

**Municipal Alert**  
**April 7, 2020**

**Omnibus Municipal Relief Law - Part I: Changes to Off Premises  
Service of Beer and Wine; Advice on Administration and  
Enforcement**

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On April 3, 2020, Governor Baker signed into law Chapter 53 of the Acts of 2020 (the “Law”), a multidimensional municipal relief bill affecting a broad range of municipal concerns arising from the present COVID pandemic, and Governor Baker’s emergency orders. The legislation addresses multiple varied municipal issues ranging from postponement of Town Meetings, recalibration of the municipal budget process, and tolling of permit timelines. A copy of the new legislation is located [here](#). Among the provisions of the new law is Section 13 which significantly alters the licensing landscape for the sales and service of alcoholic beverages. As with many sections of the law, this alteration is limited to the duration of Governor Baker’s March 10, 2020 Declaration of Emergency.

The new provision permits a Section 12 of c. 138 (on premises) license holder to sell only wine and malt beverages (no spirits) in connection with the sale of food for take-out or delivery from a licensed establishment. This is a significant departure from customary limits of on-premises license holders. On-premises service of alcohol was limited to the four corners of the licensed premises, and transportation and delivery of alcohol whether by an on or off premises license holder or independent carrier has been strictly controlled by statute and regulation. See MGL c. 138, s. 22.

The ability of on-premises license holders to sell wine and malt beverages is granted by Section 13 of the Law, without the need for further hearing or approval of the Local License Authorities or the Alcohol Beverage Control Commission (ABCC). It is also not limited to those establishments issued a “restaurant license” under Section 12 of c. 138, the on-premises license holder. Other pouring license holders (i.e. hotel, restaurant, tavern, club, general on-premises or war veterans club) is permitted to sell only wine and malt beverages, “as part of the same transaction as the purchase of food . . .” There is no minimum or maximum or type or quantity of food required to qualify for the alcohol purchase.

However other details are made clear:

- No sale to persons under age 21
- Verification of age must be provided of the person receiving the order
- Wine sold only in its original and sealed container, and malt beverage only in a sealed container



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- Alcohol sale only as part of the same transaction as the sale of food
- Sale of alcohol only during the establishment’s hours of operation, but not later than 12:00midnight
- Limitation of 192 fluid ounces of malt beverages (sixteen 12 oz. bottles/cans or twelve 16 oz. bottles/cans) or 1.5 liters of wine (two 750 mil. bottles of wine)

Several questions have surfaced which the ABCC sought to address in its Advisory issued on April 3, 2020. The Advisory may be viewed [here](#). However, some questions remain. For example the Advisory does not specifically address the apparent distinction between an original, sealed container for wine, and a sealed container for malt beverages. The distinction may be borne out by the common use of “growlers” (a refillable glass container) or “crowlers” (re-sealable can). According to various industry publications, this distinction may be intended to benefit restaurant tap service, however license holders and enforcement agents are cautioned not to permit transportation or delivery of less than standard industry accepted containers, and may not use hot and cold beverage containers or single use cups with lids, etc.

An additional question remains as to whether the off-premises sale and age verification requirements are limited to the point of sale such as the take out or curb side pick-up of a food and beverage order, or includes “delivery” for off premises consumption. ABCC guidance provides that no additional transportation license pursuant to MGL c. 138, s. 22 is required, but that curbside (and remote destination delivery) may be subject to local regulation. Insurance requirements may also impact the ability of local license holders to deliver these beverages.

All Local License Authorities are urged to revisit the local alcohol rules and regulations and update them to further refine local requirements and resolve any inconsistencies that may exist with the current law during this declared state of emergency.



*This Client Alert was prepared by David DeLuca and was reviewed by Karis North and Kier Wachterhauser. If you have any questions, please contact David DeLuca or the attorney assigned to your account, or call (617) 479-5000.*

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