



FARRAGUT BEER BOARD

October 28, 2021

5:15 PM

- I. Approval of Minutes**
 - A. October 14, 2021

- II. Discussion of request by SmartServ, located at 800 N. Campbell Station Road, to vacate the decision by the Farragut Beer Board on October 14, 2021, that issued a 21-day suspension of SmartServ's beer permit for selling beer to a minor.**

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FARRAGUT BEER BOARD MINUTES October 14, 2021

Alderman Pinchok, Chairman called the meeting to order at 5:00 PM.
Member present; Mayor Williams, Alderman Burnette, Alderman Meyer,
Alderman Pinchok and Alderman Povlin.

Approval of Minutes

Motion was made to approve the minutes of August 26, 2021, as presented. Moved by Mayor Williams, seconded by Alderman Povlin, voting yes, Mayor Williams, Aldermen Burnette, Meyer, Pinchok and Povlin; no nays; motion passed.

Beer Permit Hearing

Hearing to address Fairfield Inn, 11763 Snyder Road, beer permit violation(s) of Town of Farragut Code of Ordinances § 4-1 et seq.

Trent Walker was present representing Fairfield Inn. A motion was made to give a penalty of \$500 for violation for selling beer to a minor or a 14-day suspension if not paid within 7 days. Moved by Alderman Povlin, seconded by Alderman Meyer; voting yes, Mayor Williams, Aldermen Burnette, Meyer, Pinchok and Povlin; no nays; motion passed.

Hearing to address Hampton Inn, 11340 Campbell Lakes Drive, beer permit violation(s) of Town of Farragut Code of Ordinances § 4-1 et seq.

Darren Tallent was present representing Hampton Inn. A motion was made to give a penalty of \$500 for violation for selling beer to a minor or a 14-day suspension if not paid within 7 days. Moved by Alderman Meyer, seconded by Alderman Povlin; voting yes, Mayor Williams, Aldermen Burnette, Meyer, Pinchok and Povlin; no nays; motion passed.

Hearing to address Smart Serve, 800 N. Campbell Station Road, beer permit violation(s) of Town of Farragut Code of Ordinances § 4-1 et seq.

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There was no representative present for the SmartServ. A motion was made to suspend the beer permit for 21 days. Moved by Alderman Meyer, seconded by Alderman Povlin; voting yes, Mayor Williams, Aldermen Burnette, Meyer, Pinchok and Povlin; no nays; motion passed.

Ron Pinchok, Chairman

Allison Myers, Town Recorder

REPORT TO THE BEER BOARD

PREPARED BY: **David Smoak, Town Administrator**
 Allison Myers, Town Recorder

SUBJECT: Discussion of request by SmartServ, located at 800 N. Campbell Station Road, to vacate the decision by the Farragut Beer Board on October 14, 2021, that issued a 21-day suspension of SmartServ’s beer permit for selling beer to a minor.

INTRODUCTION: The purpose of this agenda item is to discuss the request from SmartServ to vacate the Beer Board’s decision made on October 14, 2021, that issued a 21-day suspension of its beer permit for selling beer to a minor.

DISCUSSION: The Beer Board held a hearing on October 14, 2021, regarding multiple violations of the Town of Farragut beer ordinance by beer permit holders in its jurisdiction. SmartServ was issued a citation from the Knox County Sheriff’s Office on March 8, 2021, for selling beer to a minor. SmartServ was properly served and was provided details of the time and place of the Beer Board meeting, but no representative of the establishment was present at the hearing. After listening to the testimony provided, the Beer Board found SmartServ guilty of selling beer to a minor and issued the vendor a 21-day suspension of its beer permit. A letter was delivered to SmartServ on October 15, 2021, detailing the board’s decision and on October 18, 2021, the Town of Farragut received a Motion to Vacate the order by the Farragut Beer Board (see Attachment A). The suspension of SmartServ’s beer permit has been stayed pending the outcome of this meeting.

SmartServ admits their employee did in fact sell beer to a minor on March 8, 2021, but contends they are a responsible vendor as defined in TCA 57-5-603. A “Responsible Vendor” is defined in part (6) as having received certification from the Tennessee Alcoholic Beverage Commission (TABC). Staff contacted the TABC and they have no record of SmartServ receiving a certificate as a responsible vendor.

If SmartServ has proof of being a responsible vendor, the Beer Board would need to hold another hearing at a future date in time as no suspension of a beer permit can be given to a certified responsible vendor. If, however, they are not certified as a responsible vendor the beer board’s decision on October 14 may stand.

BOARD ACTION: To vacate or uphold the Farragut Beer Board decision on October 14, 2021, to issue a 21-day suspension of the beer permit for SmartServ located at 800 N. Campbell Station Road for selling beer to a minor.

MOTION BY: _____ **SECONDED BY:** _____

VOTE/TOTAL	BURNETTE	WILLIAMS	MEYER	PINCHOK	POVLIN
YES	_____	_____	_____	_____	_____
NO	_____	_____	_____	_____	_____
ABSTAIN	_____	_____	_____	_____	_____

Attachment A

**TOWN OF FARRAGUT
BEER BOARD**

**TOWN OF FARRAGUT,
BEER BOARD**

v.

THE SMARTSERV

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)

PROPERTY ADDRESS:

**800 N. CAMPBELL STATION ROAD
FARRAGUT, TN 37932**

Permit # 0251

MOTION TO VACATE

Comes now, The SmartServ, by and through counsel, and would respectfully move this Honorable Tribunal to vacate the Order entered in relation to the above-referenced proceeding on October 14, 2021, pursuant to Rule 60.02 of the *Tennessee Rules of Civil Procedure*, and pursuant to Tenn. Code Ann. §57-5-608, and Town Of Farragut Code of Ordinance §4-162(a)(c).

In support thereof, the Movant, (hereinafter "SmartServ"), would show unto this Honorable Tribunal that a hearing in relation to the above-referenced matter was scheduled for October 14, 2021, at 5:00 p.m. at the Town of Farragut Town Hall. Inadvertently, due to a docketing error, instead of this proceeding being docketed for October 14, 2021, it was docketed by SmartServ for October 15, 2021, and as such, due to excusable neglect, SmartServ and/or its representatives could not appear at the hearing on Thursday, October 14, 2021. SmartServ would show unto this Honorable Tribunal that SmartServ had every intention to appear inasmuch as SmartServ has never missed any proceedings with the Town of Farragut, however, due to the inadvertent error cited herein, SmartServ was unable to appear.

SmartServ was advised on October 15, 2021, that an adverse ruling was entered by way of

suspending SmartServ's privilege to sell beer for twenty-one (21) days, at which time, SmartServ immediately advised the Town of Farragut, through its representatives, of this inadvertent error. In fact, a representative of SmartServ attempted to contact counsel for the Town of Farragut, however, was unable to make contact.

SmartServ would show unto this Honorable Tribunal that subsequent to the violation for which SmartServ was cited on March 8, 2021, the employee who engaged in making said sale was placed on a thirty (30) day probation immediately. Moreover, SmartServ, after said violation, has reprogrammed its POS (Point of Sale) equipment so as to require the entry of a date of birth without which a sale cannot be made. This was designed to ensure that employees are mandated to enter a date of birth before proceeding to the sale so as to ensure that the violation which occurred on March 8, 2021, is not repeated.

These measures employed by SmartServ, in fact, did prove to be successful in that two undercover operations were conducted to ensure that the violation that occurred on March 8, 2021, was not repeated, and these operations were conducted on June 3, 2021 and August 12, 2021, and on both of these occasions, the measures put in place by SmartServ prevented the violation which occurred on March 8, 2021.

SmartServ would show unto this Honorable Tribunal that pursuant to Town of Farragut Code of Ordinances §4-162(a), that SmartServ is a responsible vendor as defined by Tenn. Code Ann. §57-5-606(2), which in pertinent part provides as follows:

- (2) Provide instruction for its employees approved by the commission, which shall include the following:
- (A) Laws regarding the sale of beer for off-premise consumption;
 - (B) Methods of recognizing and dealing with underage customers; and
 - (C) Procedures for refusing to sell beer to underage customers and for dealing with intoxicated customers;

SmartServ would further show unto this Honorable Tribunal that SmartServ has not been

cited for any violations within a 12 month period, or for that matter, within a 24 month period of any infractions of the nature for which these proceedings were initiated. Had it not been for an inadvertent docketing error on the part of SmartServ, most definitely would have appeared at the scheduled hearing. Suffice it to say that SmartServ is remorseful of its failure to appear on October 14, 2021, albeit advertently.

WHEREFORE, for the foregoing reasons, SmartServ would respectfully move this Honorable Tribunal to vacate the Order entered on October 14, 2021, and to reschedule a hearing in relation to these matters at the next upcoming Beer Board meeting, or in the alternative, impose civil penalties as provided for in Town of Farragut Code of Regulation §4-162(a). SmartServ would further respectfully move this Honorable Tribunal for any and all further relief to which this Honorable Tribunal deems SmartServ to be entitled.

RESPECTFULLY SUBMITTED, this 18th day of October, 2021.

SMARTSERV

By: 

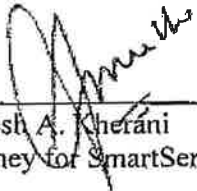
Ameesh A. Kherani, BPR #030218
Kherani | Dunaway, PLLC
Attorney for SmartServ
2685 Andersonville Highway, Suite 2
Clinton, Tennessee 37716
Telephone: 865-777-0786
Facsimile: 865-622-8887
Email: akherani@kheranilaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been served by facsimile, and/or by electronic mail, and/or by placing the same in the U. S. Mail with sufficient postage thereon to ensure delivery, upon the following, to-wit:

Thomas "Tom" Hale
Town Of Farragut
Kramer Rayson, LLP
P. O. Box 629
Knoxville, Tennessee 37902
Facsimile: 865-522-5723
Email: tomhale@kramer-rayson.com

This 18th day of October, 2021.



Ameesh A. Kherani
Attorney for SmartServ

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Tenn. Code Ann. § 57-5-603

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[TN - Tennessee Code Annotated](#) [Title 57 Intoxicating Liquors](#) [Chapter 5 Beer](#) [Part 6 Tennessee Responsible Vendor Act of 2006](#)

57-5-603. Part definitions.

As used in this part, unless the context otherwise requires:

- (1) "Beer" has the same meaning as defined in § 57-5-101(b);
- (2) "Beer board" means any entity issuing beer permits for off-premise consumption, pursuant to part 1 of this chapter;
- (3) "Certified clerk" means a clerk who has successfully satisfied the training requirements contained in this part, and who has received certification from a responsible vendor training program;
- (4) "Clerk" means any person working in a capacity to sell beer directly to consumers for off-premise consumption;
- (5) "Commission" means the alcoholic beverage commission;
- (6) "Responsible vendor" means a vendor that has received certification from the commission pursuant to this part;
- (7) "Responsible vendor training program" means a training program related to the responsible sale of beer for off-premise consumption that has met all the statutory and regulatory requirements set forth in this part, and in commission rules and regulations; and
- (8) "Vendor" means a person, corporation or other entity that has been issued a permit to sell beer for off-premise consumption.

History

Acts 2006, ch. 864, § 4.

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57-5-604. Authority of commission.

The commission shall have the authority to approve all responsible vendor training programs. The commission shall establish requirements and guidelines for responsible vendor training programs and vendor and clerk certifications. The commission shall establish and keep a master list of certified clerks and clerks not eligible for certification.

History

Acts 2006, ch. 864, § 5.

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57-5-605. Vendor certification — Rules and regulations — Monitoring and enforcing compliance — Statistical reports by beer boards and commission.

(a) A vendor who seeks certification as a responsible vendor shall provide to the commission, pursuant to procedures adopted by the commission, evidence of compliance with the requirements of this part. Upon satisfactory proof that the vendor has complied with the requirements, the commission shall certify the vendor as a responsible vendor. Certification as a responsible vendor shall be renewed every year. Responsible vendors may have their own training programs certified, or send their employees to any training program certified by the commission.

(b) The commission shall adopt rules and regulations for monitoring compliance by responsible vendors and for revoking or suspending a responsible vendor's certification for noncompliance with this part.

(c) The commission is authorized to monitor and enforce compliance with this part. The commission may impose fines on responsible vendors whose training programs fail to satisfy or maintain the requirements of this part or commission rules. The commission may further impose fines on vendors who hold themselves out as being a responsible vendor when in fact they do not hold that status. The commission may also impose fines on responsible vendors who willfully fail to comply with the requirements of this part.

(d) Determination of compliance with the responsible vendor program is the sole province of the commission.

(e)

(1) As used in this subsection (e), "beer board" means the local legislative body or committee appointed by the local legislative body having authority to issue licenses or permits under this chapter.

(2) To the extent the beer board has access to the information required pursuant to this

subsection (e), the beer board shall file with the alcoholic beverage commission an annual statistical report by February 1 of each year based on the previous calendar year's information detailing the following:

- (A)** The total number of beer permits or licenses issued by the beer board for off-premises consumption;
 - (B)** The number of violations for the sale of beer for off-premises consumption to a person under twenty-one (21) years of age resulting from:
 - (i)** A "sting" conducted pursuant to § 39-15-413; and
 - (ii)** Arrests made under conditions not related to a "sting";
 - (C)** Whether the violation of subdivision (B) occurred at an establishment participating in the responsible vendor program;
 - (D)** Whether if a "sting" was conducted pursuant to § 39-15-413 at an establishment participating in the responsible vendor program, the underage person used in the "sting" was unsuccessful in making the purchase;
 - (E)** The type and number of violations other than the sale of beer for off-premises consumption to a person under twenty-one (21) years of age occurred at establishments selling beer for off-premises consumption;
 - (F)** The name of the license or permit holder at the location where the violation occurred; and
 - (G)** The specific penalty imposed by the beer board for each violation upon a finding that a violation occurred.
- (3)** The alcoholic beverage commission shall compile the statistical information received from the beer boards and file a report with the state and local government committee of the senate and the state government committee of the house of representatives by March 15 of the year in which the report is received, together with recommendations for legislative changes related to the responsible vendor program, if any are recommended by the commission.
- (4)** The report made pursuant to subdivision (3) shall be made available by the alcoholic beverage commission to any person filing a written request for a copy of the report.

History

Acts 2006, ch. 864, § 6; 2012, ch. 964, § 1; 2013, ch. 236, § 68.

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57-5-606. Qualification for responsible vendor status.

In order to qualify for responsible vendor status, the vendor shall comply with the following requirements:

(1)

(A) Require each and every clerk to successfully complete a responsible vendor training program within sixty-one (61) days of commencing employment, whether the employment is for the first time, after rehiring, or for a different responsible vendor. Responsible vendors shall, prior to employing a clerk, verify with the commission that the clerk is eligible for certification;

(B) Each clerk shall successfully complete the responsible vendor training program and after doing so, receive a certificate of completion from the program trainer in a format that is in accordance with rules promulgated by the commission. The training program shall be a minimum of one (1) hour of instruction. A clerk shall not be authorized to sell beer for off-premise consumption, unless the clerk has successfully completed the responsible vendor training program and has received a certificate of completion or is within sixty-one (61) days of the date of hire. The original certificate of completion shall be maintained by the responsible vendor employing the clerk. The responsible vendor shall provide the commission with the names and other identifying information as required by the commission, of certified clerks within twenty-one (21) days of the date of training; and

(C) Each clerk shall be issued a name badge by the responsible vendor employer. The name badge must have the clerk's first name clearly visible. Clerks shall wear this name badge at all times during which they are on duty;

(2) Provide instruction for its employees approved by the commission, which shall include the following:

(A) Laws regarding the sale of beer for off-premise consumption;

(B) Methods of recognizing and dealing with underage customers; and

- (C) Procedures for refusing to sell beer to underage customers and for dealing with intoxicated customers;
- (3) Require all certified clerks to attend at least one (1) annual meeting, at which the responsible vendor shall disseminate updated information prescribed by the commission and the responsible vendor policies and procedures related thereto. In order for the clerk's certification to remain valid, the clerk must attend an annual meeting each year following the clerk's original certification; and the responsible vendor must keep records thereof. Responsible vendors shall notify the commission if a certified clerk does not attend an annual meeting as required by this section. The commission may, at any time, require responsible vendors to disseminate to certified clerks information from the commission that is related to changes in state law or commission rules; and
- (4) Maintain employment and all responsible vendor training records of all clerks.

History

Acts 2006, ch. 864, § 7; 2008, ch. 877, § 2; 2019, ch. 136, § 3.

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