

ORDINANCE 15-O-26 amending the Murfreesboro City Code, Chapter 4, Alcoholic Beverages, Article III, Beer, and Article IV, Nudity on Premises.

WHEREAS, Chapter 5, Title 57 of the Tennessee Code Annotated governs the regulation of the manufacture, storage, distribution, and sale of beer by local government entities; and

WHEREAS, Tennessee Code Annotated § 57-4-204 prohibits certain sexual conduct and representations at establishments selling liquor by the drink; and

WHEREAS, in order to conform local ordinances with general state laws, this ordinance shall be enacted.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. Chapter 4, Article III, Beer, of the Murfreesboro City Code, created by Ordinance No. 87-15, as amended, is hereby deleted in its entirety and substituted in lieu thereof the following:

ARTICLE III. BEER

DIVISION 1. GENERALLY

SECTION 4-40 MANUFACTURE, STORAGE, DISTRIBUTION, AND SALE OF BEER REGULATED.

It shall be lawful to manufacture, store, transport, distribute, sell, possess, and receive beer within the City, subject to all of the regulations, limitations, and restrictions provided in this article and subject to the rules and regulations promulgated pursuant to this article.

SECTION 4-41 DEFINITIONS.

- (A) The following words shall have the meanings ascribed to them in this section:
- (1) **Applicant**. Any person filing or on whose behalf an application for a beer permit is filed with the City Recorder.
 - (2) **Beer**. Any beer, ale, or other malt beverage, or any other beverages having an alcoholic content of not more than five percent (5%) by weight, prior to January 1, 2017, and thereafter, eight percent (8%) by weight, except wine as defined in T.C.A. § 57-3-101; provided, however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other non-beverage ingredients containing alcohol.
 - (3) **Board**. The City of Murfreesboro Beer Board.
 - (4) **Bona fide charitable or nonprofit organization**. (a) Any corporation that has been recognized as exempt from federal taxes under § 501(c) of the Internal Revenue Code, codified in 26 U.S.C. § 501(c); or (b) any other organization that exclusively serves religious, educational or charitable purposes and that has been recognized by the Tennessee Secretary of State as being exempt from registering with the Secretary of State as a charitable organization in accordance with the requirements of the Charitable Solicitations Act, T.C.A. §48-101-501 et seq.
 - (5) **Caterer**. A person engaged in offering food and beverage service for a fee at various locations that: (a) operates a permanent catering hall or restaurant; (b) has a complete and adequate commercial kitchen; and (c) is licensed as a caterer by the Tennessee Department of Health.
 - (6) **Certified clerk**. A clerk who has successfully satisfied the training requirements set forth in Title 57, Chapter 5, Part 6 of the Tennessee Code and who has received certification from a responsible vendor training program.
 - (7) **Clerk**. Any person working in a capacity to sell beer directly to consumers for off-premises consumption.

- (8) Commission: The Tennessee Alcoholic Beverage Commission.
- (9) Crime involving moral turpitude: Any of the following felony or misdemeanor offenses as established by Tennessee law, by any similar federal statute, or by any similar statute of another United States jurisdiction: first or second degree murder; voluntary manslaughter; aggravated assault; domestic assault or abuse; kidnapping; false imprisonment; all sexual offenses; robbery; arson; burglary; money laundering; child abuse or neglect; bribery; the manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell any Schedule I or II construed substances as designated in Title 39, Chapter 17, Part 4 of the Tennessee Code; theft of property or services classified as a felony or included within a jurisdiction's two highest classifications of misdemeanors, i.e., Class A and B misdemeanors under Tennessee law or the equivalent in the jurisdiction in which the crime was committed; or any attempt, conspiracy, or solicitation to commit any of the foregoing criminal offenses.
- (10) Employee: An individual employed by a permit holder who renders services in the distribution, sale, manufacture, or consumption of beer at the location for which the permit applied for or issued under this article is applicable.
- (11) Hearing Officer: An individual appointed by the City Council to adjudicate issues relating to the suspension or revocation of permits and/or the issuance of fines pursuant to this chapter.
- (12) Live entertainment: A performance by one or more individuals who perform before an audience on a permitted premise as a singer, musician, dancer, comedian, or model for consideration, monetary or otherwise.
- (13) Owner: The owner of a business to which a permit is issued, whether an individual, association, partnership, limited liability company, corporation, or other entity.
- (14) Permit Holder: Any person to whom any permit has been issued pursuant to this article.
- (15) Permitted premises: The property owned, leased, or otherwise controlled by a permit holder and so connected with the beer business in which the permit holder is engaged so as to form a component or integral part of it, including, but not limited to a building in which such business is located and the parking areas surrounding it.
- (16) Person: Any individual, association, partnership, limited liability company, corporation, or other entity, including the City of Murfreesboro.
- (17) Place of worship: Any structure that is utilized on a regular basis by a religious institution as the site of congregational services, rites or activities communally undertaken for the purpose of worship.
- (18) Responsible vendor: A vendor that has received certification from the Tennessee Alcoholic Beverages Commission pursuant to Title 57, Chapter 5, Part 6 of the Tennessee Code.
- (19) Responsible vendor training program: A training program related to the responsible sale of beer for off-premises consumption that has met all the statutory and regulatory requirements set forth in Title 57, Chapter 5, Part 6 of the Tennessee Code and in the Tennessee Alcoholic Beverages Commission's rules and regulations;
- (20) Retail sale or sale at retail: A sale to a consumer or to any person for any purpose other than resale.
- (21) School: Any public or private primary school, secondary school, nursery school, kindergarten, or day care facility. The term does not include any industrial, technical, or trade school, any building or facility of Middle Tennessee State University, or any other post-secondary educational institution.
- (22) Storage: The storing or possessing of beer for the purpose of resale by the permit holder.
- (23) Vendor: Any person who been issued a permit to sell beer for off-premises consumption.
- (24) Wholesale or sale at wholesale: A sale to any person for purposes of resale by that person.
- (B) Other terms used in this article shall have the meanings ascribed to them, where applicable, in Title 57, Chapter 5 of the Tennessee Code, as such statutory definitions may be amended from time to time.

SECTION 4-43 INTERPRETATION.

This article and the provisions herein shall be interpreted and enforced in conjunction with the laws of the state regarding beer. In the event of conflicts or inconsistencies, the laws of the state shall control.

SECTION 4-42 BEER BOARD.

- (A) *Created; Duty and Authority.* The City of Murfreesboro Beer Board is hereby established and vested with the duty and authority to regulate the manufacture, storage, distribution, and sale of beer within the City in accordance with powers granted to local governments in Title 57, Chapter 5 of the Tennessee Code and as provided in this article.
- (B) *Membership.* The Board shall be composed of the Mayor and members of City Council. The Mayor shall serve as the chair of the Board. The Vice Mayor shall serve as chair in the Mayor's absence or in the event of the Mayor's recusal on a particular matter. The Mayor and members of City Council shall receive no compensation for serving as members of the Board in addition to that authorized by Chapter 2 of the City Code.
- (C) *Meetings.* All meetings of the Board shall be open to the public. The Board shall hold regular meetings in conjunction with regular meetings of the City Council. In addition, the Mayor, and in the Mayor's absence, the Vice Mayor, may call a special meeting of the Board, provided that reasonable notice thereof is provided to each member. The Board may adjourn a meeting at any time to another time and place.
- (D) *Minutes.* The City Recorder shall prepare and maintain minutes of all meetings of the Board in accordance with the requirements of T.C.A. § 8-44-104. All such minutes shall be a public record.
- (E) *Requirement for Board Quorum and Action.* The attendance of at least a majority of the members of the Board shall be required to constitute a quorum for the purpose of transacting business. Matters before the Board shall be decided only by a majority vote of the total membership of the Board. Any member present but not voting shall be deemed to have cast a "nay" vote.
- (F) *Rules of Procedure.* The Board may adopt rules of procedure governing the applications for issuance of beer permits. Any hearing before the Board relating to the revocation or suspension of a permit or the imposition of a civil penalty shall be held in accordance with the requirements set forth in Division 4.
- (G) *Appeals.* A final decision of the Board may be appealed pursuant to T.C.A. § 57-5-108.

SECTION 4-43 UNLAWFUL PURCHASE OR ATTEMPTED PURCHASE OF BEER OR OTHER ALCOHOLIC BEVERAGES.

- (A) It shall be unlawful for any person:
 - (1) Under the age of twenty-one (21) to purchase or attempt to purchase beer or any other alcoholic beverage;
 - (2) To purchase beer or any other alcoholic beverage for any person under the age of twenty-one (21) or at the request of any person under the age of twenty-one (21);
 - (3) Who is obviously intoxicated to purchase beer or any other alcoholic beverage; or,
 - (4) To purchase beer or any other alcoholic beverage for, or at the request of, a person who is obviously intoxicated.
- (B) A permit holder shall promptly notify the Murfreesboro Police Department of the name, address, and date of birth of any person violating this article, if such information is reasonably available to the permit holder.
- (C) Any person between the ages of eighteen (18) and twenty-one (21) may be prosecuted in accordance with this article or T.C.A. §57-5-301, as same may be amended from time to time. Any person between the ages of thirteen (13) and eighteen (18) may be cited and prosecuted in accordance with this article or T.C.A. §55-10-701 et seq., as same may be amended from time to time.

(D) Notwithstanding the foregoing, nothing herein shall make it unlawful for the Murfreesboro Police Department to use a person under twenty-one (21) years of age in an effort to enforce this law.

SECTION 4-44 VIOLATIONS.

Except as otherwise provided in this article, any violation of this article or any provision of Title 57, Chapter 5 of the Tennessee Code shall constitute a civil offense and shall, upon conviction, be punishable by a penalty under Code §1-8 of the City Code, in addition to or in lieu of any other penalty or remedy established in this article, including the suspension or revocation of a permit. Each day a violation shall be allowed to continue shall constitute a separate offense.

SECTIONS 4-45 - 4-49 RESERVED.

DIVISION 2. PERMITS

SECTION 4-50 PERMIT REQUIRED FOR ENGAGING IN BEER BUSINESS

It shall be unlawful for any person to sell or to manufacture, distribute, or store beer for resale without first applying for and obtaining a permit from the Board.

SECTION 4-51 CLASSIFICATION OF PERMITS; PERMITS RESTRICTIVE AS TO CLASS OF BEER BUSINESS; GRANT OF PRIVILEGE.

(A) The Board shall have the authority to issue the following classes of permits:

- (1) Manufacturer permit. A manufacturer permit authorizes a permit holder who has complied with the requirements of T.C.A. § 57-5-102 to manufacture beer and to store, distribute, sell at wholesale, and sell at retail, for both on-premises and off-premises consumption to the extent permitted by and in accordance with T.C.A. § 57-5-101 and other applicable state law.
- (2) Distributor permit. A distributor permit authorizes a permit holder to store beer in a warehouse or similar facility within the City, to transport beer, and to sell or otherwise distribute beer at wholesale within the City. A distributor who does not maintain a storage facility within the City is not required to obtain a distributor permit to sell or otherwise distribute beer at wholesale within the City.
- (3) Off-premises retail permit. An off-premises retail permit authorizes a permit holder to engage in the retail sale of beer, provided the beer sold is not consumed upon the permit holder's premises.
- (4) On-premises retail permit. An on-premises retail permit authorizes a permit holder to engage in the retail sale of beer where the beer is to be consumed by the purchaser or the purchaser's guest upon the permit holder's premises. Any such permit issued to a hotel or motel shall permit the sale of beer to persons in guest rooms, either through room-service delivery or via locked in-room units operated in accordance with T.C.A. § 57-5-107.
- (5) Combined retail permit. A combined retail permit authorizes a permit holder to engage in the retail sale of beer for consumption both on and off the permit holder's premises.
- (6) Special-event permit. A special-event permit authorizes a bona fide charitable or nonprofit organization to sell or distribute beer to be consumed on the premises of a public or private facility, only at such times at which the facility is either: (1) being leased or being used for entertainment or engagement by the organization for a special limited event; or (2) being used for a special fund-raising event which is by invitation only or for which an admission is charged.
 - (a) Each special-event permit shall set forth the specific date(s), time(s), and location(s) of the permitted sale or distribution of beer.
 - (b) Beer may be sold or distributed under a single special-event permit for no more than twelve (12) hours in a twenty-four-hour period.
 - (c) No organization may receive a permit or a combination of special event permits covering more than thirty calendar days in a calendar year.
 - (d) One application may be used to obtain a permit for more than one event during the same calendar year if the application contains the information required for each event.

- (7) Caterer permit. A caterer permit authorizes a caterer who possess a current liquor by the drink certificate from the Commission to sell beer where the beer is to be consumed by the purchaser or the purchaser's guests upon the premises of the catered event site. No caterer permit shall be issued to a person who does not hold a valid on-premises or combined retail permit for its permanent catering hall or restaurant.
- (B) All beer permits shall be restrictive as to the type of beer business authorized under them. It shall be unlawful and a violation of this article for any permit holder to engage in any type of the beer business not expressly authorized by the permit issued to the permit holder. It shall likewise be unlawful and a violation of this article for a permit holder not to comply with an express restriction or condition established in this article or set forth in the permit holder's permit.
- (C) If a permit holder desires to engage in a type of beer business not authorized under the permit issued to the permit holder, the permit holder must apply to the Board for a new permit.
- (D) Permit holders holding a valid beer permit as of the effective date of this chapter shall not be required to apply for a new permit for the specific type of beer business in which they are engaged unless the permit holder desires to engage in a type of beer business not authorized under the permit holder's existing permit.
- (E) A permit issued by the Board merely grants the permit holder a privilege to carry on the business during the term of the permit subject to all the restrictions and conditions imposed by state law, the City Charter, and applicable provisions of this article and other ordinances of the City relating to these businesses.

SECTION 4-52 APPLICATION FOR PERMIT; FEE.

- (A) The owner of any business or other entity desiring to sell, distribute, manufacture, or store beer within the City, or an authorized agent thereof, shall file a written application for the desired permit in person with the City Recorder. Applicants seeking multiple permits or multiple classes of permit must submit a separate application for each permit sought.
- (B) The written application shall be made on such form as the Board shall prescribe and furnish.
- (C) Each application for a permit, other than a special event permit, shall be accompanied by a non-refundable application fee of two hundred fifty dollars (\$250.00). Applications for special-event permits, including applications seeking a permit covering more than one event, shall be accompanied by a non-refundable application fee of fifty dollars (\$50.00).
- (D) No completed application will be presented for consideration by the Board unless the City Recorder has had at least ten (10) days to review and process the application; provided, however, the Board may waive this requirement and consider a completed application if the Board deems such action appropriate under the circumstances.
- (E) The applicant shall certify that the applicant has read and is familiar with the provisions of this article.
- (F) An applicant shall disclose the following information in the application:
- (1) Name of the applicant;
 - (2) Name of applicant's business;
 - (3) Location of business by street address or other geographical description to permit an accurate determination of conformity with the requirements of this section;
 - (4) If beer will be sold at two or more restaurants or other businesses at the same location pursuant to the same permit, a description of all such businesses;
 - (5) Persons having at least a five percent (5%) ownership interest in the applicant;
 - (6) Identity and address of a representative to receive annual tax notices and any other communication from the City;
 - (7) Whether any person having at least a five percent (5%) ownership interest in the applicant or any person to be employed in the distribution or sale of beer has been convicted or any violation of the laws regulating the possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten years;
 - (8) The class of permit requested; and
 - (9) Such other relevant information as may be required by the City.

- (G) All individuals holding at least a five percent (5%) ownership interest in the applicant must present proof that they have been citizens or lawful residents of the United States for not less than one (1) year immediately preceding the date upon which application is made to the City Recorder. Applicants may satisfy this requirement by presenting any of the following official documents for inspection by the City Recorder: (1) a U.S. Passport or Passport Card; (2) a Permanent Resident Card ("Green Card"); or (3) a birth certificate issued by: (a) the United States government; or (b) the government of any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States. This requirement shall not apply where no individual holds at least a five percent (5%) ownership interest in the applicant.
- (H) An applicant for an on-premises or combined retail permit must establish that the number of parking spaces on the applicant's premises meets or exceeds the applicable requirements established by the City's Zoning Ordinance.
- (I) The applicant shall authorize the City to conduct a background investigation of the applicant and shall waive any right the applicant may have to privacy concerning arrests reflecting on the moral character of the applicant.
- (J) An applicant shall amend or supplement the application promptly if prior to the Board's consideration of the application, a change in circumstances alters or otherwise affects the information contained in the application.
- (K) Any applicant who the Board or Hearing Officer determines to have made a false statement or misrepresented a material fact in any application shall forfeit the permit and shall not be eligible to receive any permit for period of ten (10) years.
- (L) Where the Board has denied a person's application three (3) times, the person shall not be allowed to apply again for a permit on the same premises until after the expiration of one (1) year from the date of the third denial.
- (M) The Board may waive the fees imposed by this section where:
 - (1) A permit holder applies for a new permit based solely upon a change of the name under which the business operates with no change whatsoever in the ownership, type, or location of the business; or
 - (2) A permit holder applies for a new permit based solely upon a change of the permit holder's legal name, with no change whatsoever in the ownership, type, or location of the business, provided the permit holder presents, in the case of an individual, a court order changing the individual's legal name, or, in the case of a corporation, limited liability company, limited liability partnership, limited partnership, or partnership, a certified copy of the amendment form filed with the Tennessee Secretary of State changing the entity's legal name.

SECTION 4-53 APPLICANT CRIMINAL BACKGROUND CHECK.

- (A) All applicants must submit to a fingerprint-based criminal background check through the Tennessee Bureau of Investigation's Tennessee Application Processing Services (TAPS) program. The results of such checks will be forwarded directly to the City as the originating agency as authorized by T.C.A. § 57-5-103.
- (B) If an applicant is a corporation or if no individual person holds at least a 5%-ownership interest in the applicant, the applicant's manager will be required to submit to the background check.
- (C) An application will not be considered complete unless the City Recorder has received the results of the applicant's criminal background check.
- (D) An applicant's criminal background check will remain valid for 180 days from the date of the background check. An applicant who does not secure a permit for a specific premises within this period shall be required to submit to a new fingerprint-based criminal background check in accordance with the requirements of this section.

SECTION 4-54 APPLICANT—COMPLIANCE WITH OTHER PROVISIONS OF CITY CODE.

- (A) No beer permit shall be issued to any applicant for a specific location where there exists one or more signs that are in violation of the sign ordinance of the City.
- (B) No beer permit shall be issued to any applicant who occupies or proposes to occupy premises for the sale of beer where conditions exist on such premises that are in violation of the building, fire, electrical, mechanical, gas, and property maintenance

codes adopted by the City, to the extent applicable under the circumstances; provided, however, the Board may conditionally approve an application subject to the condition that the premises pass all required building and code inspections before the City Recorder may issue the requested permit.

- (C) No beer permits shall be issued to any applicant for a specific location unless the proposed use complies with the Murfreesboro Zoning Ordinance or the property owner has obtained a variance or special use permit for the proposed use.

SECTION 4-55 APPROVAL OF APPLICATION; DENIAL OF APPLICATION; ISSUANCE OF PERMIT.

- (A) The Board may, but is not required to, conduct a formal hearing on a permit application before voting to approve or deny the request for a permit.
- (B) Where an applicant has satisfied the requirements for issuance of a particular class of permit and all other general requirements contained in this article, the Board shall approve the permit application. Within ten (10) business days following the Board's approval of an application, the City Recorder shall issue a permit in the name of the owner of the business that submitted the application.
- (C) Permits shall be issued to the owner of the business or other entity responsible for the premises for which the permit is sought, regardless of whether such owner is an individual, corporation, limited liability company, partnership, joint-stock company, syndicate, association, or governmental or other entity.
- (D) The Board shall not approve an application unless the applicant establishes to the satisfaction of a majority of the Board's members that:
- (1) All individuals having at least a five percent (5%) ownership interest in the applicant have been citizens or lawful residents of the United State for not less than one (1) year immediately preceding the date upon which the application is made to the City Recorder;
 - (2) No beer will be sold except at places where such sale will not cause congestion of traffic or interference with schools, places of worship, or other places of public gathering, or otherwise interfere with public health, safety, and morals;
 - (3) No sale of beer shall be made to any person under twenty-one (21) years of age;
 - (4) No person having at least a five percent (5%) ownership interest in the applicant has been convicted within the past ten (10) years of: (i) violating any federal, state, or local law the possession, sale, manufacture, or transportation of beer or other alcoholic beverages; or (ii) any crime involving moral turpitude;
 - (5) No person who is or will be employed by the applicant in the manufacture, storage, distribution, or sale of beer has been convicted within the past ten (10) years of: (i) violating any federal, state, or local law the possession, sale, manufacture, or transportation of beer or other alcoholic beverages; or (ii) any crime involving moral turpitude; and
 - (6) No sale shall be made for on-premises consumption unless the application so states.
- (E) The Board may delay consideration of an application where the applicant faces pending charges of: (i) violating a federal, state, or local law regulating the possession, sale, manufacture, or transportation of beer or other alcoholic beverages; or (ii) having committed any crime involving moral turpitude.
- (F) In determining whether or not the applicant's proposed business will cause or be likely to cause congestion of traffic, interference with schools, churches, or other places of public gathering, or will interfere with or be likely to interfere with, injure or adversely affect the public health, safety and morals for the purposes of this section, the Board is expressly authorized and required to take into consideration all facts, conditions and circumstances that may be relevant to such the inquiry in a particular case.
- (G) No new permit shall be issued to permit the sale of beer on the a premises for which a prior permit has been revoked for at least one (1) year after the date the revocation of the prior permit becomes final; provided, however, the Board, in its discretion, may determine that issuance of a new permit before the expiration of one (1) year from such date is appropriate, if the person applying for such issuance is not the person that held the previously revoked permit or any family member who could inherit from such individual under the statute of intestate succession.

- (H) No new permit shall be issued to an applicant who has been assessed a civil penalty under this article until the applicant has paid such penalty in full.
- (I) An applicant may appeal a decision of the Board denying the applicant's request for a permit pursuant to T.C.A. § 57-5-108.

SECTION 4-56 PERMIT—CONSENT TO INSPECTION OF PREMISES AND RECORDS; DISPLAY OF PERMIT; IDENTIFICATION OF MANAGER.

Every permit issued by the Board is issued subject to the following conditions:

- (A) The permit holder shall allow the permitted premises to be inspected, at any time the premises is open for business, by any duly authorized agent of the Board, by City's codes inspectors, by any Murfreesboro Police Officer, or by other duly authorized law enforcement officers or health officials.
- (B) The permit holder shall keep invoices and all other documents relating in any way to the storing, sale, distribution, or manufacture of beer, and shall permit the City Recorder or the City Recorder's designee to inspect, at any time the permitted premises is open for business, all such articles, containers, packages, invoices, books, papers, memoranda, and other documents as may be deemed necessary in the opinion of the City Recorder or the City Recorder's designee to determine whether or not all local taxes have been paid and/or to determine the amount of such taxes that may be due.
- (C) The permit holder shall display all permits issued by the Board in a conspicuous place, together with all other permits, licenses, and stamps required by law.
- (D) Except where a permit is issued to a natural person, the name of the manager responsible for the sale, distribution, or manufacture from the permitted premises shall be provided to the City Recorder. In the event of a change in management, the permit holder shall provide the name of the new manager to the City Recorder within thirty (30) days of such change.

SECTION 4-57 PERMIT—NOT TRANSFERRABLE; PERMITTED LOCATIONS FOR CONSUMPTION; TERMINATION OF BUSINESS.

- (A) A permit shall remain valid for as long as the permit holder conducts business at the premises for which it was issued, provided that such permit is not revoked or suspended pursuant to Code §4-62.
- (B) A permit is valid only for the owner of the business in whose name the permit is issued and cannot be transferred to another owner. If the owner is a corporation, joint venture, syndicate, limited liability company, or partnership, a change in ownership shall occur when control of at least fifty (50) percent of the stock or interest in such entity is transferred to another person.
- (C) A permit is valid only for a business operating under the name identified in the permit application; provided, however, that when a permit holder applies for a new permit based solely upon a change of the name under which the business operates with no change whatsoever in the ownership, type, or location of the business, upon completion of the appropriate application form, the City Recorder may issue a new permit without further review by the Board.
- (D) A permit is valid only for a single location, except as provided in subsection (E) of this section and cannot be transferred to another location. A permit shall be valid for all decks, patios, and other outdoor serving areas that are contiguous to the exterior of the building in which the business located and that are operated by the business.
- (E) A permit holder who operates two (2) or more restaurants or other businesses within the same building may operate, in the permit holder's sole discretion, all or some of the businesses pursuant to the same permit. Such multiple use permits must be issued for the classes applicable to the conduct of the restaurants or business.
- (F) A permit shall automatically expire upon termination of the business, a change in ownership, the relocation of the business, or a change in the name of the business. A permit holder must return a permit to the City Recorder within fifteen (15) days of termination of the business, a change in ownership, the relocation of the business, or a change in the name of the business; provided, however, failure to return the permit shall have no effect on the automatic expiration of the permit under such circumstances.

(G) Except as otherwise provided in subsection (F), a beer permit shall automatically expire and cease to be valid if beer is not sold, distributed, or manufactured by the permit holder on the permitted premises for any continuous six-month period after issuance of the permit.

SECTION 4-58 PERMIT—CATERERS; NOTICE REQUIREMENTS; LOCATION RESTRICTIONS.

In addition to the other requirements of this article, all caterer permits are subject to the following notice requirements and location restrictions:

- (A) A person holding a caterer permit must give advanced written notice to the City Recorder via email, facsimile, or U.S mail at least five (5) business days before each event catered by the permit holder for which beer will be sold and consumed. Such notice shall include the date, time, and location of the event and identify the person that has contracted with the permit holder to cater the event.
- (B) No caterer permit shall be valid for the sale and consumption of beer on any premises for which an on-premises or combined retail permit has been revoked in the preceding twelve (12) months.
- (C) A caterer must make its permit or a copy thereof available at each event catered by the permit holder for inspection by duly authorized agents of the Board, by City code inspectors, by a Murfreesboro Police Officer, or by other duly authorized law enforcement officers or health officials.

SECTION 4-59 PROHIBITED ACTIVITY.

(A) *Sales of Beer to Persons Under the Age of 21 Prohibited.*

- (1) No permit holder nor any employee thereof shall sell beer or permit beer to be sold to a person under twenty-one (21) years of age.
- (2) In addition, no sale of beer for on-premises or off-premises consumption shall be made to a person who does not present a valid, government-issued photo identification; provided, however, that it shall be an affirmative defense to any punishment or adverse administrative action, including permit suspension or revocation, as provided for a violation of this subsection (A)(2) if the sale was made to a person who is or reasonably appears to be over fifty (50) years of age and who failed to present an acceptable form of identification.
- (3) The permit holder and the permit holder's agents and employees bear the burden of ascertaining the age of a purchaser in accordance with the procedures established in T.C.A. § 57-5-301(a)(1).
- (4) The City police shall notify a permit holder of the arrest or citation of the permit holder's employee pursuant to this subsection (A) within seven days of the arrest or citation, in order for any resulting conviction or guilty plea to be admissible at a hearing on suspension or revocation of the permit holder's permit.
- (5) A permit holder engaged in the retail sale of beer shall post signs on the permit holder's premises informing customers of the permit holder's policy against selling beer to persons under twenty-one (21) years of age. The signs shall be not less than eight and one half inches by eleven inches (8 ½" x 11"), and contain the following language:

STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER

- Any attempt by a person under age 21 to purchase an alcoholic beverage is illegal and must be reported to the police.**
- If you aren't 21 and attempt to purchase beer, you could lose your driver's license.**
- If you aren't 21 and are in possession of beer, you could lose your driver's license.**

Such signs shall be posted in conspicuous locations in the clear view of customers, including near the business's cash register(s) and on the door(s) of any cooler or refrigerator containing beer that is accessible to customers. The City Recorder shall make one sign available to each permit holder free of charge. The City Recorder shall make additional signs available to permit holders for a reasonable fee established by resolution of the City Council.

- (6) For purposes of this subsection, a government-issued identification means: (a) a U.S. or foreign passport; (b) a driver's license issued by: (i) any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States; or (ii) any Canadian or Mexican state, province, or territory; (c) a photo identification card, other than a driver's license, issued by any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States; (d) a U.S. military identification card; (e) an identification card issued by the United States Customs and Immigration Service, including, but not limited to, a nonresident alien border crossing card, a resident alien border crossing card, or a permanent resident card ("Green Card"); or (f) other form of identification deemed acceptable to the permit holder, that includes the photograph and birth date of the person attempting to purchase beer.
- (B) *Sale to intoxicated person.* No permit holder nor any employee thereof shall sell beer or permit beer to be sold to a visibly intoxicated or otherwise mentally incapacitated person.
- (C) *Facilitation of open container violation.* No permit holder nor any employee thereof shall permit a customer to exit the permit holder's premises with an open container of beer onto any public street, sidewalk, right of way, park, school ground, or other public place or property unless such possession or consumption of beer is specifically authorized by a permit or license issued by the City or State.
- (D) *Loitering of certain individuals prohibited.*
- (1) No permit holder nor any employee thereof shall allow any person under twenty-one (21) years of age to loiter in or about the permit holder's premises. The burden of ascertaining the age of a person shall be on the permit holder and the permit holder's agent and employees.
- (2) No permit holder nor any employee thereof shall allow an intoxicated person to loiter about the permit holder's premises.
- (E) *Hours of Sale.* No permit holder nor any employee thereof shall sell beer or permit beer to be sold or consumed on the permit holder's premises between the hours of 3:00 A.M. and 10:00 A.M. on Sundays and between the hours of 3:00 A.M. and 6:00 A.M. on any other day. This subsection (E) shall not apply to beer sold by hotels via locked in-room units operated in accordance with T.C.A. §57-5-107.
- (F) *Employment of certain individuals prohibited.* No permit holder shall employ any person in the manufacture, storage, distribution, or sale of beer who:
- (1) Is under 18 years of age; or
- (2) Has been convicted or any violation of the laws regulating the possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years.
- (G) *Retail drive-through and delivery sales prohibited.* No permit holder nor any employee thereof shall sell beer or permit the sale of beer through any drive-through or delivery window or by curbside service or to deliver beer off-premises to the consumer.
- (H) *Purchase by lawful purchaser for consumption by minor prohibited.* No permit holder nor any employee thereof shall knowingly:
- (1) sell beer or permit beer to be sold to a lawful purchaser who is purchasing the beer for consumption by a minor; or
- (2) allow beer to be passed from a lawful purchaser or possessor to a minor for consumption on the permit holder's premises.
- (I) *Disorderly conduct and criminal activity on premises prohibited.* No permit holder nor any employee thereof shall:
- (1) Permit disorderly conduct on the permit holder's premises; or
- (2) Knowingly permit an individual to engage in any criminal activity on the premises.
- (J) *False statements.* No permit holder shall make a false statement or misrepresentation of a material fact in any application for a permit or relating to an existing permit.
- (K) *Service of person possessing firearm prohibited.* No permit holder shall serve, or shall allow any of the permit holder's employees to serve, beer for consumption on the permit holder's premises or the premises of a special or catered event to an individual known by the server to have a firearm on the individual's person.
- (L) *Adequate toilet facilities; compliance with health and safety regulations.* No permit holder shall fail to provide and maintain separate sanitary toilet facilities for men and

women or fail to comply with any state, county, or local health, building, or property maintenance codes and regulations.

- (M) *Failure to pay privilege tax.* No permit holder shall fail to pay the privilege tax imposed pursuant to T.C.A. § 57-5-104.
- (N) *Maintaining or operating premises in manner detrimental to public health, safety, or morals.* No permit holder shall maintain or operate premises in a manner detrimental to public health, safety, or morals. A permit holder shall comply with the requirements of article IV of this chapter and any state law prohibiting sexual contact on the premises of an adult entertainment establishment.
- (O) *Failure to maintain required records.* No permit holder shall fail to comply with recordkeeping requirements established by Code §4-57 of this article or fail to make such records available for inspection by the City Recorder or the City Recorder's designee.
- (P) *Wholesale purchase of beer by certain permit holders.* No person holding an on-premises, off-premises, or combined retail permit shall purchase beer from anyone other than a wholesaler located in Tennessee and licensed in accordance with T.C.A. § 57-5-201.
- (Q) *Outdoor signs.* No permit holder shall maintain any outdoor sign, advertisement, or display that violates state law or City ordinance.

SECTION 4-60 PRIVILEGE TAX.

- (A) A permit holder shall pay an annual privilege tax of one hundred dollars (\$100.00) for each permit issued to the permit holder for the privilege of selling, distributing, storing, or manufacturing beer in the state. Such tax shall be remitted on or before each successive January 1, to the City Recorder.
- (B) The City Recorder shall mail written notice to each permit holder of the payment date of the annual tax at least thirty (30) days prior to January 1. Notice shall be mailed to the address specified by the permit holder on the permit application. If a permit holder does not pay the tax by January 31 or within thirty days after written notice of the tax was mailed, whichever is later, the City Recorder shall notify the permit holder by certified mail that the tax payment is past due. If a permit holder does not pay the tax within ten (10) days after receiving notice of its delinquency by certified mail, then the city may suspend or revoke the permit or impose a civil penalty pursuant in accordance with the procedures set forth in this article and T.C.A. § 57-5-108.
- (C) At the time a new permit is issued to any business subject to this tax, the permit holder shall be required to pay the privilege tax on a pro-rated basis for each month or portion thereof remaining until the next tax payment date.

SECTION 4-61 REVOCATION OR SUSPENSION OF PERMIT; CIVIL PENALTIES.

- (A) *Authority to revoke or suspend.* The Board is hereby granted the power to revoke or suspend any beer permit, or to refer to a Hearing Officer to adjudicate issues relating to the suspension or revocation of a beer permit and/or the issuance of fines, where the permit holder: (1) has violated any of the provisions of article III or IV of this chapter; or (2) has been found guilty of violating one or more provisions of the Murfreesboro City Code, including but not limited to articles III or IV of this chapter, three or more times in a twelve-month period; (3) is convicted of any violation of the laws of the United State or the state prohibiting or regulating the manufacture, sale, possession, storage, or transportation of beer or other alcoholic beverages; or (4) is convicted of a crime involving moral turpitude.
- (B) *Length of suspension; permanent revocation.*
 - (1) *Discretion of Board or Board Hearing Officer.* Except as otherwise provided by this article or state law, the Board and the Board Hearing Officer may exercise discretion in determining whether to suspend or revoke a permit and in determining the appropriate length of a suspension under the circumstances presented in each case. In making these determinations, the Board or Board Hearing Officer shall consider the effectiveness of any sanction previously imposed against the permit holder.
 - (2) *Minimum and maximum suspensions.*

- (a) *First offense in a twelve-month period.* Notwithstanding subsections (B)(1) and except as otherwise provided in this section, no permit shall be suspended for more than ten (10) days, if the violation is by the permit holder or the permit holder's manager, or for more than five (5) days, if the violation is by a permit holder's non-managerial employee, provided that neither the permit holder nor any of the permit holder's employees has committed another violation of this article in the previous twelve (12) months.
 - (b) *Subsequent offenses in a twelve-month period.* Notwithstanding subsections (B)(1) and except as otherwise provided in this section, a permit shall be revoked or suspended for a minimum of three (3) days if either the permit holder, the permit holder's manager, or any of the permit holder's employees has committed another violation of this article in the previous twelve (12) months.
- (3) *Suspension of permit for failure to remit wholesale beer tax.* Notwithstanding subsection (B)(2), the Board or Board Hearing Officer may suspend the permit of a permit holder engaged in the sale of beer at wholesale for up to thirty (30) days for each violation of T.C.A. § 57-6-104.
- (4) *Revocation.*
- (a) Except as otherwise provided in this article, no permit may be revoked unless the permit holder has committed at least two (2) violations of this article in a twelve (12) month period.
 - (b) Except as otherwise provided by this article or state law, the Board or the Board Hearing Officer shall revoke a permit holder's permit if either the Board or the Board Hearing Officer finds that beer has been sold on the permitted premises to persons under the age of eighteen (18) on two (2) or more occasions in a twelve-month period or on three (3) or more occasions in a twenty-four month period.
- (C) *Exception; sale by a responsible vendor's clerk to person under the age of 21.*
- (1) A permit shall not be revoked or suspended because of the sale of beer to a person under the age of twenty-one (21) if, at the time of the sale: (a) the permit holder was a responsible vendor; and (b) the clerk who made the sale was a certified clerk, or had been employed by the permit holder for sixty-one (61) days or less.
 - (2) Notwithstanding subsection (1), if the Commission revokes the permit holder's responsible vendor's certification pursuant to T.C.A. § 57-5-608 (b) because the permit holder had knowledge of or should have known about the violation, or participated in or committed the violation, the permit holder shall be punished under this section as if the vendor were not certified as a responsible vendor at the time of the sale.
- (D) *Exception; sale by vendor not certified as a responsible vendor to person between 18 and 21 years of age.*
- (1) A permit shall not be revoked because the permit holder or the permit holder's employee or agent sells beer to a minor over the age of eighteen (18) years, if such minor exhibits an identification, false or otherwise, indicating the minor's age to be twenty-one (21) or over, if the minor's appearance as to maturity is such that the minor might reasonably be presumed to be of such age and the minor is unknown to such person making the sale.
 - (2) In the case of an illegal sale such as that described in subsection (D)(1), a permit holder's permit may be suspended for a period not to exceed ten (10) days or a civil penalty up to one thousand five hundred (\$1,500.00) may be imposed.
- (E) *Civil penalty—responsible vendor.* Notwithstanding subsection (C)(1), the Board or the Board Hearing Officer may impose a civil penalty not to exceed one thousand dollars (\$1,000.00) for each offense of selling or permitting the sale of beer to a person under the age of twenty-one (21) or for any other violation of this article or applicable state law. A penalty imposed under this subsection shall be paid within seven (7) days of the imposition of the penalty. Failure to pay the penalty within seven (7) days shall constitute a violation of this article subject to prosecution under Code §4-44.
- (F) *Civil penalty— vendor not certified as a responsible vendor.*
- (1) Notwithstanding subsection (B)(2), the Board or the Board Hearing Officer, upon finding grounds for revoking or suspending a permit holder's permit, may offer a

permit holder who is not certified as a responsible vendor the alternative of paying:

- (a) a civil penalty not to exceed two thousand five hundred dollars (\$2,500.00) for each offense of selling or permitting the sale of beer to a person under the age of twenty-one (21); or
- (b) a civil penalty not to exceed one thousand dollars (\$1,000.00) for any other offense.

(2) If a civil penalty is offered as alternative to revocation or suspension, the permit holder shall seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn. The permit holder's payment of a civil penalty shall not affect the holder's ability to seek review of the civil penalty pursuant to state law.

(G) *Hearing required.* No permit shall be revoked or suspended or penalty imposed until a public hearing is held either before the Board or the Board Hearing Officer after reasonable notice to all the known parties in interest.

(H) *Initiation of proceedings.* The Chief of Police, the City Recorder, or any member of the Board may initiate revocation or suspension proceedings.

SECTION 4-62 LOSS OF CLERK'S CERTIFICATION FOR SALE TO MINOR.

If the Board or Board Hearing Officer determines that a clerk of a permit holder certified as a responsible vendor sold beer to a minor, the City Recorder shall report the name of the clerk to the Commission within fifteen (15) days of determination of the illegality of the sale.

SECTIONS 4-63 REQUIRED NOTICE TO COMMISSION OF SUSPENSION OR REVOCATION OF MANUFACTURER, ON-PREMISES RETAIL, AND COMBINED RETAIL PERMITS.

As required in T.C.A § 57-1-214(b), whenever the Beer Board or Hearing Officer suspends a manufacturer, on-premises retail, or combined retail permit, the City Recorder or the City Recorder's designee shall notify the Commission's executive director by certified mail, return receipt requested, of the action taken by the Beer Board or Hearing Officer. Such notice shall include the record of evidence and the determination made in suspending or revoking the permit.

SECTIONS 4-64 REQUIRED ACTION UPON NOTIFICATION BY COMMISSION OF SUSPENSION OR REVOCATION OF LICENSE.

(A) Upon the Beer Board's receipt of a certified letter, return receipt requested, from the Commission providing notice that the Commission has suspended or revoked the license of an establishment located within the City for a violation of chapter 4, title 57 of the Tennessee Code, the City Recorder may temporarily suspend the establishment's beer permit(s) and shall:

- (1) Schedule a hearing before a Hearing Officer or the Beer Board to be held at least fourteen (14) days following the date the local beer board receives the certified letter to provide an opportunity for the permit holder to appear and show cause why the permit to sell beer on the premises should not be suspended or revoked for a violation or violations as provided in chapter 4, title 57 of the Tennessee Code, based on actions taken by the commission; and
- (2) Notify the individual or business entity, which is listed as the permit holder at the same location where the alcoholic beverage license had been suspended or revoked, of the date and time of the hearing.

(B) If at such hearing, the Hearing Officer or Beer Board finds that a sufficient violation or violations have occurred as provided in chapter 4, title 57 of the Tennessee Code, at such location, then the Hearing Officer or Beer Board may suspend or revoke the permit to the same extent and at least for the same period of time as the Commission has suspended or revoked the license of the establishment.

(C) If the permit holder fails to appear or decides to surrender the permit to the Beer Board in lieu of appearing at the hearing, the permit may be suspended or revoked by the Beer Board; provided, that if the permit is suspended or revoked, no permit to

sell beer or malt beverages on the premises shall be issued by the Beer Board to any person for the location where the commission had suspended or revoked the license for the period of time included in the decision of the Commission.

(D) A decision of the Hearing Officer or Beer Board made pursuant to this section is final, and any party aggrieved thereby may appeal the decision of the local beer board in accordance with T.C.A. § 57-5-108.

SECTIONS 4-65 - 4-69 RESERVED.

DIVISION 3. ADJUDICATION OF VIOLATIONS

SECTION 4-70 HEARING OFFICER.

There shall be created the position of Hearing Officer for the purpose of the hearing and adjudicating issues relating to the suspension or revocation of permits and/or the issuance of fines pursuant to this article. Any provisions of this article which provide for the suspension or revocation of any permit, for the imposition of fines or other disciplinary action resulting from improper conduct of a business which holds a permit and which authorize the Board to take such disciplinary action shall be construed to authorize the Board to take such action by and through a properly qualified Hearing Officer duly appointed pursuant to the provisions of this part.

SECTION 4-71 SELECTION OF HEARING OFFICERS.

(A) The City Attorney shall recommend up to three (3) individuals to serve as Hearing Officers and present such individuals to the City Council for approval by majority vote. All such Hearing Officers shall be persons licensed to practice law in state of Tennessee, be in good standing with Board of Professional Responsibility of the Supreme Court of Tennessee, and have experience in the area of litigation.

(B) An individual appointed to serve as a Hearing Officer for purposes of this article may also serve as a Disciplinary Review Board Hearing Officer but, otherwise, shall not be an officer or employee of the City, nor hold any other public or political office, while serving as a Hearing Officer.

SECTION 4-72 COMPENSATION FOR HEARING OFFICER.

Hearing officers appointed under this article shall be compensated at a rate established by resolution of the City Council, subject to annual review.

SECTION 4-73 REMOVAL OF HEARING OFFICER.

A Hearing Officer shall serve one-year terms and may be reappointed to additional one-year terms by a majority vote of the City Council. A Hearing Officer may resign at any time by providing written notice to the City Recorder at least thirty (30) days prior to the date of resignation. The Board, by majority vote, may waive the thirty (30) days' notice requirement in emergency situations. In the event a Hearing Officer resigns, the City Attorney shall, within thirty (30) days, recommend a new Hearing Officer to fill the vacancy.

SECTION 4-74 CLERK OF BOARD.

The City Recorder or the City Recorder's designee shall serve as clerk of the Board ("Clerk"). The duties of the clerk shall include:

(A) The preparation of an application form for Hearing Officers;

(B) Receipt and maintenance of all records or files pertaining to any cases arising under this article;

(C) Coordination of places and times for hearings pursuant to this article;

(D) Providing appropriate published notice to the public of the time and place for hearings to be conducted pursuant to this part; and

(E) Any other duties that may assist in the just, efficient and effective enforcement of this article.

SECTION 4-75 INITIATION OF PROCEEDINGS.

Proceedings pursuant to this section may be initiated in the following manner:

- (A) The Murfreesboro Police Department or Clerk shall notify the City Attorney or the City Attorney's designee of an alleged noncompliance by a permit holder with any provision of this chapter;
- (B) Following notification by either Murfreesboro Police Department or Clerk as set forth in section (A) of this provision, the City Attorney or the City Attorney's designee shall assess whether the allegations warrant the filing of a noncompliance complaint based upon either:
 - (1) A reasonable belief that a noncompliance offense has occurred and a reasonable belief that the named defendant is the holder of the permit; or
 - (2) The conviction in any municipal, state or federal court of a beer or alcoholic beverage offense occurring on the permitted premises or upon the conviction in any court for a beer or alcoholic beverage offense or a felony by the permit holder or the permit holder's agent(s) or employee(s).
- (C) If the City Attorney or the City Attorney's designee determines that the charges are sufficient to warrant the filing of a noncompliance complaint as set forth in subsection (2) of this provision, the City Attorney or the City Attorney's designee shall prepare a noncompliance complaint and file the same with the Clerk. A copy of the complaint also shall be forwarded by the Clerk to each member of the Board.
- (D) Unless the Board votes within fourteen (14) days of the filing of the noncompliance complaint to hear and adjudicate the matters alleged in the complaint, the Clerk shall refer the matter to the next scheduled Hearing Officer, based on a system of equal rotation, for further proceedings consistent with this division.
- (E) At the time that the matter is referred to the Hearing Officer, the Clerk shall serve notice upon the permit holder, by delivering a copy of the noncompliance complaint and an order signed by the Clerk directing the permit holder to answer the noncompliance complaint and to appear to defend the charges raised therein. Notice either shall be personally hand-delivered to an adult manager on duty at the business address on the permit by an officer of the city police department or may be executed through certified mail, return receipt requested, mailed to the permit holder at the address set forth in said permit holder's most recent application for a permit.
- (F) All hearings conducted by a Hearing Officer pursuant to this part shall be open to the public. No fewer than five (5) days in advance of the initial hearing, the Clerk shall cause to be published in a newspaper of general circulation within the City, notice of the time of the hearing and the location where it is to be held.

SECTION 4-76 ANSWER.

Permit holders served with notice pursuant to this part shall file with the Clerk, at the office of the Clerk, a written answer to the allegations alleged in the complaint within fifteen (15) days of receipt of the notice. At the same time, permit holders also shall transmit a duplicate copy of the written answer to the City Attorney or the City Attorney's designee.

SECTION 4-77 DEFAULT.

Failure of the permit holder to file a written answer with the Clerk within the fifteen (15) day period shall constitute default. Upon default, the Hearing Officer shall be authorized to take any action the officer would be authorized to take upon a finding of noncompliance. Before a default judgment may be entered revoking or suspending a permit, there shall be evidence in the record establishing that the permit holder was served with notice as provided herein.

SECTION 4-78 SCHEDULING OF HEARING.

- (A) The Clerk and the duly selected Hearing Officer, in cooperation with the City Attorney or the City Attorney's designee and the permit holder or the permit holder's representative, if known, shall set the time for the suspension/revocation hearing, said time to be within sixty (60) days but not less than thirty (30) days after the receipt of notice by the permit holder.

- (B) Upon the selection of a date for the revocation/suspension hearing, it shall be the responsibility of the Clerk to forward a written notice of hearing to all parties. This notice shall contain the time, date, and place of hearing. The notice also shall contain notification to the permit holder of the right to be represented by counsel.

SECTION 4-79 RULES OF PROCEDURE; CONDUCT OF HEARING.

- (A) The burden shall be on the City to show by a preponderance of the evidence that the permit holder is guilty of a noncompliance offense. If all evidence examined by the Hearing Officer leads the Hearing Officer to conclude that it is more probable than not that the permit holder is guilty of a noncompliance offense, such proof shall constitute cause thereby justifying suspension, revocation, a civil penalty or such other sanctions as the Hearing Officer deems appropriate, consistent with the provisions of this chapter. The Hearing Officer is hereby empowered to suspend, revoke or otherwise sanction permit holders to the same extent and for the same cause that the Board may suspend, revoke or sanction permit holders under this chapter.
- (B) Neither the Tennessee Rules of Evidence, the Tennessee Rules of Civil Procedure, nor the Uniform Administrative Procedures Act shall control the conduct of any hearing pursuant to this article; however, the Hearing Officer may consider the Uniform Administrative Procedures Act's rules generally applicable to administrative hearings to the extent necessary to ensure a fair hearing and reasonable due process to both parties.
- (C) The Hearing Officer is empowered to exercise such reasonable discretion intended to result in the fair, expedient, and economical resolution of all cases brought pursuant to this article. The scope of that discretion includes, but is not limited to, the authority to amend the answer and complaint, to grant or deny continuances and establish the length of time for such continuances, to grant re-hearings, and to modify or rescind any recommendation or order.
- (D) The Hearing Officer shall render a decision at the conclusion of the hearing or within seventy-two (72) hours thereof.
- (E) A written report, stating the basis for the decision, shall be issued by the Hearing Officer within fifteen (15) days of the actual hearing date. Said report shall state the Hearing Officer's rationale, conclusions and decision. The original of the report shall be filed with the Clerk with copies provided to the parties or counsel of record for the parties and to the chairperson of the Board. Upon filing, the decision shall constitute the final action of the Board.
- (F) The Board may adopt more specific rules of procedure consistent with this article governing proceedings concerning the suspension or revocation or permits and/or the issuance of fines pursuant to this article.

SECTION 4-80 PRE-HEARING CONFERENCE.

- (A) The Hearing Officer on the officer's own motion, or upon motion of one of the parties, may direct the parties and/or attorneys of the parties to appear before the Hearing Officer for a pre-hearing conference not less than three (3) days before the date of the hearing.
- (B) The purpose of the pre-hearing conference set forth in this section shall be for the simplification of the issues, the possibility of obtaining admissions of facts and of documents that will avoid unnecessary proof, and other such matters as may aid in the disposition of the action.
- (C) An order shall be prepared at the direction of the Hearing Officer that recites the action, if any, taken at the pre-hearing conference and which limits the issues not disposed of at the pre-hearing conference. Any order prepared pursuant to the pre-hearing conference shall be filed with the Clerk.
- (D) Disposition of charges may be obtained without a hearing by means of stipulation of the parties, agreed settlements, consent orders, and default. Any extra-hearing settlement of the charges shall be reduced to writing and presented to the Hearing Officer for signature. Said action is conclusive upon the Hearing Officer, who shall sign the order as a matter of course.

SECTION 4-81 SUBPOENAS.

- (A) At least five (5) working days prior to the date of the hearing, all parties shall provide the Clerk with a list of the individuals they wish to have subpoenaed to appear at the hearing. The Clerk has the discretion to determine whether any subpoenas not timely requested under this provision shall issue. It shall not be a basis for requesting a continuance that a witness subject to a subpoena requested in an untimely manner failed to appear at the hearing.
- (B) The subpoena request list must be typed and include the name, address, and phone number (business and home, if possible) of the individuals to be subpoenaed. If a subpoena duces tecum is requested, the nature of the documents or information sought by the party requesting the subpoena duces tecum must be set out on the subpoena request list.
- (C) The subpoenas may be served by a police officer of the city or by any officer authorized to serve subpoenas in state court.

SECTION 4-82 TRANSCRIPTS AND EVIDENCE.

- (A) All audio and/or video recordings of proceedings before a Hearing Officer shall be labeled and placed in the custody of the City Recorder, unless and until said recordings are actually transcribed. The recordings shall be retained by the City Recorder at least until all rights to an appeal of the Hearing Officer's decision are exhausted.
- (B) The City Recorder shall not be required to obtain a transcript of any proceeding until the clerk has received a copy of a petition for judicial review of the matter in question.
- (C) Upon receipt of a copy of a petition for judicial review, it shall be the responsibility of the City Recorder to have prepared a transcript of the proceedings. The City Recorder shall send the original or a certified copy of the entire record of the proceeding under review to the reviewing court within forty-five (45) days of the receipt of a petition for judicial review; unless a longer period of time is granted by the court.

SECTION 4-83 APPEALS.

A final decision of the Hearing Officer may be appealed pursuant to T.C.A. § 57-5-108.

SECTIONS 4-84 - 4-86 RESERVED.

SECTION 2. Chapter 4, Article IV, Nudity on Premises, of the Murfreesboro City Code, created by Ordinance No. 87-15, as amended, is hereby deleted in its entirety and substituted in lieu thereof the following:

ARTICLE IV. NUDITY AND SEXUALLY EXPLICIT ENTERTAINMENT

SECTION 4-87 NUDITY ON PREMISES WHERE ALCOHOLIC BEVERAGES AND/OR BEER ARE OFFERED FOR SALE.

- (A) It shall be unlawful for any person maintaining, owning, or operating a commercial establishment located within the City, at which alcoholic beverages and/or beer are offered for sale for consumption on the premises:
 - (1) To employ, use or allow any person in the sale or service of alcoholic beverages and/or in or upon the licensed premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals;
 - (2) To employ, use or allow the services of any hostess or other person to mingle with the patrons while such hostess or other person is unclothed or in such attire, costume or clothing as described in subsection (A);
 - (3) To encourage or permit any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person; or

- (4) To permit any employee or person to wear or use any device or covering, exposed to view, which simulates the breast, genitals, anus, pubic hair or any portion thereof.
- (B) Any violation of this section shall constitute a civil offense and shall upon conviction, be punishable by a penalty under Code §1-8 of the City Code, in addition to or in lieu of any other penalty or remedy established in this article.
- (C) Violation of this section by a person holding a beer permit issued by the City, or by any employee or agent of such permit holder, shall constitute grounds for suspension or revocation of such permit pursuant to the procedures set forth in article III of this chapter.
- (D) If the owner, operator, licensee, lessor, lessee, manager, employee, or any other person participating in the operation of a commercial establishment located within the City at which alcoholic beverages are offered for sale for consumption on the premises shall be convicted of any of the offenses designated in this Code §4-87 as set forth herein, then the City Recorder shall notify the Tennessee Alcoholic Beverage Commission and request the liquor permit be revoked.

SECTION 4-88 SEXUALLY-EXPLICIT ENTERTAINMENT AND CONDUCT PROHIBITED WHERE ALCOHOLIC BEVERAGES AND/OR BEER ARE OFFERED FOR SALE.

- (A) Live entertainment is permitted at a commercial establishment located within the City, at which alcoholic beverages and/or beer are offered for sale for consumption on the premises, except that it shall be unlawful for any person maintaining, owning, or operating any such establishment:
 - (1) To permit any person to perform acts of or acts which simulate:
 - (a) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
 - (b) The touching, caressing or fondling of the breast, buttocks, anus or genitals; or
 - (c) The displaying of the pubic hair, anus, vulva or genitals.
 - (2) Subject to subsection (1), any entertainer who is employed in whole or in part by the licensee to dance at such licensee's premises shall perform only upon a stage at least eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest patron.
- (B) Notwithstanding subsection (A), it shall be unlawful for any person maintaining, owning, or operating a commercial establishment located within the City, at which alcoholic beverages and/or beer are offered for sale for consumption on the premises:
 - (1) To permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in subsection (A);
 - (2) To permit any person to remain in or upon the licensed premises who exposes to public view any portion of the person's genitals or anus;
 - (3) The showing of film, still pictures, electronic reproduction, or other visual reproductions depicting:
 - (a) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
 - (b) Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals;
 - (c) Scenes wherein a person displays the vulva or the anus or the genitals; or
 - (d) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.
- (C) Any violation of this section shall constitute a civil offense and shall upon conviction, be punishable by a penalty under Code §1-8 of the City Code, in addition to or in lieu of any other penalty or remedy established in this article.
- (D) Violation of this section by a person holding a beer permit issued by the City, or by any employee or agent of such permit holder, shall constitute grounds for suspension or revocation of such permit pursuant to the procedures set forth in article III of this chapter.

(E) If the owner, operator, licensee, lessor, lessee, manager, employee, or any other person participating in the operation of a commercial establishment located within the City at which alcoholic beverages are offered for sale for consumption on the premises shall be convicted of any of the offenses designated in this Code §4-88 as set forth herein, then the City Recorder shall notify the Tennessee Alcoholic Beverage Commission and request the liquor permit be revoked.

SECTION 4-89 ENTERTAINER IDENTIFICATION.

A permit holder shall have the duty and responsibility to make available for inspection by a member of the Murfreesboro Police Department an identification card, such as a driver's license, containing a photograph and the age of all entertainers or performers on the permitted premises. The permit holder shall not permit a person to perform on the permitted premise if the permit holder is not able to obtain the required identification from the performer.

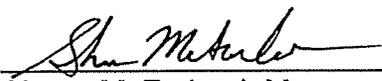
SECTION 3. Should any article, section, subsection, sentence, clause, provision, or word of this ordinance be declared to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of the ordinance as a whole, or any part thereof other than the part declared to be unconstitutional or invalid, as each such article, section, subsection, sentence, clause, provision, or word hereof is declared to be severable.

SECTION 4. The captions and headings of sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions of this Ordinance. Such captions shall not affect the meaning or interpretation of this Ordinance.

SECTION 5. That this Ordinance shall take effect fifteen (15) days after its passage upon third and final reading or on July 1, 2015, whichever occurs last, the public welfare and the welfare of the City requiring it.

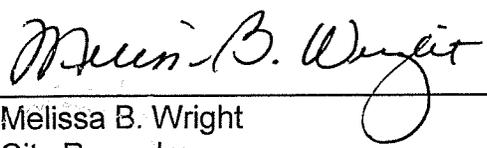
Passed:

1 st reading	<u>May 7, 2015</u>
2 nd reading	<u>May 14, 2015</u>
3 rd reading	<u>May 28, 2015</u>



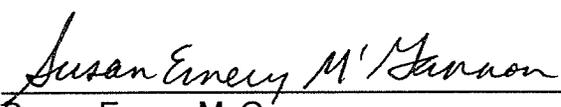
Shane McFarland, Mayor

ATTEST:



Melissa B. Wright
City Recorder

APPROVED AS TO FORM:



Susan Emery McGannon
City Attorney

SEAL