

First Reading: October 29, 2024
Second Reading: November 5, 2024

ORDINANCE NO. 14167(2)

AN ORDINANCE AMENDING CHATTANOOGA CITY CODE,
PART II, CHAPTER 5, ARTICLE VI, HEARING OFFICER FOR
THE BEER BOARD.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA,
TENNESSEE:

SECTION 1. That Chattanooga City Code, Part II, Chapter 5, Article VI, Hearing Officer
for the Beer Board, be added as follows:

Sec. 5-190. Purpose.

The purpose of this article is to provide for the efficient, effective, and just resolution of claims arising out of offenses committed by holders of beer permits issued pursuant to the provisions of this chapter, through the creation of the position of a beer board hearing officer and rules of procedure by which to govern hearings before said officer.

Sec. 5-191. Hearing officer.

There shall be created the office of beer board hearing officer (hereinafter referred to as "hearing officer") for the purpose of the judicial administration of hearings to adjudicate issues relating to the suspension or revocation of beer permits and/or the issuance of fines pursuant to this chapter. Any provisions of this chapter which provide for the suspension or revocation of any beer permit, for the imposition of fines or other disciplinary action resulting from improper conduct of a business which holds a beer permit and which authorize the beer board to take such disciplinary action shall be construed to authorize the beer board to take such action by and through a properly qualified hearing officer duly appointed pursuant to the provisions of this part.

Sec. 5-192. Selection of hearing officer.

The Mayor shall establish a list of no more than five (5) hearing officers to conduct hearings pursuant to this article. All such hearing officers shall be persons licensed to practice law in the State of Tennessee and shall have experience in the area of litigation. They shall be subject to a confirmation vote by City Council.

Sec. 5-193. Compensation for hearing officer.

Hearing officers appointed under this article shall be compensated at a rate established by the Mayor and City Council, subject to biennial review.

Sec. 5-194. Removal of hearing officer.

Hearing officers shall be appointed for two-year terms, and appointments may be renewed by Mayor and confirmed by City Council. A hearing officer may resign at any time by providing written notice to the Regulatory Unit and the City Attorney's office at least thirty (30) days prior to the date of resignation. In the event a hearing officer resigns, the Mayor shall, within thirty (30) days, appoint a new hearing officer to fill the vacancy.

Sec. 5-195. Clerk of beer board.

The Regulatory unit Admin Support Specialist, other support staff, or designee shall serve as clerk of the beer board. The duties of the clerk of the beer board shall include:

- (1) The preparation of an application form for Hearing Officers;
- (2) Receipt and maintenance of all records or files pertaining to any cases arising under this Article;
- (3) Coordination of places and times for hearings pursuant to this article;
- (4) Provide appropriate published notice to the public of the time and place for hearings to be conducted pursuant to this part; and
- (5) Any other duties which may assist in the just, efficient, and effective enforcement of this Article.

Sec. 5-196. Procedure.

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

- (1) The Regulatory Unit shall review citations issued by the Police Department for Beer Code violations;
- (2) Following the receipt of the citations, the clerk of the beer board shall refer the matter to the next scheduled hearing officer for further proceedings consistent with this division. A copy of the citation also shall be forwarded by the clerk to each member of the beer board.
- (3) 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 of the beer board shall cause to be published in a newspaper of daily general distribution within the city, notice of the time of the hearing and the location where it is to be held.

Sec. 5-197. Answer.

Permittees served with notice pursuant to this part shall file with the clerk of the beer board, at the Regulatory Unit of the Chattanooga Police Department, a written answer to the allegations alleged in the complaint within fifteen (15) days of receipt of the notice. At the same time, permittees also shall transmit a duplicate copy of the written answer to the city law department.

Sec. 5-198. Default.

Failure of the permittee to file a written answer with the clerk of the beer board 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.

Sec. 5-199. Scheduling of hearing.

The clerk of the beer board and the duly selected hearing officer, in cooperation with the City Attorney's Office and the permittee or the permittee's representative, if known, shall set the time for the hearing, said time to be within sixty (60) days but not less than thirty (30) days after the receipt of notice by the permittee.

Upon the selection of a date for the hearing, it shall be the responsibility of the clerk of the beer board 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 permittee of the right to be represented by counsel.

Sec. 5-200. Conduct of hearing.

The burden shall be on the city to show by a preponderance of the evidence that the permittee is guilty of a noncompliance offense. If all evidence examined by the hearing officer leads the hearing officer to conclude that it is more likely than not that the permittee is guilty of a noncompliance offense, such proof shall constitute cause thereby justifying suspension, revocation, a monetary penalty, or such other sanctions as the hearing officer deems appropriate, consistent with the provisions of this chapter. The hearing officer will make findings of fact and recommendations for sanctions to the beer board.

Neither the Tennessee Rules of Evidence nor the Tennessee Rules of Civil Procedure shall be applicable to these hearings but the hearing officer is instructed to make every effort to conduct the hearing so as to provide a fair hearing and reasonable due process to both parties.

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 citation, to grant or deny continuances and establish the length of time for such continuances, to grant rehearings, and to modify or rescind any recommendation.

The hearing officer shall render a decision at the conclusion of the hearing or within twenty-four (24) hours thereof.

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 of the beer board with copies provided to the parties or counsel of record for the parties and to the chairperson of the beer board.

Sec. 5-201. Pre-hearing conference.

The written report shall be presented to the beer board at the next scheduled meeting after being received by the Regulatory Unit. At that meeting, the beer board shall vote to affirm or reject the findings of the Hearing Officer. If the board rejects the findings of the Hearing Officer, the board must state their rationale on the record and impose alternate sanctions or dismissal of the citation.

Sec. 5-202. Subpoenas.

At least ten (10) working days prior to the date of the hearing, all parties shall provide the clerk of the beer board with a list of the individuals they wish to have subpoenaed to appear at the hearing. The clerk of the beer board 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.

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.

The subpoenas may be served by a police officer of the city or by any officer authorized to serve subpoenas in state court. It shall be the responsibility of the requesting party to ensure that service is proper and complete.

Sec. 5-203. Transcripts and evidence.

All tape recordings shall be labeled and placed in the custody of the clerk of the beer board, unless and until said recordings are actually transcribed. The tape recordings shall be retained by the clerk of the beer board until all rights to an appeal of the hearing officer's decision are exhausted. A copy of any transcript prepared shall be retained permanently by the clerk of the beer board.

The clerk of the beer board 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.

Upon receipt of a copy of a petition for judicial review, it shall be the responsibility of the clerk of the beer board to have prepared a transcript of the proceedings. The clerk of the beer board shall send the original or a certified copy of the entire record of the proceeding under review to the reviewing court pursuant to Tennessee state law; unless a longer period of time is granted by the court.

Sec. 5-204. Appeals.

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

Sec. 5-205. Fines utilized to pay hearing expenses.

The funds derived from fines assessed against holders of beer permits shall be placed in a separate fund which shall be utilized: (1) to defray the costs and expenses associated with providing hearings pursuant to this part (such costs and expenses shall include, but not be limited to, equipment and supplies utilized by the clerk of the beer board with respect to such hearings regardless of whether such equipment and supplies are utilized for other purposes in addition to beer board uses); and (2) to the extent that the monies in this separate fund exceed fifty thousand dollars (\$50,000.00), the excess may be designated to fund one-time projects related to underage drinking and/or alcohol abuse, upon approval of such projects by city council.

Sec. 5-206. Reserved.

SECTION 2. BE IT FURTHER ORDAINED, That this Ordinance shall take effect two (2) weeks from and after its passage.

Passed on second and final reading: November 5, 2024



CHAIRPERSON

APPROVED: DISAPPROVED:



MAYOR

PAN/mem/v2