

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

1. INTOXICATING LIQUORS.
2. BEER.

**CHAPTER 1****INTOXICATING LIQUORS****SECTION**

8-101. Prohibited generally.

**8-101. Prohibited generally.** Except as authorized by applicable laws,<sup>2</sup> and/or ordinances, it shall be unlawful for any person to manufacture, receive, possess, store, transport, sell, furnish, or solicit orders for any intoxicating liquor within the Town of Benton. "Intoxicating liquor" shall be defined to include whiskey, wine, "home brew," "moonshine," and all other intoxicating, spirituous, vinous, or malt liquors and beers which contain more than five percent (5%) of alcohol by weight. (1990 Code, § 2-101)

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<sup>1</sup>State law reference  
Tennessee Code Annotated, title 57.

<sup>2</sup>State law reference  
Tennessee Code Annotated, title 39, chapter 17.

## CHAPTER 2

### BEER<sup>1</sup>

#### SECTION

- 8-201. Beer board established.
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**8-201. Beer board established.** There is hereby established a beer board to be composed of three (3) members, one (1) of which shall be a member of the board of commissioners. The board of commissioners shall appoint the members of the beer board. A chairman shall be elected annually by the beer board from among its members. All members of the beer board shall serve without compensation. (Ord. #137, March 2003)

**8-202. Meetings of the beer board.** All meetings of the beer board shall be open to the public. The board shall hold 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 a reasonable notice thereof to each member. The board may adjourn a meeting at any time to another time and place. (Ord. #137, March 2003)

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<sup>1</sup>Municipal code references

Drinking alcoholic beverages in public, etc.: § 11-201.

General business regulations: title 9.

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 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. #137, March 2003)

**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. (Ord. #137, March 2003)

**8-205. Powers and duties of the beer board.**<sup>1</sup> 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. (Ord. #137, March 2003)

**8-206. "Beer" defined.** The term "beer" as used in this chapter shall mean and include all beers, ales, and other malt liquors having an alcoholic content of not more than five percent (5%) by weight. (Ord. #137, March 2003)

**8-207. Permit required for engaging in beer business.**<sup>2</sup> 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 a permit from the beer board. The application shall be made on such form as the board shall prescribe and/or furnish, and pursuant to Tennessee Code Annotated, § 57-5-104(a), shall be accompanied by a non-refundable application fee of two hundred and fifty dollars (\$250.00). Said fee shall be in the form of a cashier's check payable to the Town of Benton. 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. (Ord. #137, March 2003)

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<sup>1</sup>State law reference  
Tennessee Code Annotated, § 57-5-106.

<sup>2</sup>State law reference  
Tennessee Code Annotated, § 57-5-103.

**8-208. Privilege tax.**<sup>1</sup> There is hereby imposed on the business of selling, distributing, storing or manufacturing beer a 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 each successive January 1 to the Town of Benton, 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 prorated basis for each month or portion thereof remaining until the next tax payment date. (Ord. #137, March 2003)

**8-209. Beer permits shall be restrictive.** (1) All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, distributing, and manufacturing. Beer permits for retail sale of beer may be further restricted so as to authorize sales only for off premises consumption. A single permit may be issued for on premise and off premise consumption. It shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by his permit. It shall likewise be unlawful for him not to comply with any and all express restrictions or conditions which may be written into his permit by the beer board.

(2) Classes of consumption permits issued by the board shall consist of two (2) classes:

(a) Class 1 On Premises Permit. (i) A Class 1 On Premises Permit shall be issued for the consumption of beer only on the premises. To qualify for a Class 1 On Premises Permit, an establishment must, in addition to meeting the other regulations and restrictions in this chapter:

(A) Be primarily a restaurant or an eating place;

(B) Be able to seat a minimum of thirty (30) people, including children, in booths and at tables, in addition to any other seating it may have;

(C) All seating must be part of the premises. In case of any outdoor seating, the outdoor seating area must be accessible from the inside of the restaurant or eating place and the outdoor seating area must have some type of enclosure around it, such as a wall or fencing;

(D) Each "on site" consumption location shall keep and maintain the premises in a safe, clean and sanitary condition as required for a rating of class "B" or better as established by the Tennessee State Department of

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<sup>1</sup>State law reference

Tennessee Code Annotated, § 57-5-104(b).

Conservation, Division of Hotels and Restaurant Inspections.

(E) Each "on site" consumption location shall maintain proper lighting in the parking lot.

(F) The monthly sales of any establishment which holds a Class 1 on premises permit shall not exceed fifty percent (50%) of the monthly gross sales of the establishment.

(ii) All Class 1 beer permit holders shall submit quarterly sales reports to the City of Benton to assure that the Class 1 permit holder is in compliance with the provisions of this section. The city will keep those forms in the permit holder's individual business tax file so that the confidentiality required by Tennessee Code Annotated, § 67-4-722 may be maintained. The reports shall comply with the following schedule:

| Period           | Report Due Date |
|------------------|-----------------|
| January - March  | April 20        |
| April-June       | July 20         |
| July-September   | October 20      |
| October-December | January 20      |

(iii) If the monthly beer sales for any Class 1 beer permit holder exceed fifty percent (50%) of the monthly gross sales of the permit holder for either three (3) consecutive months during one calendar year or for any four (4) months in any one calendar year, the Class I permit of such permit holder may be suspended or revoked by the beer board.

(b) Class 2 Off Premises Permit. An off premises permit shall be issued for the consumption of beer only off the premises. (Ord. #150, Sept. 2006)

**8-210. 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, residences, 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 manufacture or storage of beer, or the sale of beer within three hundred (300) feet of any school, residence, church or other place of public gathering. The distances shall be measured in a straight line from the nearest corner of the building from which the beer will be manufactured, stored or sold to the nearest corner of the building of the school, residence, church or other place of public gathering. No permit shall be suspended, revoked or denied on the basis of proximity of the establishment to a school, residence,

church, or other place of public gathering if a valid permit had been issued to any business on that same location as of January 1, 1993, unless beer is not sold, distributed or manufactured at that location during any continuous six-month period after January 1, 1993. (Ord. #137, March 2003)

**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 beer or other alcoholic beverage, 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 applicant 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. #137, March 2003)

**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 under 18 years of age in the sale, storage, distribution or manufacture of beer.

(3) Make or allow any sale of beer between the hours of 12:00 Midnight and 6:00 A.M. during any night of the week; and at any time on Sunday.

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

(5) Allow any person under 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 persons to loiter about his premises.

(8) Serve, sell, or allow the consumption on his premises of any alcoholic beverage with an alcoholic content of more than five percent (5%) by weight.

(9) Allow pool or billiard playing in the same room where beer is sold and/or consumed.

(10) Fail to provide and maintain separate sanitary toilet facilities for men and women. (Ord. #137, March 2003)

**8-213. Revocation of beer permits.**<sup>1</sup> 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 revoked until a public hearing is held by the board after reasonable notice to all the known parties in interest. Revocation proceedings may be initiated by the police chief or by any member of the beer board. (Ord. #137, March 2003)

**8-214. Civil penalty in lieu of suspension.**<sup>2</sup> 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 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.

Payment of the civil penalty in lieu of 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. (Ord. #137, March 2003)

**8-215. Violations.** Except as provided in § 8-214, 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 a violation shall be allowed to continue shall constitute a separate offense. (Ord. #137, March 2003)

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<sup>1</sup>State law reference

Tennessee Code Annotated, § 57-5-108(a)(1).

<sup>2</sup>State law reference

Tennessee Code Annotated, § 57-5-108(a)(2).