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September 1, 2015

Hon. Alex Jamieson, Town Supervisor, Town of Chester, New York  
Hon. Members of the Town Board  
Town Hall  
1786 Kings Highway  
Chester, New York 10918

Dear Supervisor Jamieson and Members of the Town Board:

I am a former General Counsel to the New York State Liquor Authority, with a Business and Commercial Litigation law practice specializing, for over twenty years, in the Hospitality/Beverage Alcohol Industry. Clients include all three tiers of the beverage alcohol industry, namely, manufacturers, wholesalers, and retailers, such as, breweries, wineries, distilleries, distributors, restaurants, taverns, and package stores, as well as theatres, golf courses, gas stations, hotels, and commercial real property owners.

I am writing on behalf of the VanPamelens, who seek to form an entity to open a Farm Brewery in the Town of Chester, New York, more specifically, at 19 Lake Station Road, Warwick, New York. Twenty (20) acres of the property are located in the Town of Chester, in the Industrial Park (IP) Zoning District. The Town of Chester's Zoning Code IP District Schedule of Use and Area Requirements [Amended 6-7-2005 by L.L. No. 2-2005; 3-6-2007 by L.L. No.4-2007; 9-9-2008 by L.L. No.4-2008], lists, among others, under Uses Requiring Site Plan Approval, "8. Wholesale operations of a light industry nature." Under Accessory Uses, the Code lists "1. Customary accessory uses, including parking and loading," and "4. Retail showrooms accessory to a wholesale business."

Section 51-a, Subdivision 2, of the New York State Alcoholic Beverage Control Law (copy attached), in addition to authorizing the farm brewery licensee to  
operate a brewery for the manufacture of New York state labeled beer, states  
the license shall also authorize the licensee to:  
(e) sell at the licensed premises beer and cider manufactured by the  
licensee or any other licensed farm brewery at retail for consumption on  
or off the licensed premises;

- (f) conduct tastings at the licensed premises of beer and cider manufactured by the licensee or any other licensed farm brewery;
- (g) operate a restaurant, hotel, catering establishment, or other food and drinking establishment in or adjacent to the licensed premises and sell at such place, at retail for consumption on the premises, beer and cider manufactured by the licensee and any New York State labeled beer or New York State labeled cider.

In my experience, it is customary for a Farm Brewer to have a tap room, conduct tastings, or operate a restaurant on or adjacent to the farm brewery (Retail accessory to Wholesale operations). These activities fit the categories of Customary Accessory Uses and Retail Showrooms Accessory to a Wholesale Business, under the Chester Zoning Code.

On August 15, 2015, Governor Andrew Cuomo signed into law legislation to lift burdens on Craft Breweries, Distilleries and Cideries, further encouraging the growth of the craft industries. Here is the press release link: <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-lift-burdens-craft-breweries-distilleries-cideries> .

Also, here is a link to an article listing almost thirty NYS Farm Breweries as of 2014, most producing and serving beer and food:  
<http://thinknydrinkny.com/beer-finder/>  
<http://thinknydrinkny.com/farm-brewery/>.

Please feel free to contact me if you have questions or need additional information.

Sincerely,

Adrian C. Hunte, Esq.

## **New York State Alcoholic Beverage Control Law:**

**§ 51-a. Farm brewery license.** 1. Any person may apply to the authority for a farm brewery license as provided for in this section to brew beer within this state for sale. Such application shall be in writing and verified and shall contain such information as the authority shall require. Such application shall be accompanied by a check or draft for the amount required by this article for such license. If the authority grants the application, it shall issue a license in such form as shall be determined by its rules. Such license shall contain a description of the licensed premises and in form and in substance shall be a license to the person therein specifically designated to brew beer in the premises therein specifically licensed.

2. A farm brewery license shall authorize the holder thereof to operate a brewery for the manufacture of New York state labelled beer. Such a license shall also authorize the licensee to:

- (a) manufacture New York state labelled cider;
- (b) sell in bulk beer and cider manufactured by the licensee to any person licensed to manufacture alcoholic beverages in this state or to a permittee engaged in the manufacture of products which are unfit for beverage use;
- (c) sell or deliver beer and cider manufactured by the licensee to persons outside the state pursuant to the laws of the place of such delivery;
- (d) sell beer and cider manufactured by the licensee to wholesalers and retailers licensed in this state to sell such beer and cider, licensed farm distillers, licensed farm wineries, licensed farm cideries and any other licensed farm brewery. All such beer and cider sold by the licensee shall be securely sealed and have attached thereto a label as shall be required by section one hundred seven-a of this chapter;
- (e) sell at the licensed premises beer and cider manufactured by the licensee or any other licensed farm brewery at retail for consumption on or off the licensed premises;
- (f) conduct tastings at the licensed premises of beer and cider manufactured by the licensee or any other licensed farm brewery;
- (g) operate a restaurant, hotel, catering establishment, or other food and drinking establishment in or adjacent to the licensed premises and sell at such place, at retail for consumption on the premises, beer and cider manufactured by the licensee and any New York state labeled beer or New York state labeled cider. All of the provisions of this chapter relative to licenses to sell beer at retail for consumption on and off the premises shall apply so far as applicable to such licensee. Notwithstanding any other provision of law, the licensed farm brewery may apply to the authority for a license under this chapter to sell other alcoholic beverages at retail for consumption on the premises at such establishment;
- (h) sell beer and cider manufactured by the licensee or any other licensed farm brewery at retail for consumption off the premises, at the state fair, at recognized county fairs and at farmers markets operated

on a not-for-profit basis;

(i) conduct tastings of and sell at retail for consumption off the premises New York state labelled wine manufactured by a licensed winery or licensed farm winery;

(j) conduct tastings of and sell at retail for consumption off the premises New York state labelled cider manufactured by a licensed cider producer or licensed farm cidery;

(k) conduct tastings of and sell at retail for consumption off the premises New York state labelled liquor manufactured by a licensed distiller or licensed farm distiller; provided, however, that no consumer may be provided, directly or indirectly: (i) with more than three samples of liquor for tasting in one calendar day; or (ii) with a sample of liquor for tasting equal to more than one-quarter fluid ounce; and

(l) engage in any other business on the licensed premises subject to such rules and regulations as the authority may prescribe. Such rules and regulations shall determine which businesses will be compatible with the policy and purposes of this chapter and shall consider the effect of particular businesses on the community and area in the vicinity of the farm brewery licensee.

3. (a) A farm brewery licensee may apply for a permit to conduct tastings away from the licensed premises of beer and cider produced by the licensee. Such permit shall be valid throughout the state and may be issued on an annual basis or for individual events. Each such permit and the exercise of the privilege granted thereby shall be subject to such rules and conditions of the authority as it deems necessary.

(b) Tastings shall be conducted subject to the following limitations:

(i) tastings shall be conducted by an official agent, representative or solicitor of one or more farm breweries. Such agent, representative or solicitor shall be physically present at all times during the conduct of the tastings; and

(ii) any liability stemming from a right of action resulting from a tasting of beer or cider as authorized herein and in accordance with the provisions of sections 11-100 and 11-101 of the general obligations law, shall accrue to the farm brewery.

4. A licensed farm brewery holding a tasting permit issued pursuant to subdivision three of this section may apply to the authority for a permit to sell beer and cider produced by such farm brewery, by the bottle, during such tastings in premises licensed under sections sixty-four, sixty-four-a, eighty-one and eighty-one-a of this chapter. Each such permit and the exercise of the privilege granted thereby shall be subject to such rules and conditions of the authority as it deems necessary.

5. A licensed farm brewery may, under such rules as may be adopted by the authority, sell beer or cider manufactured by the licensee or any other licensed farm brewery at retail in bulk by the keg, cask or barrel for consumption and not for resale at a clam-bake, barbeque, picnic, outing or other similar outdoor gathering at which more than fifty persons are assembled.

6. A licensed farm brewery may apply to the authority for a license to sell liquor and/or wine at retail for consumption on the premises in a

restaurant owned by him and conducted and operated by the licensee in or adjacent to its farm brewery. All of the provisions of this chapter relative to licenses to sell liquor or wine at retail or consumption on the premises shall apply so far as applicable.

7. A farm brewery license shall authorize the holder thereof to manufacture, bottle and sell food condiments and products such as mustards, sauces, hop seasonings, beer nuts, and other hops and beer related foods in addition to beer and hop soaps, hop pillows, hop wreaths and other such food and crafts on and from the licensed premises. Such license shall authorize the holder thereof to store and sell gift items in a tax-paid room upon the licensed premises incidental to the sale of beer. These gift items shall be limited to the following categories:

(a) non-alcoholic beverages for consumption on or off premises, including but not limited to bottled water, juice and soda beverages;

(b) food items for the purpose of complementing beer and cider tastings, which shall mean a diversified selection of food that is ordinarily consumed without the use of tableware and can be conveniently consumed while standing or walking. Such food items shall include but not be limited to: cheeses, fruits, vegetables, chocolates, breads, mustards and crackers;

(c) food items, which shall include locally produced farm products and any food or food product not specifically prepared for immediate consumption upon the premises. Such food items may be combined into a package containing cider, beer and/or hop related products;

(d) beer supplies and accessories, which shall include any item utilized for the storage, serving or consumption of beer or for decorative purposes. These supplies may be sold as single items or may be combined into a package containing beer;

(e) beer-making equipment and supplies including, but not limited to, home beer-making or homebrewing kits, filters, bottling equipment, hops, barley, yeasts, chemicals and other beer additives, and books or other written material to assist beer-makers and home beer-makers or homebrewers to produce and bottle beer;

(f) souvenir items, which shall include, but not be limited to artwork, crafts, clothing, agricultural products and any other articles which can be construed to propagate tourism within the region.

8. Notwithstanding any provision of this chapter to the contrary, any farm brewery licensee may charge for tours of its premises.

9. The holder of a license issued under this section may operate up to five branch offices located away from the licensed farm brewery. Such locations shall be considered part of the licensed premises and all activities allowed at and limited to the farm brewery may be conducted at the branch offices. Such branch offices shall not be located within, share a common entrance and exit with, or have any interior access to any other business, including premises licensed to sell alcoholic beverages at retail. Prior to commencing operation of any such branch office, the licensee shall notify the authority of the location of such branch office and the authority may issue a permit for the operation of same.

10. (a) No farm brewery shall manufacture in excess of seventy-five

thousand finished barrels of beer and cider annually.

(b) A farm brewery shall manufacture at least fifty barrels of beer and cider annually.

11. (a) Except as provided in paragraph (b) of this subdivision, no licensed farm brewery shall manufacture or sell any beer other than New York state labelled beer.

(b) In the event that the commissioner of agriculture and markets, after investigating and compiling information pursuant to subdivision forty-two of section sixteen of the agriculture and markets law, determines that a natural disaster, act of God, or continued adverse weather condition has destroyed much of the necessary ingredients for brewing beer, such commissioner, in consultation with the chairman of the authority, may give authorization to a duly licensed farm brewery to manufacture or sell beer produced from ingredients grown or produced outside this state. No such authorization shall be granted to a farm brewery licensee unless such licensee certifies to such commissioner the quantity of New York grown ingredients unavailable to such licensee due to such natural disaster, act of God or continuing adverse weather condition and satisfies such commissioner that reasonable efforts were made to obtain brewing ingredients from a New York state source for such beer making purpose. No farm brewery shall utilize an amount of out-of-state grown or produced ingredients exceeding the amount of New York grown ingredients that such brewery is unable to obtain due to the destruction of New York grown or produced ingredients by a natural disaster, act of God or continuing adverse weather condition as determined by the commissioner of agriculture and markets pursuant to this subdivision. For purposes of this subdivision, the department of agriculture and markets and the authority are authorized to adopt rules and regulations as they may deem necessary to carry out the provisions of this subdivision which shall include ensuring that in manufacturing beer farm breweries utilize ingredients grown or produced in New York state to the extent they are reasonably available, prior to utilizing ingredients from an out-of-state source for such purpose.

(c) The commissioner of agriculture and markets shall make available to farm breweries and to the public each specific ingredient loss determination issued pursuant to paragraph (b) of this subdivision on or before August twentieth of each year.

(d) In the event that the continuing effects of a natural disaster, act of God, or adverse weather condition which occurred prior to August twentieth of each year or the effects of a natural disaster, act of God, or adverse weather condition which occurs subsequent to August twentieth each year results in any ingredient loss which meets the standards provided in paragraph (b) of this subdivision, the commissioner of agriculture and markets, in consultation with the chairman of the authority, may issue additional ingredient loss determinations and shall expeditiously make available to farm breweries and to the public each specific ingredient loss determination issued pursuant to this paragraph prior to October tenth of each year.

12. (a) Except as provided in paragraph (b) of this subdivision, no licensed farm brewery shall manufacture or sell any cider other than New York state labelled cider.

(b) In the event that the commissioner of agriculture and markets, after investigating and compiling information pursuant to subdivision forty-two of section sixteen of the agriculture and markets law, determines that a natural disaster, act of God, or continued adverse weather condition has destroyed much of the apple crop necessary for producing cider, such commissioner, in consultation with the chairman of the authority, may give authorization to a duly licensed farm brewery to manufacture or sell cider produced from apples grown outside this state. No such authorization shall be granted to a farm brewery licensee unless such licensee certifies to such commissioner the quantity of New York grown apples unavailable to such licensee due to such natural disaster, act of God or continuing adverse weather condition and satisfies such commissioner that reasonable efforts were made to obtain apples from a New York state source for such cider making purpose. No farm brewery shall utilize an amount of out-of-state grown apples exceeding the amount of New York grown apples that such brewery is unable to obtain due to the destruction of New York grown apples by a natural disaster, act of God or continuing adverse weather condition as determined by the commissioner of agriculture and markets pursuant to this subdivision. For purposes of this subdivision, the department of agriculture and markets and the authority are authorized to adopt rules and regulations as they may deem necessary to carry out the provisions of this subdivision which shall include ensuring that in manufacturing cider farm breweries utilize apples grown in New York state to the extent they are reasonably available, prior to utilizing apples from an out-of-state source for such purpose.

(c) The commissioner of agriculture and markets shall make available to farm breweries and to the public each specific apple loss determination issued pursuant to paragraph (b) of this subdivision on or after August twentieth of each year.

(d) In the event that the continuing effects of a natural disaster, act of God, or adverse weather condition which occurred prior to August twentieth of each year or the effects of a natural disaster, act of God, or adverse weather condition which occurs subsequent to August twentieth of each year results in any apple crop loss which meets the standards provided in paragraph (b) of this subdivision, the commissioner of agriculture and markets, in consultation with the chairman of the authority, may issue additional apple crop loss determinations and shall expeditiously make available to farm breweries and to the public the loss determination issued pursuant to this paragraph prior to October tenth of each year.

13. Notwithstanding any contrary provision of law or of any rule or regulation promulgated pursuant thereto, and in addition to the activities which may otherwise be carried out by any person licensed under this section, such person may, on the premises designated in such license:

(a) produce, package, bottle, sell and deliver soft drinks and other non-alcoholic beverages, vitamins, malt, malt syrup, and other by-products;

(b) dry spent grain from the brewery;

(c) recover carbon dioxide and yeast;

- (d) store bottles, packages and supplies necessary or incidental to all such operations;
- (e) package, bottle, sell and deliver wine products;
- (f) allow for the premises including space and equipment to be rented by a licensed tenant brewer for the purposes of alternation.

14. Notwithstanding any other provision of this chapter, the authority may issue a farm brewery license to the holder of a farm winery or farm distiller's license for use at such licensee's existing licensed premises. The holder of a farm winery or farm distiller's license that simultaneously holds a farm brewery license on an adjacent premises may share and use the same tasting room facilities to conduct any tastings that such licensee is otherwise authorized to conduct.

15. The authority is hereby authorized to promulgate rules and regulations to effectuate the purposes of this section. In prescribing such rules and regulations, the authority shall promote the expansion and profitability of beer and cider production and of tourism in New York, thereby promoting the conservation, production and enhancement of New York state agricultural lands.

## Alcoholic Beverage Control

§ 51. Brewer's license. 1. Any person may apply to the liquor authority for a license to brew beer within this state for sale. Such application shall be in writing and verified and shall contain such information as the liquor authority shall require. Such application shall be accompanied by a check or draft for the amount required by this article for such license. If the liquor authority shall grant the application, it shall issue a license in such form as shall be determined by its rules. Such license shall contain a description of the licensed premises and in form and in substance shall be a license to the person therein specifically designated to brew beer in the premises therein specifically licensed.

2. Such a license shall authorize the sale from the licensed premises of the beer brewed by such licensee to duly licensed wholesalers, retailers and permittees in this state, and to sell or deliver such beer to persons outside the state pursuant to the laws of the place of such sale or delivery. A person holding a brewer's license may apply for a license to sell beer brewed by him at wholesale at premises other than those designated in the brewery license and the provisions of this article relative to wholesaler's licenses shall apply so far as applicable to such application.

3. A licensed brewer may, under such rules as may be adopted by the liquor authority, sell beer at retail in bulk by the keg, cask or barrel for consumption and not for resale at a clam-bake, barbeque, picnic, outing or other similar outdoor gathering at which more than fifty persons are assembled.

3-a. A licensed brewer may at the licensed premises conduct tastings of, and sell at retail for consumption on or off the licensed premises,



any beer manufactured by the licensee or any New York state labeled beer. Provided, however, that for tastings and sales for on-premises consumption, the licensee shall regularly keep food available for sale or service to its retail customers for consumption on the premises. A licensee providing the following shall be deemed in compliance with this provision: (i) sandwiches, soups or other such foods, whether fresh, processed, pre-cooked or frozen; and/or (ii) food items intended to complement the tasting of alcoholic beverages, which shall mean a diversified selection of food that is ordinarily consumed without the use of tableware and can be conveniently consumed while standing or walking, including but not limited to: cheeses, fruits, vegetables, chocolates, breads, mustards and crackers. All of the provisions of this chapter relative to licenses to sell beer at retail for consumption on and off the premises shall apply so far as applicable to such licensee.

4. A licensed brewery may operate a restaurant, hotel, catering establishment, or other food and drinking establishment in or adjacent to the licensed premises and sell at such place, at retail for consumption on the premises, beer manufactured by the licensee and any New York state labeled beer. All of the provisions of this chapter relative to licenses to sell beer at retail for consumption on the premises shall apply so far as applicable to such licensee. Notwithstanding any other provision of law, the licensed brewer may apply to the liquor authority for a license to sell beer, wine or liquor at retail for consumption on the premises at such establishment. All of the provisions of this chapter relative to licenses to sell beer, wine or liquor at retail for consumption on the premises shall apply so far as applicable to such application.

5. A licensed brewer whose annual production is less than sixty thousand barrels may apply to the liquor authority for a permit to sell beer in a sealed container for off-premises consumption at the state fair, at recognized county fairs and at farmers' markets operated on a not-for-profit basis. As a condition of the permit a representative from the brewer must be present at the time of sale.

5-a. Except as otherwise provided in subdivisions three, four, five and six-a of this section and except as provided in section fifty-two of this article no brewer shall sell any beer, wine or liquor at retail.

6. Notwithstanding the provisions of subdivision one of section one hundred one of this chapter the authority may issue a brewer's license pursuant to this section for a premises which shall be located wholly within the town of Hyde Park, county of Dutchess, state of New York, known and designated as Lot No. 1 shown on a map entitled "Subdivision for Piney" filed in the Dutchess County Clerk's Office as Map No. 8764, being more particularly bounded and described as follows:

BEGINNING at a point on the easterly line of State Highway Route 9 (also known as Albany Post Road) at the northwest corner of the herein described parcel and the southwest corner of the lands now or formerly of Friendly Ice Cream Corp.; thence along the division line between the herein described parcel and the last mentioned lands; South 77 deg 10' 10" East 310.17 feet to the northeast corner of the herein described parcel and the southeast corner of the last mentioned lands at a point on the westerly line of other lands of Fernando Piney which are

designated as Lot No. 1 as shown of Filed Map 5678; thence along the division line between the herein described parcel and the last described lands of Piney. South 06 deg 34' 20" West 157.76 feet to the southeast corner of the herein described parcel and the northeast corner of Lot No. 2 as shown on Filed Map No. 8764; thence along the northerly line of Lot No. 2 as shown on the last mentioned filed map. North 81 deg 25' 42" West 155.26 feet and South 87 deg 45' 20" West 155.00 feet to the southwest corner of Lot No. 1 and the northwest corner of Lot No. 2 at a point on the easterly line of State Highway Route 9; thence along the easterly line of State Highway Route 9. North 06 deg 34' 20" East 210.00 feet to the point of beginning. Being the same premises as conveyed to Anthony Lobianco, Joseph Lobianco and Carmelo DeCicco by deed of Universal Land Abstract, as agent of the grantor, Fernando Piney, dated March 21, 1995 and recorded in the office of the Dutchess County Clerk on such date as Receipt no. R12437, Batch record no. A00209; Being the same premises as conveyed to Angela DeCicco by deed of Schirmer Hrdlicka & Strohsahl, as agent of the grantor, Carmelo DeCicco, dated November 17, 2003 and recorded in the office of the Dutchess County Clerk on December 9, 2004 as document no. 02 2004 12028, Receipt no. R98669, Batch record no. C00440.

6-a. A licensed brewer producing New York state labelled beer may:

(a) sell such beer to licensed farm distillers, farm wineries, farm cideries and farm breweries. All such beer sold by the licensee shall be securely sealed and have attached thereto a label as shall be required by section one hundred seven-a of this chapter;

(c) sell such beer at retail for consumption off the premises at the state fair, at recognized county fairs and at farmers markets operated on a not-for-profit basis;

(e) apply for a permit to conduct tastings away from the licensed premises of such beer. Such permit shall be valid throughout the state and may be issued on an annual basis or for individual events. Each such permit and the exercise of the privilege granted thereby shall be subject to such rules and conditions of the authority as it deems necessary. Tastings shall be conducted subject to the following conditions:

(i) tastings shall be conducted by an official agent, representative or solicitor of the licensee. Such agent, representative or solicitor shall be physically present at all times during the conduct of the tastings; and

(ii) any liability stemming from a right of action resulting from a tasting of beer or cider as authorized herein and in accordance with the provisions of sections 11-100 and 11-101 of the general obligations law, shall accrue to the licensee.

(f) if it holds a tasting permit issued pursuant to paragraph (e) of this subdivision, apply to the authority for a permit to sell such beer, for consumption off the premises, during such tastings in premises licensed under sections sixty-four, sixty-four-a, eighty-one and eighty-one-a of this chapter. Each such permit and the exercise of the privilege granted thereby shall be subject to such rules and conditions of the authority as it deems necessary.

7. Notwithstanding any contrary provision of law or of any rule or

regulation promulgated pursuant thereto, and in addition to the activities which may otherwise be carried on by any person licensed as a brewer under this chapter, such person may, on the premises designated in such license: (a) produce, package, bottle, sell and deliver soft drinks and other non-alcoholic beverages, vitamins, malt, malt sirup, and other by-products; (b) dry spent grain from the brewery; (c) recover carbon dioxide and yeast; (d) store bottles, packages and supplies necessary or incidental to all such operations; (e) package, bottle, sell and deliver wine products; (f) allow for the premises including space and equipment to be rented by a licensed tenant brewer for the purposes of alternation; and (g) manufacture, produce, blend, package, bottle, purchase, sell and deliver alcoholic beverages. If any licensed brewer desires to engage in any of the activities in paragraph (a), (b), (c), (d) or (e) of this subdivision which (a) require the use of by-products or wastage from the production of beer, or utilize buildings, room-areas or equipment not fully employed in the production of beer; or (b) are reasonably necessary to realize the maximum benefit from the premises and equipment and to reduce the overhead of the brewery; or (c) are in the public interest because of emergency conditions; or (d) involve experiments or research projects related to equipment, materials, processes, products, by-products or wastage of the brewery, he shall submit an application so to do to the liquor authority, on forms prescribed and furnished by it. If the authority determines that the activities specified in the application will not impede the effective administration of the alcoholic beverage control law, it may approve such application, subject to such restrictions or modifications, and in such manner and form as it may determine, and no brewer licensed under this chapter shall engage in any such activities without the prior approval of the authority. Provided, however, if the licensed brewer desires to engage in any activities identified in paragraph (f) or (g) of this subdivision the licensee shall submit an application to do so to the liquor authority, on forms prescribed and furnished by it. If the authority determines that the activities specified in the application will not impede the effective administration of this chapter, it may approve such application, subject to such restrictions or modifications, and in such manner and form as it may determine. The approval of such application shall be subject to the imposition of such additional license fees for such activities identified in paragraph (g) of this subdivision consistent with the manufacture of any alcoholic beverages under this article and articles five and six of this chapter. The liquor authority is hereby authorized to adopt such rules and regulations as it may determine necessary to effectuate the provisions of this subdivision.

8. (a) A licensee or his or her employee, or a brewer or manufacturer as defined in section three of this chapter or its employee or representative, or an importer having a basic permit as required by section 1.20 of title 27 of the code of federal regulations or its employee or representative, may obtain a permit to serve small samples of beer or malt beverages he or she produces or imports at establishments licensed under section fifty-four or fifty-four-a of this article. Furthermore such permit may also be obtained for serving small

samples of beer or malt beverages produced or imported by such licensee, brewer, manufacturer or importer at annual fairs sponsored by agricultural and horticultural societies as defined in section fourteen hundred nine of the not-for-profit corporation law, and for sampling at the licensed premises of the holder of a wholesaler's license under section fifty-three of this article issued or renewed prior to July first, nineteen hundred sixty, and thereafter renewed or transferred, which authorizes the holder thereof to sell beer at retail to a person for consumption in his or her home. For purposes of this paragraph, a representative shall not include a person licensed under section fifty-three of this article or his or her employees.

(b) The fee for a temporary brewer tasting permit shall be twenty dollars and shall be issued by the authority and dated for its period of use, which shall not exceed three days. An applicant for such permit may also apply for an annual brewer tasting permit for a fee of one thousand dollars which shall be issued by the authority.

(c) Tastings at such licensed establishments or annual fairs shall be conducted only within the hours fixed by or pursuant to this chapter, during which alcoholic beverages may be lawfully sold or permitted upon premises licensed to sell beer or malt beverages for off-premises consumption.

(d) A licensee or his or her employee may provide small samples of beer or malt beverages he or she produces at their licensed establishment. No permit shall be required for a licensee or his or her employee to provide small samples of beer or malt beverages when served at his or her licensed establishment.

(e) Each serving at tastings shall be served only by the brewer or importer or his or her employee and shall be limited to three ounces or less of a brand of beer or malt beverage produced by the brewer or by the importer and no consumer of legal age shall be provided or given more than two servings of such brands offered for tasting.

(f) All beer or other malt beverages served pursuant to a permit issued under this subdivision shall have been purchased by the retail licensee upon whose premises the serving of samples is taking place.

(g) A brewer or importer to whom a permit is issued pursuant to this subdivision may not be assessed a fee or charge by the retail licensee upon whose premises the serving is taking place for the privilege of serving such samples.

(h) The brewer or importer, or his or her employee serving such samples, shall be responsible for ensuring that such samples are only served to individuals legally eligible to consume alcoholic beverages in this state.

(i) Any liability stemming from a right of action resulting from the sampling of beer or other malt beverages as authorized by this subdivision, and in accordance with the provisions of sections 11-100 and 11-101 of the general obligations law, shall accrue to the brewer or importer.

(j) The authority is authorized and directed to provide such forms to a brewer or importer to obtain the necessary temporary brewer tasting permit and promulgate such rules and regulations, as it deems necessary or appropriate to implement the provisions of this subdivision to

protect the health, safety and welfare of the people of this state.

9. A brewery shall manufacture at least fifty barrels of beer annually.