



The Legal Guide To Establishing A Brewery In Massachusetts



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The Application Process

When considering whether to open a brewery, one should be familiar with the relevant law, available brewing licenses and the requirements as well as the procedure for obtaining these licenses. Careful consideration of the city or town in which the proposed brewery will be located involves a separate analysis of applicable municipal regulations and requirements, including building and zoning ordinances.

Below is a very general list of steps that one should consider at the outset of planning to open a brewery. A few of these steps are further addressed below in more detail.

STEP 1: Assemble the brewery team - ensure no team member is at risk for disqualification under the relevant statutes

STEP 2: Organize the business entity - formalize the business by incorporating or organizing a limited liability company and agreeing to an operating agreement amongst the owners

STEP 3: Check for municipal zoning and building issues in the town or city where the proposed brewery is to be located – zoning relief may be required

STEP 4: Choosing a “Manager of Record” – every Massachusetts brewery license requires a single person to take responsibility for the operation of the licensed business in conformity with licensing laws and regulations. The “Manager of Record” need not be an owner, director, or officer of the licensee and can be a mere employee, but the “Manager of Record” is subject to a higher standard of scrutiny in his or her background and generally must have some experience in the business of alcoholic beverages. The “Manager of Record” cannot have a serious criminal record of any significance, must be a US citizen and should be a Massachusetts resident.

STEP 5: Establish the brewery premises – plan the location and begin negotiation of the lease or acquisition of land where the brewery will be operated and obtain the equipment for the brewery in compliance with the law

STEP 6: Submit an application on the federal level – gather the materials needed for the Alcohol Tax & Trade Bureau's Brewer's Permit

STEP 7: Submit an application on the state level – secure additional materials required for one of the three brewer's licenses available through the Massachusetts Alcoholic Beverages Control Commission

STEP 8: Acquire approval of labels and register trademarks and trade names – approval of each brand used in trade must be acquired at the federal level; logos and labels that are protectable as trademarks should be registered

STEP 9: Selecting a wholesaler – once your branded product is shipped to a Massachusetts wholesaler for six months, a statutory relationship will be created with that wholesaler which cannot be terminated in the normal course of business. Choosing the right wholesaler is therefore very important in order to ensure your branded product will survive the crowded marketplace

Types of Applications



The Federal Brewer's Permit

To legally produce and sell beer commercially, an application for a Brewer's Permit should be submitted to the Alcohol Tax & Trade Bureau ("TTB") prior to applying for a state license. Filed electronically or mailed in, the application must be submitted within 95 days of the brewery opening for business. Supplemental application materials required vary depending on the business's organization, however, all types of commercial brewers file for the same type of permit. A checklist of required information and documents is found at the end of this guide.

The Massachusetts State Application

The three types of brewery licenses issued in Massachusetts are the *Manufacturer of Wine and Malt Beverages* license, the *Farmer Brewery* license and the *Pub Brewery* license. Each style of license lends itself to different business models and confers different privileges upon the licensee. Fees for these licenses vary according to estimated beer production for the year covered by the license. The three available brewery licenses in Massachusetts are discussed below.

Manufacturer of Wine and Malt Beverages License

- This license allows a brewer to produce beer, but not to sell beer for on-premises consumption. A separate license is required for on-premises consumption: a "pouring" license, which is subject to the quota system and may or may not be available in the municipality of your proposed brewery. The licensee may sell its product to wholesalers in kegs or bottles to retail licensees, such as restaurants and liquor stores, but may not sell bottled beer directly to retailers or the public.

Farmer Brewery License

- While this license permits a brewer to import some of the ingredients it intends to use in brewing its beer, the purpose of this license is to promote the use of Massachusetts grown ingredients in the production of the final product. Just how much of the ingredients must be acquired from local farms is an issue to be seriously considered when seeking this particular license.
- A farmer brewer may sell a certain amount of beer directly to retail licensees for resale to the public. A farmer brewer also may acquire an "on premises" pouring license and sell directly to the public if it acquires such a license from the local municipality. Unlike the manufacturer license, the farmer brewery licensee is not subject to the quota system for an "on premise" pouring license. There is also pending legislation that may expand the privileges of this license.



Pub Brewery License

- Traditionally, a Pub Brewery License is thought of as more of a pub or restaurant than as a working brewery. Unlike a farmer-brewer, a pub brewer may produce malt beverages with or without the use of cereal grains or hops, whether those ingredients are produced or bought by the brewer locally or not.
- A pub brewer may sell at retail to the public for consumption off of the premises any products which it produced but in no event more than two gallons per person. The pub brewer may also sell to wholesalers, but must conform to certain production requirements.

Common Application Disqualifications

Pursuant to Massachusetts state statutes, there are certain prohibitions or disqualifications that prevent some people from having a financial interest in a brewer's license of any kind. A general list of these disqualifications is set forth below.

◆ No person may have an interest in the brewery without his or her identity being disclosed in the application



- ❖ Each shareholder, member, officer, or director must be 21 years of age or older
- ❖ The majority of directors in a corporation must be U.S. citizens
- ❖ CORI forms authorizing a search of one's criminal record are required for each shareholder, member, officer or director
- ❖ Depending on which brewery license is sought, owners retaining or owning an interest in the business of a licensed restaurant, package store, wholesaler's or importer's license, may be disqualified depending on the other type of license held

- ◆ The applicant must be determined to be of "responsible character"
- ◆ No shareholder, member, officer or director can have been convicted of a crime involving a "narcotics law"
- ◆ No church or school may be located within 500 ft. of the proposed brewery premises without a separate notice procedure to that institution which secures its consent

Important Things To Know



- ◆ The Massachusetts Alcoholic Beverages Control Commission conducts on-site inspections of the brewery premises to ensure compliance with all application materials
 - ◆ All labels must be approved by the Alcohol Tax and Trade Bureau (TTB) and must comply with all federal regulations. Approval is needed for each brand used in trade
 - ◆ All protectable trademarks and trade names should be registered at the state and federal levels.
 - ◆ If not yet in possession, brewery tanks should be at least ordered prior to filing applications and a promised delivery date should be available upon request.
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- ◆ 3 months of bank statements are needed from every person who will hold a direct or indirect financial interest in the licensed business, as documentation for the source of their investment
 - ◆ Brewers may choose to use alternate operating methods such as acquiring a contract brewing relationship of a tenant brewer and/or host brewer, or seeking approval of an alternating brewery proprietorship within the same brewery premises

Applying for a Brewer's License Basic Checklist

Federal Application

- Brewer's Permit from the Alcohol and Tobacco Tax and Trade Bureau:**
 - Applications for Owner and Officer Information from each person retaining or owning an interest in the brewery
 - Documentation for source of funds (SEC filings, subscription information, 3 months bank statements for each person with an interest in the brewery)
 - Brewer's Notice
 - Brewer's Bond
 - Diagram of Brewery Premises

- Proof of order of brewing tanks accompanied by promised delivery date
- Description of brewery premises
- Statement describing security measures to be employed at brewery
- Environmental Information form
- Supplemental Information of Water Quality form
- Lease agreement and/or proof of property of ownership
- Copy of Driver's License of primary contact person
- Power of Attorney form
- Trade name registration
- Certificate to operate in a foreign state (if existing)

If a corporation:

- Copy of Corporate Resolution
- Certificate of incorporation
- Corporate resolution
- Copy of bylaws
- List of officers
- Signing authority of corporate officials.

If a partnership:

- Partnership agreement
- Certificate of partnership
- List of partners

If a LLC:

- Articles of organization
- Certificate of organization
- List of partners
- Copy of operating agreement

Massachusetts State license application

The Manufacturer's, Pub Brewery or Farmer Brewery license:

- List of individuals with interest in license
- Personal information forms from all persons with an interest in brewery
- Surety Bond
- Manager's form
- Manager's employment history

Other

Accompanying documents and applications to be submitted:

- Certificate of Label Approval (COLAs)
- Trademark / trade name registration (if existing)
- Alcohol formula and sample submissions (FORMULAS online)

Useful Links

Federal Alcohol Tax & Trade Bureau

<http://www.ttb.gov/>

Massachusetts Alcoholic Beverages Control Commission

<http://www.mass.gov/abcc/>

List of Local Licensing Authorities

<http://www.mass.gov/abcc/pdf/ContactCityTowns.pdf>

United States Patent & Trademark Office

<http://www.uspto.gov/>

Massachusetts Brewers Guild

<http://www.massbrewersguild.com/>

Brewers Association

<http://www.brewersassociation.org/>

Massachusetts Alcoholic Beverage Industry and Licensing Blog

<http://www.connelllawoffices.com/blog/>