

## Client Alert Update: Boston's New Upgrade Rules Safeguard Beer and Wine License Value

By Ryan Clemens on December 1, 2025



Since covering the passage of Massachusetts General Law Chapter 138, Section 12D in **September**, the Boston Licensing Board (the "Board") has now clarified one of the most important elements of Section 12D. Businesses that upgrade from a Wine and Malt Beverage License to a Non-Transferable All Alcoholic Beverages License retain the underlying beer and wine license with its original attributes, including its value. If the business later decides to downgrade, the original beer and wine license is restored with full transferability, giving operators a meaningful safety valve that protects the long-term value and flexibility of their license.

This flexibility for beer and wine license holders is greater than the law's plain language originally suggested. The Board confirmed that upgrading today does not lock a business into a permanent non-transferable status. Instead, operators can upgrade to offer spirits now and still preserve the ability to transfer or monetize their beer and wine license later. In practical terms, this means the decision to upgrade is no longer a one-way street. Operators gain access to a more robust license category while still holding the asset that has historically carried economic value in the private market.

For an overview, Section 12D allows restaurants and bars to convert their existing beer and wine license to an all-alcohol license. The Board views Section 12's conversion option as an "upgrade" to a beer and wine license, where upgrading does not require the license holder to surrender their beer and wine license; rather, the license becomes a non-transferable all-alcohol license that may later be downgraded back to a transferable beer and wine license. The Board has clearly stated that beer and wine businesses can upgrade to an all-alcohol license now while still retaining the ability to transfer the beer and wine license in the future.

For the upgrade application process, businesses will file an Alcoholic Beverages Control Commission ("ABCC") "Change of Category" form with the Board first. Eligible licensees include: any on-premises beer and wine license holder; cordials license holders; transferable and non-transferable beer and wine licenses. But non-eligible licensees include: package stores; farmer-series manufacturers; breweries; wineries; distillers; and brewpubs. Upon reviewing the application from an eligible licensee, the Board will apply the standard "public need" analysis, considering license density, neighborhood impact, public support, and the applicant's reputation and compliance. If the Board approves the application, the ABCC then reviews the application too. The ABCC may approve, deny, or take no action on the application. If the ABCC approves the upgrade application, the City can then grant the upgraded license.

The Board also clarified several important considerations following an upgrade. When a

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business upgrades their license, their underlying beer & wine license remains with the business and does not return to the City's quota. Ownership transfers within the entity holding an upgraded license are capped at 49%, however. If the business later chooses to downgrade their all-alcohol license, the beer and wine license is restored with its original attributes, including transferability. This clarification on downgrading later ensures that the business can preserve their license's value of flexibility for relocation, closure, or future transfer. And if a business has to surrender an upgraded license without downgrading, the license returns to the City as a beer and wine license that is will be available for re-issuance.

The Board is currently drafting rules on timelines, fees, required documentation, downgrade procedures, treatment of cordials and seasonal licenses, and other operational issues. The Board is currently considering comments from business and license holders after closing the feedback period, and forecasts that they will finalize regulations and then be able to approve upgrade applications either in December 2025 or January 2026. And as a reminder, this update is for the City of Boston's process only; other Massachusetts communities who adopt Section 12D may interpret the law or establish rules differently.

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