

**RULES OF PROCEDURE
KINGSPORT BEVERAGE BOARD
KINGSPORT, TENNESSEE**

I. OFFICERS

- A. The Board shall organize and elect a Chairman, Vice-Chairman, and Secretary annually in the month of January or at such other time as there is a change in membership of the Board.
- B. The Chairman shall preside at all meetings and hearings of the Board; he shall decide all points of order of procedure and shall appoint any committee that may be necessary. The Chairman is a voting member. The Vice-Chairman shall act in absence of the Chairman.
- C. The Secretary shall perform all official duties as the Chairman directs, and shall conduct all official correspondence subject to these rules at the direction of the Board; shall give out application forms and receive completed application forms and receive completed applications; send out all notices required by these rules of procedure; keep the minutes of the proceedings of the Board; keep a file on each case which comes before the Board; and record meetings. Agendas will be mailed the week before the meetings.

II. MEETINGS

- A. Meetings are regularly held on the first Tuesday of each month at 1:30 P.M.
- B. A quorum shall consist of five (5) members.
- C. The order of business of all meetings of the Board shall be as follows:
 - 1. Roll Call
 - 2. Approval of minutes of previous meeting
 - 3. Reviewing applications or hearings of cases
 - 4. Unfinished Business
 - 5. New Business
- D. Permittees or licensee called before the Board for a violation must be given at least ten (10) days' notice of the date, time, and place of hearing. They may appear in person before the Board or may be represented by an attorney.
- E. Special Meetings:

Special meetings may be called by the Chairman of the Beverage Board provided that least five (5) days's notice of such meetings is given each member and each permittee or licensee having business at such meeting.

III. **FORMS**

- A. Application for beverage permits.
- B. Notice to appear before the Beverage Board for information or to answer charges.
- C. Resolution.
- D. Permit.
- E. Request for Hearing - Revocation or suspension of beer permit.

IV. **PROCEDURE FOR GRANTING PERMITS**

- A. Applicant must secure the necessary forms from the Secretary.
- B. A \$250.00 filing fee is required before the application can be processed.
- C. The application must be in the hands of the Secretary two weeks prior to the meeting scheduled for hearing.
- D. The application must be completed and filed with the Secretary. All applications will be assigned a number and placed on the agenda for hearing in the order in which they are deemed complete.
- E. The Secretary will turn the completed application forms over to the Police Department for a complete check as to the applicant's court record, character record, criminal record and on-site inspection prior to the hearing date.
- F. The applicant must meet the standards required by the law, business permit, physical inspection, etc.
- G. The owner, or bona fide representative authorized to act on behalf of the owner, of the business seeking a permit shall appear in person before the Kingsport Beverage Board for the purpose of answering any questions, under oath, regarding the application.
- H. Final decision of any application to the Kingsport Beverage Board shall be in the form of a resolution which must be approved by a majority of the members present at a duly called meeting of the Beverage Board.
- I. The affected parties will be notified immediately after the decision of the Beverage Board.
- J. Special Events (Temporary) Permits

Applications in writing for special events must conform to all requirements and procedures of the Beverage Board.

(a) The Beverage Board of the city is authorized to issue special event licenses to bona fide charitable, nonprofit or political organizations for special events.

(b) The special event license shall not be issued for longer than one (1) seventy-two hour period, subject to the limitations on the hours of sale imposed by law. (The Beverage Board may, however, at its discretion, impose different licensing periods for special events involving multiple occasions.)

(c) The application for the special event license shall state that the applicant is a charitable, nonprofit or political organization, and include documents showing evidence of the type of organization, and state the location of the premises upon which alcoholic beverages shall be served and the purpose for the request of the license. The fee for each special occasion license shall be fifty dollars (\$50.00).

(d) **Multiple event** special event licenses—for no longer than one year—may be granted by the Beer Board for such times and dates as approved. These Multiple Event Licenses are for repetitive occasions of the same type (e.g., the weekly concert series). The Board reserves the right to immediately revoke the license if any elements on the permit are violated. Any changes in the major parameters of the Multiple Event must be approved by the Chair of the Beverage Board. The fee for **multiple event** special event licenses shall be a one-time fee of fifty dollars (\$50.00) which will cover all occasions/events listed for the one year period.

(e) For purposes of this section:

Bona fide charitable or nonprofit organization means any corporation which has been recognized as exempt from federal taxes under section 501(c) of the Internal Revenue Code.

Bona fide political organization means any political campaign committee as defined in T.C.A. § 2-10-101(a) or any political party as defined in T.C.A. § 2-13-101.

(f) No charitable, nonprofit or political organization possessing a special event license shall purchase, for sale or distribution, beer from any source other than a licensee as provided pursuant to state law.

(g) For all special events conducted outdoors, it will be required that beer be served only in clear plastic cups.

(h) Special Event Permits shall be limited to two events per year for each nonprofit organization. A multiple event permit will count as one permit towards this total.

Any person, organization or other entity conducting a special event during which beer is to be sold or dispensed on public property, shall provide a written application to the chairman of the Beverage Board, with a copy to the City Attorney and the City Recorder, of the intent to conduct such a special event. The application shall be provided at least thirty (30) days prior to the Beverage Board's next meeting. The notice required by this part shall include, but not necessarily be limited to, the following information or conditions:

- a. Date and time of the special occasion(s). Any changes in dates (including rain dates) will need to be approved by the Chairman of the Beverage Board and Chief of Police.
- b. The sponsor of the special occasion(s);

- c. The specific location where any beer is to be sold;
- d. Any plans for proposed temporary closure of public rights-of-way;
- e. Plans for security and policing of the special occasion(s);
- f. The anticipated number of persons attending the special occasion(s);
- g. Plans for clean-up of the site after use;
- h. Provisions for sanitary facilities and for safety inspection as determined to be necessary by the fire and building and zoning departments;
- i. A provision which will indemnify and hold the city, its officials and employees harmless from any claim.
- j. Evidence that the special occasion permittee has procured comprehensive general liability insurance to cover the occasion. The liability insurance shall be a minimum amount of one million dollars (\$1,000,000).
- k. The Beverage Board may request any other information it deems necessary in order to make an appropriate decision on the permit request.
- l. The Beverage Board may also, at its discretion, require additional provisions as a part of granting the special occasion permit.

The city will reserve the right to immediately revoke permission and to suspend or terminate the special event or any portion of it if any of the elements of the agreement are violated.

Upon receipt of the application as required herein, (application with the above requirements [a-l] addressed), the proposed special event shall be placed on the agenda of the Beverage Board for its next regularly scheduled meeting. The sponsor of the proposed event shall send a representative or representatives (both a representative of the nonprofit organization and a representative of the professional organization running the event [if applicable]) to the Beverage Board meeting to address any questions or issues arising out of the proposed special event.

K. Temporary Permits for Newly Annexed Permittees

Subject to the requirements hereinafter set out in this subparagraph, the city recorder, with the concurrence of the chairman of the Beverage Board, and the chief of police, may issue a temporary beer permit in the event a business has been annexed into the city, and is operating in good standing under a county beer permit, which was valid at the time of annexation; or if a business has received a permit to sell alcoholic beverages in the city from the Tennessee Alcoholic Beverage Commission and is in good standing with the Commission. Such temporary permit cannot be issued if it is determined that a proceeding for the revocation or suspension of a beverage or alcohol permit of such business is pending, or it is apparent that the sale of beer at the location would likely violate a city ordinance. To be eligible for a temporary permit the business must have made application to the city for a beer permit pursuant to these rules and regulations and paid the applicable fee. The temporary permit shall be for no more than thirty (30) days, but the time may be extended by a majority vote of the Beverage Board for good cause. Good cause includes the inability to place the item on the agenda for an upcoming scheduled meeting, awaiting information and a report from the Kingsport Police Department, or other reasons for delay not caused by the proposed permittee, provided such permittee is proceeding in good faith and as expeditiously as possible to obtain a permit.

- L. Upon approval by the Beverage Board, copies of all special occasion and temporary permits shall be forwarded to the Police Department.

V. PROCEDURE FOR LEVYING CIVIL PENALTIES (FINES), REVOKING OR SUSPENDING PERMITS

- A. Any concerns of possible violations of City Ordinances or rules of Beverage Board shall be submitted to the Secretary of the Board in writing. Any concerns of possible violations received will be submitted to the Kingsport Police Department for an investigation. The Beverage Board may institute an investigation at its own initiative.
- B. The Police Department shall submit to the City Attorney's Office all incident reports relating to the permit holders place of business for a period of time not to exceed two years; however, incident reports will not be reviewed for any time prior to the date of issuance of the permit in question. The information will be summarized by the City Attorney's Office and submitted to the Beverage Board at their next meeting along with a recommendation of whether the possible violations and incident reports warrant a show cause hearing.
- C. The Beverage Board shall review the information and the recommendation of the City Attorney, and determine if a show cause hearing is necessary. If by majority vote the Beverage Board decides to hold a show cause hearing, the summary as submitted to the Beverage Board will be sent to the permit holder. This will serve as written notice of all allegations which the permit holder will be expected to answer.
- D. The show cause hearing will be held within ten (10) to thirty (30) days after the written notice is issued to the permit holder.
- E. The permit holder may represent him or herself or may be represented by an attorney. The permit holder is responsible for his or her own witnesses and will be allowed to question any witnesses appearing on behalf of the City of Kingsport and/or the Beverage Board. If permit holder intends to call an employee of the City of Kingsport, a minimum of forty-eight (48) hours' notice prior to the hearing is required. If no such notice is given, the employee is not required to appear.
- F. The permit holder will be required to bring his or her permit to the show cause hearing and if it is the determination of the Beverage Board after the hearing that the permit should be suspended or revoked, the permit will be surrendered at that time. If the permit holder is not prepared, or is unable to attend the hearing, a date of continuance will be set; however, the permit holder will surrender his or her permit until such time as the hearing can be held and a determination is made by the Beverage Board. If the permit holder fails to bring his or her permit to the hearing, an officer will be dispatched to the permit holder's place of business to collect the permit. The surrendering of the permit can be waived by the Beverage Board for good cause shown.
- G. If the permit holder does not appear at the show cause hearing, it may be held ex parte and if the Beverage Board determines a suspension or revocation is in order, a police officer will be dispatched to collect the permit from the place of business.

Written notice of the suspension or revocation will be forwarded to the permit holder within twenty-four (24) hours of the show cause hearing.

- H. If to the Beverage Board it satisfactorily appears that the premises of any person, firm or corporation holding a permit or license are being maintained and operated in such manner as to be detrimental to public health, safety or morals, it will suspend the permit for a minimum of 10 days for the first offense. The Board may, at the time it imposes a revocation or suspension, offer the permit holder the alternative of paying a civil penalty of a minimum of five hundred dollars (\$500.00). For a second offense the Board will suspend the permit for a minimum of 20 days. The Board may, at the time it imposes a revocation or suspension, offer the permit holder the alternative of paying a civil penalty of one thousand dollars (\$1,000). For all subsequent offenses the Board will suspend the permit for a minimum of 20 days.

If the Beverage Board finds that beer was sold, given or served to a person under the age of 21, it will suspend the permit for a minimum of 15 days for the first offense. The Board may, at the time it imposes a revocation or suspension, offer the permit holder the alternative of paying a civil penalty of a minimum of seven hundred fifty dollars (\$750). For a second offense the Board will suspend the permit for a minimum of 30 days. The Board may, at the time it imposes a revocation or suspension, offer the permit holder the alternative of paying a civil penalty of one thousand five hundred dollars (\$1,500). For all subsequent offenses the Board will suspend the permit for a minimum of 40 days. Pursuant to the Tennessee Code Annotated (T.C.A.) § 57-5-108(a)(2)(C) permanent revocation of a beer permit for sale to a person under 21 years of age may only be applied when the permit holder has at least two (2) violations within a twelve-month period.

Notwithstanding the foregoing, pursuant to T.C.A. § 57-5-608, the Board will not revoke or suspend the permit of a responsible vendor for a clerk's illegal sale of beer to a person under the age of 21, if the permit holder and the clerk making the sale have complied with the requirements of T.C.A. § 57-5-606 as a responsible vendor under T.C.A. Title 57, chapter 5 part 6, provided, however, the Board may impose on the responsible vendor a civil penalty not to exceed one thousand dollars (\$1,000) for each offense of making or permitting to be made any sales to a person under the age of 21 or for any other offense. This prohibition shall not apply to any vendor who is not a responsible vendor under T.C.A. Title 57, chapter 5 part 6 or to a participating vendor, if the vendor or clerk making a sale to a person under the age of 21 fails to comply with the requirements of T.C.A. § 57-5-606.

No permit shall be revoked on the grounds that the permit holder or any person working for the permit holder 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 is unknown to such person making the sale. The permit may be suspended for a period not to exceed ten (10) days or a civil penalty up to one thousand five hundred dollars (\$1,500) may be imposed.

Any offense can constitute grounds for revocation of the permit.

If a civil penalty is offered as an alternative to revocation or suspension the permit

holder shall have 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 permit holder's ability to seek review of the civil penalty pursuant to T.C.A. subsection § 57-5-108(d).

The Beverage Board may at any time accept the payment of a civil penalty, not to exceed the amounts set forth in T.C.A. § 57-5-108(a)(2)(B), by a permit holder charged with a violation, which payment shall be an admission by the permit holder of the violation so charged and shall be paid to the exclusion of any other penalty that the Beverage Board may impose.

If a permit holder has maintained the premises in a manner acceptable to the Beverage Board for a period of four (4) years after one suspension, the Beverage Board may, at its discretion, expunge the previous suspension (or other civil penalty) and treat any future incidents as a first offense. In no way is the minimum civil penalty or suspension contained herein to be construed to limit the Beverage Board's authority to increase or reduce a civil penalty or suspend a permit for a longer period of time or to revoke the permit if the Board deems such action appropriate.

All suspensions and revocations will comply with applicable state law, and in the event any portion of these regulations conflict with the state law, the state law will prevail.

Whether to offer a civil penalty will be at the discretion of the Beverage Board.

In addition, with each offense, the permit holder, an executive officer of the permit holder with authority to bind the permit holder, may provide the Beverage Board with a written remedial plan to prevent any future violations. The Board may, at its discretion, take the remedial plan into consideration in levying a penalty.

- I. If the Beverage Board determines there are strong mitigating circumstances, a modification of the suspension as stated in Paragraph H may be reduced to not less than five (5) days for the first and second offenses. If the Board offers a civil penalty in lieu of the suspension, such penalty may be reduced to a minimum of \$500 for selling to a person under the age of 21. Mitigating circumstances may include, but are not limited to the effective measures taken in regard to training, supervision, accountability and the use of tools, procedures or electronics to assist in identifying underage persons attempting to buy beer.

VI. **RECORDS**

- A. A file of all material and decisions relating to each application or case shall be kept by the Secretary.
- B. All records of the Board shall be a public record.

VII. **REGISTERED AGENT**

- A. Registered Agent.

- (1) Each permittee must continuously maintain in this city:
 - (a) A registered office that may be the same as its place of business; and
 - (b) A registered agent, who shall be an individual who resides in this city and whose business office is identical with the registered office.
- (2) If a registered agent resigns or is unable to perform his duties, the designating permittee shall promptly designate another registered agent to the end that it shall at all times have a registered agent in this city.

B. Change of registered agent.

- (1) A permittee may change its registered office or registered agency by delivering to the City Recorder for filing a statement of change that sets forth:
 - (a) The name of the permittee;
 - (b) The street address of its current registered office;
 - (c) If the current registered office is to be changed, the street address of the new registered office and the zip code for such office, and the county in which the office is located;
 - (d) The name of its current registered agent;
 - (e) If the current registered agent is to be changed, the name of the new registered agent; and
 - (f) That after the change or changes are made, the street address of its registered office and the business office of its registered agent will be identical.
- (2) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any permittee for which he is the registered agent by notifying the permittee in writing of the change and signing and delivering to the City Recorder for filing a statement that complies with the requirements of subsection (1) and recites that the permittee has been notified of the change.

C. Resignation of registered agent.

- (1) A registered agency may resign his agency appointment by signing and filing with the City Recorder an original statement of resignation accompanied by his certification that he has mailed a copy thereof to the principal office of the permittee by certified mail. The statement may include a statement that the registered office is also discontinued.
- (2) The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed by the City Recorder.

D. Service on permittee.

- (1) A permittee's registered agent is the permittee's agent for service of process, notice, or demand required or permitted by law to be served on the permittee.
- (2) Whenever a permittee fails to appoint or maintain a registered agent in this city, whenever a non-permittee shall transact business or conduct affairs in this city without first procuring a permit to do so from the Beverage Board, then the City Recorder shall be an agent of such non-permittee upon whom any such process, notice or demand may be served.
- (3) This section does not prescribe the only means, or necessarily the required means, of serving a permittee.

E. Procedure for service on a permittee by service on City Recorder.

- (1) Service on the City Recorder, when he is an agent for a permittee as provided in 4(2), of any process, notice, or demand shall be made by delivering to the City Recorder the original and one (1) copy of such process, notice, or demand, duly certified by the Secretary of the Beverage Board. The City Recorder shall endorse the time of receipt upon the original and copy and immediately shall send the copy, along with a written notice that service of the original was also made, by registered or certified mail, with return receipt requests, addressed to such permittee at its registered office or principal office as shown in the records on file in his office. If none of the previously mentioned addresses are available to the City Recorder, service may be made in any appropriate manner reasonably calculated, under all the circumstances, to apprise interested parties of the action and afford them an opportunity to present their objections.
- (2) The refusal or failure of such permittee to accept delivery of the registered or certified mail provided for in subsection (1), or the refusal or failure to sign the return receipt, shall not affect the validity of such service; and any such permittee refusing or failing to accept delivery of such registered or certified mail shall be charged with knowledge of the contents of any process, notice, or demand contained therein.
- (3) When the registered or certified mail return receipt is received by the City Recorder or when a permittee refuses or fails to accept delivery of the registered or certified mail and it is returned to the City Recorder, he shall forward the receipt or such refused or undelivered mail to the Secretary of the Beverage Board, together with the original process, notice, or demand, a copy of the notice he sent to the permittee and his affidavit setting forth his compliance with this section. Upon receipt thereof the Secretary shall mark it, the receipt or refused or undelivered mail, and the copy of notice as of the day received and pleadings are kept, and such receipt or refused or undelivered mail, affidavit, and copy of notice shall be and become a part of the technical record in the suit or action and thereon service on the defendant shall be complete. Service made under this section shall have the same legal force and validity as if the service had been made personally in this city.

- (4) Subsequent pleading or papers permitted or required to be served on such permittee may be served on the City Recorder as agent for such permittee in the same manner, at the same cost and with the same effect as process, notice, or demand are served on him as agent for such permittee under this section.
- (5) No appearance shall be required in the action by the permittee nor shall any judgment be taken against the permittee in less than one (1) month after the date service is completed under this section.
- (6) The City Recorder shall keep a record of all processes, notices, and demands served upon him under this section, which record shall include the time of such service and his action with reference thereto.