

September 9, 2014

City of Eagleville Tennessee
Ms. Kathey Burleson
City Clerk
108 South Main Street
Eagleville, Tennessee 37060

Dear Ms. Burleson:

You have asked for guidance in the process to be followed for a beer permit issued to two owners, one of whom now desires to be removed from the permit. The majority owner (Sewell) has a 60% interest in the business and the minority owner (Holton) a 40% interest. As I understand, Sewell desires to be removed as an owner and 100% of the business will be owned by Holton. Legal Consultant Melissa Ashburn was consulted in providing this response.

Tennessee Code Annotated § 57-5-103 provides in part as follows:

(3) A permit shall be valid:

(A) Only for the owner to whom the permit is issued and cannot be transferred to another owner. If the owner is a corporation, a change in ownership shall occur when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner;

(B) Only for a single location, except as provided in subdivision (a)(4), 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 is located and that are operated by the business; and

(C) Only for a business operating under the name identified in the permit application.

(4) Where an owner operates two (2) or more restaurants or other businesses within the same building, the owner may in the owner's discretion operate some or all such businesses pursuant to the same permit.

(5) A business can sell beer for both on-premises and off-premises consumption at the same location pursuant to one (1) permit.

(6) A permit holder must return a permit to the county or city that issued it within fifteen (15) days of termination of the business, **change in ownership**, relocation of the business or change of the business's name; provided, that notwithstanding the failure to return a beer permit, **a permit shall expire on termination of the business, change in ownership**, relocation of the business or change of the business's name. (Emphasis added)

Accordingly, since the majority owner (Sewell) will no longer have an interest in the business, this change in ownership will require that the permit (Permit No. 102) be surrendered to the city. Holton will be required to apply for a new beer permit solely in his name which should be handled as a new application in accordance with Ordinance No 09-001 (attached). Particular attention should be focused on Sec.1-06 (Application fee); Sec. 1-107 (Applications, time for filing, requisites); Sec. 1-108 (Public inspection) and Sec. 1-21 (Privilege tax).

Ms. Kathey Burleson
September 9, 2014
Page 2

You will also be interested in knowing if the situation was reversed and the minority owner (Holton) was leaving, the process to follow would be to issue a replacement permit in Sewell's name only. A revised permit (Permit 102) would be reissued reflecting the ownership change – and no other.

Please let me know if you have further questions regarding this matter.

Very truly yours,



Jeffrey J. Broughton
Municipal Management Consultant

Cc: Melissa Ashburn

ORDINANCE 09-001

BE IT ORDAINED BY THE CITY OF COUNCIL OF THE TOWN OF EAGLEVILLE THAT THE SALE OF "BEER" AS DEFINED HEREUNDER SHALL BE ALLOWED WITHIN THE CORPORATE LIMITS OF THE CITY OF EAGLEVILLE ONLY AS REGULATED UNDER THE FOLLOWING ORDINANCE:

BEER**SECTION 1:**

- 1-01. Beer board created.
- 1-02. Beer board; organization; meetings.
- 1-03. Powers and duties of the beer board.
- 1-04. Procedures of board.
- 1-05. "Beer" defined.
- 1-06. Beer permit required; application fee.
- 1-07. Applications; time for filing; requisites.
- 1-08. Application to be filed; open to inspection; forfeiture of permit for false statement.
- 1-09. Classes of permits.
- 1-10. Grounds for denial of permit.
- 1-11. Permits prohibited within certain areas.
- 1-12. Posting of permit.
- 1-13. Legal hours of sale.
- 1-14. Permit may be suspended or revoked for cause.
- 1-15. Transfer of permits prohibited; notice to board of transfer of beer business ownership required.
- 1-16. Application of new owner.
- 1-17. Expiration of permit; surrender to board.
- 1-18. Restrictions on permit holder.
- 1-19. Wholesalers and manufacturers to sell, etc., only to retailers.
- 1-20. Regulations on the sale of beer to minors.
- 1-21. Privilege tax.
- 1-22. Each violation constitutes a separate offense.
- 1-23. Penalty.
- 1-24. Prior permit holders.

1-01. Beer board created. There is hereby created a board, which shall be known and designated as the Beer Board of the City of Eagleville, Tennessee. Such board shall be composed of the city council of the City of Eagleville, Tennessee.

1-02. Beer board; organization; meetings. The board shall organize by the election of a chairman and secretary. The board shall meet at such times as the members shall prescribe. All meetings shall be held in the municipal building at an hour fixed by the board. Minutes shall be kept of the meetings in permanent form and a record shall be kept of the action of the board with respect to every application for a beer permit. The presence of a majority of the members shall constitute a quorum and the concurring vote of the majority present at any meeting of the board shall be necessary to approve or revoke any beer permit. The minute book of the board shall be a public record, and shall become a part of the records of the city recorder.

1-03. Powers and duties of the beer board. The beer board shall have the power and it is hereby directed to regulate the selling, storing for sale, distributing for sale, and manufacturing of beer within this city in accordance with the provisions of this chapter.

1-04. Procedures of board. The beer board is authorized and empowered to adopt such reasonable rules and regulations as a majority thereof may deem necessary and proper for the operation and supervision of the business of the permittees in conformity with the provisions of this chapter.

1-05. "Beer" defined. The term "beer" used in this chapter shall mean and include all beers, ales, and other malt liquors having alcoholic content of not more than five percent (5%) by weight.

1-06. Beer permit required; application fee. It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the beer board. Pursuant to Tennessee Code Annotated, section 57-5-101(b), the application shall be accompanied by a non-refundable application fee of two hundred fifty dollars (\$250) as well as any costs of publication required under 1-07 in the form of a cashiers check payable to the City of Eagleville.

1-07. Applications; time for filing; requisites. All applications for a beer permit shall be made on a form prescribed by the board in conformity with the requirements of this section.

Before the beer board shall issue a license or permit under this section, it shall cause to be published in a newspaper of general circulation a notice in which the name of the applicant and the address of the location for such license or permit and the date and time of its meeting at which such application shall be considered. The notice shall be published not less than ten (10) days prior to such meeting. Such meeting shall be a public hearing for the purpose of hearing the statement of any person or his attorney on any application for a license or permit.

All applications for any permits required hereunder shall be verified by oath and affidavit, and shall establish the following:

- (1) that no person or persons will be employed by the applicant who are not U.S.

citizens or who do not meet the requirements for employment under the laws of the State of Tennessee and/or the United States of America.

(2) that neither the applicant nor any person or persons employed by him/her in such distribution or sale has been convicted of any violation of the statutes of Tennessee or any other state prohibiting the possession, sale, manufacture or transportation intoxicating liquors, or any other crime involving moral turpitude in the past ten years or have been convicted of any crime classified as a felony under the statutes of Tennessee or any other state. This section would not be applicable to servers with a certification from Alcoholic Beverage Commission as per Tennessee Code Annotated 57-5-106.

(3) that no sale shall be made to any person under the age of twenty-one (21) years, nor shall any person under the age of eighteen (18) be employed directly in the sale or distribution of such beverages;

(4) that no person under the age of twenty-one (21) shall be allowed to loiter about the applicant's premises; provided, that persons under that age shall be allowed a reasonable amount of time to consume their meals and nonalcoholic beverages;

(5) that no sale shall be made to persons intoxicated or who are feeble minded, insane or otherwise mentally incapacitated;

(6) that the applicant is of good character and has a sufficient legal interest in a suitable location as to entitle the applicant to conduct the sale of beer at such place of business;

(7) that in the place of business where such beverages will be sold or distributed, no loud, unusual or obnoxious noises shall be allowed, and that the applicant shall conduct such place of business otherwise in an orderly, peaceful, and lawful manner;

(8) that, if the application is for an "on-site" permit, the primary business of the applicant on the premises for which the beer permit is requested is the sale of prepared food to be consumed on the premises and that less than thirty percent (30%) of the applicant's income on the premises will be from the sale of beer.

1-08. Application to be filed; open to inspection; forfeiture of permit for false statement. The application shall at all times be kept on file by said board shall be open to inspection of the general public, and any person, firm, corporation or association making any false statement of the material facts in the application shall forfeit the permit, and shall not be eligible to receive any permit for a period of ten (10) years thereafter.

1-09. Classes of permits. There shall be two (2) classes of permits issued by the beer board, as follows:

(1) Class A. An "off-site" permit to any person or legal organization engaged in the sale of such beverages where they are not to be consumed by the purchaser or other persons upon or near the premises of such seller.

The monthly beer sales of any Class A permit holder which for two (2) consecutive months or for any three (3) months in any calendar year has beer sales exceeding thirty percent (30%) of its gross sales, shall have its beer permit suspended or revoked in accordance with the provisions of this chapter.

(2) Class B. An "on-site" permit to any person or legal organization engaged in the operation of a restaurant wherein the sale of beer is for consumption on the premises. A restaurant shall be defined as a business establishment whose primary business is the sale of

prepared food to be consumed on the premises and less than thirty percent (30%) of its income is from the sale of beer.

1-10. Grounds for denial of permit. No application for permit for the sale of beer shall be approved where in the reasonable determination of the board such sale would cause a dangerous congestion of traffic or interfere with the peaceful and orderly operation of schools, churches, playgrounds, parks, or other places of public gathering, or where the applicant has once held a permit and it has been revoked less than one (1) year from the time of his present application, or where it would otherwise interfere with the public health, safety and morals.

1-11. Permits prohibited within certain areas.

(1) No permits shall be issued to an applicant whose location:

(a) Is upon property having a common boundary line with the property upon which a church, school, public park, or public playground is located.

(b) Is upon property any portion of which is perpendicularly across any street from property upon which a church, school, public park or public playground is located.

(2) No permit shall be issued to an applicant whose location is within two hundred and fifty (250) feet from any church, school, public park or public playground.

(3) In determining the distance under this section, measurement shall be from the center of the main entrance of a structure, or facility, in case of a public park or public playground following a straight line, to the center of the main entrance of the potential permittee.

1-12. Posting of permit. The permit showing the payment of the permit fee issued shall be conspicuously posted in the house, building, room or place where the business authorized by the permit is conducted.

1-13. Legal hours of sale. The legal hours of sale for all classes of permit holders shall be the same as the legal hours of sale of beer authorized by the Tennessee Alcoholic Beverage Commission for certain counties and municipalities, as defined in Tennessee Code Annotated, section 57-5-301(b)(4), which are the following hours:

Monday through Saturday - 8:00 a.m. to 3:00 a.m.

Sunday - 12:00 noon to 3:00 a.m.

the City of Eagleville elects to opt out of any extensions of hours granted by the State of Tennessee Alcoholic Beverages Commission.

1-14. Permit may be suspended or revoked for cause.

(1) All permits issued by the beer board under the provisions of this chapter shall be subject to suspension or revocation by said board for the violation of any of the provisions of this

chapter.

(2) The board created by this chapter is vested with full and complete power to investigate charges against any permit holder and to cite any permit holder to appear and show cause why his permit should not be suspended or revoked for the violation of the provisions of this chapter.

(3) Complaints filed against any permit holder for the purpose of suspending or revoking such permit shall be made in writing filed with the board. When the board shall have reason to believe that any permit holder shall have violated any of the provisions of this chapter. The board is authorized, in its discretion, to notify the permittee of said violations and to cite said permittee by written notice to appear and show cause why his permit should not be suspended or revoked for such violation. Said notice to appear and show cause shall state the alleged violation as charged, and shall be served upon the permittee either by registered letter or by a member of the Police Department of the City of Eagleville, Tennessee. The notice shall be served upon the permittee at least ten (10) days before the date set for the hearing. At the hearing, the board shall publicly hear the evidence both in support of the charges and on behalf of the permittee. After such hearing, if the charges are sustained by the evidence, the board may, in its discretion, suspend or revoke said permit. The beer board has the option at the time it imposes a suspension or revocation of offering the permit holder the alternative of paying a civil penalty not to exceed \$1,500 for each offense of making or permitting to be made any sales to minors, or a civil penalty of \$1,000 for any other violation of this chapter. If a civil penalty is offered as an alternative to suspension or revocation, the permit holder shall have seven (7) days within which to pay the civil penalty before the revocation or suspension is effective. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn. The action of the board in all such hearings shall be final, subject only to review by the court as provided in Tennessee Code Annotated 57-5-109.

1-15. Transfer of permits prohibited; notice to board of transfer of beer business ownership required. The transfer of a beer permit to any other person firm or corporation is prohibited. However, any person, firm or corporation holding a beer permit under this chapter who proposes to sell or otherwise transfer the business to another person, firm or corporation with the intention or expectation that the buyer or transferee will engage in the business of selling beer at the same location shall be required to notify the beer board of his or her intention to sell or transfer the business.

1-16. Application of new owner. The board shall be furnished with the name of the proposed buyer or transferee, who shall be required to make application for a permit to the board. Such application shall conform to the requirements for other applications for permits as set out in this chapter.

1-17. Expiration of permit; surrender to board. Any permit issued for the sale of beer under this chapter shall become invalid and void at 12:00 o'clock midnight of the date on which any holder of a permit ceases to operate the business for which said permit was issued. This provision shall not apply to temporary absences of the permittee, but shall apply when said permittee permanently ceases operations under his permit. Said permittee shall within five (5) days from the date on which he ceases to do business under the permit surrender said permit to the city recorder.

1-18. Restrictions on permit holder. It shall hereafter be unlawful for any person, firm, corporation or association to engage in the business regulated hereunder to make or permit to be made any sales or distribution of such beverages to minors; to allow any minor to loiter about such place of business, and the burden of establishing the age of any such minor shall be upon the owner or operator of such place of business; to employ minors directly in the sale of such beverages; to sell or distribute such beverages to persons who are feebleminded, intoxicated, insane, or otherwise mentally incapacitated; to allow consumption of beverages regulated hereunder upon the premises of seller unless a Class B permit has been issued for such premises; to employ any person who has been convicted of any violation of the state statutes prohibiting the sale, possession, manufacture and transportation of alcoholic beverages or any other crime involving moral turpitude within the past ten (10) years.

1-19. Wholesalers and manufacturers to sell, etc., only to retailers. It shall be unlawful for any wholesaler, distributor or manufacturer of beer, or any of their salesmen or representatives, to sell or deliver beer in or out, or from delivery vehicles, to any persons other than holders of valid retail permits and it shall be the duty of such wholesaler, distributor or manufacturer, their salesmen or representatives, to ascertain whether or not such purchaser is a holder of a valid beer permit.

1-20. Regulations on the sale of beer to minors.

(1) Purchase of beer by minors prohibited. It shall be unlawful for any minor to purchase or attempt to purchase beer, and it shall be unlawful for any minor to present or offer to a permittee, his agent or employee, any written evidence of his or her age, which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or attempting to purchase beer.

(2) Purchase of beer for minor prohibited. It shall be unlawful for any person to purchase beer for a minor.

(3) Identification required prior to sale. Any person, before purchasing or attempting to purchase beer, is required to furnish to the permittee, his or her agent or employee, a photo identification produced by the State of Tennessee, or by any other state or territory of the United States, or any other country of the world, which contains the birth date of the person.

(4) Permittees shall prominently display on or near the cash register where payment for the sale of beer is made and recorded, and on the beer cooler or where beer is merchandised signs not less than six (6) inches high and ten (10) inches wide, which state: "A MINOR WHO PURCHASES OR ATTEMPTS TO PURCHASE BEER SHALL BE PROSECUTED TO THE FULLEST EXTENT OF THE LAW."

1-21. Privilege tax. There is imposed on the business of selling, distributing, storing or manufacturing beer an annual privilege tax of one hundred dollars (\$100). Any person, firm, corporation, joint stock company, syndicate or association engaged in the sale, distribution, storage or manufacture of beer shall remit the tax on January 1, 2010 and each successive January 1, to the City of Eagleville, Tennessee. 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 prorated basis for each month or portion thereof remaining until the next tax payment date.

1-22. Each violation constitutes a separate offense. Each sale or distribution of beer in violation of the provisions of this chapter shall constitute a separate offense on the part of each and all persons, firms, corporations or other legal entity participating therein.

1-23 Penalty. Any person in violation of any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to fine or jail sentence in accordance with the general penalty clause in this code of ordinances.

1-24. Prior permit holders. Any person, firm, corporation, or legal entity heretofore issued a permit for the sale of beer by the city council of the City of Eagleville, Tennessee, and conducting sales under such permit on the effective date of this chapter shall, in order to continue such sales, be required to apply for a permit for the sale of beer within the municipality under the provisions of this chapter within twenty (20) days from its passage.

Be it further enacted and ordained that in the event any part of this chapter shall be declared invalid for any reason, the remainder of said chapter shall remain in full force and effect and not be affected thereby.

SECTION 2: BE IT FURTHER ORDAINED, THAT THIS ORDINANCE SHALL take effect fifteen (15) days after final passage hereof in accordance with the Charter for the Town of Eagleville.

First Reading Date: _____ Time: _____

_____ In Favor _____ Opposed

Second Reading Date: _____ Time: _____

_____ In Favor _____ Opposed

Third Reading Date: _____ Time: _____

_____ In Favor _____ Opposed

Mayor

City Recorder