

**TITLE 8****ALCOHOLIC BEVERAGES<sup>1</sup>****CHAPTER**

1. PACKAGE LIQUOR STORES.
2. BEER.
3. BROWN-BAGGING.

**CHAPTER 1****PACKAGE LIQUOR STORES****SECTION**

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**8-101. Alcoholic beverages subject to regulation.** It shall be unlawful to engage in the business of selling, storing, transporting, distributing, or to purchase or possess alcoholic beverages, as that term is defined in Tennessee Code Annotated, title 57, chapter 3, within the corporate limits of this city except as provided by Tennessee Code Annotated, title 57, chapter 3 and this chapter. (1976 Code, § 2-101, as replaced by Ord. #497, Jan. 2017 *Ch3\_08-12-21*)

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<sup>1</sup>State law reference

Tennessee Code Annotated, title 57.

**8-102. Application for certificate.**<sup>1</sup> Before any certificate of compliance, as required by Tennessee Code Annotated, § 57-3-208 or a renewal as required by § 57-3-213 shall be signed by the mayor, or by any aldermen,<sup>2</sup> an application in writing shall be filed with the city recorder. If an application for a certificate of compliance is to be submitted for a business entity other than a sole proprietorship, the application shall be accompanied by an application completed by each owner of the retail package store business, including each and every partner, shareholder, member or any other person or entity, however described, who has any ownership interest in the retail package store business on a form to be provided by the city, giving the following information:

(1) Name, date of birth, address, social security number and telephone number of the applicant.

(2) The name of the business entity that owns or will own the retail package store business and the names, dates of birth, addresses and telephone numbers of each person who has or will have an ownership interest in the business.

(3) Whether or not the applicant or applicants has been convicted of a felony or "any" violation of state or local liquor laws within a ten-year period immediately preceding the date of application.

(4) The location of the proposed store for the sale of alcoholic beverages.

(5) The name, address and telephone number of the owner(s) of the real estate to be used for the proposed location of the retail package store.

(6) The ownership interest of each applicant in the retail package store business.

(7) A true, complete and accurate Tennessee Bureau of Investigation criminal history report on each applicant.

The information in the application shall be verified by the oath of the applicant. (as added by Ord. #497, Jan. 2017 *Ch3\_08-12-21*)

**8-103. Applicant to agree to comply with laws.** The applicant for a certificate of compliance shall agree in writing to comply with the state and federal laws and ordinances of the City of Henderson and rules and regulations of the Alcoholic Beverage Commission of the State for sale of alcoholic beverages. (as added by Ord. #497, Jan. 2017 *Ch3\_08-12-21*)

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<sup>1</sup>State law reference

Tennessee Code Annotated, § 57-3-208.

<sup>2</sup>State law reference

Tennessee Code Annotated, § 57-3-208 requires the certificate to be signed by the mayor or a majority of the governing body.

**8-104. Applicant to appear before board of mayor and aldermen.**

After submitting an application for a certificate of compliance an applicant may appear in person before the board of mayor and aldermen and provide additional information that the applicant elects to provide. (as added by Ord. #497, Jan. 2017 *Ch3\_08-12-21*)

**8-105. Action on the application.** Every application for a certificate of compliance shall be referred to the chief of police for investigation and to the city attorney for review, each of whom shall submit his findings to the board of mayor and aldermen within twenty (20) days of the date each application was filed.

Provided that the applicant(s) has submitted an application that fully complies with § 8-102 above, the board of mayor and aldermen may issue a certificate of compliance to any applicant, which shall be signed by the mayor or by a majority of the board of aldermen. (as added by Ord. #497, Jan. 2017 *Ch3\_08-12-21*)

**8-106. Applicants for certificate who have criminal record.** No certificate of compliance shall be issued to any person, (or if the applicant is a partnership, any partner, or if the applicant is a corporation, any stockholder), who, within ten (10) years preceding the application for such certificate of compliance, has been convicted of any felony or of any offense under the laws of the state or of the United States prohibiting the sale, possession, transportation, storage or otherwise handling of intoxicating liquors, has suffered the suspension or revocation of any license or certificate providing for the sale of intoxicating liquors and or beverages in any civil proceeding for violations of the laws of the State of Tennessee and/or the City of Henderson, Tennessee or who has during such period been engaged in business, alone or with others, in violation of such laws. (as added by Ord. #497, Jan. 2017 *Ch3\_08-12-21*)

**8-107. Where establishments may be located.** It shall be unlawful for any person to operate or maintain any retail establishment for the sale, storage or distribution of alcoholic beverages in the city except at locations zoned for that purpose. (as added by Ord. #497, Jan. 2017 *Ch3\_08-12-21*)

**8-108. Retail stores to be on ground floor; entrances.** No retail store shall be located anywhere in the city except on the ground floor thereof. Each such store shall have only one (1) main entrance; provided, that when a store is located on the corner of two (2) streets, such store may maintain a door opening on each such street.

In addition, all retail package liquor stores shall be a permanent type of construction. No retail package liquor stores shall be located in a manufactured or other moveable or prefabricated type building. All liquor stores shall have night lights surrounding the premises and shall be equipped with a functioning

burglar alarm system on the inside of the premises. The minimum square footage of the interior of the liquor store shall be one thousand (1,000) square feet. Full, free and unobstructed vision of the interior of the store shall be afforded to and from the street or public highway by the way of large windows in the front. Said windows shall cover a minimum of seventy percent (70%) of the total square footage of the ground floor building front between three and eight foot (3' and 8') in height. Said required windows shall not be covered by any signage, merchandise, shelving, security bars or shutters during the hours of operation. Security shutters may be used when the package store is closed. Where due to distance or the nature of the real property upon which any such store is situated, such view from a street or highway is not feasible, unobstructed vision shall nevertheless be provided to and from the parking lot of such store. Regardless, no fence, landscaping or other impediments are allowed other than vehicles temporarily parked on the premises on which the package liquor store is located, that obstruct the full and free vision of the interior of any such store.

All liquor stores shall be subject to applicable zoning, land use, building and life safety regulations, adopted by the city, unless specifically provided otherwise. (as added by Ord. #497, Jan. 2017 *Ch3\_08-12-21*)

**8-109. No consumption on premises.** No alcoholic beverages shall be sold for consumption, or shall be consumed, on the premises of the retail seller. (as added by Ord. #497, Jan. 2017 *Ch3\_08-12-21*)

**8-110. Amusement devices and seating facilities prohibited in retail establishments.** No television sets (for public viewing), pinball machines, slot machines or other devices which tend to cause persons to congregate in such place shall be permitted in any retail package liquor store. No seating facilities shall be provided for persons other than employees. (as added by Ord. #497, Jan. 2017 *Ch3\_08-12-21*)

**8-111. Inspection fee.** The City of Henderson hereby imposes an inspection fee in the maximum amount allowed by Tennessee Code Annotated, § 57-3-501 on all licensed retailers of alcoholic beverages located within the corporate limits of the city. (as added by Ord. #497, Jan. 2017 *Ch3\_08-12-21*)

**8-112. Distance requirements.** No retail package liquor store shall be allowed within one thousand (1,000) feet of any school, church, day care center or public park in existence on the date of the applicant's application for a certificate of compliance. The distance described herein shall be measured in a straight line from building to building, or in the case of a public park, from the closest point in the nearest property line of the public park.

If a potential applicant selects a site that is legal under these regulations but due to substantial remodel of an existing building or the construction of a

new building there will be a significant amount of time prior to the applicant being eligible to file an application for a certificate of compliance, said potential applicant can complete a "letter of intent" on a form provided by the city. The purpose of the letter of intent is to gain prior approval for the proposed site as to the distance requirements and the proper zoning. If the letter of intent is approved by the building official and the mayor as to the distance and zoning requirements, this approval will remain effective for a period of six (6) months from the date of filing. Approval of the letter of intent is only as to distance and zoning requirements and in no way approves that the structure or building meets any other regulations of this chapter or the building code. An approved letter of intent is non-transferrable. (as added by Ord. #497, Jan. 2017 *Ch3\_08-12-21*, and replaced by Ord. #498, Jan 2017 *Ch3\_08-12-21*)

**8-113. Violations.** Any violation of this chapter shall constitute a civil offense and shall, upon conviction, be punishable by a penalty under the general penalty provision of this code. Each day that any person fails to fully comply with the provisions of this chapter shall constitute a separate offense and violation. Upon conviction of any person under this chapter, it shall be mandatory for the city judge to immediately certify the conviction, whether on appeal or not, to the Tennessee Alcoholic Beverage Commission. However, nothing herein shall be construed to prevent the city from exercising any criminal or civil remedies that it may have with respect to violations of this chapter. (as added by Ord. #497, Jan. 2017 *Ch3\_08-12-21*)

## 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.
- 8-207. Permit required for engaging in beer business.
- 8-208. Annual privilege tax.
- 8-209. Beer permits shall be restrictive; on premises consumption not allowed; surrendering permits.
- 8-210. Distance requirements.
- 8-211. Issuance of permits to persons convicted of certain crimes prohibited.
- 8-212. Prohibited conduct or activities by beer permit holders, employees and persons engaged in the sale of beer.
- 8-213. Revocation or suspension of beer permits.
- 8-214. Civil penalty in lieu of revocation or suspension.
- 8-215. Loss of clerk's certification for sale to minor.

**8-201. Beer board established.** There is hereby established a beer board to be composed of all the members of the board of mayor and aldermen. A chairman shall be elected annually by the board from among its members. All members of the beer board shall serve without additional compensation. (1976 Code, § 2-201)

**8-202. Meetings of the beer board.** All meetings of the beer board shall be opened to the public. The board shall hold regular meetings at a location set by the board on the second Thursday night of each month 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 or any two members, provided reasonable notice thereof is given to each member at least three (3) days in advance of such meeting. The board may adjourn a meeting at any time to another time and place. (1976 Code, § 2-202, as amended by Ord. #286, March 1995, modified)

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<sup>1</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).

**8-203. Record of beer board proceedings to be kept.** The recorder shall keep 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. (1976 Code, § 2-203)

**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. (1976 Code, § 2-204)

**8-205. Powers and duties of the beer board.** The beer board shall have the power and it is hereby directed to regulate the selling, storing for sale, distributing for sale, and manufacturing of beer within this municipality in accordance with the provisions of this chapter. (1976 Code, § 2-205)

**8-206. "Beer" defined.** For purposes of this chapter, "beer" shall mean beer, ale or other malt beverages, or any other beverages having an alcoholic content of not more than eight percent (8%) by weight, except wine as defined in Tennessee Code Annotated, § 57-3-101; provided, however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other non-beverage ingredients containing alcohol. (1976 Code, § 2-206, as replaced by Ord. #500, Jan. 2017 *Ch3\_08-12-21*)

**8-207. Permit required for engaging in beer business.** It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining from the beer board a permit. No application will be accepted for a location if the local zoning ordinance does not allow a business or this type of business at the proposed location. Applicants for new permits will be required to pay a non-refundable application fee of two hundred and fifty dollars (\$250.00) when filing the application with the city recorder. The application shall remain on file with the city recorder at least thirty (30) days prior to being placed on the agenda of the beer board. During this period notice of the application shall be published for two (2) consecutive weeks in the "Chester County Independent" newspaper at the expense of the applicant. Both the application and the notice shall be on forms prescribed and furnished by the board. 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. (1976 Code, § 2-207, as amended by Ord. #267, July 1993, and Ord. #286, March 1995)

**8-208. Annual privilege tax.** An annual privilege tax is required for all permit holders. The due date of the privilege tax is January 1 of each year. The city is required to mail written notice at least 30 days prior to the due date of the tax, notifying them of the due date and that it is to be remitted to the city recorder. If the permit holder does not pay the tax by January 31, then the recorder shall send a notice of delinquency by certified mail. Once the delinquent notice is received, the permit holder has ten (10) days to remit the tax. If not remitted during this period, the permit automatically becomes void. Permit holders who get beer permits after January 1 of each year are required to pay a prorated amount of the tax for each month or portion thereof they have a permit until the next due date. Any permit holder who has paid the privilege tax and goes out of business at anytime after payment of the tax, will not be eligible for a refund of any portion of the tax. (Ord. #267, July 1993)

**8-209. Beer permits shall be restrictive; on premises consumption not allowed; surrendering permits.** 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. It shall be unlawful for any beer permit holder to engage in any type or phrase of the beer business not expressly authorized by his/her/their 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/her/their permit by the beer board.

There shall be no sales of beer for on premises consumption within the city limits. Any existing business which holds a permit for the on premises sale and consumption of beer under a prior ordinance will be allowed to operate lawfully under this section provided, however, that if the holders of the on premises permit(s) violate any provision of the beer law, such permits may be revoked by the beer board.

Beer permit holders must surrender the permit within fifteen (15) days of the termination of business, change of ownership, relocation, or change in the business name. (1976 Code, § 2-208, as amended by Ord. #267, July 1993, and Ord. #286, March 1995)

**8-210. Distance requirements.** No permit authorizing the retail sale of packaged beer shall be issued if the proposed or existing business is within one thousand feet (1,000') of any school, church, day care center or public park in existence on the date of the applicant's application for the permit. The distance described herein shall be measured in a straight line from building to building, or in the case of a public park, from the closet point in the nearest property line of the public park. (1976 Code, § 2-210, as amended by Ord. #286, March 1995, and replaced by Ord. #500, Jan. 2017 *Ch3\_08-12-21*)



**8-211. 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. (1976 Code, § 2-211)

**8-212. Prohibited conduct or activities by beer permit holders, employees and persons engaged in the sale of beer.** 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 less than eighteen (18) years of age in the sale, storage, distribution or manufacture of beer.

(3) Make or allow the sale of beer except during the following times: Monday-Saturday from 6:00 A.M. until 12:00 midnight. No beer sales shall be allowed on Sunday.

(4) Make or allow any sale of beer to a minor less than twenty-one (21) years of age.

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

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

(7) Allow drunk or disreputable persons to loiter about the premises.

(8) To sell any alcoholic beverage with an alcoholic content higher than beer as defined in § 8-206.

(9) Serve or allow the consumption on his/her premises of any alcoholic beverage.

(10) Fail to provide and maintain a public sanitary toilet facility. (1976 Code, § 2-212, as amended by Ord. #286, March 1995, as replaced by Ord. #516, July 2018 *Ch3\_08-12-21*)

**8-213. Revocation or suspension of beer permits.** The beer board shall have the power to revoke or suspend 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 revoked or suspended until a public hearing is held by the board after reasonable notice to all the known parties in interest. Revocation or suspension proceedings may be initiated by the police chief or by any member of the beer board.

Pursuant to Tennessee Code Annotated, § 57-5-608, the beer board shall not revoke or suspend the permit of a "responsible vendor" qualified under the requirements of Tennessee Code Annotated, § 57-5-606 for a clerk's illegal sale of beer to a minor if the clerk is properly certified and has attended annual

meetings since the clerk's original certification, unless the vendor's status as a certified responsible vendor has been revoked by the alcoholic beverage commission. If the responsible vendor's certification has been revoked, the vendor shall be punished by the beer board as if the vendor were not certified as a responsible vendor. "Clerk" means any person working in a capacity to sell beer directly to consumers for off-premises consumption. Under Tennessee Code Annotated, § 57-5-608, the alcoholic beverage commission shall revoke a vendor's status as a responsible vendor upon notification by the beer board that the board has made a final determination that the vendor has sold beer to a minor for the second time in a consecutive twelve (12) month period. The revocation shall be for three (3) years. (1976 Code, § 2-213, as amended by Ord. #267, July 1993, and Ord. #286, March 1995, and replaced by Ord. #516, July 2018 *Ch3\_08-12-21*)

**8-214. Civil penalty in lieu of revocation or suspension.**

(1) Definition. "Responsible vendor" means a person, corporation or other entity that has been issued a permit to sell beer for off-premises consumption and has received certification by the Tennessee Alcoholic Beverage Commission under the "Tennessee Responsible Vendor Act of 2006," Tennessee Code Annotated, § 57-5-601, et seq.

(2) Penalty, revocation or suspension. The beer board may, at the time it imposes a revocation or suspension, offer a permit holder that is not a responsible vendor the alternative of paying a civil penalty not to exceed two thousand five hundred dollars (\$2,500.00) for each offense of making or permitting to be made any sales to minors, or a civil penalty not to exceed one thousand dollars (\$1,000.00) for any other offense.

The beer board may impose on a responsible vendor a civil penalty not to exceed one thousand dollars (\$1,000.00) for each offense of making or permitting to be made any sales to minors or 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.

Payment of the civil penalty in lieu of revocation or suspension by a permit holder shall be an admission by the holder of the violation so charged and shall be paid to the exclusion of any other penalty that the city may impose. (as added by Ord. #373, Dec. 2002, and replaced by Ord. #516, July 2018 *Ch3\_08-12-21*)

**8-215. Loss of clerk's certification for sale to minor.** If the beer board determines that a clerk of an off-premises beer permit holder certified under Tennessee Code Annotated, § 57-5-606, sold beer to a minor, the beer board shall report the name of the clerk to the alcoholic beverage commission within fifteen (15) days of determination of the sale. The certification of the clerk

shall be invalid, and the clerk may not reapply for a new certificate for a period of one (1) year from the date of the beer board's determination. (as added by Ord. #516, July 2018 ***Ch3\_08-12-21***)

## CHAPTER 3

### BROWN-BAGGING

#### SECTION

- 8-301. Brown-bagging prohibited.
- 8-302. Definitions.
- 8-303. Violation.

**8-301. Brown-bagging prohibited.** No owner, operator or employee of any restaurant, club, or any other business of every kind and description, shall permit or allow any person to open, or to have open, or to consume inside or on the premises a bottle, can, flask or container of any kind or description, of alcoholic beverages or beer. (Ord. #310, Aug. 1997)

**8-302. Definitions.** For the purposes of interpreting this ordinance, the term "alcoholic beverages" shall mean and include alcohol, spirits, liquor, wine and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, other than patent medicine, or beer where the latter contains an alcoholic content of five percent (5%) by weight or less. The term shall also include any liquid product containing distilled alcohol capable of being consumed by a human being, manufactured or made with distilled alcohol irrespective of alcoholic content, including, but not limited to, "home brew" and "moonshine."

For the same purposes, the term "beer" shall mean all beers, ales and other malt liquors having an alcoholic content of not more than five percent (5%) by weight. (Ord. #310, Aug. 1997)

**8-303. Violation.** Any person violating this ordinance shall be punished by a fine not to exceed \$50.00. Each day any violation of this ordinance occurs shall be considered a separate offense. (Ord. #310, Aug. 1997)