

TITLE 8

ALCOHOLIC BEVERAGES<sup>1</sup>

CHAPTER

1. INTOXICATING LIQUORS.
2. BEER.

CHAPTER 1

INTOXICATING LIQUORS

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<sup>1</sup>State law reference

Tennessee Code Annotated, title 57, ch. 3.

Charter references

Alcoholic beverages: § 5(25).

8-101. Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them herein, unless the text clearly indicates otherwise:

(1) "Administrator or city administrator." The city administrator for the city, or his duly authorized representative.

(2) "Alcoholic beverage or beverages, and intoxicating liquor." Includes alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, or wine and capable of being consumed by a human being, other than patented medicine, beer, or wine where such beer or wine has an alcoholic content of five percent by weight, or less.

(3) "Domicile." Actual physical residence accompanied by an intention to make such residence a permanent "home."

(4) "License." The license or permit issued pursuant to Tennessee Code Annotated, title 57, chapter 1.

(5) "Permit." The permit required or issued pursuant to this chapter, and "permittee" means any person, firm, or corporation to whom such permit has been issued pursuant to this chapter.

(6) "Person." Any natural person as well as any corporation, partnership, firm, or association.

(7) "Retail sale or sale at retail." A sale to a consumer or to any person for any purpose other than for resale.

(8) "Retailer or dealer." Any person who sells at retail any beverage for the sale of which a permit is required under the provisions of this chapter.

Words importing the masculine gender shall include the feminine and the neuter; the singular shall include the plural. (1979 Code, § 2-201)

8-102. Scope of chapter. It shall be unlawful to store, transport, sell, give away, distribute, possess, or receive alcoholic beverages in the city unless provisions of this chapter and the laws of the state have been complied with.

Nothing in this chapter regulates the transportation, storage, sale, distribution, possession, or receipt of or tax upon any beverage of alcoholic content of five percent by weight or less, and nothing in this code or other city ordinances related thereto is modified by this chapter. (1979 Code, § 2-202)

8-103. Compliance with state law required. In addition to the permits required by this chapter, no person, firm, corporation, association, or partnership shall engage in the retail liquor business unless all the necessary state licenses and permits have been obtained. (1979 Code, § 2-203)

8-104. Purchases from persons without permit prohibited. It shall be unlawful For any person to buy or purchase any alcoholic beverages from any person who, to the knowledge of the buyer or purchaser, does not hold the appropriate permit or license required under the provisions of this chapter or under the laws of the state, authorizing the sale of such beverages to him.

Furthermore, no retailer shall purchase any alcoholic beverages for resale from anyone other than a licensed wholesaler. (1979 Code, § 2-204)

8-105. Interest in more than one retail business prohibited. No person shall directly or indirectly operate more than one place of business for retail sale of liquor. The word "indirectly" shall include and mean any kind of interest in another place of business by way of stock ownership, loan, partner's interest, or other wise. (1979 Code, § 2-205)

8-106. Permit holder--restrictions generally. (1) Governmental officials. No retailer's permit shall be issued to a person who is a holder of a public office, either appointed or elective, or who is a public employee, either national, state, city, or county. It shall be unlawful for any such person to have any interest in such wholesale or retail business, directly or indirectly, either proprietary or by means of any loan, mortgage, or lien, or to participate in the profits of any such business.

The foregoing shall not apply to uncompensated appointees to municipal boards and commissions where the boards or commissions on which such appointees serve have no duty to vote for, overlook, or in any manner superintend the sale of alcoholic beverages.

(2) Criminal record. No retailer's permit shall be issued to a person who has been convicted of a felony involving moral turpitude or convicted of any offense under the laws of this state or any other state, or of the United States, prohibiting or regulating the sale, possession, transportation, storing, manufacturing, or otherwise handling of intoxicating liquors, within ten years prior to the time he or the concern with which he is connected makes application for a permit. In the case of any such conviction occurring after a permit has been issued and received, such permit shall immediately and automatically be revoked if such convicted felon be an individual permittee, and if not, the partnership, corporation, or association with which he is connected shall immediately discharge him.

(3) Who may not have interest in retail store. No manufacturer, brewer, or wholesaler shall have any interest in the business or building containing the business of a retail liquor store holding a permit under this chapter.

(4) Domicile. Permits authorized by this chapter shall be issued only to a person domiciled for two years in the city immediately preceding date of application for such permit; except, that in the case of a corporation, this requirement as to domicile shall apply to its officers. In accordance with T.C.A. § 57-3-208 of (c), this paragraph shall not apply to any applicant who has been continuously licensed pursuant to T.C.A. § 57-3-204 for seven (7) consecutive years.

(5) Disclosure in application. It shall be unlawful for any person to have ownership in or participate, either directly or indirectly, in the profits of

any retail business holding a permit under this chapter unless his interest in such business and the nature, extent, and character thereof shall appear on the application for a retail liquor dealer's permit; or, if the interest is acquired after the issuance of a permit, unless it shall be fully disclosed to the city council and approved by it. Where such interest is owned by such person on or before the application for any permit, the burden shall be upon such person to see that this section is fully complied with, regardless of who prepares and signs the application. If such interest is acquired after the issuance of a permit, the burden of such disclosure of the acquisition of such interest shall be upon both the seller and purchaser.

(6) Age limit. No retailer or any employee thereof engaged in an activity requiring a permit shall be a person under the age of eighteen years. It shall be unlawful for any retailer or employee to permit any such person under such age in his place of business to engage in the sale of alcoholic beverages.

(7) Employees. No retailer shall employ in the sale, storage, or distribution of alcoholic beverages any person who within ten years prior to the date of his employment shall have been convicted of a felony involving moral turpitude or convicted of any law regulating intoxicating liquors, and in case an employee should be so convicted, he shall immediately be discharged.

(8) Restrictions cumulative. The provisions of this section shall be in addition to any other restriction or condition which may be contained elsewhere in the provisions of this chapter.

(9) Financial responsibility. Applicants for a retail permit shall furnish evidence of his financial responsibility in the net amount of twenty thousand dollars. (1979 Code, § 2-206, modified, as amended by Ord. #2754, July 1994; Ord. #2755, July 1, 1994; and Ord. #3097, May 2002)

8-107. [Deleted.]. This section was deleted by Ord. #3097, May 2002. (1979 Code, § 2-207, as deleted by Ord. #3097, May 2002)

8-108. Regulations of sales. (1) Hours of sales on weekdays. Retail dealers in alcoholic beverages shall not engage in the sale of such beverages, except between the hours of 8:00 A.M. and 11:00 P.M., on weekdays and Saturdays. In the event of an emergency, liquor stores shall be closed upon the order of the city administrator or police chief.

(2) Sales on Sundays and holidays. No retailer shall sell or give away any alcoholic beverage between 11:00 P.M. on Saturday and 8:00 A.M. on the following Monday of each week. No retailer shall sell or give away any alcoholic beverage on the following holidays: New Years Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas.

(3) [Deleted.] This subsection was deleted by Ord. #3097, May 2002.

(4) Price list to be posted. Each retail permittee shall have conspicuously displayed within the interior of his premises not less than four

copies of a printed price list of liquors offered for sale and one printed copy of the penal section of this chapter.

(5) Sales to minors. No retailer shall sell or give away alcoholic beverages to a person under twenty-one years of age, and it shall be unlawful for any such minor to purchase any alcoholic beverage. Also, it shall be unlawful for any person to present false evidence that he has attained the age of eighteen years.

(6) Keeping an unsealed bottle or container. No retailer of alcoholic beverages shall keep, or permit to be kept upon his premises, any alcoholic beverages in any unsealed containers

(7) Sales to persons intoxicated. No retailer shall sell or give away any alcoholic beverages to any person who is intoxicated, nor shall any retailer sell or give away any alcoholic beverages to any person accompanied by a person who is intoxicated.

(8) Sales on credit. No holder of a permit for the sale of alcoholic beverages at retail shall sell, deliver, or cause, permit, or procure to be sold or delivered, any alcoholic beverages on credit.

(9) Unstamped merchandise. No retail permittee shall own, store, or possess upon the premises any unstamped merchandise required by the laws of the state to have affixed thereto revenue stamps of the state.

(10) Sales of more than one case of alcoholic beverages. The retailer shall keep a record of all transactions for the sale of one or more cases of alcoholic beverages, and such records shall be kept on forms and in the manner prescribed by the city administrator or his duly authorized representative.

(11) Political advertising. No political advertising of or for any candidate or party by poster, handout card, matches or other similar election campaign material shall be placed or dispensed on the premises of a retail liquor store holding a permit under this chapter.

(12) Consumption on premises. No alcoholic beverages shall be sold for consumption, or consumed, on the premises of the seller.

(13) Advertising restricted--generally. A licensee may place upon the premises, flat against the building, two signs in letters not larger than nine and one-half (9½) inches in height designating the premises as "\_\_\_\_\_ Package Store." No more than two such signs shall be permitted and no signs may extend from the building. The lettering on the permitted sign shall be in paint, enamel, gold or silver leaf, individual plastic letters or similar material used in signs, and use of the words "liquor," "whiskey," "wine," "gin," "spirits," or any other word of a similar connotation in the signs is prohibited. No licensee shall be permitted to erect or maintain, or cause to be erected or maintained, any electrical or other type sign or advertising, other than provided above, on the exterior of his or any other premises nor within any window thereof, or in any manner or location where the signs or advertising is calculated to or does attract the attention of persons outside the building. However, interior signs or

displays which are readily noticeable only after entry into the licensee's building are to be permitted.

(14) Public display and public drinking prohibited. It shall be unlawful for any person to publicly drink any alcoholic beverage on any street or sidewalk, on any school ground or in any park, theatre, stadium, or school. It shall be unlawful for any person to display openly a bottle or other container of alcoholic beverage in the portion of a restaurant or other eating place to which the general public is admitted, on any public street, sidewalk, or school ground, or in any park, theatre, stadium, or school. (1979 Code, § 2-208, as amended by Ord. #2555, Oct. 1988, and Ord. #3097, May 2002)

8-109. Store location; off-street parking. It shall be unlawful for any person to operate or maintain a liquor store in the city unless such store is located in the following manner: (1) In the Intermediate Business Zone, on Highway 11E or the Highway 11E Bypass, but not both, a distance of at least six-tenths of a mile east of the intersection of Cumberland and Main Streets, there may be one store.

(2) In the Intermediate Business Zone, on Highway 11E, a distance of at least six-tenths of a mile west of the intersection of Cumberland and Main Streets, there may be one store.

(3) In the Intermediate Business Zone, on North Cumberland Street a distance of at least six-tenths of a mile north of the intersection of Cumberland and Main Streets, there may be one store.

(4) In the Intermediate Business Zone, on South Cumberland Street, a distance of at least six-tenths of a mile south of the intersection of Cumberland and Main Streets, there may be one store.

(5) No closer than 7,500 feet in a direct line to any of the four existing stores, but inside the perimeter of the four stores, there may be one store.

(6) No store shall be located within three hundred feet of any church, school, or public building.

(7) No store shall be located adjacent to property where any house used as a residence is located.

There will be three square feet of off-street parking space required for each one square foot of store floor space, available immediately adjacent to the liquor store, except for a store located in the Central Business District Zone as set out in subsection (5) of this section, in which case no such restriction is applied. (1979 Code, § 2-209, as amended by Ord. #2523, Mar. 1988)

8-110. General restrictions on liquor stores. No retail store shall be located on any building floor except the ground floor. Such place of business shall have one main entrance opening on a public street and shall have no other entrance for use by the public except as hereinafter provided. When a retail store is located on the corner of two public streets, such retail store may maintain a door opening on each of the public streets. Provided, however, that

any salesroom adjoining the lobby of a hotel or other building used by the general public may maintain an additional door into such lobby so long as same shall be opened to the public. In addition, to the fullest extent consistent with the nature of the establishment, full, free, and unobstructed vision shall be afforded from the street or public highway to the interior of the place of sale or dispensing of alcoholic beverages there sold or dispensed. No television, pinball machines, or other devices which tend to cause persons to congregate in such place shall be permitted in any retail establishment. No seating facilities shall be provided for persons other than employees. (1979 Code, § 2-210)

8-111. Solicitation of orders by retailer and wholesaler. No holder of a permit issued under this chapter shall employ any canvasser or solicitor for the purpose of receiving an order from a customer for any alcoholic beverages at the residence or place of business of such consumer, nor is any such permittee to receive or accept any such order which shall have been solicited or received at the residence or place of business of such consumer. This section shall not prohibit the solicitation by a licensed wholesaler of an order from any retailer at the permittees premises. (1979 Code, § 2-211)

8-112. Inspection fees. (1) Inspection and enforcement fee levied. Each retailer dealer shall pay an inspection and enforcement fee of eight percent on the gross purchase price of alcoholic beverages purchased by him for resale.

(2) Collection. The inspection and enforcement fee shall be collected by the wholesaler and transmitted to the finance department of the city not later than the twentieth day of each month for the preceding month. The wholesaler is entitled to five percent of the gross collection to be deducted from his monthly remittance.

(3) Determining wholesale prices. The wholesale price of alcoholic beverages shall be determined at all times by reference to the wholesale price list issued to retailers by wholesalers.

(4) City to furnish forms for making returns. The department of finance of the city shall prepare and make available to every retailer sufficient forms for the monthly report of the inspection fees, and the administrator is authorized to promulgate reasonable rules and regulations to facilitate the reporting and collection of such inspection fees.

(5) Failure to pay; effect on permit. The failure to pay the inspection fees and make the required reports accurately and within the time prescribed shall, at the discretion of the city council, be cause for suspension or revocation of the retailer's permit. (1979 Code, § 2-212, as amended by Ord. #3097, May 2002)

8-113. Investigations by administrator. The city administrator is authorized to examine the books, papers, and records of any retail dealer in the city for the purpose of determining whether the inspection fees and all other fees

so imposed by this chapter have been fully paid, and he shall have the power to investigate and examine according to law any premises where any alcoholic beverage is possessed or stored for the purpose of sale, or sold, for the purpose of determining whether the provisions of this chapter are being complied with. Any refusal to permit the examination of any such books, papers, and records, or the investigation and examination of such premises, shall constitute sufficient reason for the revocation of a permit or the refusal to issue a permit. (1979 Code, § 2-213)

8-114. Penalties for violation of chapter. Any violation of any section of this chapter, upon conviction, shall be punished by a fine of not less than twenty-five dollars nor more than fifty dollars. Furthermore, any violation of this chapter shall be grounds for suspension, denial, or revocation of a retail dealer's permit. This penalty shall be in addition to any other penalty provided by any section of this chapter. (1979 Code, § 2-214, as amended by Ord. #3097, May 2002)

8-115. Permit required. (1) Retailer's permit. No person, firm, or corporation shall engage in the business of retail sale of liquor unless a retail liquor dealer's permit has been obtained.

(2) Employee's permit. It is made the duty of the retailer to see that each person dispensing alcoholic beverages in his place of business has an employee's permit as required by the Alcoholic Beverage Commission, which permit must be upon the premises where alcoholic beverages are sold, at all times, subject to inspection by the city administrator or any police officer. (1979 Code, § 2-215, as amended by Ord. #3097, May 2002)

8-116. Application for permit. (1) Retailer's permit. Any person desiring to sell, give away, or dispose of in any manner alcoholic beverages to patrons or customers in sealed packages only, and not for consumption on the premises, shall make application to the city council for a retailer's permit, which application shall be in writing and verified on forms herein authorized to be prescribed and furnished by the council; and the council may, subject to the restrictions of this chapter, cause such retailer's permit to be issued.

(2) [Deleted.] This subsection was deleted by Ord. #3097, May 2002. (1979 Code, § 2-216, as amended by Ord. #3097, May 2002)

8-117. Certificate of compliance. An applicant for a retail liquor store permit shall file with the city a completed written application, accompanied by an application fee of \$250.00 on a form to be provided by the city which shall contain all of the following information and such additional information as may be directed by the city administrator:

(1) The name and street address of each person to have an interest, direct or indirect, in the retail liquor store as an owner, partner, stockholder or

otherwise. That the applicant or applicants who are to be in actual charge of the business have not been convicted of a felony within a ten-year period immediately preceding the date of application and, if a corporation, that the executive officers or those in control have not been convicted of a felony within a ten-year period immediately preceding the date of the application.

(2) The name and address of the proposed retail liquor store. That the applicant or applicants have secured a location for the business, which complies with all restrictions of this chapter.

(3) That the applicant or applicants have complied with this chapter regulating the number of retail licenses to be issued.

(4) The statement that an individual applicant has been a resident of the city for at least two (2) consecutive years immediately prior to the time the application is filed.

(5) A statement that the persons receiving the requested permit to the best of their knowledge if awarded the certificate of compliance could comply with all the requirements for obtaining the requiring licenses and permits under state law and the provisions of this chapter for the operation of a retail liquor store within the city.

(6) The agreement of each applicant to comply with all applicable laws and ordinances and with the rules and regulations of the Tennessee Alcoholic Beverage Commission with reference to the sale of alcoholic beverages and the agreement of each applicant as to the validity and reasonableness of this chapter, including the fees and taxes imposed thereby with respect to the sale of retail alcoholic beverages. (1979 Code, § 2-217, as replaced by Ord. #3097, May 2002)

8-118. Issuance of permit. It shall be the duty of the city council to issue retail liquor dealer's permits provided, that all necessary conditions and requirements of this chapter have been complied with. (1979 Code, § 2-218, as amended by Ord. #3097, May 2002)

8-119. Display; copy of council regulations to be kept on premises. Persons granted a permit to carry on any of the businesses or undertakings contemplated by this chapter shall, before being qualified to do business, display and post such permit, and keep such permit displayed and posted in the most conspicuous place on the premises. Permittees shall promptly procure and keep at the place of business a copy of the rules and regulations promulgated by the city council. (1979 Code, § 2-219)

8-120. Duration of permit; reapplication. (1) Each retail liquor dealer's permit shall expire on December 31 of the year in which it was issued, whereupon the permittee must reapply for a new permit upon the same conditions and procedures as for the original permit. Refusal to issue a permit to any retail liquor dealer permittee holding a permit during all or part of the

year immediately preceding the year for which application for a permit is made, shall be treated as a revocation of permit and shall be subject to all provisions of § 8-122 dealing with revocation.

(2) [Deleted.] This subsection was deleted by Ord. #3097, May 2002. (1979 Code, § 2-220, as amended by Ord. #3097, May 2002)

8-121. Transfer prohibited; effect of change in business location. No holder of any permit shall sell, assign, or transfer such permit to any other person. In addition, there shall not be a transfer of any retail liquor dealer permit from one location to another, except in special instances to be fixed by rule or regulation of the city council. (1979 Code, § 2-221, as amended by Ord. #3097, May 2002)

8-122. Suspension and revocation procedures. (1) Whenever the city council is authorized to revoke a permit issued by it, except in those cases where revocation is mandatory, the council may, if in its discretion it feels that revocation of the permit is too drastic a penalty, suspend such permit. The procedure for such suspension and the review of such suspension order shall be the same as that prescribed herein for revocation of permits issued under this chapter.

(2) Before the city council shall revoke or suspend any permit issued under this chapter, at least ten days notice of such proposed or contemplated action by the council shall be given to the permittee affected. Such notice shall be in writing and shall contain a statement of the grounds or reasons for the proposed or contemplated action of the council, and it shall be served upon the permittee in person or by registered mail sent to his last known address. The council shall, in such notice, appoint a time and place when and at which the permittee shall be heard as to why such permit shall not be revoked or suspended. The permittee shall at such time and place have the right to produce evidence on his behalf, and to be represented by counsel.

(3) All hearings provided for in this section shall be held publicly by the city council, and such council shall make findings of fact, conclusions of law, and shall issue such orders as they deem proper based thereon. The city council may make and shall publish such other and further procedural rules and regulations not inconsistent with this section, as it deems proper governing any hearing provided for herein.

(4) All orders of the city council revoking or suspending permits issued under this section, shall take effect fifteen days from the date thereof.

(5) The council is hereby empowered to subpoena witnesses and compel their attendance and the production of records, memoranda, papers, and other documents at any hearing authorized under this section. The council shall administer oaths to any such witnesses. All parties to the proceeding, including the permittee, shall have the right to have a subpoena issued by the council or other persons authorized herein to compel the attendance of all witnesses and

the production of all records, memoranda, papers, and other documents deemed by such party to be necessary for a full and complete hearing.

(6) At all hearings provided for herein, the city council shall provide a stenographer to take stenographic record of the evidence and testimony adduced at such hearing. The permittee shall be entitled to a copy of such stenographic record upon application therefor and upon paying a reasonable cost thereof, to be fixed by the council. (1979 Code, § 2-222)

8-123. Business taxes. Each permittee hereunder shall be subject to and shall pay the business taxes provided for under Tennessee Code Annotated, § 67-4-701 et seq., and in particular in compliance with §§ 67-4-708(2)(G) and 67-4-709(a)(b)(2). (as added by Ord. #3097, May 2002)

CHAPTER 2

BEER<sup>1</sup>

SECTION

- 8-201. Beer board established.
- 8-202. Meetings of the beer board.
- 8-203. Record of beer board proceedings to be kept.
- 8-204. Requirements for beer board quorum and action.
- 8-205. Powers and duties of the beer board.
- 8-206. "Beer" defined.
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- 8-208. Privilege tax.
- 8-209. Beer permits shall be restrictive.
- 8-210. [Deleted].
- 8-211. Interference with public health, safety, and morals prohibited.
- 8-212. Issuance of permits to persons convicted of certain crimes prohibited.
- 8-213. Prohibited conduct or activities by beer permit holders.
- 8-214. Suspension and revocation of beer permits.
- 8-215. Civil penalty in lieu of suspension.
- 8-216. Open beverage containers prohibited.
- 8-217. Designation of alcoholic beverage enforcement officer(s).
- 8-218. Limitation on permits issued.
- 8-219. Adoption of the Tennessee Responsible Vendor Act.

8-201. Beer board established. There is hereby established a beer board to be composed of the members of the city council. The mayor shall be the chairperson. All members of the beer board shall serve without compensation. (Ord. #2741, May 1994, as replaced by Ord. #2900, Nov. 1997)

8-202. Meetings of the beer board. All meetings of the beer board shall be open to the public. The board, when there is business to conduct, shall hold regular meetings in the city hall immediately following regular city council meetings. Special meetings may be called by the chairman provided he gives a reasonable notice thereof to each member. Special meetings may also be called by a majority of the board members, who also shall give reasonable notice thereof to each member. The board may adjourn a meeting at any time to

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<sup>1</sup>Municipal code references

Tax provisions: title 5.

State law reference

For a leading case on a municipality's authority to regulate beer, see Watkins v. Naifeh, 635 S.W.2d 104 (Tenn. 1982).

another time and place. (Ord. #2741, May 1994, as replaced by Ord. #2900, Nov. 1997)

8-203. Record of beer board proceedings to be kept. The city administrator 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. (Ord. #2741, May 1994, as replaced by Ord. #2900, Nov. 1997)

8-204. 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. Applicants for beer permits shall appear in person before the board will consider their application. (Ord. #2741, May 1994, as replaced by Ord. #2900, Nov. 1997)

8-205. Powers and duties of the beer board. The beer board shall have the power and it is hereby directed to regulate the giving away, selling, storing for sale, distributing for sale, and manufacturing of beer within this municipality in accordance with the provisions of this chapter (Ord. #2741, May 1994, as replaced by Ord. #2900, Nov. 1997, as replaced by Ord. #3300, Aug. 2007)

8-206. "Beer" defined. The term "beer" as used in this chapter shall mean and include all beers, of alcoholic content of not more than five percent (5%) alcohol by weight, or any other beverage of like alcohol content except wine. (Ord. #2741, May 1994, as replaced by Ord. #2900, Nov. 1997)

8-207. Permit required for engaging in beer business. It shall be unlawful for any person to give away, sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the beer board.

(1) Each applicant shall be furnished pursuant to Tennessee Code Annotated, § 57-5-103, and shall be accompanied by a non-refundable application fee of two hundred and fifty dollars (\$250.00). Said fee shall be in cash or equivalent payable to the City of Morristown.

(2) 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.

No permit shall be issued hereunder to an individual who is an officer or employee of the City of Morristown, or to such individual's spouse.

(3) A sign of minimum size two feet by two feet (2ft by 2ft.) shall be posted on the premise for which application is being made at least fifteen (15) days prior to the meeting of the beer board at which the application will be considered. At least ten (10) days prior to being considered by the beer board, an announcement in a newspaper or general circulation must appear stating the name of the applicant, the type of permit desired, and the address of the premise at which the permit is desired.

(4) A permit is void at midnight of the day a permit holder ceases business for which the permit was granted and must be surrendered to the city cashier's office within five (5) working days.

(5) If application is being made for an establishment that has not been constructed or is under construction, a complete site plan and floor plan must be submitted with the application. The plans must provide a description of the entire premises, including open and parking areas available to and for the use of the business. If construction is not commenced within six months or is not completed within eighteen months from the date of approval of the beer permit; or if after completion of the construction, the facility differs materially from the submitted plans or violates any provisions of this chapter in effect at the time of approval of the permit, any permit issued for the facility becomes immediately void.

(6) A permit is not transferable. (Ord. #2741, May 1994, as amended by Ord. #2911, Jan. 1998, as amended by Ord. #3300, Aug. 2007)

8-208. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer a privilege tax of one hundred dollars (\$100) per year. Any person, firm, corporation, joint stock company, syndicate or association engaged in the sale, distribution, storage or manufacture of beer shall remit the tax on issuance of the permit, and each successive January 1, to the City of Morristown, Tennessee. A penalty of ten dollars (\$10) will be assessed on the second working day following January 1, and on each successive working day until the privilege tax is paid. 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. #2741, May 1994, as deleted by Ord. #2900, Nov. 1997, and amended by Ord. #2911, Jan. 1998)

8-209. Beer permits shall be restrictive. All beer permits shall be restrictive as to the type of beer business authorized under them.

(1) 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 authorize sales only for off premises

or on premises 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 that are written into his permit by the beer board.

(2) No on premise permit shall be issued for a premise other than a nonprofit club or restaurant. For purposes of this chapter, "on premise" shall include the interior of the business enclosed by permanent walls and covered by a permanent roof, and, in the case of a nonprofit club, a golf course that is a part of the establishment. On premise establishments must provide separate public restroom facilities for both sexes.

(a) "Restaurant" 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 regular served, such place being provided with adequate and sanitary kitchen and dining room equipment and a seating capacity of at least seventy-five (75) people at tables, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. At least one (1) meal per day shall be served at least five (5) days a week, with the exception of holidays, vacations and periods of redecorating, and the serving of such meals shall be the principal business conducted, except where the restaurant is located in a hotel or motel which provides at least thirty (30) rooms or suites for guests, in which case, the restaurant business may be secondary to the hotel or motel business. A restaurant shall also be eligible for an on premise permit hereunder if the restaurant serves at least one (1) meal a day at least four (4) days a week with the exception of holidays, vacations and periods of redecorating, and if the serving of such meals is the principal business conducted, and if such restaurant is only open for four (4) days a week. In no case shall beer be sold at times other than when meals are being served.

The seating capacity requirement as set forth in this subsection (a) shall not apply to any restaurant which has been annexed by the City of Morristown which, on May 16, 1994, held a valid and duly authorized on-premise beer permit or license issued by the City of Morristown or Hamblen County.

(b) "Nonprofit club" means a corporation organized and in good standing under the laws of the State of Tennessee, not for profit, solely for the promotion of some common object of fellowship, recreation and other nonprofit purposes other than the sale and consumption of beverages containing alcohol.

(c) A permit is required for all employees involved in the selling or dispensing of beer for on premises consumption. There shall be a fee imposed for such permit by resolution of city council, as it may act from time to time, in such amounts and for such duration as the council deems

appropriate. Applicants for employee permits must be certified in alcohol server training under the "Training for Intervention Procedures" (TIPS) program, and maintain certification during employment, or be certified under a comparable program formally approved and adopted by the beer board. If the employee applicant chooses to take training for certification in a course offered by the city, no fee will be charged the applicant for such training. The training must include, but not be limited to, recognition of possible impairment of patrons, criminal and civil liability issues related to serving alcoholic beverages, and the legal and social consequences of unlawful consumption of alcoholic beverages.

(d) Annual sales of beer as defined in this chapter shall not exceed twenty five percent (25%) of total taxable sales for any on premise permit holder. In the application of this section, total taxable sales shall be defined as those food and non-alcoholic beverage sales subject to state and local sales taxes. It shall be a violation of this section if the beer sales exceed the 25% limit in two consecutive months or three months in any calendar year.

(3) No off premise permit shall be issued for a premise other than full line grocery stores, drug stores, or convenience stores. Such establishments must be constructed so that the cashier(s) or checkout counter(s) are clearly visible from a public street or shopping center parking lot. For the application of this section, a full line grocery store shall be defined as a store that maintains an inventory of staple food items including fresh meats, vegetables, produce, and fruits. A drug store shall be defined as a business whose primary business is the sale of prescription drugs and associated items. And convenience store shall be defined as a store that maintains an inventory of basic food items such as luncheon meats, snack items, milk products, bread products, and canned goods. All managers and other employees involved in the selling or dispensing of beer for off premise consumption shall comply with the training and certification requirements of Tennessee Code Annotated, §§ 57-5-604, 57-5-605, and 57-5-606 (Tennessee Responsible Vendor Act of 2006).

(4) Each holder of a beer permit shall continuously maintain in this city:

(a) A registered office which may be the same as the permitted place of business; and

(b) A registered agent, who shall be an individual who resides in Hamblen County and whose business office is identical with the registered office.

(5) No brewer, wholesaler or manufacturer of beer, nor any agent of such brewer, wholesaler or manufacturer, shall be permitted to make a loan of money or furnish any fixtures of any kind or have any interest either directly or indirectly in the business of any retailer of beer, or in the premises occupied by such retailer. No person holding and/or exercising a valid permit issued pursuant to this article shall while so doing convey or grant or contract to

convey or grant any interest in the business located at the place named on the permit, or an interest in the premise or any property therein, to any brewer, wholesaler or manufacturer of beer regulated by this chapter. No person holding and/or exercising a valid permit issued pursuant to this article shall incur or contract any indebtedness or financial obligation to any brewer, wholesaler or manufacturer of beer regulated by this chapter, except for the purchase of the beverages. No permit shall be granted under this article to any applicant who at the time of making application, is indebted or financially obligated to any such brewer, wholesaler or manufacturer, except for the purchase of the beverages. (Ord. #2741, May 1994, as amended by Ord. #2900, Nov. 1997; Ord. #3033, May 2000; Ord. #3145, Oct. 2003; Ord. #3163, Jan. 2004, and Ord. #3300, Aug. 2007)

8-210. [Deleted]. (Ord. #2909, Jan. 1998)

8-211. 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, parks, or other places of public gathering, or would otherwise interfere with the public health, safety, and morals. For purposes of application of this section, in no event will an off premise permit be issued authorizing the sale of beer within one hundred and fifty (150) feet of any church, public or private school, or city park. The distances shall be measured in a straight line<sup>1</sup> from the nearest point of any portion of the building from which the beer will be sold to the nearest point on the property line of the church, school, or park. "Building" for these purposes shall mean the walls that enclose a grocery store, drug store or convenience store, even though they may lie within a larger building such as in the case of a shopping center. The licensed premises within such building shall not have general access directly to or from other retail stores or shops within the center or other structure wherein the licensed premises is located. No permit shall be suspended, revoked or denied on the basis of proximity of the establishment to a school, church, or park if a valid permit had been issued to any business on that same location, unless beer is not sold, distributed or manufactured at that location during any continuous one (1) year period. "School" does not include private pre-school, private day care, home school or any institution of learning within the jurisdiction of the Tennessee Higher Education Commission as set forth in Tennessee Code Annotated, § 49-7-203. Issuance of a permit pursuant to this § 8-211 shall be subject to the provisions

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<sup>1</sup>State law reference

See Watkins v. Naifeh, 625 S. W. 2d 104 (Tenn. 1982) and other cases cited therein which establish the straight line method of measurement.

of § 8-207(5). No permit shall be denied on the basis of proximity to any facility described above if the application for the permit was duly filed and accompanied with the appropriate filing fee prior to commencement of the use of any facility described above for the purposes which would otherwise prohibit the issuance of the permit. (Ord. #2741, May 1994, as amended by Ord. #2900, Nov. 1997; Ord. #3042, Aug. 2000; Ord. #3145, Oct. 2003; and Ord. #3163, Jan. 2004, as replaced by Ord. #3300, Aug. 2007)

8-212. 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 business for which application is being made 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. #2741, May 1994, as amended by Ord. #2900, Nov. 1997)

8-213. Prohibited conduct or activities by beer permit holders. It shall be unlawful for any beer permit holder, employee, or person engaged in the sale of beer 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, storage, distribution or manufacture of beer.

(3) Make or allow any sale of beer on Sunday (12:00 A.M. Saturday--8:00 A.M. Monday) or between the hours of 12:00 A.M. and 8:00 A.M. on any other day. Private clubs operating under a state of Tennessee Alcoholic Beverage Control Board permit shall comply with the hours of operation dictated in that permit.

(4) Make or allow any sale of beer to a person under twenty-one (21) years of age.

(5) Allow on the premises an owner, co-owner, operator, proprietor, or employee to drink or be under the influence of any of the beverages regulated by this chapter.

(6) Allow any person under twenty-one (21) years of age to loiter in or about his place of business.

(7) Make or allow any sale of beer to any person who appears, or would reasonably appear to be under the influence of any intoxicant whatsoever.

(8) Allow intoxicated person to loiter about his premises.

(9) To erect or maintain more than one advertising display sign that is clearly visible from the exterior of the establishment to be placed either on the

inside or outside of the building. Such sign may use the word "beer" or the name of any brand of beer. Such advertising or display sign shall not exceed four (4) inches in depth and eighteen (18) inches in length, and the sign, if on the outside of the building, shall be placed parallel with the building.

(10) Have on the premises any pool or billiard tables. This section shall not apply to any permit issued for premises holding a valid permit on November 18, 1997, where at that time the premises contained pool or billiard tables, nor shall it apply to any private clubs operating under a State of Tennessee Alcoholic Beverage Control Board permit.

(11) Make or allow the sale of beer directly to the occupants of a vehicle or through "drive-through" windows.

(12) Provide for or allow any gambling or games of chance involving exchange of money on the premises, excepting activities authorized pursuant to the Tennessee Education Lottery Implementation Law codified at Tennessee Code Annotated, § 4-51-101 et seq.

(13) Knowingly or intentionally permit or allow any person to appear in the establishment or on the premises for which the permit was issued and to:

(a) Publicly or openly perform acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any other sexual acts prohibited by law;

(b) Publicly or openly engage in the actual or simulated touching with the hand, facial area or mouth, or caressing, or fondling of the breasts, buttocks, anus or genitals;

(c) Publicly or openly engage in the actual or simulated display to public view of any portion of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the display of the female breast with less than a fully opaque covering of the areola, or the showing of covered male genitals in a discernibly turgid state; or

(d) Publicly or openly wear or use any device or covering exposed to public view which simulates the display to public view of any portion of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the display of the female breast with less than a fully opaque covering of the areola, or the showing of covered male genitals in a discernibly turgid state; or

(e) To employ, use or allow any person in the sale or service of food, wine, beer or other alcoholic beverages while such person is publicly or openly unclothed or in such attire, costume or clothing as to expose to view any portion of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the female breast with less than a fully opaque covering of the areola, or the showing of covered male genitals in a discernibly turgid state; or

(f) To employ, use or allow the services of any hostess or other person to mingle with patrons while such hostess or other person is unclothed or in such attire, costume or clothing as to expose to view any

portion of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the female breast with less than a fully opaque covering of the areola, or the showing of covered male genitals in a discernibly turgid state; or

(g) Publicly or openly permit any person to use artificial devices or any inanimate objects to depict any prohibited activities described above; or

(h) For the owner of the property, or the owner of any business operated thereon, or any employee thereof to allow or permit any person to remain in or upon the premises who is exposing to public view any portion of the human male or female genitals, pubic area, buttocks with less than a fully opaque covering, the female breast with less than a fully opaque covering of the areola, or the showing of covered male genitals in a discernibly turgid state.

(i) Publicly or openly show films, videotapes, laser discs, CD ROMS, electronic reproductions or other visual reproductions that involve movement depiction of any of the following:

(i) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

(ii) Any person being touched, caressed, or fondled on the breasts, buttocks, anus or genitals;

(iii) Scenes wherein the person displays the vulva, the anus or the genitals;

(iv) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

(j) Nothing contained in this section shall be construed to prohibit persons of either sex from engaging in swimming or related activities while clad in attire customarily worn in the community for such purpose.

(k) Nothing contained in this section shall be construed to prohibit the broadcast or display of any television program subject to regulation by the Federal Communications Commission of the United States on the permitted premises. (Ord. #2741, May 1994, as replaced by Ord. #2900, Nov. 1997; and amended by Ord. #2911, Jan. 1998; Ord. #3173, March 2004, and Ord. #3300, Aug. 2007)

8-214. Suspension and revocation of beer permits. Subject to the provisions of Tennessee Code Annotated, § 57-5-601 et seq., the beer board shall have the power to revoke any beer permit issued under the provisions of this chapter when the holder thereof is guilty of making a false statement or misrepresentation in his application or of violating any of the provisions of this chapter. However, no beer permit shall be suspended or revoked until a public

hearing is held by the board after reasonable notice to all the known parties in interest. Suspension or revocation proceedings may be initiated by the chief of police or by any member of the beer board. If a permit is revoked pursuant to this ordinance, no permit may be issued for sales of beer from the same premises for one year from the effective date of the revocation. (Ord. #2741, May 1994, as replaced by Ord. #2900, Nov. 1997, as amended by Ord. #3300, Aug. 2007)

8-215. Civil penalty in lieu of suspension. Subject to the provisions of Tennessee Code Annotated, § 57-5-601 et seq., 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 one thousand five hundred dollars (\$1,500.00) for each offense of making or permitting to be made any sales to persons under twenty-one (21) years of age, or a civil penalty not to exceed one thousand dollars (\$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. 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. (Ord. #2741, May 1994, as replaced by Ord. #2900, Nov. 1997, as amended by Ord. #3300, Aug. 2007)

8-216. Open beverage containers prohibited. It is unlawful for any person to possess open cans, bottles, or containers of beer in motor vehicles in the city or upon the public streets, sidewalks, or other public places in the city, not otherwise permitted by this chapter. There shall be rebuttable presumption that open containers of alcoholic beverages found in a motor vehicle, not within the physical possession of any individual, are in the possession of the driver of the vehicle. (Ord. #2741, May 1994, as replaced by Ord. #2900, Nov. 1997)

8-217. Designation of the alcoholic beverage enforcement officer(s). The Chief of Police of the City of Morristown shall submit names of a sworn officer or officers as primary alcoholic beverage enforcement officer(s) to the city council and city council shall appoint the officer or officers to serve in that capacity. At the request of any member of the beer board or for any other reason, an enforcement officer shall conduct inspections of establishments holding permits. An enforcement officer or any other Morristown police officer shall have the right to inspect at any and all times the entire premises and property where or upon, on or in which the beverages regulated by this chapter are sold, stored, transported or otherwise dispensed or distributed or handled, whether retail or wholesale, in the city. The chief of police shall maintain a written record of each

permittee of the findings of inspections conducted in accordance with this section. (Ord. #2900, Nov. 1997)

8-218. Limitation on permits issued. The beer board shall not issue permits for beer sales that would result in the number of permits in effect numbering more than one hundred (100). The limiting number is based on the 1990 Federal Census and shall be adjusted by one (1) permit for each change of the population by two hundred fifty (250) persons as established by a Federal Census or any special census conducted by the City of Morristown or the State of Tennessee. Businesses which may be annexed, and which possess a valid beer license at the time of their annexation; and business which had been issued a valid permit which is existing at the time of the final passage of this ordinance, but which experience a change of control (ownership) such as would require application for issuance of a new permit, shall not be denied a permit on the basis of the limitation of the number of permits to be issued by the city. (Ord. #2900, Nov. 1997)

8-219. Adoption of the Tennessee Responsible Vendor Act. There is hereby adopted and incorporated herein by reference the Tennessee Responsible Vendor Act, codified in Tennessee Code Annotated, § 57-6-601 et seq. Any provisions of title 8, chapter 2 of the municipal code in conflict with the provisions of the Act are hereby repealed. (as added by Ord. #3300, Aug. 2007)