

September 23, 2014

City of Minor Hill  
Mayor Tracy Wilburn  
13200 Minor Hill Highway  
Minor Hill, Tennessee 38473

VIA ELECTRONIC MAIL

Dear Mayor Wilburn:

In response to your inquiry regarding the status of a beer permit issued to a person now deceased, please be advised that there is no guiding statute addressing this issue. Accordingly we must look to your code of ordinances to provide guidance on this matter.

Section 8-110(18) of the Minor Hill code of ordinances provides as follows:

(18) If applicant is no longer actively engaged in the business for which the permit is issued, applicant agrees to surrender the permit to the board or to the city clerk immediately; applicant understands and acknowledges that his/her failure to do so will subject him/her to liability for a penalty of twenty-five dollars (\$25.00) per day for each day the business is operated under his/her license after he/she is no longer actively engaged in the business. A permit holder not devoting a minimum average of forty (40) hours per week on the premises supervising the operation of the business shall be deemed by the board to be no longer actively engaged in the business.

Based on this code provision, the applicant is required to surrender the permit if he/she is no longer actively engaged in the business, or the board shall deem the applicant no longer engaged in the business if he/she is no longer devoting an average of 40 hours per week on the premises. Since the applicant is deceased, he/she does not have the ability to surrender the license. Therefore, the board needs to have a finding of the applicant's death and rescind the permit. A special meeting of the beer board should be called to take this action at its earliest convenience.

Please also be mindful of Section 8-126 as it relates to on premises beer permits. Should the decedent be licensed for on premises sales, his/her successors shall have first option on the available license:

**8-126. On premises restrictions.** At no time shall the number of beer permits issued by the beer board and outstanding in the City of Minor Hill for taverns exceed six (6).

(1) In cases of waiting lists, applicants for already established businesses will hold priority over unestablished businesses.

(2) In the event of the death of a beer permit holder, his successors shall have first option on the available license. (Ord. #\_\_\_\_, Oct. 1993)

Mayor Tracy Wilburn  
September 23, 2014  
Page 2

The beer board should at the same meeting, or at a later date, give the successor the option of applying for the available license. A reasonable period should be granted to allow said application to be made. If an application is made, it should be handled as a new permit as set forth in Title 8, Chapter 1 (attached).

Please be advised that MTAS Legal Consultant Stephanie Allen was consulted in formulating this response. Please let us know if you have further questions or require additional assistance.

Very truly yours,



Jeffrey J. Broughton  
Municipal Management Consultant

Cc: Stephanie Allen

**TITLE 8****ALCOHOLIC BEVERAGES<sup>1</sup>****CHAPTER****1. BEER.****CHAPTER 1****BEER<sup>2</sup>****SECTION**

- 8-101. Beer business lawful.
- 8-102. Beer board established.
- 8-103. Meetings of the beer board.
- 8-104. Record of beer board proceedings to be kept.
- 8-105. Requirements for beer board quorum and action.
- 8-106. Powers and duties of the beer board.
- 8-107. "Beer" defined.
- 8-108. Permit required for engaging in beer business.
- 8-109. Restrictions upon granting permits.
- 8-110. Application for retail permit; requirements as to applicants; regulations to be followed and shown in the application.
- 8-111. Beer permits shall be restrictive.
- 8-112. Permits not transferable; limitation of permits at one location.
- 8-113. Duration of permit.
- 8-114. Display of permit.
- 8-115. Privilege tax.
- 8-116. Interference with public health, safety, and morals prohibited.
- 8-117. Issuance of permits to persons convicted of certain crimes prohibited.
- 8-118. Issuance of permits to hotels, clubs, etc.
- 8-119. Retail premises; restrictions, frontage, curtains, blinds, etc., exceptions.
- 8-120. Sanitation for premises covered by on premises permit.
- 8-121. Minor, fraudulent evidence of age, etc., misdemeanor.
- 8-122. Investigation of applicant, agent and/or employees.

---

<sup>1</sup>State law reference  
Tennessee Code Annotated, title 57.

<sup>2</sup>State law reference  
For a leading case on a municipality's authority to regulate beer, see the Tennessee Supreme Court decision in Watkins v. Naifeh, 635 S.W.2d 104 (1982).

- 8-123. Prohibited conduct or activities by beer permit holders.
- 8-124. Suspension and revocation of beer permits.
- 8-125. Limitations on number of permits: retail off premises restrictions.
- 8-126. On premises restrictions.
- 8-127. Penalty for violations.
- 8-128. Employees liable for violations.

**8-101. Beer business lawful.** It shall hereafter be lawful to transport, store, sell, distribute, possess, receive or manufacture beer of alcoholic content as is allowed by the statutory laws of the State of Tennessee, or any other beverages of like alcoholic content, within the corporate limits of the City of Minor Hill, subject to all of the regulations, limitations, and restrictions hereinafter provided, and subject to the rules and regulations promulgated by authorized public officials or board. (Ord. #\_\_\_\_, Oct. 1993)

**8-102. Beer board established.** There is hereby established a beer board to be composed of five (5) citizens of the City of Minor Hill, who shall be duly elected by the mayor and board of alderman, and these shall constitute the governing body of the beer board. A chairman shall be elected annually by the board from among its members. All members of the beer board shall serve without compensation, except when a special meeting is called by the chairman, at which time the applicant shall pay a \$250.00 fee. For the special meeting each member present shall receive a fee of five dollars (\$5.00) per meeting for their services rendered. (Ord. #\_\_\_\_, Oct. 1993)

**8-103. Meetings of the beer board.** All meetings of the beer board shall be open to the public. The board shall hold regular meetings quarterly at a date designated by the beer board, at the city hall whenever there is business to come before the beer board. A special meeting of the beer board may be called by its chairman provided he gives a reasonable notice thereof to each member and the board may adjourn a meeting at any time to another time and place. (Ord. #\_\_\_\_, Oct. 1993)

**8-104. Record of beer board proceedings to be kept.** The city clerk shall make a record of the proceedings of all meetings of the beer board. The record shall be a public record and shall contain at least the following: The date of each meeting; the names of the board members present and absent; the names of the members introducing and seconding motions and resolutions, etc., before the board; a copy of each such motion or resolution presented; the vote of each member thereon; and the provisions of each beer permit issued by the board. The city clerk shall also maintain an up-to-date list of all beer permit holders. (Ord. #\_\_\_\_, Oct. 1993)

**8-105. Requirements for beer board quorum and action.** The attendance of at least a majority of the members of the beer board shall be required to constitute a quorum for the purpose of transacting business. Matters before the board shall be decided by a majority of the members present if a quorum is constituted. Any member present but not voting shall be deemed to have cast a "nay" vote. (Ord. # \_\_\_\_, Oct. 1993)

**8-106. 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 the municipality in accordance with the provisions of this chapter. (Ord. # \_\_\_\_, Oct. 1993)

**8-107. "Beer" defined.** The term "beer" as used in this chapter shall mean and include all beers, ales, and other malt liquors having an alcoholic content of not more than five percent (5%) by weight. (Ord. # \_\_\_\_, Oct. 1993)

**8-108. Permit required for engaging in beer business.** No person shall engage in the storing, selling, distributing or manufacturing of beer of alcoholic content of not more than five per cent (5%) by weight, or other beverages of like alcoholic content within the corporate limits of the City of Minor Hill, until he shall receive a permit to do so from the Beer Board of the City of Minor Hill, which permit shall at all times be subject to all the limitations and restrictions herein provided. The application shall be made on such form as the board shall prescribe and/or furnish, and pursuant to T.C.A. § 57-5-101(b), and shall be accompanied by a non-refundable application fee of two hundred and fifty dollars (\$250.00). Said fee shall be in the form of a cashier's check payable to the City of Minor Hill. Each applicant must be a person of good moral character and certify that he has read and is familiar with the provisions of this chapter. (Ord. # \_\_\_\_, Oct. 1993)

**8-109. Restrictions upon granting permits.** No permit shall be issued to sell any beverage coming within the provisions of this section:

(1) In violation of any provisions of the state law.

(2) In violation of any rules or regulations adopted or promulgated by agencies thereof including, but not limited to, the Tennessee Alcoholic Beverage Commission.

(3) In violation of any applicable ordinance of the City of Minor Hill including, but not limited to, the zoning ordinances. The judgment of the beer board on such matters shall be final, except as same is subject to review at law under the Tennessee Code Annotated. (Ord. # \_\_\_\_, Oct. 1993)

**8-110. Application for retail permit; requirements as to applicants; regulations to be followed and shown in the application.**

(1) That the applicant is a citizen of the United States, or if a syndicate or association, that all the members thereof are citizens of the United States.

(2) Applicant will immediately report to the board in writing any material or substantial changes with respect to information furnished on the application. Willful failure to report such changes shall constitute a violation and shall be grounds for action by the board under § 8-124.

(3) The location of the premises at which the business is to be operated and the said place of business is not within 400 feet for packaged beer and 2,000 feet for taverns of any school, church or other place of public gathering nor will said location cause congestion of traffic.

(4) The owner or owners of such premises.

(5) The names and addresses of all other persons or firms who have any financial interests whatsoever in the beer business proposed to be established.

(6) That applicant will operate the business in person or by agent, but that applicant will devote a minimum average of 40 hours per week on the premises to the supervision and operation of said proposed business.

(7) That no person will be employed in the storage, sale or manufacture of such beverages except those who are citizens of the United States.

(8) That the applicant will not engage in the sale of such beverages except at the place or places for which the beer board has issued permit or permits, to such applicant.

(9) That no sale of such beverages will be made except in accordance with the permit granted.

(10) That if the application is for a permit to sell, not for consumption on the premises, that no sale will be made for consumption on the premises; that no consumption will be allowed on the premises thereof.

(11) That no sale will be made to minors, and that the applicant will not permit minors or disorderly or disreputable persons to loiter around the place of business.

(12) The applicant will be responsible for any gambling on his premises and his permit subject to revocation by reason of the same.

(13) The applicant will not allow any liquor with alcoholic content greater than five percent (5%) to be consumed on his premises.

(14) That the applicant must secure a certificate or a statement from the health department or health officer that the premises which the application covers meet the requirements of this title.

(15) The application shall be submitted to the city clerk at least fifteen (15) days prior to the beer board meeting at which it is to be considered. The city clerk shall, within five (5) days after receipt of an application, notify each member of the beer board of such an application.

(16) The application must be accompanied by a certificate, signed by the mayor or city clerk, attesting to the good moral character of the applicant or any agent operator.

(17) No permit shall be issued by the beer board until the application therefor shall have been subscribed to and approved in writing by the city attorney. However, the city attorney is only authorized to disapprove applicants when there is a failure to comply with a city ordinance or state law governing the issuance of permits.

(18) If applicant is no longer actively engaged in the business for which the permit is issued, applicant agrees to surrender the permit to the board or to the city clerk immediately; applicant understands and acknowledges that his/her failure to do so will subject him/her to liability for a penalty of twenty-five dollars (\$25.00) per day for each day the business is operated under his/her license after he/she is no longer actively engaged in the business. A permit holder not devoting a minimum average of forty (40) hours per week on the premises supervising the operation of the business shall be deemed by the board to be no longer actively engaged in the business.

(19) All tavern or beer establishments shall have a working phone installed in the place of business. (Cell phones are not acceptable.) (Ord. #\_\_\_, Oct. 1993, as amended by Ord. #\_\_\_, June 1999, and Ord. #\_\_\_, April 2002)

**8-111. Beer permits shall be restrictive.** All beer permits shall be restrictive as to the type of beer business authorized under them. Beer permits for the retail sale of beer may be further restricted by the beer board so as to authorize sales only for off premise consumption. It shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by his permit. No one individual may hold more than one type of license at any time. A single permit may be issued for on premises and off premises consumption. (Ord. #\_\_\_, Oct. 1993)

**8-112. Permits not transferable; limitation of permits at one location.** Beer permits are not transferable, saleable or assignable from one person or entity to another or from one location to another. No more than three permits may be issued within a single calendar year at the same location. (Ord. #\_\_\_, Oct. 1993)

**8-113. Duration of permit.** Permits issued pursuant to the provisions of this chapter shall be issued for an indefinite period of time. Operations may be reviewed by the beer board from time to time and at least on an annual basis. (Ord. #\_\_\_, Oct. 1993)

**8-114. Display of permit.** The permit required by this chapter shall be posted in a conspicuous place on the premises of the permit holder, together

with all other permits, licenses, and stamps as required by law. (Ord. #\_\_\_\_, Oct. 1993)

**8-115. Privilege tax.** There is hereby imposed on the business of selling, distributing, storing or manufacturing beer a 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 January 1, 1994, and each successive January 1, to the City of Minor Hill, 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. (Ord. #\_\_\_\_, Oct. 1993)

**8-116. Interference with public health, safety, and morals prohibited.** No permit authorizing the sale of beer will be issued when such business would cause congestion of traffic or would interfere with schools, churches, or other places of public gathering, or would otherwise interfere with the public health safety and morals. In no event will a permit be issued authorizing storage, sale or manufacture of beer at places within 400 feet for packaged beer and 2000 feet for a tavern, of any school, church or other place of public gathering, pursuant to Tennessee Code Annotated. § 57-5-105. The distance shall be measured in a straight line from the nearest point on the property line upon which sits the building from which the beer will be manufactured, stored or sold to the nearest point on the property line of the hospital, school, church or other place of public gathering if a valid permit had been issued to any business on that same location as of January 1, 1999, unless beer is not sold, distributed or manufactured at that location during any continuous six month period after January 1, 1999. (Ord. #\_\_\_\_, Oct. 1993, as replaced by Ord. #\_\_, June 1999)

**8-117. Issuance of permits to persons convicted of certain crimes prohibited.** No beer permit shall be issued to any person who has been convicted for the possession, sale, manufacture, or transportation of intoxicating liquor or any crime involving moral turpitude within the past ten (10) years. No person, firm, corporation, joint-stock company, syndicate, or association having at least a five percent (5%) ownership interest in the applicant shall have been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years. (Ord. #\_\_\_\_, Oct. 1993)

**8-118. Issuance of permits to hotels, clubs, etc.** It shall be lawful for the beer board to issue a permit for the sale of any beverage coming within the provision of this chapter, to hotels, motels, clubs, or lodges, subject to the limitations and restrictions contained in the state law, and the rules and



regulations promulgated thereunder, and subject to all the limitations and restrictions contained in the permit provided by this chapter. (Ord. #\_\_\_\_, Oct. 1993)

**8-119. Retail premises; restrictions, frontage, curtains, blinds, etc., exceptions.** No permit to sell at retail coming within the provisions of this chapter, shall be issued for the operation of any place except one with enough of the front enclosed in glass of such design that the interior can be easily seen from the sidewalk or street in front of such place. No curtains, drapes, shades, blinds, screens or other things shall be used in the front of any place that hinders a clear and unobstructed view of the interior of such place from the sidewalk or street in front of such place. All places shall be adequately lighted. (Ord. #\_\_\_\_, Oct. 1993)

**8-120. Sanitation for premises covered by on premises permit.** Any person holding a permit under this chapter for sale for consumption on the premises shall keep and maintain the premises in a clean and sanitary condition. (Ord. #\_\_\_\_, Oct. 1993)

**8-121. Minor, fraudulent evidence of age, etc., misdemeanor.** It shall be unlawful for any minor to purchase, attempt to purchase or to possess any such beverage covered under this chapter, or for anyone to purchase such beverage for a minor. It shall be unlawful for any minor to present or offer to permit, his agent or employee, any written evidence of his age which is false, fraudulent, or not actually his own, for the purpose of purchasing or attempting to purchase such beverages. Any minor who acts in violation of any one or more of the provisions of this section shall be deemed guilty of a misdemeanor and if eighteen (18) years of age, or more, shall, upon conviction, be subject to a fine of not more than five hundred dollars (\$500.00); if seventeen (17) years of age, or less, he shall be taken before the juvenile judge for appropriate disposition. (Ord. #\_\_\_\_, Oct. 1993)

**8-122. Investigation of applicant, agent and/or employees.** Applicants for a retail permit under this section are subject to be investigated by municipal, county and state authorities, and any agent of said applicant, or hi employees must register with the Police Department of the City of Minor Hill prior to beginning work, submit such information and records as the beer board may require and secure a permit from said police department. In addition, all employees of retail beer permit holders must have an up-to-date health card before accepting employment as required by State Public Health Department for Food Handlers. (Ord. #\_\_\_\_, Oct. 1993)

**8-123. Prohibited conduct or activities by beer permit holders.** It shall be unlawful for any beer permit holder to:

(1) Employ any person convicted for the possession, sale, manufacture or transportation of intoxicating liquor or any crime involving moral turpitude within the past ten (10) years.

(2) Employ any minor under eighteen (18) years of age in the sale, service or dispensing of beer at retail.

(3) Make or allow any sale of beer between the hours of twelve midnight and 6 A.M. on Monday through Friday mornings; between 1 A.M. and 6 A.M. on Saturday and Sunday mornings; from 10 A.M. to 12 P.M. on Sunday. During daylight saving time taverns will be allowed to remain open and sales allowed until 12 midnight on Sundays. For the remaining part of the year, no sales will be allowed after 9 P.M. on Sundays. No person or persons shall be allowed on the premises (defined as the building and immediate parking area surrounding same) for a period to continue more than 30 minutes after the required closing times except the beer permit holder and one designated employee whose name has been furnished in advance and in writing to the city clerk or a police commissioner.

(4) Allow any loud, unusual or obnoxious noises to emanate from his premises.

(5) Make or allow any sale of beer to a person under the minimum age allowed by Tennessee law to purchase beer; or to allow any such person to loiter in or about the place of business.

(6) Make or allow any sale of beer to any intoxicated person or to any feeble minded, insane, or other mentally incapacitated person.

(7) Allow drunk or disreputable persons, or persons of questionable character to loiter about his premises.

(8) Serve, sell or allow the consumption on his premises of any alcoholic beverage with an alcoholic content of more than five (5%) percent by weight.

(9) Fail to provide and maintain separate sanitary toilet for men and women.

(10) Fail to allow Minor Hill City Police or any other law enforcement officer, or beer board member, to enter and check any business at any time where establishment has municipal beer license. Failure to permit same shall constitute cancellation of beer license by beer board after appropriate hearing.

(11) It shall be unlawful for any person to transport from any point within or without this state to another point within this state, any beer and/or other beverages on which the tax imposed has not been paid to the City of Minor Hill.

(12) Allow pool and billiard playing or video games in the same room where beer is sold and/or consumed. Beer may be sold in a pool room or game room only if a partition or wall separates the place of sale from the pool or gameroom. The hours of closing for pool rooms or video game rooms shall be 9 P.M. on Sunday (12 midnight during daylight saving time), 12 midnight on

Monday, Tuesday, Wednesday and Thursday nights of each week and 1 A.M. on Saturday and Sunday mornings of each week. (Ord. #\_\_\_\_, Oct. 1993, modified)

**8-124. Suspension and revocation of beer permits.** 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 the State Beer Act or any of the provisions of this chapter. Suspension or revocation proceedings may be initiated by the police or by any member of the beer board and the board 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.

Complaints filed against any permit holder for the purpose of suspending or revoking such permits shall be made in writing and filed with the board. When the board shall have reason to believe that any permit holder shall have violated the provisions of the State Beer Act or any of the provisions of this chapter, the board is authorized 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 violations. Said notice to appear and show cause shall state the alleged violations charged and shall be served upon the permittee either by registered letter or by a member of the police department. This notice shall be served upon the permittee at least five (5) days before the date of 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 said hearing, if the board determines that the charges have been sustained, said board shall suspend the permit as follows:

For a first offense the minimum period of three consecutive calendar days.

For a second offense occurring within 90 days of the prior offense the minimum suspension shall be a period of 15 calendar days.

For a third offense occurring within 180 days of the second offense as described in the preceding paragraph the minimum suspension period shall be 30 consecutive calendar days.

The board may, in its discretion suspend for any of these offenses for a substantially longer period of time. In addition, the board may revoke the permit.

The beer board may, at the time it imposes a revocation or suspension, offer a permit holder the alternative of paying a civil penalty not to exceed \$1,500.00 for each offense of making or permitting to be made any sales to minors or, a civil penalty not to exceed \$1,000.00 for any other offense. If a civil penalty is offered as an alternative to revocation or suspension, the 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 action of the beer board in said hearings shall be final, subject to review by the court as provided in the State Beer Act. When the permit is

revoked, no new permit may be issued hereunder for the sale of beer at the same location until the expiration of one (1) year from the date the revocation became final. (Ord. #\_\_\_, Oct. 1993)

**8-125. Limitations on number of permits: retail off premises restrictions.** (1) At no time shall the number of beer permits issued by the beer board and outstanding in the City of Minor Hill for off premises consumption exceed two (2).

(2) "Package beer" is defined as beer (defined § 8-107) sold for off premises consumption.

(3) Permits for the off premises sale of beer shall be issued according to the following classes and limitations:

(a) Off premises where beer is sold at a grocery (food store). Grocery shall mean a business establishment whose primary business is the retail sale of food merchandise and household items. Beer shall not be sold for consumption on the premises of grocery stores.

(b) Off premises where beer is sold at a prepared food business. This shall mean an establishment whose business is the sale of prepared food to be consumed off the premises as defined by this section. (Ord. #\_\_\_, Oct. 1993)

**8-126. On premises restrictions.** At no time shall the number of beer permits issued by the beer board and outstanding in the City of Minor Hill for taverns exceed six (6).

(1) In cases of waiting lists, applicants for already established businesses will hold priority over unestablished businesses.

(2) In the event of the death of a beer permit holder, his successors shall have first option on the available license. (Ord. #\_\_\_, Oct. 1993)

**8-127. Penalty for violations.** Each day's violation of each or any provisions of this chapter by any permit holder, or each sale made in violation of any provisions of this chapter shall constitute a separate misdemeanor which shall be punishable by a fine of not less than one dollar (1.00) or more than one thousand and five hundred dollars (\$1,500.00) or by suspension or revocation of the permit issued hereunder, or by such fine or suspension or revocation. (Ord. #\_\_\_, Oct. 1993)

**8-128. Employees liable for violations.** Any employee of any permittee who violates the provisions of this chapter or any provision of the State Beer Act while so employed by such permittee shall be guilty of a misdemeanor which shall be punishable by a fine of not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00). (Ord. #\_\_\_, Oct. 1993)