restrictions as to footwear. (Examples: “Jackets required”; “Ties and jackets required”; “Shirts with collars required, no sneakers”).
 - 2. No signs shall be posted which state, “Proper dress required,” or which otherwise announce a dress policy without stating specifically, item by item, what dress is required or what dress is prohibited.
- c. No licensee shall institute privileged entrance requirements of any kind except according to the following rules:
 - 1. A licensee may issue special passes.
 - 2. The special passes shall state the calendar year on the face of the pass.
 - 3. The special pass shall not entitle the passholder to free drinks or to a discount on drinks.
 - 4. The licensee shall keep a list of the names and addresses of all passholders and must have such list available if requested by the Authority.
 - 5. The licensee is responsible for ensuring that persons are picked to be passholders on a rational basis and not on any basis that is discriminatory in violation of law or these regulations.
- d. No licensee shall require any person to pay a minimum charge or cover charge unless a sign is conspicuously posted at every entrance to any dining room or rooms where such charge is required, in letters no less than one (1) inch in height, stating that a minimum charge or cover charge shall be charged and also stating the amount of charge; provided, however, that no such licensee shall require a

person under thirteen (13) years of age to pay a minimum charge or cover charge. Such cover charge shall not be collected in advance of gaining entrance to the licensed premises, and can only be charged upon a written or printed receipt, permanently recorded and numbered seriatim, presented to each individual customer or group of customers. Records of such receipts shall be kept by the licensee for a period not less than two (2) years. Cover charge shall mean all admission fees or admission charges. Such charges must also be posted on the outside of the licensed premises. Nothing in this regulation shall be construed to prohibit advance ticket sales.

- e. No minimum charge for the purpose of alcoholic beverages or minimum alcoholic beverage drinking requirement shall be imposed upon any customer of a G.L. c.138, §12 licensee.
- f. A licensee who charges a minimum charge for the purchase of food and/or non-alcoholic beverages shall include a specific statement in a posting stating that there is no minimum charge for alcoholic beverages. Such minimum charge for food and/or non-alcoholic beverages shall not be collected in advance of gaining entrance to the premises. No licensee shall impose a minimum charge for food and/or non-alcoholic beverages upon any customer who incurs charges for alcoholic beverages equal to or greater than the posted minimum charge for food and/or non-alcoholic beverages.
- g. Licensees shall refuse entrance to the premises to a person who appears to be intoxicated or unruly; and shall evict such a patron, except that in such a case the licensee should call the police and should offer assistance to an intoxicated person when possible.
- h. Licensees shall not permit entrance to the premises by more persons than the maximum occupancy limit established by the Building Department.
- i. Licensees who permit persons to wait in line for a table or a seat or for entrance to the premises shall obey the following rules:
 - 1. Persons who wait inside the premises shall be kept in an orderly line and must not be permitted to block fire aisles or exits. The number of such persons waiting inside the premises shall not exceed the number of persons allowed as standees.
 - 2. Persons who are permitted to wait in line outside the premises shall be supervised by an employee of the licensed premises. Such employee shall stand outside with the line during all times when the line exceeds ten (10) persons and shall announce no further admissions to the premises if persons in the line are being loud or disorderly or if the line is blocking the sidewalk or is of a size that could reasonably be expected to cause noise or

other problems for residents of the area or for passersby. To the extent that lines in front of a licensed premises become the subject of public complaints the licensee shall have been deemed to be inviting a public nuisance and shall be subject to disciplinary proceedings for same. It is recommended that licensees in residential areas discourage lines of more than ten persons.

- j. Licensees shall not lock the front door of the premises until the last patron has exited from the premises.
- k. Licensees shall not allow any patron or any guest or any employee who is not working that shift to enter the premises after the closing hour posted on the license or prior to the opening hour posted on the license.

1.05 Hours of Operation

- a. The hours of operation shall be restricted to those set by the Licensing Authority and stated on the face of the license. No patrons shall be on the premises before the official opening hours nor fifteen (15) minutes after the official closing hours. Customers must be up and on the way out once the closing hour of the licensed premises has been reached. No drink consumption time.
- b. The rules for employees on premises after closing hours are as follows: employees must be off the premises no later than sixty (60) minutes after the "Official Closing Hour," provided however, that such employees or other hired personnel may be on the premises at any time for the purpose of cleaning, making emergency repairs, providing security for the premises, or preparing food for the next day's business or opening or closing the business on an orderly manner. No other persons, friends or relatives may be on the premises with the owners, managers or employees of the licensed premises during the hours when the public is excluded from the premises.
- c. Licensees shall ensure that their patrons leave the premises in an orderly manner. Licensees who have a clientele that regularly fails to leave the area in a quiet and orderly manner should hire security personnel to police the leave-taking of the patrons at closing time.

1.06 Physical Premises

- a. No license shall be issued or shall be considered in good standing unless the licensed premises comply with all statutory requirements, including all applicable building codes and fire, health, safety, trash and other government regulations and laws.

- b. The licensed premises shall conform to the floor plan approved by the Authority with regard to the structures and the walls at the premises, as well as with regard to all tables, chairs, booths, bars, counters, bar stools, dance floors or areas, railing partitions, and other barriers at the premises. Any changes in the floor plan or any renovations of any kind shall not be made without notification to the Authority and the approval of the Authority. This includes substantial changes in the arrangement of moveable furniture.
- c.. All premises covered by the license shall be kept in a clean and sanitary condition, with specific reference to fruit flies contaminating open liquor bottles.
- d. No outside area shall be used as a gathering place for patrons unless approved by the Authority and the Alcoholic Beverages Control Commission if alcohol is consumed.
- e. The premises shall be lighted in all public areas in a manner sufficient for the safety of the patrons and in a manner sufficient for the agents of the Authority to make observations at the premises without the need to identify themselves or the need to seek assistance.
- f. The actual capacity of the licensed premises will be established by the Licensing Authority and shall be the lowest set by septic or building capacity. That capacity shall be stated on the license.
- g. Licensees shall not invite the members of the general public to private areas of the premises which are approved by the Authority for storage or for an office or for a kitchen or for a music or video projection room or for any similar non-public use. Only owners and employees of the licensed premises shall be in these areas.
- h. No advertising matter, screen, curtain or other obstruction, which in the opinion of the Licensing Authority or its Agents, prevents a clear view of the interior of the premises shall be maintained in or on any window or door thereof after the Authority has ordered the removal of such obstruction.
- i. The interior of the premises shall be sufficiently lighted at all times and all exits shall be properly designated by lighted signs, “Exit,” as same may be mandated by the Building Inspector of the Town of Harwich or by the Fire Department of the Town of Harwich.

1.07 Business Arrangements of Licensees

- a. No person or entity shall obtain or renew a license unless the applicant for such license or for renewal of such license can demonstrate proof of a legal right to the licensed premises for the term of the license. Such proof shall include ownership papers or a tenancy document or a management contract; provided, however, that

all parties to such ownership or leasehold interest or management contract shall be known to the Authority and the terms of such agreements or contracts shall be made known to the Authority.

- b. No licensee shall hire any employee or contract for goods or services in any name other than that of the licensee, nor shall the licensee pay for any such employment, goods, or services by any means other than its own cash or bank accounts in its own name. Cash transactions shall be recorded in a manner suitable for review by the Authority. Such records shall be kept for a period of three (3) years.
- c. No licensee shall permit any person to have a direct or indirect financial or beneficial interest in the licensed business or to receive any revenue from the business or to manage the premises other than the persons properly approved of by the Authority and the salaried employees of such persons.
- d. No licensee shall permit any person to work at the licensed premises or to hold themselves out as a person in a position of authority at the premises except for those persons who are owners and officers or who are salaried employees for whom payroll records are available. No licensee shall pay an employee any percentage of the profits of the business or pay an employee in any manner other than by salary or hourly rate except upon approval of the Authority.
- e. No licensee shall pay a landlord or creditor of any kind a percentage of the profits of the business except upon complete disclosure to the Authority and the receipt of the Authority's approval.
- f. No licensee shall lease out any part of the premises or any part of the business without the approval of the Authority. No licensee shall lease out the food or beverage service without the approval of the Authority.
- g. No licensee shall enter into an agreement with an independent contractor to provide beverages or food or entertainment or management at the premises without the approval of the Authority.
- h. No licensee shall pledge the stock in the licensed business or the license itself without the approval of the Authority pursuant to G.L. c.138 §15A. No licensee shall pledge a license without obtaining the approval of the Authority pursuant to G.L. c.138, §15A and the Board of Selectmen's Policy on Pledging of Alcoholic Beverages Licenses.
- i. No licensee shall take a loan secured by any equipment at the premises or secured by any direct or indirect interest in the licensed business without the approval of the Authority. This includes kitchen equipment, video or audio equipment, lighting equipment, furniture, or any other type of equipment.

- j. No licensee shall contract bills for its licensed premises under any corporation or trade name other than that under which it is licensed.
- k. Managers in licensed premises shall not be changed until the Authority and the Alcoholic Beverages Control Commission have approved such change.
- l. Any licensee intending to close its place of business shall notify the Authority in writing before such closing and state the reason for such closing.
- m. Assignment of the stock of corporate licensees for purposes of collateralizing loans or notes, etc., gives no right to the assignee to conduct the business of the licensee. Licensees shall immediately notify the Authority when the assignee forecloses under such assignment of stock or when other proceedings are brought which affect the economic and financial rights and abilities of the licensee.
- n. Licensees shall enter into no agreement or understanding which sets a minimum requirement for gross sales of food and beverages at the premises.
- o. Licensees shall not use any trade name, assumed name, or abbreviated name in connection with the licensed business unless the same appears on the license certificate issued by the Authority or unless written permission is first obtained from the Authority. The use of any unauthorized name on the books, records, stationery, or interior or exterior of the licensed premises or for advertising purposes or telephone listing is prohibited unless permission is first obtained from the Authority.
- p. Licensees are responsible for maintaining a legal right to access to and control of the premises which is covered by the license. Failure to have a legal right to the named licensed premises shall result in the revocation or non-renewal of the license.

1.08 Alcoholic Beverages Sales and Laws

- a. No alcoholic beverages shall be sold for less than the actual cost of the beverage to the licensee. An admission charge shall not be credited towards the purchase price of any alcoholic beverage.
- b. 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.
- c. No licensee or employee or agent or a licensee shall:
 - 1. offer or deliver any free drinks to any person or group of persons;

2. deliver more than two (2) drinks to one person at one time;
 3. 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 general public;
 4. sell, offer to sell, or deliver to any person an unlimited number of drinks during a set period of time for a fixed price, except at private functions not open to the general public;
 5. 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;
 6. sell, offer to sell or deliver malt beverages or mixed drinks by the pitcher except to two (2) or more persons at any one time;
 7. 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;
 8. encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes;
 9. advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under this section.
- b. Nothing contained in the preceding section shall be construed to prohibit licensees from offering free food 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 persons; or to prohibit those licensed under G.L. c.138, §15 from offering free wine tastings; or to prohibit those licensed under G.L. c.138, §12 from offering room services to registered guests.
- c. Licensees shall not permit alcoholic beverages to be brought on the licensed premises by patrons or employees.
- d. Licensees shall be responsible for ensuring that minors are not served alcoholic beverages and are not drinking alcoholic beverages on the licensed premises, whether served to them by an employee or handed to them by another patron. Licensees who do not have the ability to keep track of the drinking activity of minors at the premises shall exclude minors from coming onto the premises in order to meet the burden of ensuring that there is no underage drinking at the

premises. Licensees who choose to permit minors on the premises shall be accountable if minors are found to be drinking alcoholic beverages on the premises, whether or not the Authority's agents are able to prove that the licensee actually served the drink directly to the minor. Sufficient security personnel shall be employed to monitor the premises to ensure that patrons do not pass alcoholic beverages to minors.

- e. Any establishment licensed to sell alcoholic beverages to be drunk on the premises shall post a copy of the penalties for driving under the influence set forth in section G.L. c.90, §24. Establishments licensed to sell alcoholic beverages not to be drunk on the premises shall post a copy of the penalties for operating a motor vehicle while drinking from an open container. Said copies shall be posted conspicuously in said establishments. Said copies are available from the Alcoholic Beverages Control Commission.
- f. Food service shall be available in all areas of the licensed premises where alcoholic beverages are served, this to include dining areas and lounge areas. This does not include any area approved as a waiting area by the Licensing Authority.

1.09 Entertainment at Licensed Premises

- a. No licensee may provide entertainment of any kind unless the licensee holds an entertainment license issued pursuant to G.L. c.140, §183A. Such license must be held in the same name, by the same owners, and with the same manager as the food or beverage license; provided, however, that in cases where entertainment on the premises is to be conducted by a person or entity who is an independent contractor at the premises, the food or beverage licensee may seek the approval of the Licensing Authority for an exemption from this rule based upon a written contract with the independent contractor which gives control of the premises to the food or beverage licensee while allowing the independent contractor to book and/or to produce the entertainment.
- b. The food or beverage licensee shall be responsible for the actions of any independent contractor on the premises providing entertainment in addition to the responsibility held by the independent contractor pursuant to the entertainment license.
- c. The food or beverage licensee shall pay the independent contractor a fee according to the written contract, said fee to be commensurate with the market value of the services, and the independent contractor shall not be given any direct or indirect interest in the licensed premises other than the fee set out in the contract. Said fee shall not be based upon the number of patrons attending an entertainment event.

- d. Any food or beverage licensee who permits entertainment at the licensed premises pursuant to a license held by a person in violation of this rule will be subject to disciplinary action by the Authority.
- e. Inside Entertainment - No entertainment at the licensed premises may be conducted in a manner such that the noise from the entertainment is creating a nuisance and can be heard outside the boundaries of the premises.

Outside Entertainment – Noise from entertainment must be at reasonable sound levels which are not plainly audible at a distance of 150 feet from boundary line or source of sound amplification system whichever is further.
- f. No dancing by patrons is permitted except upon proper licensing pursuant to G.L. c.140, §183A, and confined to a particular dance floor area which has been approved by the Authority and which is not inconsistent with the entertainment license requirements.
- g. Entertainment shall not be conducted on the premises prior to the opening or subsequent to the closing hour set by the Authority for the exercise of the food or beverage license or during any period when the food or beverage license has been suspended.
- h. No licensee may have upon the premises any automatic amusement devices unless such machines have been approved and separately licensed by the Authority pursuant to G.L. c.140, §177A. Types of machines and location of machines upon the premises must be approved. The licensee must make application, not the distributor.
- i. Licensees shall not permit any games to be played at the premises for money, alcoholic beverages, or for any other prize. Games may be played for money at certain fundraising activities which have been approved by the Authority and for which the licensee holds other appropriate licenses.
- j. Licensees who hold licenses under G.L. c.138, §12 to serve alcoholic beverages for on premises consumption may petition the Authority for approval to allow dancing on Sundays between the hours of twelve midnight and one o'clock A.M. or two o'clock A.M. for the same hours for which the licensee is authorized to sell alcoholic beverages. (G.L. c.138, §33).

1.10 Environs of Licensed Premises

- a. It shall be the obligation of licensees to ensure that a high degree of supervision is exercised over the conduct of the licensed establishment at all times. Each licensee shall be accountable for all violations that are related to the licensed

premises to determine whether or not the licensee acted properly in the given circumstances.

- b. Licensees shall act reasonably and diligently to disperse loiterers or patrons who attempt to congregate in front of or at the licensed premises. Failure of the licensee to keep persons from congregating at the licensed premises may lead to disciplinary action against the licensee for allowing a public nuisance. Action to be taken by the licensee shall include: (1) maintaining the front door in a closed position; (2) asking loiterers to disperse; (3) promptly notifying the police if loiterers refuse to disperse; (4) hiring a security guard or stationing a security employee at the front door to disperse loiterers; (5) refusing to allow patrons to walk in and out of the premises at short intervals; (6) maintaining order in lines of patrons waiting outside to get in; (7) announcing that no further patrons will be allowed into the premises if lines become too long or disorderly or loud.
- c. Licensees shall take such steps as are necessary to ensure that patrons or employees do not leave the premises with alcoholic beverages. Such steps shall include having an employee stationed at the door to watch patrons as they leave. When patrons are observed leaving the premises with beer bottles, beer cans, or cups or glasses filled with liquids that smell like alcoholic beverages to the Authority's agents, it shall be presumed that the vessels contain alcoholic beverages.
- d. When any noise, disturbance, misconduct, disorder, act or activity occurs in the licensed premises, or in the area in front of or adjacent to the licensed premises, or in any parking lot provided by the licensee for the use of its patrons, which in the judgment of the Authority adversely affects the protection, health, welfare, safety or repose of the residents of the area in which the licensed premises are located, or results in the licensed premises becoming the focal point for police attention, the licensee shall be held in violation of the license and subject to proceedings for suspension, revocation or modification of the license.

1.11 Inspections and Investigations

- a. The licensed premises shall be subject to inspection by the members of the Licensing Authority and its duly authorized agents. Any hindrance or delay of such inspection caused by an employee of the licensee shall be cause for action against the licensee. It shall be the responsibility of the licensee to ensure that procedures are in place, be it posting a doorman or otherwise, to allow police and authorized agents of the Authority immediate entrance into the premises at any time employees are on the premises. Any delay in providing such access shall be cause for action against the license.
- b. Any person who hinders or delays any authorized investigator of the Alcoholic Beverages Control Commission or any investigator, inspector or any other

authorized agent of the Licensing Authority in the performance of his duties, or who refuses to admit to or locks out any such investigator, inspector or agent from any place which such investigator, inspector or agent is authorized to inspect, or who refuses to give to such investigator, inspector or agent such information as may be required for the proper enforcement of G.L. c.138, shall be punished by penalties as outlined in G.L. c.138.

- c. Licensees shall maintain a current list of all of their employees and shall have it available at all times for inspection upon the request of an authorized agent of the Authority. Licensees who contract with entertainment entities to provide entertainers must maintain a current list of the names of such entertainers and said entertainers shall be held to the same rules as other employees at the premises.
- d. No device or electronic equipment shall be utilized by a licensed premises for the purpose of signaling employees that agents of the Licensing Authority are present.
- e. All complaints and reports shall continue in force until they have been reviewed and disposed of by the Licensing Authority.

1.12 Standards of Conduct on the Premises

- a. It is forbidden to permit any employee or person in or on the licensed premises to promise, offer, suggest, or accept sexual acts or favors in exchange for money or for the purchase of any alcoholic beverages or other commodities.
- b. It is forbidden to encourage or permit any person in or on the licensed premises to touch, caress, or fondle the breasts, buttocks or genitals of any other person.
- c. No alcoholic beverages shall be sold to anyone under twenty-one (21) years of age. No service of alcoholic, wine/malt beverages shall be made to anyone under twenty-one (21) years of age.
- d. No manager or employee shall consume any alcoholic beverages while on the licensed premises while on duty or after the official closing hour.
- e. There shall be no disorder, prostitution, illegal gambling, illegal drug use or sales or possession, or other illegal activity on the licensed premises or any premises connected therewith by an interior communication.
- f. All other acts defined as criminal behavior by the Massachusetts General Laws are also prohibited on the premises.

1.13 Requirement to Monitor and Prevent Illegal Activity on the Licensed Premises

Licensees shall make all reasonable and diligent efforts to ensure that illegal activities do not occur at the licensed premises. Such efforts shall include:

- a. Frequent monitoring of restrooms and other nonpublic areas of the premises for signs of drug activity or other illegalities;
- b. Paying attention to activities on the premises of known drug users or drug dealers or prostitutes or others who are known to have been convicted of crimes which may be conducted at a licensed premises;
- c. Monitoring of activities of persons who talk about weapons or who appear to be hiding a weapon;
- d. Calling for police assistance as necessary to protect patrons against injury or to evict unruly patrons or to uncover unlawful conduct or to give medical assistance and providing police with requested information;
- e. Hiring security personnel to deal with chronic unlawful activity at the premises such as prostitution or gambling or larceny from patrons or assaults and batteries or other problems associated with the premises.

1.14 Injuries to Persons at the Premises

- a. Licensees shall instruct their employees and security personnel that they are not to make bodily contact with a patron unless to protect other patrons or themselves from being subjected to body blows from an unruly patron. In all other circumstances, employees and security personnel are to call the police to have patrons removed from the premises when such patrons are being disruptive and they are unable to convince the patron to leave the premises voluntarily.
- b. Licensees shall call the police and an ambulance and take all other reasonable steps to assist patrons or persons who are injured in or on the licensed premises or whose injuries have occurred outside the premises but have been brought to the attention of the licensee.

1.15 Other Causes for Revocation, Suspension, and Modification

- a. Any license issued pursuant to G.L. c.138 may be modified, suspended, or revoked for any of the following causes:
 1. Violation by the licensee of any provision of the relevant General Laws of the Commonwealth, of the regulations of the Alcoholic Beverages Control Commission or of the regulations of the Licensing Authority;

2. Fraud, misrepresentation, false material statement, concealment or suppression of facts by the licensee in connection with an application for a license or permit or for renewal thereof, or in connection with an application for the removal of the licensed premises or the alteration of the premises, or in connection with any other petition affecting the rights of the licensee, or in any interview or hearing held by the Authority in connection with such petition, request, or application affecting the rights of the licensee;
3. Failure to operate the premises covered by the license without prior approval of the Licensing Authority;
4. Failure or refusal of the licensee to furnish or disclose any information required by any provision of the General Laws, or by any rule or regulation of the Alcoholic Beverages Control Commission, or by any rule or regulation of the Licensing Authority;
5. Licensees shall not give or offer any money or any article of value or pay for or reimburse or forgive the debt for services provided to any employee or agent of the Authority either as a gratuity or for any service;
6. Licensees may not fail to comply with any condition, stipulation or agreement upon which any license was issued or renewed by the Authority or upon which any application or petition relating to the premises was granted by the Authority. It shall be the duty of the licensee to ensure that all appropriate personnel at the licensed premises are familiar with the rules and regulations of the Authority and with any conditions on the license.
7. A license may be suspended or modified or revoked for the refusal by any licensee and, if a corporation, by a manager, officer, or director thereof to appear at an inquiry or hearing held by the Authority with respect to any application or matter bearing upon the conduct of the licensed business or bearing upon the character and fitness of such person to continue to hold a license.
8. Licensees shall properly serve suspension and modification orders.

1.16 Violations; Hearing Procedure

- a. Upon written notice from the Chief of Police or other source that an illegality has allegedly occurred at a licensed establishment or other matters that the Chief of Police deems should be brought to the attention of the Licensing Authority, the Authority will consider in open session whether or not a public hearing should be held.

- b. If it is determined that a public hearing will be held by vote of the Authority, the Town Administrator shall send written notice to the licensee by Certified Mail, Return Receipt Requested.
- c. At the hearing the Authority will first hear evidence from the Police Chief and his agents and/or witnesses or from other complaining parties, as may be appropriate. Then the licensee and the licensee's counsel will have an opportunity to present their response and evidence.
- d. After all testimony has been given, the Authority reserves the right to question all witnesses and parties and, if necessary, take under advisement all facts and vote either to render their decision or continue the hearing to a subsequent meeting of the Authority.

1.17 Disciplinary Guidelines

- a. Licensees in violation of the applicable laws of the Commonwealth, regulations of the Alcoholic Beverage Control Commission and/or these regulations may be subject to the following range of discipline:
 - 1. First offense: warning to seven day suspension.
 - 2. Second offense: warning to thirty day suspension.
 - 3. Third and subsequent offenses: warning to revocation.
- b. Only offenses which have occurred within the two (2) years preceding the date of violation shall be used in calculating the number of offenses for purposes of the disciplinary guidelines.
- c. The disciplinary guidelines are only a guide. The Licensing Authority may use its discretion in determining whether the facts surrounding a violation warrant a penalty which is more lenient or severe than that suggested by the guidelines.
- d. The disciplinary guidelines shall not be construed so as to limit the Licensing Authority's authority to consider alternative dispositions, or further conditions on a license, or even alternate penalties (e.g. roll back of operating hours).

1.18 Service of Suspension Orders

- a. When the Authority suspends the license or licenses of any licensee, it shall provide the licensee with an order of suspension for public display that must contain the words, "No alcohol served per order of the Board of Selectmen for the Town of Harwich." Such order shall be publicly displayed by the licensee in the

following manner. If there is a door opening from the street into the licensed premises and a window facing the street upon which such door opens, such order shall be displayed in such window so that it may readily be seen from the street. If the licensed premises are otherwise located, such order shall be affixed to the door of the entrance to the premises and displayed in such a way that it may be readily seen from the street.

- b. Suspension orders of the Authority, as above, shall remain affixed throughout the entire period of suspension. The removal, covering, defacement, or obliteration of the order of suspension or the failure to maintain the order of suspension in the manner and place required prior to the expiration of the suspension period shall be deemed the act of the licensee and shall be cause for further suspension, modification or revocation of the license.
- c. Suspension periods shall not be used as a time to do renovations at the licensed premises unless such renovations have previously been approved by the Authority.
- d. No members of the public may be on the premises at any time during suspension periods, with the exception that restaurants may be able to continue to service patrons without serving alcohol, with the approval of the Licensing Authority.

1.19 Permission to Close Premises Required; Non-use of Licenses

- a. Licenses are granted to serve the public need and, to that end, licensees are expected to operate the license for a substantial number of hours on all days when the premises are permitted to be open under the terms of the license. In the case of alcoholic beverages licenses, the number of which are limited according to statute, no licensee may close its place of business for any reason other than the following:
 - 1. Upon approval of a request to the Licensing Authority for closing in order to do renovations for a reasonable time;
 - 2. For all holidays and religious days;
 - 3. A closing of one (1) or more days per week upon approval of a request to the Authority and a showing by the licensee that it does not have adequate business upon such days.
 - 4. A closing due to an act of God, natural disaster, illness or some other business problem for which request has been made to the Authority and approval granted.
- b. Any licensee intending to close a place of business, whether on a temporary or permanent basis, must notify the Licensing Authority in writing before such

closing stating the reason and length of such closing and obtain approval. Failure to provide such notice may result in the suspension or revocation of the license.

- c. If the Licensing Authority becomes aware of a license not being exercised, it may conduct a hearing to obtain a status update.
- d. The Authority reserves the right to require that the licensee appear before the Authority every three (3) months from that point until the business has commenced or resumed operations or the license has been transferred or turned back to the Town.
- e. The Authority reserves the right to revoke the license at any time if it deems that the public good is not being served.

1.20 Bankruptcy and Court Proceedings

- a. The licensee shall immediately notify, in writing, the Licensing Authority of any proceedings brought by or against the licensee under the bankruptcy laws or of any other court proceedings which may affect the status of the license.

1.21 Management

- a. Each corporate licensee must appoint a manager by a properly authorized and executed delegation.
- b. The responsibilities of every license holder and any manager shall be as follows:
 - 1. To obey all statutes of the Commonwealth, rules of the Alcoholic Beverages Control Commission, Rules and Regulations of the Licensing Authority;
 - 2. To promptly notify the police of any disturbances or illegal activity on the licenses premises of which he becomes aware;
 - 3. As to corporate licensees, to sign the annual application for renewal of license, unless unavailable;
 - 4. To cooperate with authorized agents of the Licensing Authority, including but not necessarily limited to, any police officer, in their investigation or inspection of the licenses premises.
- c. Any such notice sent to the manager as named in the records of the Licensing Authority or the owner at the address of the licensed premises shall constitute valid legal notice to the licensee.

- d. The licensee shall not change managers, change corporate officers, sell or transfer corporate stock, pledge corporate stock or liquor license as security, or accept a loan or credit from another licensee, without first obtaining the approval of the Authority. No person may have a direct or indirect beneficial interest in a license without first obtaining the approval of the Authority.

1.22 Service Training

- a. An employee training program on the proper procedures for verifying that patrons are at least twenty-one (21) years of age and not intoxicated shall be provided by the licensee. A written description of such program, along with a written policy outlining the employees' responsibilities and the disciplinary measures which will be taken against any employee for violating said policy, shall be provided to the Authority as part of the original or renewal application materials and maintained on the premises at all times.
- b. A signed certification of each employee who handles alcohol, indicating that the employee has received the described training and has reviewed and understands the written policy describing his or her responsibilities and the disciplinary action which will be taken for violations, shall be maintained on the premises at all times. Copies of all such documents and certifications shall be available to the licensing authority, or any authorized agent thereof, upon demand.
- c. Each new employee who handles alcohol shall obtain server training within thirty (30) days of commencing employment.
- d. Upon a finding by the Authority of a violation of the laws or regulations concerning service of alcohol to a minor or intoxicated person, the employees involved in the violation who continue to be employed by the licensee shall be retrained forthwith and receive a new server training certification.
- e. The training and certification referenced in Section 1.22 shall be pursuant to a training program approved by the Authority (e.g. TIPS or equivalent).