

TITLE 8**ALCOHOLIC BEVERAGES**¹**CHAPTER****1. BEER.****CHAPTER 1****BEER**²**SECTION**

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8-101. Beer board established. There is hereby established a beer board to be composed of the members of the Board of Commissioners of the City of Baneberry, whose duty it shall be to regulate, supervise, and control the issuance, suspension, and revocation of permits to sell, store, distribute, dispense, serve, and/or manufacture beer, ales, malt liquors and other beverage of like alcoholic content, defined pursuant to *Tennessee Code Annotated*, § 57-5-101, in the City of Baneberry. The mayor shall be the chairman and the city recorder shall be the secretary of said board. A majority of the board shall

¹State law reference
Tennessee Code Annotated, title 57.

²State 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).

constitute a quorum for any purpose. Members of the beer board shall serve without compensation. (Ord. #216-3, Feb. 2016)

8-102. Meetings of the beer board. All meetings of the beer board shall be open to the public. The beer board shall conduct a regularly scheduled meeting immediately following the board of commissioner's regularly scheduled monthly meeting in February. The beer board shall hold additional regular meetings in the city hall at such times 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 adequate notice thereof to each member and to the public. The board may adjourn a meeting at any time to another time and place. (Ord. #216-3, Feb. 2016)

8-103. Record of beer board proceedings to be kept. The recorder shall make a record of the proceedings of all meetings of the beer board. The record shall be a permanent 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 before the board; a copy of each motion or resolution presented; the vote of each member thereon; and the provisions of each beer permit issued by the board. (Ord. #216-3, Feb. 2016)

8-104. 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. (Ord. #216-3, Feb. 2016)

8-105. Permit required for engaging in beer business. It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture (brew) beer for sale within the incorporated area of the City of Baneberry without first making application to and obtaining a permit from the beer board (*Tennessee Code Annotated*, § 57-5-103). The application shall be made on such form as the board shall prescribe and/or furnish, and pursuant to *Tennessee Code Annotated*, § 57-5-105, and shall be accompanied by a nonrefundable application fee of two hundred fifty dollars (\$250.00). Said fee shall be in the form of a cashier's check payable to the City of Baneberry. Each applicant must be a person of good moral character and certify that he has read and is familiar with the provisions of this chapter. (Ord. #216-3, Feb. 2016)

8-106. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer, an annual privilege tax of one hundred dollars (\$100.00). 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 Jan. 1, 1994, and each successive Jan. 1, to the City of Baneberry, Tennessee. 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 rata basis for each month or portion thereof remaining until the next tax payment date. The city shall provide each beer permit holder with written notice of the payment due date at least thirty (30) days prior to Jan. 1. If the permit holder does not pay the annual privilege tax by Jan. 31, or within thirty (30) days after written notice of the tax was mailed, whichever is later, the city must notify the permit holder by certified mail that the tax is past due. If the permit holder does not pay the tax within ten (10) days after receiving notice of delinquency by certified mail, the beer permit is void. (Ord. #216-3, Feb. 2016)

8-107. Beer permits shall be restrictive. 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 the retail sale of beer shall be of the following type only:

(1) Off-sale. An "off-sale" permit is required by any person or legal organization engaged in the sale of beer where it is not to be consumed by the purchaser upon or near the premises of the seller.

(2) On-sale. An "on-sale" permit is required by any person or legal organization engaged in the sale of beer where it is to be consumed by the purchaser or his guests on the premises of the seller, and in regularly incorporated clubs and lodges upon their obtaining the required permit.

(3) A business may sell beer for both on- and off-premises consumption under the same permit if so approved by the beer board and so indicated on the beer permit. *Tennessee Code Annotated*, § 57-5-103(a)(5).

(4) If a permit holder wants to change method of sales, he must apply for a new permit.

(5) The maximum number of permits permitted under this chapter shall be three (3) until such time as the population of the city reaches one thousand six hundred (1,600) at which time one (1) additional permit may be granted.

(6) 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 to not comply with any and all express restrictions or conditions which may be written into his permit by the beer board.

(7) A permit is valid only for a single location, which includes all decks, patios and other outdoor service areas contiguous to the location.

(8) A permit is valid only for the business of the owner named in the permit application - if the name changes, a new permit must be obtained.

(9) A permit holder must return a permit to the City of Baneberry within fifteen (15) days of termination of the business, change in ownership, relocation of the business or change of the business name. A change in ownership occurs for a corporate owner when at least fifty percent (50%) of the stock of the corporation is transferred to a new owner. (Ord. #216-3, Feb. 2016)

8-108. 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, or other places of public gathering, or would otherwise interfere with the public health, safety, and morals. In no event will a permit be issued authorizing the storage, sale, or manufacture of beer at places within three hundred feet (300') of any school, church, or other such place of public gathering, measured on a straight line from the nearest building of said school, church or other such place of public gathering to the nearest building in which beer is stored, sold or manufactured. (Ord. #216-3, Feb. 2016)

8-109. 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 illegal possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years. (Ord. #216-3, Feb. 2016)

8-110. Prohibited conduct or activities by beer permit holders. It shall be unlawful for any beer permit holder to:

(1) Employ any person convicted for the illegal possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years.

(2) Employ any person less than eighteen (18) years of age in the sale, storage, distribution, or manufacture of beer. (This provision shall not apply to grocery stores selling beer for off-premises consumption only).

(3) Make or allow any sale of beer or other alcoholic drink between the hours of 1:00 A.M. and 6:00 A.M. on Monday to Saturday of the week and between the hours of 1:00 A.M. and 12:00 P.M. on Sunday.

(4) Allow any loud, unusual, or obnoxious noises to emanate from his premises.

(5) Make or allow any sale of beer or other alcoholic drink to a person less than twenty-one (21) years of age.

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

(7) Make or allow any sale of beer or other alcoholic drink to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person.

(8) Allow drunk or disreputable persons to loiter about his premises.

(9) Fail to provide and maintain separate sanitary toilet facilities for men and women.

(10) Permit gambling activities of any sort on the premises. (Ord. #216-3, Feb. 2016)

8-111. Suspension and revocation of beer permits. (1) All permits subject to suspension/revocation. All permits issued by the beer board under the provisions of this chapter shall be subject to suspension or revocation by the board for the violation of any provisions of the applicable laws of the State of Tennessee or any of the provisions of this chapter or where the holder thereof is guilty of making false statements or misrepresentations in his application for a permit.

(2) Authority of board. The board by this chapter 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 revoked for the violation of the provisions of this chapter or the provisions of the state beer act.

(3) Complaints. Complaints filed against any permit holder for the purpose of suspending or revoking beer permits shall be made in writing and filed with the board.

(4) Notice to appear, content and service. When the board has reason to believe that any permit holder has violated any of the provisions of this chapter or any of the provisions of the State Beer Act, *Tennessee Code Annotated*, § 57-5-101, *et seq.*, the board is authorized, in its discretion, to notify the permittee of the violations and to cite the permittee by written notice to appear and show cause why his permit should not be suspended or revoked for the violations. The notice to appear and show cause shall state the alleged violations charged and shall be served upon the permittee either by registered letter or by a member of the police department of the city. The notice shall be served upon the permittee at least five (5) days before the date of the hearing,

(5) Hearing. At the hearing, the board shall publicly hear the evidence both in support of the charges and on behalf of the permittee. After the hearing, if the charges are sustained by the evidence, the board may, in its discretion, suspend or revoke the permit

(6) Effect of board action. The action of the board in all such hearings shall be final, subject only to judicial review. 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 of revocation becomes final.

(7) Revocation. A beer permit shall be automatically revoked when a business for which the permit was issued fails to begin the sale of beer within sixty (60) calendar days after the granting of such permit or where a business for which a permit has been granted ceases to operate for a period of thirty (30) consecutive calendar days.

(8) Suspension/revocation of Tennessee state mixed drink license. If the Tennessee State Alcoholic Beverage Commission (TABC) suspends or revokes a businesses' mixed drink license, the city beer board can also suspend that businesses' beer permit if the circumstances warrant. When the beer board takes this action it shall notify the state ABC of the action by date of suspension/revocation, the business name, and the address of the permit holder. (Ord. #216-3, Feb. 2016, modified)

8-112. Civil penalty in lieu of suspension. 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 minors, or a civil penalty not 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 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. #216-3, Feb. 2016)

8-113. Permits not transferable. Permits issued under the provisions of this chapter are not transferable, either as to location or to successor by purchase or otherwise, of the business for which the permit is required in the manner provided herein. (Ord. #216-3, Feb. 2016)

8-114. Inspection of beer business. The police officers and/or the members of the beer board of the City of Baneberry 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. #216-3, Feb. 2016)