

## TITLE 8

### ALCOHOLIC BEVERAGES<sup>1</sup>

#### CHAPTER

#### 1. BEER.

#### CHAPTER 1

#### BEER<sup>2</sup>

#### SECTION

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**8-101. Board composition.** There is hereby established a beer board to be composed of the board of mayor and aldermen (hereinafter referred to as the beer board). The mayor shall be the chairman of the beer board. Its members shall serve without compensation. (Ord. #96-10, Dec. 1996)

**8-102. Powers and duties of the beer board.** The beer board shall have the power and it is hereby directed to establish regulations governing the selling, storing for sale, distributing for sale, giving away, and manufacturing of beer within the boundaries of the Town of Nolensville in accordance with the

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<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).

provisions of state statutes, provided such provisions and regulations are approved by the board of mayor and aldermen and to issue permits related thereto:

(1) The Town of Nolensville Beer Board may promulgate such by-laws, rules and regulations not inconsistent with state law, as it deems appropriate for the conducting of its business, copies of which shall be filed with the secretary of the board, and with the town recorder.

(2) All meetings of the beer board shall be open to the public. The board shall hold regular meetings at such times and at such locations as it shall prescribe. When there is business to come before the beer board, a special meeting may be called by the chairman provided he gives a reasonable notice thereof to each member. The board may adjourn a meeting at any time to another time and place.

(3) The attendance of a least a majority of 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.

(4) The town recorder shall make a record of the preceding 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 name 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.

(5) The term "beer" as used herein shall mean and include all beers, ales, and other malt liquors having an alcoholic content of not more than five percent (5%) by weight.

(6) The Town of Nolensville Beer Board meeting shall be conducted according to the latest available edition of Robert's Rules of Order. (Ord. #96-10, Dec. 1996, as amended by Ord. #02-08, Nov. 2002)

**8-103. Eligibility for beer permit required for engaging in beer business.** (1) Permits shall be issued to the owner of the business, whether a person, firm, corporation, joint-stock company, syndication association or limited liability company. A written application, under oath, shall be filed with the town recorder's office prior to the date of the hearing. The town recorder shall, within five (5) days after receipt of an application, notify each member of the beer board of such application.

(2) No such permit shall be issued until the beer board has approved the written application for the permit which application shall contain questions necessary to the determining of whether or not the applicant has met all laws

of this state and all provisions of this chapter and other regulations of the Town of Nolensville then in effect. (Ord. #96-10, Dec. 1996, as amended by Ord. #97-04, March 1997)

**8-104. Application requirements.** The application for a beer permit shall be submitted to the town recorder prior to the beer board meeting at which it is to be considered. The town recorder shall, within five (5) days after receipt of an application, notify each member of the beer board of such applications. The form of such application shall be prescribed by the beer board. Each applicant must affirmatively and explicitly state:

(1) The applicant shall state that the business will be conducted in person and shall indicate whether he or she is acting as an agent for any other person, firm, corporation, syndicate, association, joint venture, joint stock company, or limited liability company.

(2) The location of the premises at which the business shall be conducted.

(3) The owner or owners of such premises.

(4) If the applicant is a private individual, he or she must indicate the names and address of all other persons who have an ownership interest of five (5) percent or more in the business proposed to be established.

(5) If the applicant is a corporation whose stock is traded on a recognized stock exchange, the applicant must indicate only the names and addresses of those persons who have an ownership interest of five (5) percent or more in the corporation establishing the proposed business. If the applicant is a corporation, the applicant shall indicate whether the corporation is authorized to do business within the State of Tennessee.

(6) If the applicant is a partnership, a joint venture, limited liability company or a corporation whose stock is not traded on a recognized stock exchange, the applicant must also indicate the names and address of all persons who have an ownership interest of five (5) percent or more in the entity establishing the proposed business, whether as a member or stockholder of the partnership, the joint venture, corporation, member of a limited liability company or of otherwise.

(7) If the applicant is a partnership, a joint venture, a limited liability company or a corporation, the private individual who signs the application shall indicate, in words, that he or she signs "on behalf of" and then indicate the name of the business entity. By such signature, the partnership, the joint venture, limited liability company or the corporation agrees to be bound by all regulations under this chapter and to be liable for any violations thereof. Where it deems it to be appropriate, the beer board may require the applicant to furnish as a condition of approval a certified copy of a resolution approved by the

managing body of the business entity authorizing the individual signing the application on behalf of the business entity to obligate the entity.

(8) If the applicant will operate the business through an agent, the name and the address of the agent will be indicated. Any time the applicant/licensee changes agents, it shall notify the beer board in writing within thirty (30) days of the change and shall supply the name and address of the new agent.

(9) No permittee shall open his/her premises to the public for the sale of beer until the permittee shall first have filed with the beer board floor plans and diagrams completely disclosing and designating a physical arrangement of the premises, should the beer board so require the same of any applicant. (Ord. #96-10, Dec. 1996, as amended by Ord. #97-04, March 1997)

**8-105. Conditions of permits.** Every applicant to whom a beer permit is issued agrees to the following conditions:

(1) The premises are declared to be a public place for the purpose of inspection by any duly authorized enforcement officer or town official.

(2) 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.

(3) The permit holder shall keep invoices and all other memoranda fully descriptive relating in any way to the storing, sale, distribution by sale or gift or manufacture of beer, and the permit holder shall permit any town official, or representatives or employees of the town, to inspect, at any time during the business hours of the day, all such articles, containers, packages, invoices, books, appears and memoranda as may be deemed necessary in the opinion of the director of finance or his authorized agent, representative or employee in ascertaining whether or not all state and local taxes have been paid or in determining the amount of such taxes that may be due.

(4) Any applicant making any false statement in such application shall forfeit the permit, and shall not be eligible to receive any permit for a period of ten (10) years.

(5) Beer permits are not transferable from one person to another or from one location to another. A new permit is required in the manner provided herein.

(6) All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, distributing, and manufacturing. Beer permits for retail sale of beer may be further restricted by the beer board so as to authorized sale solely for off premises consumption. A single permit may be issued for on premises and 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.

It shall likewise be unlawful for him not to comply with any and all express restrictions or conditions which may be written into his permit by the beer board.

(7) No permit for on-premises beer consumption shall be granted or approved unless the applicant's business for which it is seeking a beer permit derives at least sixty-five (65) percent of its gross income from the sale of food prepared on the business premises to be consumed on the business premises. (Ord. #96-10, Dec. 1996, as amended by Ord. #97-04, March 1997)

**8-106. Application fees and taxes.** All applications for the issuance of permits by the Town of Nolensville Beer Board shall be accompanied by a non-refundable application fee of two hundred fifty dollars (\$250.00) for use of offsetting the expenses of investigating the applicant and processing the application. Said fee shall be in the form of a cashier's check payable to the Town of Nolensville. Each applicant must be a person of good moral character and he must certify that he has read and is familiar with the provisions of this chapter. All applications shall be on such forms as the beer board shall prescribe and/or furnish. No application fee shall be required of an owner of a business holding a valid beer permit, at a location in the Town of Nolensville for a business as of October 1, 1996. In the event the business location changes or ownership of said business changes, the application must be accompanied by a non-refundable application fee. (Ord. #96-10, Dec. 1996)

**8-107. Restrictions upon granting permits.** No permit shall be issued to sell any beverage coming within the provisions of this chapter that are:

- (1) In violation of any provision of the state law.
- (2) In violation of the Zoning Ordinance of the Town of Nolensville; or
  - (a) Pursuant to Tennessee Code Annotated, § 57-5-103(a)(1), no person shall engage in the storing, selling, distribution, giving away, or manufacturing of beer, or other beverages of like alcoholic content, within the town limits of the Town of Nolensville until that person shall receive a permit to do so from the Beer Board of the Town of Nolensville, Tennessee. The applicant shall certify that he or she has read and is familiar with the chapter. No permit shall be issued to any person, persons, firm, corporation, joint-stock company, syndicate, limited liability company, or association if such persons or entity are in violation of the beer ordinance at the time of application for such permit.

(b) 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 schools, churches, or other places of public gathering, or would otherwise interfere with the public health and safety of the

inhabitants of the Town of Nolensville; or in no event will a permit be issued authorizing the manufacture or storage of beer, or the sale of beer within two hundred fifty (250) feet of any hospital, school, church or other place of public gathering. The distances 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. No permit shall be suspended, revoked or denied on the basis of proximity to a school, church, or other place of public gathering if a valid permit had been issued to any business at the same location as of October 1, 1996. No sales of beer or like beverages shall occur within one hundred fifty (150) feet of a residential dwelling if the owner of the dwelling objects to the issuance of the permit. Business establishments where the service of meals is the principal business and where at least sixty-five (65) percent of its gross business revenue is derived from the sale of food may be exempted from the distance requirements as stated herein at the sole discretion of the beer board; or

(c) No beer permit shall be issued to any applicant 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, limited liability company or association having at least a five percent (5%) ownership interest in the business applying for a permit 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.

(d) No permit authorizing the sale of beer for on-premises consumption shall be issued to any persons or entity unless the applicant derives sixty-five (65) percent of its gross business revenue from the sale of food prepared on the business premises to be consumed on the business premises.

(e) The judgment of the beer board on such matters is final except as same is subject to review under law Tennessee Code Annotated, § 57-5-108. (Ord. #96-10, Dec. 1996, as amended by Ord. #97-04, March 1997)

**8-108. Referral of applications to local law enforcement agencies.**

The Town of Nolensville Beer Board shall submit the necessary information of each applicant for a permit to local law enforcement agencies for the purpose of ascertaining if the applicant has ever been arrested or convicted of any offense which would prohibit the issuance of a permit. (Ord. #96-10, Dec. 1996)

**8-109. Prohibited acts.** The Town of Nolensville Beer Board shall have the power to revoke or suspend, and shall be charged with the duty of revoking or suspending, any permits issued by it, upon notice to the permittee and a hearing thereon, for any violation of any provision of state law regulating the sale, storage and transportation of alcoholic beverages or for any violations of any provisions of this chapter or when the permittee engages in the following prohibited conduct or activities:

- (1) Operates a disorderly place; or
- (2) Has been convicted by final judgment of a court of competent jurisdiction of a crime involving moral turpitude; or
- (3) Permits minors to congregate about the premises; or
- (4) Has made a false statement of a material fact in any application or notice to the beer board; or
- (5) Sales to minors as: It shall be unlawful for any person under twenty-one (21) years of age to purchase, attempt to purchase, or to possess any beverage covered by this chapter or for anyone to purchase such beverage for a persons under twenty-one (21) years of age to present or offer to any permittee, his or her agent or employee, any written evidence of his age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or attempting to purchase such beverages. Any person under twenty-one (21) years of age who acts in violation of any one or more of the provisions of this section shall be taken before the juvenile judge of this county for appropriate disposition; or
- (6) Make or allow sales of beer to any intoxicated person or feeble minded, insane, or otherwise mentally impaired person; or
- (7) Allow intoxicated persons to loiter about the premises; or
- (8) 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; or
- (9) Employ any person under eighteen (18) years of age in the sale, service, or dispensing of beer at retail for consumption on the premises; or
- (10) Make or allow any sale of beer between the hours of 12 midnight and 6 A.M. during any night of the week, or between the hours of 12 midnight Saturday and 1:00 P.M. on Sunday. Sale of beer on Sunday is further restricted and confined to package only for consumption off the premises of the permittee and to those businesses where service of meals is the principal business and at least sixty-five (65) percent of the gross business revenue of such business is derived from food sales; or
- (11) Allow pool or billiard playing and the playing of arcade-style games in the same room where beer is sold and/or consumed. Beer may be sold in a pool room or billiard playing area, or an area where arcade-style games are

played only if it is sold and/or consumed in a separate room separated from the pool room and/or the arcade area by a permanent door; or

(12) Allow the place of business to become a public nuisance or a nuisance to law enforcement agencies of the Town of Nolensville or create a nuisance or materially contribute to creating or maintaining a public nuisance; or

(13) Allow any sale or delivery of beer for consumption on the premises outside of the building occupied by the holder of the permit. Any sales for consumption on the premises but outside the building from which the business is operated shall be made from within the building, it being the intention of this provision to prohibit the sale of beer by what is commonly known as "curb service" or "curb sales."

(14) The owner and operator shall be held strictly accountable for any actions of his employees which violate any of the above provisions.

(15) 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 a permit or permits to such applicant.

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

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

(18) That no sale will be made to persons under twenty-one (21) years of age. (Ord. #96-10, Dec. 1996, as amended by Ord. #02-08, Nov. 2002)

**8-110. Permit revocation or suspension.** All permits issued by the beer board under the provisions of this chapter shall be subject to suspension or revocation by the beer board for the violation of any of the provisions of this chapter.

(1) Suspension or revocation proceedings may be initiated by the local law enforcement agencies or by any member of the beer board. The beer 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 the permit shall be made in writing and filed with the beer board.

(2) When the beer 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 beer board is authorized to notify the permittee of said violations and to cite said permittee, by written notice, to appear and show cause why the 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 by registered mail. The notice shall be served upon the permittee at least seven (7) days before the date of the hearing. The chairman of said beer board is authorized to compel the attendance of the hearing. Adequate public notice under the circumstances shall be given of the hearing. The chairman of said beer board is authorized to compel the attendance of witnesses by subpoena issued by the town recorder. At the hearing, the beer board shall publicly hear the evidence both in support of the charges and on behalf of the permittee. After such hearing, if the charges are sustained by evidence, the beer board may, in its discretion, suspend or revoke said permit.

(3) The action of the beer board in all such hearings shall be final, subject to review by the court is provided in Tennessee Code Annotated, § 57-5-108. When a permit is revoked, no new permit shall be issued hereunder for the sale of beer at the same location, until the expiration of one (1) year from the date said revocation becomes final. However, nothing contained herein shall be construed to deny the beer board the discretion to grant a new permit at the same location within one (1) year if the new applicant has no connection to the previous permit holder as provided in Tennessee Code Annotated, § 57-5-108(k). (Ord. #96-10, Dec. 1996)

**8-111. Revocation or suspension penalties.** 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 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. (Ord. #96-10, Dec. 1996)

**8-112. Additional privilege tax.** (1) In addition to the one-time application fee, beginning January 1, 1997, each beer permit holder shall pay a privilege tax of \$100.00 per year to the Town of Nolensville for business locations within municipal boundaries. The town recorder is required to mail a written notice of the annual tax due to each permit holder at least 30 days prior to January 1<sup>st</sup> of each year. This notice must be mailed to the address specified in the beer permit application. If the permit holder does not pay the tax by January 1<sup>st</sup> of each year, then the town recorder must notify the permit holder by certified mail that the tax payment is past due. If a permit holder does not pay the tax within 10 days after receiving notice of the delinquency by certified mail, then the beer board may suspend or revoke the permit or impose a civil penalty.

(2) 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 pro-rated bases for each month or portion thereof remaining until the next tax payment due date. (Ord. #96-10, Dec. 1996)