

Chapter 16

Board of Selectmen

State law reference - G.L. c. 41, Secs. 20-23.

Cross reference—Board of Selectmen generally, Secs. 2 - 38 to 2 - 44. See also Selectmen-Administrator Act, Secs. 2, 5,8, 14, and 16.

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Article I. In General.

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Article II. Site Plan Approval.*Division 1. Generally.***Sec. 16 - 6. Definitions.**

The definitions of the zoning bylaw shall apply to all terms and words relative to zoning used in these rules and regulations, with the addition of the following terms and words.

Applicant. The person or persons who shall be an owner or owners of equitable interest of all land included in the site plan. If the applicant is represented by an agent, written evidence shall be submitted with the application for site plan approval that the agent has authority to submit said application for each owner involved.

Artificial pond. A body of water created by the process of excavation or by means of a dam, which is lined to most or all of its extent by natural materials.

Board. The Board of Selectmen acting upon site plan approval.

Building. For the purposes of defining the spacing between buildings, a building is taken to mean a structure which has been erected to enclose or shelter, partially or otherwise, an intended use therein, but excluding steps which provide a means of access therein.

Driveway opening. A vehicular access to or from a site located at the boundary between the site and the street side-line leading onto the traveled portion of a public, laid out or accepted way as defined in G.L. Chapter 41, Sec. 81L, by "subdivision."

Fire lane. A path or way or area, clearly marked for such use by signs, or other readable designations, flat and free of obstacles, which borders on or near a building or structure,

sufficient to yield access to such structure for the removal of persons therein by fire apparatus, and which will provide rapid unimpeded access to said building or structure under all conditions of weather.

Hazard. A condition on a site which is dangerous to the health or the life and limb of occupants therein by reason of, but not limited to sudden changes of topography, wet, icy or otherwise slippery surfaces, insufficient ground support to bear customary loads appropriate for use, leakage of sewage, conditions which would result in a loss of vehicular control, infestations of insects or vermin, or other such conditions which the board holds to be a similar general condition during the development of the site, and after its completion.

Owner. As applied to real estate, the owner of record in the Middlesex South Registry of Deeds. or Middlesex South Land Registry District.

Parking area. A paved area comprised of parking spaces within a site, clearly marked for such use, or delineated with painted lines, for the unattended temporary storage of motor vehicles, with sufficient maneuvering area such as to allow collision-free access into and out of such spaces as are part of said parking area.

Parking space. A marked, paved or otherwise delineated area reserved to the use of individual motor vehicles, conforming in area to the requirements of the zoning bylaw, but such that a rectangle of dimensions eight feet by nineteen feet is not exterior to the bounds so marked, posted, delineated or otherwise reserved to such use.

Pedestrian way. A pathway within a site intended for pedestrian traffic which shall be capable of providing all-weather passage without ice hazard from draining water from other areas, or wet-slippage from the same, or without accumulation of mud or dust.

Person. An individual, two or more individuals, a group or association of persons having common or individual interest in a site, a partnership or a corporation.

Screening. An obstacle to vision or light sufficient to reduce glare resulting from an allowed use within the site to an acceptable level on adjoining property, or to keep hidden from vision an outside storage area, such as not to detract from the amenities of the neighborhood.

Site. For the purposes of these rules and regulations, an area of land, with definite boundaries, used or available for use as the locus of one or more buildings, wherein use as such is allowed by the zoning bylaw, or by variance, exception or special permit, as to which there is an accord to such use, proposed or extant by persons with an interest in same.

Storage area. A location wherein outdoor material storage shall be confined in accordance with the use regulations of the zoning bylaw.

Street side line. The boundary between the lot or lots comprising the site, or the area of the site, and the public or laid out, or accepted way, as defined in Chapter 41, Section 81L of the General Laws.

Town agency. Any town board or department within whose purview recommendations as to the approval of a site plan may lie.

Ways within the site. For the purposes of these rules and regulations, areas used or intended to be used for vehicular traffic within the site which are paved and graded to accept loads appropriate to the uses allowed therein, not necessarily delineated with markers, curbs, or other signs, and which are clear of obstacles or obstructions to such vehicular travel in some continuous path from driveway opening to a parking area or pedestrian way leading to buildings or structures on a site.

Zoning bylaw. The zoning bylaw of the town.

Sec. 16 - 7. Authority of Board of Selectmen.

(a) *Generally.* The Board of Selectmen is empowered by Division 3 of Article VII of Chapter 15 to approve site plans for certain residential and commercial uses prior to the issuance of a permit by the building inspector for the construction, enlargement or alteration of buildings for such uses.

The zoning bylaw specifies certain districts where a mixture of residence and commercial uses are permitted. In addition, the bylaw specifies that commercial uses are permitted, under certain general conditions, but without specifying restrictions as to heights, yards, setbacks and lot size, in general. When regulations are of such unspecified and general character, the delegation of broad powers of approval to the Board of Selectmen, as provided by Division 3 of Article VII of Chapter 15, is a proper delegation of the powers of zoning by the town to the Board of Selectmen, and such power is validly exercised under provisions of Chapter 40A, Sections 4 and 2 of the General Laws.

(b) *Discretion.* Where discretion of the Board of Selectmen in the approval of a site plan is exercised, in matters having to do with the effect of the plan on the continuous use or advantageous development of adjoining properties, the board acts under the authority granted by Chapter 40A, Section 4 of the General Laws and other relevant provisions of the Zoning Enabling Act.

(c) *Limits on disapproval.* The board in exercising discretion or otherwise may request reasonable modifications of a submitted plan to conform with the provisions of the zoning bylaw. A plan may be disapproved only on failure of an applicant to so modify a plan, or for compelling and overwhelming reasons having to do with the promotion of public safety, health, welfare, convenience and morals.

Sec. 16 - 8. Application contents.

Application for site plan approval shall include the following to be considered valid:

(a) *Land.* A description of the land sufficient to identify by book and page in the Registry of Deeds, or identify the same, by location metes and bounds or other description.

(b) *Owners, agents, etc.* A testament as to the name, and addresses of mortgagees, owner or owners of the land within the site or authorized agents of such owners, with a signed request by the same for approval of the site plan, attesting to ownership, or mortgage and agreeing to abide by the rules and regulations of the Board of Selectmen in regard to site plan approval and further agreeing that obtaining such an approval of a site plan by fraud or misrepresentation shall be grounds for revocation of any permit so issued.

(c) *Other owners.* If different than the applicant, the name and address of all owners of structures within the site shall be included in the application, and a signed statement by the same shall be included with the application, consenting to the application for approval of the site plan. Further, if said other owners desire that conditions be laid upon their consent, let them so be taken at such time, in company with the application.

(d) *Abutters.* A list of the names and addresses of the most recent abutters and the owners of land next adjoining the land of the abutters, as required for public hearing and notice under the provisions of Chapter 40A, Section 17 of the General Laws.

(e) *Plans.* A site plan and six copies which conform to the site design requirements of these rules, and to the requirements for plans detailed by the zoning bylaw as follows:

- (1) *Residential.* A scaled topographical site plan showing:
 - a. Location of vehicular ways.
 - b. Location of pedestrian ways.
 - c. Parking or garaging of motor vehicles complying with the zoning bylaw.
 - d. Spacing of structures.
 - e. Dimensions having to do with proper compliance with setbacks, heights and frontage required by the zoning bylaw.
- (2) *Business or commercial.* A scaled topographical site plan showing:
 - a. Existing buildings.
 - b. Proposed buildings.
 - c. Existing structures.
 - d. Proposed structures.
 - e. Parking or garaging of motor vehicles.
 - f. Driveway openings.
 - g. Driveways.

- h. Service areas.
- i. Facilities for sewerage, refuse.
- j. Other open uses.
- k. Facilities for surface water drainage.
- l. Fences.
- m. Walls.
- n. Planting areas.
- o. Pedestrian walks.

Sec. 16 - 9. Submission.

(a) *Determination of requirement.* To determine whether or not site plan approval is required, the following procedure applies:

- (1) An application for a building permit shall be filed with the building inspector, together with two copies of the site plan.
- (2) If the building inspector finds that the application is for a structure on a site as described in the zoning bylaw, he shall forward to the Board of Selectmen, in writing or otherwise, a request for a collateral finding by the board as to whether or not the board concurs in such finding, and if, in the opinion of the board, site plan approval is required.
- (3) Said finding by the board shall be final and determining of such requirement.
- (4) If the board finds that site plan approval is not required, it shall so certify to the building inspector, in writing, said finding within fourteen days of the request for a finding by the building inspector.

(b) *Submission procedure.* Any person who submits a site plan to the Board of Selectmen for approval shall file with the board the following:

- (1) A valid application as detailed in Section 16 - 8.
- (2) A filing fee of ten dollars.

(c) *Date of filing.* The site plan shall not be deemed to have been submitted to the board until the valid application including plan and prints, and filing fee have been delivered to the board and recorded as valid at a regular or special meeting thereof and are all fully completed in accordance with these rules and regulations.

Sec. 16 - 10. Notice to town clerk of submission.

The applicant shall give written notice to the town clerk, by delivery or registered mail, postage prepaid, that he has submitted the site plan to the Board of Selectmen for approval. Such notice shall be accompanied by a copy of a valid application.

Sec. 16 - 11. Contents of plan.

- (a) The site plan shall also show:
 - (1) Site, name or identification by boundaries, north point, date, scale, and the title "Site Plan."
 - (2) Name and address of owner, designer and engineer or surveyor.
 - (3) Names and owners of abutting land as they appear in the most recent tax list.
- (b) On request from the board, where the use of the site will have a major impact on adjoining property, the plan shall show:
 - (1) Names, widths and exterior lines of existing streets.
 - (2) Size and locations of existing storm drains, sewers and water mains and their appurtenances and the location of existing buildings adjacent to the site.
 - (3) Fire boxes, hydrants and existing above-ground utilities within or adjacent to the site.
 - (4) Zoning districts within and adjacent to the site.

Sec. 16 - 12. Approval, modification or disapproval.

(a) *Governing law.* The Board of Selectmen, standing in place of the Board of Appeals by Chapter 40A, Section 4 of the General Laws, is governed in regard to site plan approval by provisions of Chapter 40A, Sections 17, 18, 19, 20, and 21 of the General Laws.

(b) *Procedures.* At a properly advertised hearing the Board of Selectmen shall review the site plan, taking into account recommendations submitted to it by the required town agencies. Within sixty days after submission, the board shall approve, disapprove or approve with modification the site plan, noting thereon its action and any changes which should be made. In case of disapproval, the board shall state in detail its reasons therefor.

All other procedures under site plan approval shall be in accordance with the provisions of special permit Chapter 40A, Section 18 of the General Laws or other relevant sections therein in regard to notice of action, recording of action, and recording of vote.

(c) *Recommendations.* Recommendations in regard to the site plan from town agencies shall be made to the board no later than forty-five days from the time of submission of the site plan. Failure to recommend by any town agency will constitute recommendation by that agency of approval within the purview of said agency.

Sec. 16 - 13. Extension of time.

(a) Upon the written request of the applicant or by mutual consent of the board and the applicant, an extension of time may be agreed upon for the board to take final action.

(b) Notice of such extension of time agreed upon, as described in Subsection (a) of this section, shall be filed forthwith by the board with the town clerk.

Sec. 16 - 14. Public hearings and appeals.

(a) *Hearings generally.* A public hearing on the application will be held no later than forty-five days from the date of submission of a valid application.

(b) *Procedure.* Provisions of Chapter 40A, Sections 17, 18, 19, 20 and 21 of the General Laws where applicable to special permits shall apply to a site plan approval in regard to but not limited to the following matters: Notice of hearing; required vote; repetitive petition; appeal to district court; appeal to superior court; bills filed by others; parties respondent; written notice of bill in equity; affidavit to court; intervention by interested persons; notice by clerk; finding and appeal; legal counsel for municipal officer or board; costs against board; costs against appellant; precedence of action.

Division 2. Site Design and Bonding.

Sec. 16 - 15. Paving of ways.

All ways within the site shall be paved such as to provide nonhazardous rapid access to all buildings on the site in all weather for vehicles and fire equipment, and such as not to comprise a nuisance to adjoining property by reason of noise, odor, vibration, dust, light and glare.

Sec. 16 - 16. Adoption of design guidelines.

Design guidelines shall be adopted by the following agencies:

(a) *Public Works Department.* The Public Works Department for materials, specifications and methods of construction and placement of drainage, vehicular and pedestrian

ways, parking areas, municipal services, and conduits for underground utilities and fire alarm systems and driveway openings.

(b) *Building inspector.* The building inspector for screening against light, nuisance and fencing to protect the public against hazard.

(c) *Fire Department.* The Fire Department for fire lanes and the placement of hydrants and fire alarm boxes.

(d) *Health Department.* The Health Department for procedure and method of construction such as to minimize hazards to public health.

(e) *Other departments or boards.* All other departments or boards for matters within their purview.

Sec. 16 - 17. Bonding.

(a) Provision shall be made for satisfactory completion of vehicular and pedestrian ways, parking areas, drainage, municipal services, hydrants, conduits for fire-alarm systems and screening according to specification by the appropriate town agencies by bonding construction and installation of the same in sufficient amount prior to issuance of a permit resulting from approval.

(b) A bond shall be provided by the applicant, if required, sufficient to provide for the elimination of health hazards which may result from preparation of the site for construction, or construction on the site.

(c) Provision for inspection, control and notice of satisfactory performance sufficient to guarantee the release of the bond required by the board shall be made by the board and the relevant town agency.

Division 3. Summary of Procedure and Simplified Procedures for Approval.

Sec. 16 - 18. Summary of procedure.

(a) Application for building permit with two plot plans filed with building inspector.

(b) Building inspector forwards plot plan to selectmen for determination as to whether site plan approval is required.

(c) If selectmen determine that a site plan hearing is not required, they notify the building inspector within fourteen days in writing and a permit is issued forthwith.

(d) If selectmen believe that approval is required, they notify the building inspector to that effect within fourteen days.

- (e) Applicant files application with the information and plans required in Section 16-9 with a ten-dollar filing fee.
- (f) Copy of application is filed with town clerk.
- (g) Date of submission is taken as date of regular meeting of selectmen when valid application is filed.
- (h) Copies of plans are forwarded to all boards for recommendations.
- (i) Hearing date is set within forty-five days of date of submission.
- (j) Notice is published once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing.
- (k) Abutters and abutters to abutters are notified of the hearing by certified mail.
- (l) Recommendations of town agencies are received prior to forty-five days from date of submission.
- (m) Failure to make recommendations by a town agency shall be interpreted as approval.
- (n) A hearing board may recommend modification of plan. If plan is acceptable as submitted or modified, approval must be voted by no less than four out of five selectmen within sixty days of submission.
- (o) Record of each selectman's vote with reasons for approval, modification or disapproval, is recorded in minutes of hearing.
- (p) Within sixty days of submission, notice of decision is sent to applicant by certified mail.
- (q) Notice of decision is filed with town clerk within sixty days from date of submission.
- (r) Notice of decision is sent to abutters, abutters to abutters and any person requesting notification at hearing by certified mail within sixty days of date of submission.
- (s) Any person aggrieved by decision may request review by district court within twenty-one days of date decision was recorded in the office of the town clerk.
- (t) Within twenty days of date decision is filed in the office of town clerk or with the clerk of the district court hearing such matter, a bill in equity may be filed in superior court.
- (u) If no notice of appeal was received during the twenty-one days by either district or superior court, final approval may be certified to applicant by town clerk.
- (v) If a bond is required, it must be provided before a permit is issued.

(w) If limits or conditions are placed upon approval of site plan, such limits or conditions must be recorded at the Registry of Deeds or registered in land court prior to issuance of permit.

(x) Applicant and board may agree on extension of time for approval.

(y) Agreement on extension of time for approval filed with town clerk.

Sec. 16 - 19. Simplified procedure for applicant.

(a) Applicant for either apartment or commercial permit submits two plot plans to building inspector.

(b) Within fourteen days applicant is notified whether site plan approval is required.

(c) Application for site plan approval is received at regular meeting of Board of Selectmen.

(d) Duplicate application is filed with town clerk.

(e) Hearing is advertised and abutters notified.

(f) Hearing held not later than forty-five days from date of application.

(g) Decision of approval made within sixty days.

(h) Decision filed with town clerk.

(i) Time for decision may be extended by mutual consent, and notification filed with town clerk.

(j) Appeal or request for judicial review may be taken in accordance with Chapter 40A, Section 21 of the General Laws.

(k) If no appeal, permit will issue after twenty-one day appeal period with no notification of appeal.

Article III. Vehicles For Hire.

State law reference - Regulation of vehicles, G.L. c. 40 sec. 22. Registry of Motor Vehicle regulations, 540 CMR 2.00, et seq. See also common carriers of passengers, G. L. c. 159A.

Division 1. Generally.

Sec. 16-20. Applicability of Article.

Vehicles for hire including taxicabs and liveries (hereinafter referred to as "vehicles") operating or caused to be operated by non-governmental entities for the transportation of persons

from place to place within the town, other than over regular routes or between fixed termini, shall be subject to the regulations of this article to the extent provided below.

Sec. 16-21. Taxicab - Definition, Requirements and Limitations.

A private vehicle licensed as such, used for transporting persons from place to place within the town other than over regular routes or between fixed termini. A taxicab may be hired by means of a taxi stand, solicitation to or from persons on the street, telephone or radio call or other pre-arrangement.

Sec. 16-22. Livery - Definition, Requirements and Limitations.

A private vehicle licensed as such, which shall in all respects be the same as a taxicab except that it may not be hired by means of a taxi stand or solicitation to or from persons on the street.

Sec. 16-23. Limousine - Definitions, Requirements and Limitations.

A private vehicle license as such, used for prearranged trips. Trips must be prearranged no less than twelve (12) hours prior to pick-up.

Division 2. License.

Sec. 16-24. Required.

No vehicle shall be driven, operated or caused to be operated as a vehicle for hire without a license first having been obtained for that vehicle from the Board of Selectmen after review of the license application by the Chief of Police and successful inspection of the vehicle.

Sec. 16-25. Application.

Applications for a license shall be made in writing, on Town approved forms, to the Police Department and shall provide the following information:

(a) The name and address of the applicant, if an individual; or if a corporation, the name, date of incorporation, address of its principal place of business and the name and address of its officers; or if a partnership, association or unincorporated company, the names and addresses of the partners or associates and the address of its principal place of business.

(b) The intended place of business within the Town of Stoneham.

- (c) The intended place of nighttime vehicle storage.
- (d) The name of the manager or principal representative.
- (e) Proposed hours of operation.
- (f) A telephone number where the licensee may be contacted in the evening.
- (g) Description of proposed vehicle including the make, model and age of the vehicle.

Sec. 16-26. Review by Chief of Police.

The Chief of Police shall review the license application and forward his comments and/or recommendation, if any, to the Board of Selectmen no later than forty-five (45) days after submission of the application. No license shall be granted by the Board of Selectmen until the application has been reviewed by the Chief of Police.

Sec. 16-27. Grant or denial.

The Board of Selectmen may upon receipt of an application, issue a license under such terms and conditions as they deem appropriate and in the public interest. The Board, in determining whether or not to issue a license, may consider the public demand for the proposed service, the effect of the proposed service upon relevant traffic and safety conditions, the character and financial responsibility of the applicant, the condition of the proposed vehicle, and any and all other relevant facts or circumstances.

Sec. 16-28. Notification as to vehicle.

If issued a license, the licensee shall, prior to the operation of the vehicle as a vehicle for hire, provide the following information, in writing, to the Police Department:

- a. The make, model, vehicle identification number and age of the vehicle.
- b. A copy of the certificate of insurance coverage page for the vehicle.
- c. Vehicle registration.

Sec. 16-29. Vehicle inspection.

Subsequent to the grant of an initial license, but prior to the operation of the licensed vehicle, the vehicle shall be inspected at the direction of the Police Department to ensure full compliance with these regulations. Nothing herein shall relieve a licensee of its sole responsibility to ensure the safety of the vehicle and compliance with all applicable laws and regulations.

Sec. 16-30. Term and fee.

Any license issued hereunder shall expire on the first day of May next ensuing, unless sooner revoked or surrendered. Any licensee who permanently ceases to operate the vehicle for which a license was issued shall forthwith surrender the license to the Board of Selectmen.

The annual fee for each license shall be fifty dollars (\$50.00) per license for a full license year whether the initial year or renewal.

Sec. 16-31. Renewal application/Replacement vehicles/Inspection.

Renewal applications shall be submitted to the Police Department no later than April 1 each year. The renewal fee shall be One Hundred Dollars (\$100). If a vehicle is changed during a license year, the license fee for the replacement vehicle shall be Fifty Dollars (\$50).

Prior to the grant of a renewal license by the Board or the replacement of a vehicle, the vehicle shall be inspected at the direction of the Police Department to ensure full compliance with these regulations. A vehicle which has not passed inspection shall not be granted a renewal license.

Sec. 16-32. Insurance.

A vehicle issued a license hereunder shall be insured. Coverage for "Bodily Injury to Others" shall be no less than \$100,000 per person/\$300,000 per accident. The Town shall be listed as a Certificate Holder with the Certificate provided to the Board of Selectmen and the notice of cancellation or amendment of the policy shall be no less than thirty (30) days.

Sec. 16-33. Liability.

The licensee is at all times responsible for his vehicle and shall be liable for all penalties and/or damage resulting from his operation of the vehicle by an employee, agent, or any other person authorized by the licensee to use the vehicle.

Sec. 16-34. Suspension or revocation.

The Board of Selectmen may suspend or revoke a license issued under the provisions of this article for good cause. Before suspension or revocation of a license, the licensee shall be entitled to a hearing thereon before the Board of Selectmen. Written notice of the hearing shall be forwarded to the licensee at least seven (7) calendar days prior to the date of the hearing. Such notification shall state the grounds of complaint and the date, time and place of the hearing.

The Board of Selectmen or the Chief of Police may temporarily suspend a license without a hearing for a period of no greater than ten (10) days or until a hearing is held, whichever is sooner, if there is sufficient evidence to indicate that the public safety would be endangered by continued operation of the vehicle.

Sec. 16-35. Assignment or transfer prohibited.

No license shall be assigned or transferred.

Sec. 16-36. Return of license to police department/loss or destruction of license.

A license shall be promptly returned to the Police Department by the Licensee upon suspension or revocation of the license or the cessation of use of the vehicle as a vehicle for hire.

If a license is lost or destroyed, the licensee shall immediately report such loss to the Police Department which shall replace the license. The cost for a replacement license shall be Five Dollars (\$5.00).

Division 3. Permit.

Sec. 16-37. Required.

No person shall operate a vehicle with a passenger, and no licensee shall employ or allow a person to operate a vehicle with a passenger, unless the operator first obtains a permit from the Board of Selectmen.

Sec. 16-38. Age/Experience.

No permit shall be issued to a person under eighteen (18) years of age, nor to any person who has not had a valid operator's license for the prior two (2) years.

Sec. 16-39. Application.

Applications for a permit shall be made in writing to the police Department and shall provide the following information:

- a. Full name and address.
- b. Copy of a valid Massachusetts operator license issued by the Registrar of Motor Vehicles.
- c. Previous experience operating a vehicle for hire within the last three (3) years.

d. Convictions or pleas of guilt to a criminal offense(s), except as outlined below shall be provided to the Town if requested, stating the offense(s), court(s) in which convicted or guilty plea occurred and when the conviction(s) or plea(s) occurred. (Nothing herein restricts the Town's right to obtain criminal history record information pursuant to state law.)

The following criminal information is not and shall not be requested, examined or considered by the Board of Selectmen:

1. Arrests, detentions or dispositions in which no conviction or guilty plea resulted.
2. Convictions which have been reversed or vacated, but not pardoned.
3. Misdemeanor convictions or guilty pleas when the date of conviction or plea was greater than ten (10) years prior to the date of application for the permit.

e. Traffic violations for which there was a finding of responsibility for a period of three (3) years prior to the date of application for the permit or for such period of time as the Board of Selectmen or Police Department shall request.

Failure to give accurate and complete information as required above may be grounds for denial, suspension or revocation of a permit.

Sec. 16-40. Review by Chief of Police.

The Chief of Police shall review the permit application and forward his comments and/or recommendation, if any, to the Board of Selectmen no later than forty-five (45) days after submission of the application. No permit shall be issued by the Board of Selectmen until the application has been reviewed by the Chief of Police.

Sec. 16-41. Issuance or denial.

An applicant shall be granted a permit only if the Board of Selectmen determines that granting a permit to the applicant is in the best interest of the public.

Criminal convictions or pleas of guilt shall not result in an automatic denial of an application, but shall be given significant consideration and weight by the Board of Selectmen, taking into account all factors including the nature and gravity of the offense, the time that has passed since the conviction or plea and the sensitive nature of serving the public as a driver of a vehicle for hire.

Sec. 16-42. Term and fee.

Any permit granted hereunder shall expire on the first day of May next ensuing unless sooner revoked or surrendered. A permit holder who ceases to operate vehicles shall forthwith surrender his permit to the Board of Selectmen.

The fee for an initial permit shall be Fifty Dollars (\$50.00) and the fee for a permit renewal shall be Ten Dollars (\$10).

Sec. 16-43. Picture identification card.

A picture identification card shall be issued by the Board of Selectmen, or its designee, to each permit holder.

Sec. 16-44. Liability.

A permit holder is at all times responsible for the vehicle he is operating and shall be liable for all penalties and/or damage resulting from his operation of the vehicle or a violation of these regulations. Nothing herein shall eliminate or reduce the responsibility or liability of the licensee pursuant to the applicable provisions of these regulations or law.

Sec. 16-45. Suspension or revocation.

The Board of Selectmen may suspend or revoke a permit granted under the provisions of this article for good cause. Before suspension or revocation of a permit, the permit holder shall be entitled to a hearing thereon before the Board of Selectmen. Notice of the hearing shall be in writing and forwarded to the permit holder at least seven (7) calendar days prior to the date of the hearing. Such notification shall state the grounds of complaint and the date, time and place of the hearing.

The Board of Selectmen or the Chief of Police may temporarily suspend a permit until a hearing can be held in accordance with the procedures set out above if there is sufficient evidence to indicate that the public safety would be endangered by continued operation by the permit holder. In no event shall a temporary suspension be for a period greater than ten (10) calendar days.

Sec. 16-46. Return of permit and picture identification card to Police Department by vehicle licensee/Loss or destruction of permit.

A driver's permit and picture identification card shall be promptly returned to the Police Department by the licensee of the vehicle upon suspension or revocation of a driver's permit or any termination of the employment or services of the driver.

If a permit is lost or destroyed, the permit holder shall immediately report such loss to the Police Department which shall replace the permit. The cost for a replacement permit shall be Five Dollars (\$5.00).

Sec. 16-47. Return of license to Police Department/Loss or destruction of license.

A license shall be promptly returned to the Police Department by the licensee upon suspension or revocation of the license or the cessation of use of the vehicle as a vehicle for hire.

If a license is lost or destroyed, the license holder shall immediately report such loss to the Police Department which shall replace the license. The cost for a replacement license shall be Five Dollars (\$5.00).

*Division 4. Operation.***Sec. 16-48. Duty to transport.**

A permit holder shall not unreasonably refuse to transport a passenger.

Sec. 16-49. Sharing a ride.

No permit holder shall accept a passenger when the vehicle is occupied or engaged without the consent of the passenger(s) already in the vehicle. No person shall be obliged to pay any extra fare or fee for refusing such consent. Separate fares shall not be charged to members of the same party.

Sec. 16-50. Waybill.

Each permit holder operating a taxi or livery or the licensee or its agent shall maintain a waybill form issued or approved by the Police Department documenting every trip from the point of origin to the point of destination. The record shall include the time and place of pick-up and destination; the number of passengers, the fare collected; and the articles, if any, found in the vehicle after departure of the passenger(s). The information entered on the waybill shall be recorded at the completion of the trip.

Waybill records shall be kept for a period of not less than one year and shall be made available to the Police Department or Board of Selectmen upon request.

Sec. 16-51. Taxi stands - Parking - Standing.

The Board of Selectmen may assign a taxi stand to each taxicab. The Board of Selectmen may also designate specific areas, streets or ways where vehicles may not park or stand.

Standing and/or parking on public ways or public property of vehicles not licensed in the Town of Stoneham is prohibited except while waiting to return a party whose original point of hire was from outside of Stoneham, when operating in accordance with a Massachusetts Department of Public Utilities license, or when being used for personal (non-vehicle for hire) purposes.

Sec. 16-52. Maintenance of vehicles/seatbelts.

Every vehicle shall be kept in good condition, suitable for occupancy and mechanically fit for the safety of passengers. The interior and exterior of the vehicle shall be safe, clean, and sanitary at all times. All seatbelts required by law must be in open view and operational.

Sec. 16-53. Inspection/Inquiries.

The Board of Selectmen, Stoneham Police Department or their designee shall have the right to inspect any vehicle for purposes of these regulations or as public safety requires at any reasonable time. The licensee and/or permit holder shall provide full cooperation with respect to inspections.

Police officers shall have a right to make inquiries to licensees and permit holders regarding any aspect of a vehicle or its operation and the licensee and/or permit holder shall respond to any such inquiry in a reasonable and civil fashion.

Sec. 16-54. Smoking.

Smoking in a vehicle is permitted only with the consent of the driver and all passengers.

Sec. 16-55. Appearance/behavior of operator.

Every driver having charge of a licensed taxicab shall be suitably dressed (sleeved shirt), neat and clean in appearance. Each driver shall be respectful and courteous to passengers.

Sec. 16-56. Display of license, picture identification card, and rates of fare.

Every taxicab and livery when in operation shall display the following cards in a suitable frame so that they are secure and immobile and plainly visible to passengers riding in the rear of the vehicle:

- a. License.
- b. Permit holder's picture identification card.
- c. Fares.
- d. Such other information as the Board of Selectmen reasonably deems appropriate.

Every limousine, when in operation, shall have available for review by any passenger who requests the above-referenced license and picture identification card.

Sec. 16-57. Lettering on taxicabs and liveries.

Every taxicab and livery operating under the authority of this article shall have the name or trade name of the licensee and the name "Town of Stoneham" or "Stoneham" painted on both sides of the taxicab in letters not less than four inches high and one-half inch wide.

If a licensee operates more than one taxicab or livery, each taxicab or livery shall have a number, not less than four inches high and one-half inch wide, painted in two conspicuous places on the vehicle.

Sec. 16-58. Copy of regulations.

Every vehicle shall, when in operation, contain a copy of these regulations, which shall be exhibited to any passenger or police officer on request. The licensee and permit holder shall be responsible for the implementation of this requirement.

*Division 5. Fares.***Sec. 16-59. Taxicabs and liveries.**

The Selectmen shall establish the rates of fare for the conveyance of passengers and baggage by a taxicab and livery within the Town of Stoneham, and may revise such when they so determine. The rate of fare shall be on file with the Board of Selectmen and the Police Department.

Sec. 16-60. Separate fares.

Separate fares shall not be charged to members of the same party.

Sec. 16-61. Senior citizen discount.

Fares for all persons sixty (60) years of age and older may be discounted up to twenty-five (25) percent. When discounted rates are offered, they must be offered to all senior citizens traveling within the Town of Stoneham, regardless of the point of origin or destination of ride. Any company which offers such a discount shall display a sign visible to a passenger within each taxi or livery informing the passengers of the discount.

Sec. 16-62. No fares in excess of established rates.

No permit holder operating a taxicab or livery shall demand or receive as a fare more than the fare established by the Board of Selectmen under the authority granted by these regulations.

Sec. 16-63. Rates for trips outside the Town of Stoneham.

Charges by taxicabs, liveries and limousines originating or ending outside the Town of Stoneham shall be subject to mutual agreement between the licensee and the passenger(s). The Board of Selectmen reserves the right to regulate the fares for such trips if it deems such to be in the public interest.

Division 6. Information Update and Penalties.**Sec. 16-64. Information update.**

When any information provided in an application for a license or permit changes or is updated, the respective licensee or permit holder shall give notice thereof, in writing, to the Board of Selectmen.

A driver shall immediately report the suspension or revocation of his license to the Police Department and Board of Selectmen and shall thereupon immediately surrender his permit to the Police Department. The driver shall be subject to suspension or revocation of his permit pursuant to Section 16-40 of these regulations.

Sec. 16-65. Enforcement/Penalties.

The penalty for a violation of any of the regulations of this article shall be a fine not exceeding Three Hundred Dollars (\$300) for each day such violation occurs.

Violation of a regulation of this article shall, in accordance with Section 1-4A of the Town of Stoneham Bylaws, also be subject to a non-criminal disposition penalty of Fifty Dollars (\$50) for the first offense in a six month period, One Hundred Dollars (\$100) for the second offense in a six month period and Two Hundred Dollars (\$200) for the third offense in a six month period. Each day a violation continues is a separate offense.

Violation of any of the regulations herein shall be just cause for suspension or revocation of a license and/or permit.

Sec. 16-66. Reserved.**Sec. 16-67. Reserved.****Sec. 16-68. Reserved.****Sec. 16-69. Reserved.****Article IV. Alcohol Beverage Rules and Regulations**

State law references - Alcoholic beverages, G.L. c. 138; Common victualers, G.L. c. 140, sec. 2-21; Entertainment license, food and/or drink on premises, G.L. c. 140, sec. 183A-D and 184; and with respect to operation prior to one o'clock p.m. Sunday, G.L. c. Sec. 4(b).

By virtue of the authority contained in Chapter 138 of the General Laws, as amended, and other power or provisions of law thereto enabling, the Board of Selectmen of the Town of Stoneham, serving as the Town of Stoneham's Liquor Licensing Authority, adopt the following rules and regulations applicable to alcoholic beverage licenses issued under the authority of Chapter 138.

APPLICABLE TO ALL LICENSEES

Sec. 16-70. Applicability of State Statutes and Regulations - Regulating alcoholic beverages.

All licensees are subject to the applicable provisions of the General Laws of the Commonwealth of Massachusetts regulating alcoholic beverages, including, but not limited to, Chapter 138 of the General Law, the provisions of the below referenced Special Acts of the General Court, and the regulations promulgated pursuant thereto by the Alcoholic Beverages Control Commission.

Sec. 16-71. Applicability of State and local laws and regulations, and permit requirements.

All alcoholic beverage licenses shall also be issued contingent upon continued compliance with all appropriate state and local laws and regulations and all permits and licenses which may pertain to the operation of the premises, including, but not limited to, the State Building Code, State or Board of Health Regulations, common victualer license requirements, entertainment and/or amusement licenses and the Town of Stoneham Bylaws.

Sec. 16-72. Availability of rules and regulations.

All licensees shall ensure that a copy of these Rules and Regulations and the applicable regulations promulgated by the Alcoholic Beverages Control Commission are kept on the premises at all times and is immediately available for inspection upon request by a member of the public or an agent of the Board of Selectmen.

Licensees shall also ensure that copies of the above referenced regulations are given to each employee who is responsible for the sale or service of alcoholic beverages.

Sec. 16-73. Responsibility for knowing rules and regulations.

Licensees must be familiar with all applicable Rules and Regulations contained herein, as well as applicable state statutes and regulations promulgated by the Alcoholic Beverages Control Commission. A plea of ignorance will not be considered a justification or defense for a violation.

Sec. 16-74. Reserved**Sec. 16-75. Application process - General requirements.**

(a) Every applicant for a license, either individually or as a member of a partnership, association, or business shall furnish proof of his citizenship by production of a certificate of birth, naturalization or as a registered voter.

(b) Every application for a license made by an individual shall be signed by the applicant therefore, who shall give his or her full name and home address.

(c) Every application for a license made by a partnership shall state the full names and home addresses of all the members of the partnership and shall be signed by a majority thereof.

(d) Every application for a license made by an association shall be signed by a majority of the members of the governing body thereof, who shall state their full names and home addresses.

(e) Every applicant for a license required by the provisions of Section 5, Chapter 110, General Laws, to file a certificate stating the real name of a person conducting a business, shall file with his application a certified copy thereof.

(f) Every applicant for a license made by a corporation shall state the full names and home addresses of the president, treasurer, clerk and secretary, and directors. It shall be signed by an officer duly authorized by a vote of its board of directors or other similar board. A copy of such vote certified by the clerk or secretary of the corporation, together with a copy of the certificate of its organization, shall accompany the application.

(g) Every applicant for a license made by a partnership, association, business or corporation, pursuant to sub-paragraphs c, d, e and f above, shall include the name, home address and telephone number, and all previous relevant experience, if any, of a duly qualified manager or other principal representative who is a citizen of the United States and who is of character satisfactory to the Board of Selectmen. A copy of the vote appointing its manager or other principal representative, and vesting in him by a properly authorized and executed written delegation as full authority and control of the proposed licensed premises and of the conduct of all business therein relative to alcoholic beverages as the licensee itself could in any way have and exercise if it were a natural person resident in the commonwealth, shall also accompany the application.

(h) Applicants for a license must list all other alcoholic beverage licenses held in any capacity, individually or as part of corporate or other entity, either currently or in the past. Applicants must also list any previous denial(s) of an application for a license.

(i) The Board of Selectmen may require an applicant for a license to supply complete financial records and statements.

(j) Applicants, shall list past criminal convictions and guilty pleas for all persons having a beneficial interest in the application, in accordance with the provisions set out in state statute and regulations. Criminal information shall not be requested, examined or considered by the Board of Selectmen, except in accordance with said state statute and regulations.

(k) The Board of Selectmen may request for review and consideration, the proposed menus, description of food to be served and the manner in which such food shall be served, when considering applications for a license.

(l) All applications for licenses shall be made upon blanks furnished by the Board of Selectmen, shall be fully answered in detail and shall be typewritten or legibly written in ink. Applications written in pencil, in whole or in part, will not be accepted.

(m) All applications shall be made under the penalties of perjury and any false statement contained in any application, including, but not limited to the true names of those with a beneficial interest in the application for a license, shall be a cause or ground for refusing to grant the license or permit or for suspending, canceling or revoking a license or permit already granted.

(n) Every application which in any way has to do with a license for the sale of alcoholic beverages, other than an application for the straight renewal of such license, shall be filed with the Board of Selectmen in duplicate.

Sec. 16-76 Application process - Building and site plans.

(a) All applicants for an alcoholic beverage license for consumption occurring on the premises must submit to the Board of Selectmen, with the appropriate application, a plan of the building and site which contains the following information:

- i. The floor area of the proposed premises and the dimensions of each room requested to be used for the sale of alcoholic beverages, including any bar, cocktail lounge, dining room, function room, or other room(s) in which approval of the Board of Selectmen is requested.
- ii. The location and dimensions of any proposed "service bar," which is distinct from what is commonly referred to as a "bar." See paragraph below.
- iii. See Massachusetts State Building Code for capacity, aisle requirements and related building code issues.
- iv. The seating capacity at the bar is to be no more than fifteen (15) chairs and/or stools. NOTE - A license shall not be granted for an establishment having a seating capacity of less than fifty (50) persons approved by the voters of the Town of Stoneham, on November 7, 1978. See Chapter 84 of the Acts and Resolves of 2000 (4-3-01).

- v. All rooms not being requested to be licensed for the sale of alcoholic beverages, if said rooms are to be on the same floor as those rooms to be licensed, must be labeled as to their function, such as kitchens, coat rooms, lobby, rest rooms, etc.
- vi. Entrances and exits.
- vii. OFF-STREET PARKING - See Zoning bylaws for off-street parking requirements.
- viii. Exterior lights and signs.

(b) All applicants for an alcoholic beverage license for consumption occurring off the premises must submit to the Board of Selectmen, with the application, a building and site plan which contains the following information:

- i. The floor area of the proposed premises and the dimension of each room requested to be used for the sale of alcoholic beverages.
- ii. All rooms not being requested to be licensed for the sale of alcoholic beverages, must be labeled as to their function, such as storage rooms, etc.
- iii. Entrances and exits.
- iv. OFF-STREET PARKING. See Zoning bylaws for off-street parking requirements.
- v. Exterior lights and signs.

Sec. 16-77. License conditions and restrictions.

The Board of Selectmen may attach such reasonable conditions and restrictions to a license as it deems to be in the public interest, consistent with state statute and regulations.

Sec. 16-78. Amendments to license approval.

Any subsequent changes in the information provided on the application for a license, including, but not limited to a change in the licensed premises, a change of a manager or principal representative, or a change to a requirement for the issuance of a license, shall be submitted as expeditiously as possible to the Board of Selectmen. Licenses are not, and shall not be, amended without an authorized vote of the Board of Selectmen.

Sec. 16-79. Notification of legal actions.

Licenses shall immediately notify the Board of Selectmen of any legal proceeding, including a bankruptcy proceeding, brought by or against the licensee which may affect the status of the license or licensed premises.

Sec. 16-80. License renewal.

Applications for license renewals must be submitted to the Board of Selectmen during the month of NOVEMBER and shall be acted upon by the Board of Selectmen no later than thirty days following submission in accordance with the provisions of Sections 16A and 16B of Chapter 138.

Sec. 16-81. Display of license.

Licenses issued by the Board of Selectmen shall be displayed on the premises in a conspicuous place where they can be easily read.

Sec. 16-82. Prohibition of licensed activity outside area designated by license.

No licensee may permit the licensed activity outside the area designated by or in accordance with the license issued by the Board of Selectmen. No change may be made in the area in which the licensed activity is permitted without prior approval by the Board of Selectmen after the submission of an amended plan.

Sec. 16-83. Compliance with restrictions on hours of sales and/or service.

The sale and/or service of alcoholic beverages must cease immediately at any time not permitted by these Rules and Regulations, or by state statute or regulations.

Sec. 16-84. Responsibility for order.

Licenses shall make all reasonable and diligent efforts to ensure that disorder, disturbance or illegality of any kind does not occur at the licensed premises. The licensee may be held responsible for such activity, whether present or not.

Sec. 16-85. Telephone access to manager.

The licensee shall submit the home telephone number of the authorized manager(s) to the Board of Selectmen, who may be contacted by the Town in cases of emergency.

Sec. 16-86. Calling for police and/or medical assistance.

Licensees shall call for police and/or medical assistance as necessary to protect against injury to persons and protect against unlawful conduct. Nothing in these Rules and Regulations shall limit any lawful authority of the Stoneham Police Department to issue orders to or at a licensed establishment for the protection of public safety.

Sec. 16-87. Hiring security personnel.

The Board of Selectmen reserves the right to require professional security coverage to be paid for by the licensee when security coverage is necessary to protect the safety and well being of patrons and residents of Stoneham. The Chief of Police may also require such security coverage for a period of time not to extend beyond the date upon which the next Board of Selectmen's meeting is held.

Sec. 16-88. Gambling prohibited.

Gambling of any sort shall not be permitted on any licensed premises.

Sec. 16-89. Sale or service to intoxicated persons.

Sale or service of an alcoholic beverage to an intoxicated person is prohibited.

Sec. 16-90. Upkeep of area outside licensed premise.

Licensees shall at all times maintain the immediate and surrounding area outside the licensed premises in a state of cleanliness and upkeep.

Sec. 16-91. List of employees.

Licensees shall maintain an up-to-date list of all employees which shall be available to the Board of Selectmen upon request.

Sec. 16-92. Right of inspection.

Licensees shall, at any reasonable time, permit the Board of Selectmen or its duly authorized agents, including, but not limited to the Stoneham Police Department, Fire Department, Building Inspector, and/or Board of Health Agent to inspect the licensed premises for purposes of regulating the licensed activity.

Sec. 16-93. Modification, suspension, revocation and cancellation.

Licenses are issued on the condition that there shall be strict compliance with the provisions of these Rules and Regulation, state statute and regulations, Town by-laws and regulations, and the conditions of the subject permit. Any failure to comply therewith shall be cause or grounds for refusing to grant or renew a license or for modifying, suspending, revoking or canceling a license already granted, after due notice of the alleged non-compliance and an opportunity to be heard in accordance with relevant statutory provisions and due process requirements.

Sec. 16-94. Transfer of a license.

A license may not be transferred without the approval of the Board of Selectmen and the Alcoholic Beverages Control Commission.

**APPLICABLE TO ALL LICENSEES (OTHER THAN THEATERS) AUTHORIZED
TO SELL FOR CONSUMPTION ON THE PREMISES****Sec. 16-95. Minimum seating requirement.**

A license shall not be granted for an establishment having a seating capacity of less than **fifty (50)** persons. (5-3-99, Art. 22) See Chapter 84 of the Acts and Resolves of 2000 (4-3-01).

Sec. 16-96. Off-street parking requirements.

All licensees must be in compliance with the applicable off-street parking requirements of the Town of Stoneham Zoning Bylaws.

Sec. 16-97. Hours of operation and sale.

(a) Subject to further limitations fixed, or from time to time modified by the Board of Selectmen with respect to a particular license and those set forth in these rules and regulations

and the General Laws of Massachusetts, the hours during which sales of alcoholic beverages may be made by any licensee shall be from 11:00 A. M. to 1:00 A.M on Monday through Saturday; 12:00 Noon to 1:00 A.M. on Sunday.

(b) The hours during which sales of alcoholic beverages may be made in a dining room are further limited to the times when the dining room is open and food service is available. No alcoholic beverages may be sold or served in a dining room before the dining room is open and food service is available nor after the dining room has been closed or food service has been suspended, and unless the person so ordering has ordered or is to order prepared food from the menu.

(c) All tables shall be cleared of alcoholic beverages within one half hour after the legal time for sale.

Sec. 16-98. Service of food.

No alcoholic beverage is to be served to the public by the licensee, in any area, including, but not limited to the area designated and approved as a "bar," "cocktail lounge" or "dining area," unless the person so ordering has ordered or is to order prepared food from the menu. Not more than two alcoholic beverages may be served to a patron prior to the ordering of food. The word "food" shall not include the customary and usual "snacks" served with alcoholic beverages. This Section shall not apply to the playing course area of a golf course licensed for the sale and service of alcoholic beverages by a cart(s).

Sec. 16-99. Seating requirements.

There shall be no ordering of alcohol by anyone or service of alcohol to anyone unless they are seated at the bar or at a table or standing at an authorized bar area. Alcoholic beverages may not be carried by a patron from the bar or bar area to a seat in the dining area, but must be brought over by a server. The seating capacity at the bar shall be no more than fifteen (15) chairs and/or stools. This requirement does not apply to the license area of function hall or a golf course, including the clubhouse. (See also Sec. 16-76.)

Sec. 16-100. Service bar.

In the event that an area is designated as a "service bar," which is distinct from what is commonly referred to as a "bar," no liquor is to be served to the public at such service bar and no stools or chairs are to be placed at said service bar.

Sec. 16-101. Non-disposable glass or cup.

All alcoholic beverages must be served with a non-disposable glass or cup. This requirement does not apply to the license area of a golf course, including the clubhouse.

Sec. 16-102. Alcoholic beverages to remain on the premises.

No alcoholic beverages shall be removed from the premises.

Sec. 16-103. Supervision - Presence.

The licensee or a manager shall at all times during which alcoholic beverages are being sold pursuant to the license, be present in the licensed premises and shall be available to the licensing authority and its agents during all such times, unless some other person, similarly qualified, authorized and satisfactory to the Board of Selectmen, and of whose authority to act in place of such manager shall first have been certified to the licensing authorities in the manner aforesaid, is present in the premises and is acting in the place of such manager.

Sec. 16-104. Staffing.

Licensees shall maintain an adequate ration of staff to patrons in order to properly monitor beverage sales and consumption.

Sec. 16-105. Establishment of written policies.

Licensees should establish written policies regarding the service of alcoholic beverages based upon the requirements of the regulations of the Alcoholic Beverage Control Commission and these regulations.

Sec. 16-106. Alcohol policy for staff while serving.

Licensees, managers, principal representatives and employees are required to be alcohol free while serving patrons.

Sec. 16-107. Alcohol management or server training.

(a) Individual licensees and the manager(s) of other licensed establishments are required to successfully complete an alcohol management or server training course, approved by a professional organization qualified to approve such courses within three (3) months of

beginning in their respective positions, although it is encouraged that successful completion occur within one (1) month of beginning work. Said persons must be successfully retrained, if and when the certification period ends.

(b) All servers of alcoholic beverages shall attend and complete a server training course approved by the Liquor Liability Joint Underwriting Association of Massachusetts or an equivalent organization, within three (3) months of beginning in their respective positions or six (6) months of the adoption of this regulation, whichever is later.

Sec. 16-108. Liquor liability insurance requirement.

The liquor liability insurance requirements of Section 12 of Chapter 138, added by Chapter 116 of the Acts of 2010, and as may be further amended, are incorporated herein by reference.

State law reference – G.L.c.138, Sec. 12 requires “liquor legal liability insurance for bodily injury or death for a minimum amount of \$250,000 on account of injury to or death of one person, and \$500,000 on account of anyone accident resulting in injury or death of more than one person. Proof of insurance coverage required by this section shall be made by filing a certificate of insurance in a form acceptable to the local licensing authority”

Sec. 16-109. List of alternative transportation.

Licensees shall maintain a written list of the telephone numbers of local taxicab companies next to the public telephone. If there is no public telephone, the list should be available for patrons when requested.

Sec. 16-110. Orderly closing.

Licensees shall ensure that patrons leave the premises at the closing hour in an orderly manner.

Sec. 16-111. Information regarding the alleged service of alcohol prior to violation for driving under the influence of intoxicating liquors.

Upon the receipt of a letter for the Office of the Attorney General or the Middlesex District Attorney's Office pursuant to G.L. c. 90, sec. 24J, regarding the alleged service of alcohol to an individual who is subsequently convicted or pleads guilty to a violation of driving under the influence of intoxicating liquors or enters a disposition under section 24D of Chapter 90, the Board of Selectmen:

- i. Shall forward a copy of the letter to the licensee cited, along with a copy of these Rules and Regulations.

- ii. May request that the licensee appear before the Board to respond to the allegation. Upon the receipt of two or more letters in a two year period, the licensee shall be required to appear before the Board to respond to the allegations.

Any disciplinary action taken by the Board shall be taken in accordance with the provisions of these Rules and Regulations and applicable law. Neither a letter from the Office of the Attorney General or the Middlesex District Attorney's Office, nor the original letter from the court to these law enforcement agencies shall, by itself, constitute sufficient evidence so as to allow for a finding that a licensee has committed a violation.

Sec. 16-112. Reserved.

Sec. 16-113. Reserved.

Sec. 16-114. Reserved.

APPLICABLE TO LICENSEES AUTHORIZED TO SELL FOR CONSUMPTION
OFF THE PREMISES (PACKAGE GOODS STORE LICENSEES)

Sec. 16-115. No sale of alcoholic beverages for consumption on premises.

No alcoholic beverages may be sold for consumption on the premises.

Sec. 16-116 Prohibition on sale of products not directly associated with the sale of alcoholic beverages.

Package goods store licensees shall not sell products that are not directly associated with the sale of liquor. Tobacco products and lottery tickets shall be excluded from this provision. In making such determination, the Board of Selectmen shall take into consideration whether the sale of such merchandise could be undertaken as a business independent of the sale of liquor.

Sec. 16-117. Management and employee alcohol management training.

(a) Individual licensees, or the managers or principal representatives of other licensed establishments are required to successfully complete an alcohol management training course, approved by the Liquor Liability Joint Underwriting Association of Massachusetts or the

Massachusetts Package Stores Association, within three (3) months of beginning in their respective positions, although it is encouraged that successful completion occur within one (1) month of beginning work. Said persons must be successfully retrained, if, and when, the certification period ends.

(b) Licensees are encouraged to have employees who sell alcoholic beverages attend and complete an alcohol management course approved by the Liquor Liability Joint Underwriting Association or the Massachusetts Package Stores Association. A discount of ten percent (10%) or two hundred dollars (\$200), whichever is greater, shall be given on the annual license fee, when, at the time of license renewal, seventy-five per cent (75%) or more of the employees who sell alcoholic beverages have successfully completed, and are still certified by, such a program.

Sec. 16-118. Hours of operation and sale.

Subject to further limitations fixed, or from time to time modified by the Board of Selectmen with respect to a particular license and those set forth in these rules and regulations and the General Laws of Massachusetts, the hours during which sales of alcoholic beverages may be made by any licensee shall be from 8:00 P. M. to 11:30 P.M. on Monday through Saturday and 8:00 A.M. to 11:30 P.M. on any day immediately preceding a legal holiday, except when prohibited by Section 33 of Chapter 138.

SPECIFICALLY APPLICABLE TO CLUB LICENSEES

Sec. 16-119. No off premises advertising.

No club licensed to sell alcoholic beverages shall use any signs, printed matter or other means to publicly advertise the sale of alcoholic beverages. This shall not prohibit the use of reasonable and proper signs.

SPECIFICALLY APPLICABLE TO THEATERS

Sec. 16-120. Minimum seating requirement.

A license shall not be granted for a theater having a seating capacity of less than three hundred (300) persons. (5-7-01, Art. 34). See Chapter 167 of the Acts and Resolves of 2001.

Sec. 16-121. Incorporated by reference from rules and regulations “Applicable To All Licensees (Other Than Theaters) Authorized To Sell For Consumption On The Premises”.

The following rules and regulations are incorporated by reference from those “Applicable To All Licensees (Other Than Theaters) Authorized To Sell For Consumption On The Premises”: Sections 16-96, 6-102, 16-103, 16-102, 16-103, 16-104, 16-105, 16-106, 16-107, 16-108, 16-109, 16-110, and 16-111.

Sec. 16-122. Events.

Alcoholic beverages shall be served only to patrons and participants in performances, conferences, functions, meetings or in cultural or educational activities which have a stated theatrical, cultural or educational or public service purpose.

Sec. 16-123. Hours – sale of alcoholic beverages.

(a) Subject to further limitations fixed, or from time to time modified by the Board of Selectmen with respect to a particular license and those set forth in these rules and regulations and the General Laws of Massachusetts, the hours during which sales of alcoholic beverages may be made by any theater licensee shall be from 11:00 A. M. to 11:30 P.M. on Monday through Saturday; 12:00 Noon to 11:30 P.M. on Sunday.

(b) No alcoholic beverage may be sold more than one-half hour (30 minutes) prior to the event, nor more than one-half hour (30 minutes) after the event.

(c) All alcoholic beverages shall be cleared within one half hour (30 minutes) after the legal time for sale.

Sec. 16-124. Arrangement and service.

The arrangement for display and sale of alcoholic beverages shall be done in a manner conducive to safety and control. Only theater personnel or persons under the control of the theater, meeting the requirements of these Rules and Regulations shall dispense alcoholic beverages. Patrons may not serve themselves.

Sec. 16-125. Areas of service.

Alcoholic beverages may be sold and consumed only in those areas authorized by the Board of Selectmen.

Sec. 16-126. Eligible purchasers.

Only persons who are ticket holders or function participants may be served an alcoholic beverage.

Sec. 16-127. Containers.

Alcoholic beverages may be sold only in individual open containers with a capacity of not more than twelve (12) fluid ounces.

Sec. 16-128. Transporting.

No patron may take their own alcoholic beverage to the theater. No alcoholic beverage or container (even if empty) may be removed from the theater by anyone other than the theater staff or its vendors.

Sec. 16-129. Advertising.

No exterior sign or advertising shall reference the fact that alcoholic beverages are for sale in the theater.

SPECIFICALLY APPLICABLE TO HOTELS, INNS AND MOTELS

Sec. 16-130. Room service only upon express approval.

Room service to registered guest of a hotel, inn or motel shall be permitted only by express approval of the Board of Selectmen.

SPECIAL LICENSE (ONE DAY PERMIT)

Sec. 16-131. One day permits - generally.

The Board of Selectmen may in its discretion grant one day permits in accordance with the requirements of Section 14 of Chapter 138. All pertinent provisions of the above entitled sections: "applicable to all licensees" and "applicable to licensees authorized to sell for consumption on the premises," including the liquor liability insurance requirement of paragraph

34, shall be applicable to special licenses. Insurance policies must be written on an "Occurrence Basis." See also paragraph 5, above.

FEES

Sec. 16-132. The annual fee for a license.

a. Restaurant/all alcoholic	\$2,500
b. Restaurants/beer and wine	\$1,000
c. Package Goods Store/ all alcoholic*	\$1,500
d. Package Goods Store/beer and wine*	No Licenses Permitted
e. Clubs	\$350
f. Special License (One-day permit)	\$25

*A discount of ten percent (10%) or two hundred dollars, (\$200), whichever is greater, is available annually for package store licensees who meet the server or employee training provisions of Sec. 16-117(b).

Sec. 16-133. Effective date of rules and regulations.

These rules and regulations are effective upon adoption by the Board of Selectmen.

Sec. 16-134-149. Reserved.

Article V. Town Common Regulations.

Sec. 16-150. Town Common Regulations.

The following Regulations are promulgated by the Town Administrator and the Board of Selectmen for the Town Common, pursuant to M.G.L. c. 45, §5. (Wherever authorization or approval of the Town Administrator is required by these regulations, such authorization/approval may be made by a designee of the Town Administrator. All authorizations/approvals shall be in writing, unless otherwise provided.)

Sec. 16-151. Regulations Applicable To All Persons Including Groups.

- (a) *Alcoholic Beverages – Prohibited.* No alcoholic beverage shall be consumed.
- (b) *Amusement Rides (Mechanical) - Prohibited.* No mechanical amusement rides are allowed.
- (c) *Animals – Restrictions.* No animals other than dogs, cats and other household pets shall be allowed, without the approval of the Town Administrator.
- (d) *Audio Devices – Restricted.* No person shall create or allow the emission of any amplified sound, except from a radio, recorder or other device possessed and used by an individual for his/her own enjoyment and operated in such a manner so as not to interfere with the use and enjoyment of the Town Common by an other person, unless authorized by the Town Administrator.
- (e) *Camping – Prohibited.* No overnight camping or sleeping is allowed.
- (f) *Damaging Town Common – Prohibited.* No person shall remove, break, deface or defile the Town Common or any part thereof.
- (g) *Electrical or Electronic Device(s) Requiring Outdoor Auxiliary Equipment.* No person shall use any electrical or electronic device or equipment requiring outdoor auxiliary power without the approval of the Town Administrator.
- (h) *Fireworks – Prohibited.* No person shall use or discharge fireworks.
- (i) *Litter, Trash, etc.* All litter, cans, refuse, bottles and trash shall be removed by the user(s), unless placed in a trash receptacle provided or authorized by the Town.
- (j) *Motor Vehicles – Restricted.* No motor vehicle shall be allowed on the Town Common, except Town vehicles and those vehicles authorized by the Town Administrator.
- (k) *Open Fires – Prohibited.* No open fires or flames, including cooking on an open grill, is allowed.
- (l) *Solicitation and Sale of Goods or Services – Restricted.* No solicitation or sale of goods or services is allowed, except for an event by or for a non-profit group with written permission of the Town Administrator.
- (m) *Sporting Events.* There shall be no organized sporting events.
- (n) *Structures and Buildings – Restricted.* No person shall station or erect any building, tent, canopy, stand, bandstand, stage, tower, scaffold, sound stage, platform, rostrum or other structure on the Town Common without the approval of the Town Administrator.
- (o) *Trees, Shrubs, and Flower: Planting and removal, etc. – Restricted.* No person, other than a Town employee or contractor, shall plant, remove, cut, deface or otherwise damage any tree, shrub or flower, unless authorized by the Town Administrator.

Sec. 16-152. Regulations Applicable to Group Use.*(a) Application/Approval For Group Use.*

(1) No organized group may use the Town Common without submitting a written application on a form provided by the Town to the Town Administrator or his/her designee and receiving approval by the Town Administrator.

(2) Applications may not be submitted by a minor.

(3) Applications may be made up to one (1) year in advance.

(4) Applications shall be processed in order of receipt and shall be allocated in order of receipt of fully executed applications. Annually occurring events, such as Town Day, shall at all times be deemed to be fully executed applications for each year following the prior year's event.

(5) The Town Administrator may establish an application fee and/or user fee schedule for group events.

(6) Applications for activities or events which require insurance, approval or permits from other governmental entities, or compliance with other terms or conditions, will be reviewed and, if the application otherwise conforms to all other requirements, a conditional approval will be issued. If, within the time prescribed by the Town Administrator, any required fee or security deposit is not paid, or an insurance certificate evidencing the requisite insurance is not filed with the Town Administrator, or the approval or permit of other governmental entities has not been received, or the other terms and conditions have not been met, the conditional approval will automatically expire, the application for permit will be deemed denied and no written notice of denial will be required. For events or activities which involve the use of special facilities or activities, all terms and conditions for issuance of the permit, including securing insurance and payment of all fees and security deposit, must be completed at least thirty (30) days prior to the event unless otherwise a different time period is prescribed by the Town Administrator.

(7) No permit shall be issued unless all applicable fees and security deposit, if any, are paid within the times prescribed by the Town Administrator. Failure to pay fees or security deposit within that time shall cause the application to be deemed denied, without further notice to the applicant.

(8) The applicable provisions and procedures for denial of an application and notice thereof are set out in Section 16-154 of these Regulations.

(9) Any amendment or revision of an application or approval shall, for purposes of determining the priority of the application for permit, relate back to the original filing thereof; but the time in which the Town shall grant or deny the application for permit and serve notice of such granting or denial shall be computed from the date of the proposed amendment or revision.

(10) Applications and approvals shall be limited to no more than for one (1) day.

(11) If estimated attendance exceeds two hundred (200) persons, a copy of this application must be submitted to the Stoneham Police and Fire Chiefs for their review. The Police and Fire Chiefs have the right, in their reasonable discretion, to require detail officer(s). The applicant is responsible for the implementation of all recommendations from these departments' reviews.

(b) *Indemnification.* The Town Administrator may institute an indemnification requirement for group events, in which the applicant shall execute a written agreement with the Town, on a form prescribed by the Town Administrator, by which the applicant (group) shall covenant to hold harmless and indemnify the Town of Stoneham, its officials, employees and agents against all costs, damages, losses, claims, and expenses, including reasonable attorney fees, incurred, directly or indirectly, as a result of such applicant's use of the Town Common. Such costs, damages, losses, claims, and expenses shall include, without limitation, any damage to the Town Common or adjacent Town property, the cost of employee overtime, the cost of police and fire protection, and any claim asserted by a third party against the Town of Stoneham, its officials, employees or agents on account of any alleged injury arising from the use of the Town Common. This agreement shall also constitute a release by the applicant and each and all of its members of any claim against the Town of Stoneham, its officials, employees or agents for any injury to persons or damages to property suffered by such applicant or any of its members during or as a result of using the Town Common, except insofar as such injury or damage is directly and solely caused by the negligence or intentional misconduct of any person belonging to or acting on behalf of the Town of Stoneham.

(c) *Insurance.* The Town Administrator may institute an insurance requirement for group events, requiring insurance with such coverages and in such amounts as shall reasonably be required by the Town, which shall name the Town of Stoneham as an additional insured thereunder. The amounts and type of insurance required shall be determined by the Town Administrator based upon the nature of the activity and the risk involved. The Town Administrator shall prepare a uniform schedule of insurance guidelines for particular types of activities. The Applicant shall provide the Town Administrator with a certificate from an insurer evidencing such coverage prior to the applicant's use of Town Common, and within the time prescribed by the Town Administrator. The certificate shall also provide that the insurer shall give the Town reasonable advance notice, of no less than thirty (30) days, of insurer's intent to cancel or amend the insurance coverage provided.

(d) *Security Deposit.*

(1) The Town Administrator may institute a security deposit requirement. The security deposit shall be in an amount in accordance with a schedule of fees. The amount of the security deposit set in the schedule of fees shall be equal to the estimated cost of policing, cleaning up, and restoring the park upon the conclusion of the use or activity. Promptly after the

conclusion of a permit activity, the Town shall inspect the premises and equipment used by the permittee.

(2) If it is determined that there has been no damage to the Town Common or equipment beyond reasonable wear and tear, the security deposit shall be refunded in full within thirty (30) days of the conclusion of the permitted event.

(3) If it is determined by such inspection that the permitted event proximately caused damage to the Town Common in excess of normal wear and tear and which requires repairs in excess of routine maintenance, the Town shall retain the security deposit or any portion thereof necessary to pay for the cost repair or any fines assessed against the applicant. The Town Administrator shall give written notice of the assessment of damages or fine and retention of the security deposit to the permittee by personal delivery or by deposit in the United States mail, with proper postage prepaid, to the name and address set forth in the application for permit. Any assessment of damages in excess of the security deposit shall be paid to the Town within thirty (30) days after notice of such assessment of damages is sent.

(e) *Waiver of Application/User Fee, Insurance Requirement and/or Security Deposit.* Any requirements for an application and/or user fee, insurance, or security deposits may be waived by the Town Administrator if the activity is protected by the First Amendment of the United States Constitution and the requirement would be so financially burdensome that it would preclude the applicant from using the Town Common for the proposed activity. Fees for equipment and services shall not be waived pursuant to this subsection. Application for a waiver of a user fee, security deposit, or certificate of insurance shall be made on a form prescribed by the Town Administrator and must include an affidavit by the applicant and sufficient financial information about the applicant to enable the Town Administrator to determine whether the requirement(s) would be so financially burdensome that it would preclude the applicant from using the Town Common property for the proposed activity. If no written denial is issued within thirty (30) days of the date on which the application for such waiver is fully completed, executed and filed with the Town Administrator, the waiver request shall be deemed approved, contingent upon the applicant complying with all other permit requirements.

(f) *Approvals For Designated Areas Only.* All approved applications shall be for the use of designated areas only and shall not exceed the scope of the approval.

(g) *Town Common To Be Generally Available For Use By Individual Members of the Public.*

IT IS THE STRONG POLICY OF THE BOARD OF SELECTMEN AND THE TOWN OF STONEHAM THAT THE TOWN COMMON BE GENERALLY AVAILABLE FOR USE BY INDIVIDUAL MEMBERS OF THE PUBLIC WITHOUT THE INTERFERENCE OF GROUP USE. ACCORDINGLY, GROUP USE SHALL BE REASONABLY LIMITED IN TIME, PLACE AND MANNER BY MEANS OF THE APPROVAL PROCESS.

(h) *Time Restriction.* No activity may occur between the hours of 10:00 p.m. to 6:00 a.m., unless otherwise authorized by the Town Administrator.

(i) *Liability For Property Damage.* Reservation of the Town Common is granted with the understanding that the Applicant shall be liable for any property damage and shall be required to reimburse the Town for such damage.

(j) *Trash and Litter.* All trash resulting from the event shall be removed by the Applicant from the Town Common area immediately following the event and properly disposed of. Failure to do so shall result in a charge for removal and disposal by the Town.

(k) *Use of Adjacent and/or Municipal Parking For Non-Parking Purposes.* Use of parking adjacent to the Town Common or other municipal parking for non-parking purposes must be authorized by the Town Administrator.

(l) *Portable Toilets – Prohibited.* Portable toilets are prohibited.

(m) *Trash Dumpsters – Prohibited.* Trash dumpsters are prohibited.

(n) *No Fee Charged By Applicant.* No fee may be charged by the Applicant for admission to the event.

Sec. 16-153. Denial of An Application For Group Use - Procedures and Provisions.

(a) *Notice of Denial.* Notice of denial of an application for permit shall clearly set forth the grounds upon which the application was denied and, where feasible, shall contain a proposal by the Town for measures by which the applicant may cure any defects in the application for use or otherwise procure approval. Where an application has been denied because a fully executed prior application for the same time and place has been received, and approval has been or will be granted to the prior applicant authorizing uses or activities which do not reasonably permit multiple occupancy of the particular area, the Town may propose an alternative place, if available for the same time, or an alternative time, if available for the same place.

(b) *Grounds for Denial of Application.* To the extent permitted by law, the Town may deny an application if the applicant or the person on whose behalf the application was made has on prior occasions made material misrepresentations regarding the nature or scope of an event or activity previously permitted or has violated the terms of prior approvals or permits issued to, or on behalf, of the applicant. The Town may also deny an application on any of the following grounds:

(1) the application (including any required attachments and submissions) is not fully completed and executed;

(2) the applicant has not tendered the required application fee, if any, with the application or has not tendered the required user fee, indemnification agreement, insurance certificate, or security deposit within the times prescribed;

- (3) the application contains a material falsehood or misrepresentation;
- (4) the applicant is legally incompetent to contract;
- (5) the applicant or a party on whose behalf the application was made has on prior occasions damaged Town property and has not paid in full for such damage;
- (6) a fully executed prior application for the same time and place has been received, and an approval or permit has been or will be granted to a prior applicant authorizing uses or activities which do not reasonably permit multiple occupancy of the Town Common;
- (7) the use or activity intended by the applicant would conflict with previously planned programs organized and conducted by the Town and previously scheduled for the same time and place;
- (8) the proposed use or activity is prohibited by or inconsistent with the classifications and uses of the Town Common or part thereof so designated;
- (9) the use or activity intended by the applicant would present an unreasonable danger to the health or safety of the applicant, other users of the Town Common, Town employees or of the public;
- (10) the applicant has not complied or cannot comply with applicable licensure requirements, bylaws or regulations of the Town concerning the sale or offering for sale of any goods or services; or
- (11) the use or activity intended by the applicant is prohibited by federal, state or town law, bylaw or regulations.

Sec. 16-154. Compliance with Applicable Law and Penalties.

Persons shall comply with applicable state laws and regulations and Town bylaws and regulations.

Sec. 16-155. Failure To Comply With Town Common Regulations.

Any person who fails to comply with any of these Town Common Regulations is subject to revocation of their application approval Depending on the severity of the offense, or the frequency of other offenses, the Town may initiate legal action.

Sec. 16-156. Penalty For Violation.

Pursuant to M.G.L. c. 45, '4, violation of any of these regulations is subject to being "punished by a fine of not more than two hundred dollars."