

**OAK RIDGE BEER PERMIT BOARD
REGULAR MEETING**

**Training Room – Municipal Building
Monday – October 8, 2012
12:00 Noon**

AGENDA

1. **ROLL CALL**
2. **APPROVAL OF MINUTES** – Regular Meeting of September 10, 2012
3. **APPLICATIONS FOR NEW BEER PERMIT AND ASSOCIATED MANAGER APPROVAL APPLICATIONS**

Application No. 1460

**Leonor Martin, Owner/Manager
Tienda Nony #3
135 E. Tyrone Road
Class “C” Permit**

Application No. 1462

**Robin Biloski on behalf
Emory Valley Center
Benefit Concert – October 19, 2012
123 Randolph Road
Class “E” Permit**

Application No. 1463

**Aubrey Burleson, Owner/Manager
Jody Slimp, Manager
Aubrey’s Inc.
481 S. Illinois Avenue
Class “C” Permit**

Application No. 1464

**Abdul Rahman Shakoor Jamal, Owner
Akbar Abdul Rahman, Manager
Ian’s Market #32
12 Arkansas Avenue
Class “B” Permit**

Application No. 1465

**Wiwat Nang Crossno, Owner/Manager
Dondie Jai Hensley, Owner/Manager
Smokes To Go
117 Robertsville Road
Class “B” Permit**

4. **NEW MANAGER APPROVAL APPLICATIONS**

Jonathan A. Harris
Big Ed's Pizza
101 Broadway Avenue

5. **NEW / OLD BUSINESS**

- **New – Request for Board recommendation on proposed amendment to City Code (brown bagging) – See Legal Department Memorandum 12-57 and Attachments**
- **Old – Continuation of “new business” discussions from September 10, 2012**
- **Reminder – The following members’ terms expire December 31, 2012: Carol Heck, Theresa Scott, and Randy Tedford. If you are interested in remaining on the Board, you need to complete an application form (preferably online). The application is due no later than 5:00 p.m. on November 16, 2012, to the City Clerk’s Office. There is also one vacancy on the Board to serve the remainder of an unexpired term of office ending December 31, 2013. Elections will take place at a special meeting of City Council on December 17, 2012.**

6. **ADJOURNMENT**

**MINUTES OF THE
OAK RIDGE BEER BOARD
Regular Meeting**

Training Room – Municipal Building
September 10, 2012
12:00 noon

PRESENT: Barton Bailey, Colin Colverson, Gerald Cooksey, Carol Heck, Theresa Scott,
Debra Solmonson, and Randy Tedford

ABSENT: None

ALSO
PRESENT: Tammy Dunn, Senior Staff Attorney

AUDIENCE
MEMBERS: Trina Baughn, Citizen
Nang Crossno, Back 2 Brewskis (Owner/Manager)
Michael Foster, Allies for Substance Abuse Prevention
Charlie Hensley, Councilmember
John Iacovino, Citizen
Andy Marathe, Citizen
Pedro Otaduy, Citizen
Maria Ramirez, Homeland Foods (Owner)
Ellen Smith, Councilmember

ROLL CALL

Chairman Tedford called the meeting to order at 12:00 noon.

APPROVAL OF MINUTES

Ms. Solmonson moved, seconded by Secretary Bailey, to amend the minutes to state that Ms. Solmonson recused herself from Application No. 1458 and the motion carried unanimously (Mr. Colverson and Ms. Scott were absent for this vote.) Secretary Bailey moved, seconded by Ms. Solmonson, to approve the minutes of the July 9, 2012 meeting as amended and the motion carried unanimously. (Mr. Colverson was absent for this vote.)

APPLICATIONS FOR NEW BEER PERMITS AND THEIR ASSOCIATED MANAGER APPROVALS

Application No. 1459
Lynda Vinyard/Andrea Souza on behalf
St. Mary's Church
Fall Festival – October 12-13, 2012
327 Vermont Avenue
Class "E" Permit

Ms. Vinyard was present to discuss the special event application along with two other representatives of St. Mary's Church.

The Board asked various questions about the event and the sale of beer. As in the past, St. Mary's Church asked for an exemption from the requirement to use armbands. Having had no issues in the past with St. Mary's Church's events, Ms. Heck moved, seconded by Secretary Bailey, to approve the application and the motion carried unanimously.

Application No. 1460
Leonor Martin, Owner-Manager
Tienda Nony #3
135 E. Tyrone Road
Class "C" Permit

Ms. Martin was not present at the meeting. Ms. Dunn stated that the establishment did not pass the life safety inspection according to Mr. Denny Boss, Community Development Department. Chairman Tedford moved, seconded by Ms. Scott, to postpone the application to the next meeting and the motion carried unanimously.

Application No. 1461
Free Medical Clinic of behalf of
Jackson Square Merchant's Association's
Taste of Oak Ridge Event – September 22, 2012
Jackson Square
Barbara Ferrell, Supervisor of Beer Sales
Class "E" Permit

Ms. Ferrell was present to discuss the special event application.

The Board asked various questions about the event and the sale of beer. Ms. Ferrell indicated an ID was required to obtain a wristband for the beer event and volunteers would patrol outside the tent to make sure beer is not taken outside. Chairman Tedford moved, seconded by Secretary Bailey, to approve the application and the motion carried unanimously.

NEW MANAGER APPROVAL APPLICATIONS
(None)

NEW / OLD BUSINESS

Discussion of Beer Ordinances (City Code) for Possible Amendment

Training Requirements

The Board discussed the training requirements set forth in City Code §8-709 which places a responsibility on the permittee to explain to and ensure comprehension of the City's beer ordinances to their employees that participate in beer sales/distribution. Michael Foster, Allies for Substance Abuse Prevention (ASAP), was in attendance and had previously requested the Board to consider adopting a requirement for specific training, which ASAP could provide as well as others, similar to what Anderson County passed this year.

There was discussion about providing a list of training opportunities to permittees, but not endorsing any particular training program. There was discussion about whether permittees would benefit financially (ex: lower insurance premiums) by having a training certificate for their employees. There was also some discussion about whether volunteers and agents should be trained as well. There was some concern about tracking the information to ensure compliance if all employees were required to complete a certain training class, particularly with the larger businesses such as Wal-Mart and Kroger. There was discussion about just having owners and managers go through specific training. There was discussion about the ordinance requirement already in place and not placing additional requirements on permittees.

There was some discussion about whether Anderson County had an update on their requirement since it had been in place for a few months.

No formal action was taken for this discussion item.

Manager Certifications

The Board discussed whether to establish additional manager requirement such as a Board-approved manager on site at all times the establishment is open, or placing a line on the application form and beer permit for the owner to designate an alternate (or agent) for the City to contact if the owner is unavailable for an urgent matter. There was some discussion of whether the term “manager” would cause issues for a business should additional requirements be put in place since “manager” denotes a certain status in a business.

Nang Crossno, owner/manager of Back 2 Brewskis, commented that changing the requirement would cost small businesses and it may be something they could not afford to do. Mr. Crossno believed the potential to lose the beer permit for any violation was incentive to comply with the beer requirements already in place.

Andy Marathe, citizen, commented that making a change would create problems that do not exist and might drive small businesses away. Mr. Marathe asked that the codes not be complicated but be business friendly.

No formal action was taken for this discussion item.

Brown Bagging

The Board discussed the current prohibition on brown bagging (City Code §8-805) that prohibits beer-permitted establishments from allowing patrons to brown bag unless the establishment also possesses a liquor license. Ms. Dunn explained that this ordinance was enacted during a time when current Attorney General Opinions limited a city’s authority to only beer permittees, which is why the ordinance was not applicable to non-permitted businesses as well.

There was much discussion on this item by the Board and audience members, with particular focus on its impact on Homeland Café. The main point of each audience member who spoke is listed here.

- Trina Baughn, citizen, commented that Homeland Café’s brown bagging practice was not in violation of City ordinance since they did not have a beer permit.
- Maria Rameriz, owner of Homeland Café, desired to obtain a beer permit but wanted to continue her current practice of allowing patrons to brown bag wine. Current ordinance will not allow this practice once the beer permit is obtained and M. Ramirez asked for consideration of a change to the ordinance.

- Pedro Otaduy, citizen and husband of Ms. Ramirez, supported his wife's request for a change in the ordinance and started a petition.
- Andy Marathe, citizen, supported a change in the ordinance.
- Ellen Smith, citizen and councilmember, supported a change to the ordinance and commented that as it is currently written establishments that do not show they are responsible beer permittees (those who have no permit) are allowed to brown bag and responsible beer permittees are not. Councilmember Smith also commented that Homeland Café is not allowed to seek a wine-only-license from the State since the café does not meet the minimum seating requirement (40 seats). Councilmember Smith offered two suggestions: (1) allow brown bagging or (2) allow wine to be brown bagged in food establishments (restaurants).
- Charlie Hensley, citizen and councilmember, supported a change.

The Board had a variety of comments, but most comments were in support of considering a modification to the ordinance. Due to the lateness of the meeting, Mr. Colverson moved, seconded by Secretary Bailey, to continue this discussion at the next meeting along with the other items that remained un-discussed on the agenda, and the motion carried unanimously.

ADJOURNMENT

The meeting adjourned at 1:45 p.m. upon motion of Mr. Colverson, seconded by Secretary Bailey, and unanimous approval.

Respectfully submitted,

Barton Bailey, Secretary

LEGAL DEPARTMENT MEMORANDUM
12-57

DATE: October 2, 2012
TO: Chairman Tedford and Members of the Oak Ridge Beer Permit Board
FROM: Tammy M. Dunn, Senior Staff Attorney
SUBJECT: BROWN BAGGING – PROPOSED ORDINANCE AMENDMENT

An item for discussion at the October 8, 2012 meeting is a proposed ordinance amendment concerning the practice of brown bagging into establishments without the proper permit or license for such consumption.

Background

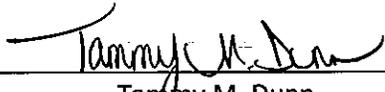
At the last meeting, the Board discussed the current ordinance on brown bagging and a request by a local restaurant to change it. This discussion was continued to the October 8, 2012 meeting. In the meantime, the issue of brown bagging was brought before City Council at the September 10, 2012 meeting and City Council directed the City Manager to bring the issue to the next available work session for discussion. At the September 24, 2012 work session, the issue of brown bagging was discussed, as was a proposed amendment to the ordinance. Prior to the work session meeting, the members of the Board received a copy of the work session packet materials for this item by email.

After discussion with City Council at the work session, the proposed amendment to the ordinance has been modified by City Staff. It is being brought to the Board at this meeting for a recommendation to City Council which will consider the ordinance amendment on first reading on October 8, 2012 and planned for second reading on October 22, 2012.

Proposed Ordinance Amendment

A proposed ordinance amendment is offered that will address the public safety concerns, yet still provide a mechanism for responsible restaurant owners and operators to be able to allow wine with meals. For these purposes, a “responsible” restaurant owner/operator is one who is familiar with and abides by the rules and regulations pertaining to the consumption of alcohol on their premises—those with a beer permit and/or liquor license.

Attached for the Board’s reference is a copy of the City Council agenda materials for the proposed ordinance amendment (Legal Department Memorandum 12-56, bold/strikethrough, and the ordinance).



Tammy M. Dunn

Attachment: October 8, 2012 City Council Agenda Materials on the Proposed Ordinance Amendment

JOINT MEMORANDUM
LEGAL DEPARTMENT 12-56
POLICE DEPARTMENT 12-03

DATE: October 2, 2012

TO: Mark S. Watson, City Manager

FROM: Tammy M. Dunn, Senior Staff Attorney
James T. Akagi, Chief of Police

SUBJECT: AMENDMENT TO CITY CODE – BROWN BAGGING PROHIBITED, EXCEPTION

An item for the agenda is an ordinance to amend the City Code pertaining to brown bagging.

Background

The issue of brown bagging was discussed at the September 24, 2012 work session at the direction of City Council. The history of state laws governing alcoholic beverage sales and brown bagging, as well as current applicable City Codes, were addressed by Legal Department Memorandum 12-54 and presented to City Council at the work session. A proposed ordinance amendment option was also discussed at the work session meeting as outlined in Legal Department Memorandum 12-55. Since these memos were presented previously to City Council, the content of the memos is not reiterated here.

City Staff's main focus during the work session meeting was to bring to City Council's attention potential problems should the practice of brown bagging be allowed without limitation. Those concerns include public drunkenness, open container violations, alcohol-involved domestic incidents, and intoxicated drivers. Statistics for Oak Ridge were presented at the meeting. Addressing the unregulated consumption of alcoholic beverages can further the City's interests in diminishing the number of those incidents outlined above. City Staff sought to balance those interests against the desire of some restaurant owners to allow patrons to brown bag wine.

During the work session discussion, City Council seemed agreeable to City Staff's request to broaden the current brown bagging prohibition to apply it citywide with one exception. The original exception presented to City Council was to allow small restaurants with a valid on-premises beer permit to allow patrons to brown bag wine provided such restaurant was unable to obtain a wine only or liquor license from the state due to the state's minimum seating requirements. At the meeting, it was suggested that this exception not be limited to establishments that could not obtain a license from the state based upon seating but allow the exception to apply to any restaurant (food service establishment) with a valid on-premises beer permit. This would allow those operators who have shown a willingness and a responsibility toward on-premises consumption of alcohol (beer) to allow patrons to brown bag wine.

In order to accomplish this, it is necessary to delete the second half of City Code §8-805 – which contains the current prohibition on brown bagging – and take it back to its' previously version of just being a provision regarding drugs in establishments with beer permits. It is also necessary to create a new section on brown bagging setting forth the prohibition and the exception. In looking at other cities' ordinances, those with similar prohibitions place that provision in their title on municipal offenses under the chapter pertaining to alcohol. Oak Ridge has the same type of city code structure as many other Tennessee cities, therefore, it is recommended that the new provision be contained in Title 11, Municipal Offenses, Chapter 2, Alcohol, Drugs, Etc. to keep consistency among codes within the state.

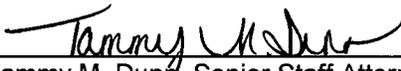
The new provision takes into account the comments made at the work session concerning food service establishments versus minimum seating requirements set by the state for liquor licensing. In an effort to allow current businesses who allow brown bagging under current City Code, enforcement of the new provision is recommended to begin January 1, 2013. This will allow restaurants who wish to continue the practice of brown bagging wine sufficient time to obtain an on-premises beer permit while not negatively impact any business plans currently in place for the upcoming holidays.

The attached ordinance was drafted in light of the comments received at the September 24, 2012 work session.

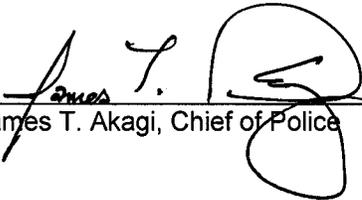
Recommendation

The Oak Ridge Beer Permit Board will be considering this ordinance amendment at their meeting on October 8, 2012, and if available, the board's recommendation to City Council will be presented at the Council meeting.

Approval of the attached ordinance is recommended.



Tammy M. Duro, Senior Staff Attorney



James T. Akagi, Chief of Police

Attachment

City Manager's Comments:

I have reviewed the above issue and recommend Council action as outlined in this document.

Mark S. Watson

Date

BOLD/STRIKETHROUGH OF BROWN BAGGING ORDINANCE

TITLE 8
ALCOHOLIC BEVERAGES

CHAPTER 8
BEER AND OTHER LIGHT BEVERAGES – PROHIBITIONS

Section 8-805. ~~Drugs or liquor on premises.~~

~~It is unlawful for any person to bring, to cause or to allow to be brought onto any permitted premises under chapters 6, 7, and 8 of this title any prohibited drugs within the meaning of Tennessee Code Annotated, §§ 53-10-101, et seq., and 39-17-401, et seq. It is also unlawful for any person to bring, to cause or to allow to be brought onto any permitted premises under chapters 6, 7, and 8 of this title any intoxicating beverage, the alcoholic content of which is in excess of five percent (5%) by weight, unless such permittee is also the holder of a valid liquor license issued under the authority of Tennessee Code Annotated, title 57, chapter 4.~~

TITLE 11
MUNICIPAL OFFENSES

CHAPTER 2
ALCOHOL, DRUGS, ETC.

Section 11-201. ~~{Deleted.}~~

Section 11-202. ~~Possession and/or consumption of beer and other alcoholic beverages prohibited on posted private property.~~

~~It shall be unlawful for any person to drink, consume, or possess opened cans, bottles, or other containers of beer or other alcoholic beverages upon any private property where the owner has posted a reasonably visible sign on the premises prohibiting such activity. Such a sign located upon the premises shall be presumed to be posted by the owner. The signs posted under this section shall be approved by the city manager as to size, form, and content prior to posting.~~

Section 11-201. Drinking beer, wine, alcoholic beverage or other intoxicating liquor in public.

It shall be unlawful for any person to drink, consume or have an open container or bottle of beer, wine, alcoholic beverage, or other intoxicating liquor in or on any public street, alley, avenue, highway, sidewalk, public park, public school ground, or other public place or private club unless such place has a current and valid permit or license for on premises consumption of such beverage.

Section 11-202. Brown bagging.

It shall be unlawful for any person to bring for consumption any container or bottle of beer, wine, alcoholic beverage or other intoxicating liquor ("brown bagging") in or on any public street, alley, avenue, highway, sidewalk, public park, public school ground, or other public place or private club. It is similarly unlawful for any person or establishment to allow "brown bagging" to occur on their premises or to fail to take reasonable measures to inform their patrons and customers that "brown bagging" is not allowed upon their premises. Any establishment who promptly reports to the police a "brown bagging" violation on its premises shall be presumed to be in compliance with the law. Likewise, any establishment which fails to promptly notify the police of a "brown bagging" violation on its premises shall be presumed to be in violation of the law.

Section.11-203. Exceptions.

- (1) **Generally. The provisions of Section 11-201 and Section 11-202 above are not applicable to any establishment which possesses a current and valid liquor by the drink license from the State of Tennessee.**
- (2) **On-Premises Beer Permitted Food Service Establishments – Wine. Food service establishments with a current and valid on-premises consumption beer permit issued under the provisions of the City Code may allow patrons and customers to “brown bag” wine—as defined by Tennessee Code Annotated §57-4-102(39)—regardless of whether such food service establishment possesses a liquor by the drink license from the State of Tennessee. For purposes of this subsection, “food service establishment” means any public place kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and tables, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its patrons and customers; and providing that more than fifty percent (50%) of the gross revenue of the establishment is generated from the serving of food/meals. City Council may, by resolution, establish a permit fee for this exception to the “brown bagging” prohibition.**

Notes:

1. The first change (§8-805) removes the current language on brown bagging.
2. The second change deletes current language in §11-202 that would conflict with the proposed provision on brown bagging.
3. The third change is to add new language (§11-201, currently empty) to prohibit the *consumption* of beer, wine, and liquor in any public place or private club that is not properly permitted or licenses.
4. The fourth change is to add new language (new §11-202) to prohibit the bringing of beer, wine and liquor (*brown bagging*) by persons and to prohibit establishments from allowing the practice of brown bagging.
5. The last change is to add a new section (§11-203) to address the exception. One, exception for liquor by the drink establishments because state law does not allow the city to regular liquor licensed establishments in this manner. Two, exception for on-premises beer-permitted food service establishments to allow patrons to brown bag wine only. This is to address the issue discussed at the September 24, 2012 work session.

TITLE

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF OAK RIDGE, TENNESSEE, BY DELETING SECTION 8-805, TITLED "DRUGS OR LIQUOR ON PREMISES," AND SETTING FORTH A NEW SECTION 8-805, TITLED "DRUGS ON PREMISES"; AND BY DELETING TITLE 11, TITLED "MUNICIPAL OFFENSES," CHAPTER 2, TITLED "ALCOHOL, DRUGS, ETC." IN ITS ENTIRETY AND SUBSTITUTING THEREFOR A NEW CHAPTER 2, TITLED "ALCOHOL," ALL FOR THE PURPOSES OF SETTING FORTH REGULATIONS CONCERNING THE PRACTICE COMMONLY REFERRED TO AS "BROWN BAGGING."

WHEREAS, by City Code §8-805, the City of Oak Ridge prohibits the practice of brown bagging alcoholic beverages exceeding five percent (5%) alcoholic content by weight in establishments with a beer permit; and

WHEREAS, the City desires to expand the prohibition on brown bagging with one exception.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OAK RIDGE, TENNESSEE:

Section 1. Title 8, titled, "Alcoholic Beverages," Chapter 8, titled "Beer and Other Light Beverages – Prohibitions," of the Code of Ordinances, City of Oak Ridge, Tennessee, is hereby amended by deleting Section 8-805, titled "Drugs or Liquor on Premises," in its entirety and substituting therefor a new Section 8-805, titled "Drugs on Premises," which new section shall read as follows:

Sec. 8-805. Drugs on premises.

It is unlawful for any person to bring, to cause or to allow to be brought onto any permitted premises under chapters 6, 7, and 8 of this title any prohibited drugs within the meaning of Tennessee Code Annotated §§53-10-101, et seq., and 39-17-401, et seq.

Section 2. Title 11, titled, "Municipal Offenses," of the Code of Ordinances, City of Oak Ridge, Tennessee, is hereby amended by deleting Chapter 2, titled "Alcohol, Drugs, Etc.," and substituting therefor a new Chapter 2, titled "Alcohol," which new chapter shall read as follows:

Chapter 2
Alcohol

Sec. 11-201. Drinking beer, wine, alcoholic beverage or other intoxicating liquor in public.

It shall be unlawful for any person to drink, consume or have an open container or bottle of beer, wine, alcoholic beverage, or other intoxicating liquor in or on any public street, alley, avenue, highway, sidewalk, public park, public school ground, or other public place or private club unless such place has a current and valid permit or license for on premises consumption of such beverage.

Sec. 11-202. Brown bagging.

It shall be unlawful for any person to bring for consumption any container or bottle of beer, wine, alcoholic beverage or other intoxicating liquor ("brown bagging") in or on any public street, alley, avenue, highway, sidewalk, public park, public school ground, or other public place or private club. It is similarly unlawful for any person or establishment to allow "brown bagging" to occur on their premises or to fail to take reasonable measures to inform their patrons and customers that "brown bagging" is not allowed upon their premises. Any establishment who promptly reports to

the police a "brown bagging" violation on its premises shall be presumed to be in compliance with the law. Likewise, any establishment which fails to promptly notify the police of a "brown bagging" violation on its premises shall be presumed to be in violation of the law.

Sec .11-203. Exceptions.

- (1) Generally. The provisions of Section 11-201 and Section 11-202 above are not applicable to any establishment which possesses a current and valid liquor by the drink license from the State of Tennessee.
- (2) On-Premises Beer Permitted Food Service Establishments – Wine. Food service establishments with a current and valid on-premises consumption beer permit issued under the provisions of the City Code may allow patrons and customers to "brown bag" wine—as defined by Tennessee Code Annotated §57-4-102(39)—regardless of whether such food service establishment possesses a liquor by the drink license from the State of Tennessee. For purposes of this subsection, "food service establishment" means any public place kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and tables, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its patrons and customers; and providing that more than fifty percent (50%) of the gross revenue of the establishment is generated from the serving of food/meals. City Council may, by resolution, establish a permit fee for this exception to the "brown bagging" prohibition.

Section 3. Enforcement of this ordinance shall begin January 1, 2013.

Section 4. This ordinance shall become effective ten (10) days after adoption on second reading, the welfare of the City of Oak Ridge requiring it.

APPROVED AS TO FORM AND LEGALITY:

Kenneth R. Krushenski, City Attorney

Thomas L. Beehan, Mayor

Diana R. Stanley, City Clerk

First Reading: _____
 Publication Date: _____
 Second Reading: _____
 Publication Date: _____
 Effective Date: _____