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COMPLIANCE ISSUES DURING THIS HOLIDAY SEASON

The Alcoholic Beverages Control Commission extends our best wishes to you for the upcoming holiday season. Towards that end, the Commission would like to remind you of certain practices, which are prohibited under the Liquor Control Act (G.L. c. 138) and Commission regulations, specified in 204 C.M.R. 4.00, *et seq.*, (commonly referred to as the “Happy Hour” regulation). These prohibited practices are available on the Commission’s website at www.mass.gov/abcc.

The “Happy Hour” regulation prohibits any licensee or employee or agent of a licensee from engaging in or permitting any of the following activities:

1. offering or delivering any free drinks to any person or group of persons;
2. delivering more than two drinks to one person at one time;
3. selling, offering to sell or delivering 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 public;
4. selling, offering to sell or delivering to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public;
5. selling, offering to sell or delivering 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. selling, offering to sell or delivering malt beverages or mixed drinks by the pitcher except to two or more persons at any one time;
7. increasing the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week and;
8. encouraging or permitting, on the licensed premises, any game or contest, which involves drinking or the awarding of drinks as, prizes.

Therefore, licensees may not legally offer an “open bar” to customers for a fixed price or offer discounted prices for drinks during a limited time period. Furthermore, no licensee shall advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under 204 CMR 4.03.

In addition, licensees who intend to host private functions must be aware of Commission decisions¹ that issued in May 2004. These decisions list the factors that the Commission will consider in determining whether an individual §12 licensee is holding an event that will be considered a “private function” within the meaning of 204 C.M.R. §§ 4.00, *et seq.* The licensee must demonstrate that:

1. the private function has a host;
2. access to the private function is restricted to invited guests;
3. invited guests are not charged indirectly or directly;
4. the host is the only individual responsible for payment to the licensee;
5. the private function was not publicly advertised; and
6. written records containing the guest list exist and are available for inspection by the licensing authorities.

Moreover, a licensee’s obligation to comply with the Liquor Control Act and Commission regulations cannot be circumvented by using a third party. Licensees should understand that allowing a third party to sell tickets or use other methods of admission (where the price of admission includes any alcoholic beverages), results in the licensee transferring the privilege of its license, or transferring a direct or indirect beneficial interest in its license to a third party. This is a violation of the Liquor Control Act. A licensee must receive prior approval from both the local licensing authorities and the Commission before transferring the privilege of its license or any type of interest in it.

We hope that all of your operations, particularly those hosted within licensed premises, are structured, advertised and operated in compliance with all laws and regulations of the Commonwealth. Together, we can ensure that each license serves the public need and is operated only in such a manner so as to protect the common good. If we are successful, our holiday season is sure to be joyful and safe.

With grateful appreciation and many thanks for your attention, assistance and co-operation in these efforts, we extend our wish for a safe holiday season, and a Happy New Year.

ALCOHOLIC BEVERAGES CONTROL COMMISSION



Kim S. Gainsboro

Chairman

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¹ The Commission reads its regulation to include these elements of proof for an activity to be considered a “Private Function.” In re: Bedford Dining, Inc. dba White Horse Tavern, (ABCC Decision dated May 24, 2004); In re: The Boston Leco Corporation dba Matrix, (ABCC Decision dated May 24, 2004); In re: Boylston Entertainment, Inc. dba The Big Easy, (ABCC Decision dated May 24, 2004); In re: K.M.F. Hospitality, Inc. dba Jose McIntyre’s, (ABCC Decision dated May 24, 2004).