

TITLE 8**ALCOHOLIC BEVERAGES**¹**CHAPTER**

1. INTOXICATING LIQUORS.
2. BEER.

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

8-101. Prohibited generally.

8-101. Prohibited generally. Except as authorized by applicable laws² 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 this city. "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. (Ord #10, March 1952, modified)

¹Municipal code reference

Minors in beer places, etc.: title 11, chapter 1.

State law reference

Tennessee Code Annotated, title 57.

²State law reference

Tennessee Code Annotated, title 39, chapter 17.

CHAPTER 2

BEER

SECTION

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8-201. Beer board established. There is hereby established a beer board to be composed of five (5) members. The mayor shall serve as chairman of the beer board. Four (4) members shall be appointed by the board of commissioners to serve four (4) year terms. Initial appointments shall be staggered terms, with two (2) appointments serving two (2) years and two (2) appointments serving a four (4) year term. Thereafter, board members serve four (4) years terms ending every two (2) years and the chairman's term running concurrently with the mayoral term of office. All members of the beer board shall serve without compensation. (Ord. #10, March 1952, as replaced by Ord. #68, June 2011)

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, but will meet no less than quarterly on an annual basis. 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. (as added by Ord. #68, June 2011)

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 outcome of every vote; and the provisions of each beer permit issued by the board. (as added by Ord. #68, June 2011)

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. (as added by Ord. #68, June 2011)

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. (as added by Ord. #68, June 2011)

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, except wine as defined in Tennessee Code Annotated, § 57-3-101(a)(20); 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. (as added by Ord. #68, June 2011)

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 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 City of Ducktown. Each applicant must be a person of good moral character and they must certify that they have read and are familiar with the provisions of this chapter. A new permit may be issued to a qualified purchaser of an existing establishment in which a permit is now held for the sale of beer, and the permit used only within the establishment or building purchased. (as added by Ord. #68, June 2011)

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 (\$100.00). 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 City of Ducktown, 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. (as added by Ord. #68, June 2011)

8-209. 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 retail sale of beer may be further restricted by the beer board so as to authorize sales for off-premise consumption or on-premise consumption. An on-premise consumption permit shall only be issued to the permittee whose business is a restaurant or eating place meeting the requirements of § 8-211 within this chapter. 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 in his permit. (as added by Ord. #68, June 2011)

8-210. Restrictions upon granting or permits. No permit shall be issued to sell any beverage coming within the provisions of this chapter:

- (1) In violation of any provision of state laws.
- (2) Any area of the city that is not zoned C-2 commercial by the city ordinances.
- (3) To any non-restaurant business that does not have other sales than beer, that will provide at least fifty one percent (51%) of the gross sales of the business receipts, (beer sales not to exceed forth-nine percent (49%).
- (4) To any drive-in restaurant, restaurants or businesses offering curbside service or drive-through windows (off-premises sales shall be confined to the premises of the structure).
- (5) To any hotel or motel with less than fifty (50) rooms for rent. (as added by Ord. #68, June 2011)

8-211. Restaurants further restricted. A restaurant shall be defined as an establishment having a minimum indoor seating capacity of thirty (30), one that serves meals "at least" one (1) time a day and "at least" five (5) days a week, whose principal business is serving food for consumption on premises, and whose monthly beer sales shall not exceed thirty percent (30%) of the monthly gross sales of the business.

“On-premise” is defined as any portion of the building interior and any deck, patio, porch or other outside serving area that:

(1) Is only accessible from the interior of the principal structure housing the restaurant; and

(2) Is fully enclosed by a permanent fence that is attached to the principal structure housing the restaurant with the fence or wall made of brick, stone, wrought iron, or exterior wood panels with a minimum height of forty-eight inches (48") with a maximum spaces between rods, spindles or boards of four inches (4") and such that four inch (4") sphere cannot pass between any rods, spindles or boards. If an emergency exit is required by any regulation, ordinance or law within the fence or wall it shall be clearly marked as an emergency exit only and used only for that purpose. The emergency exit shall be equipped with an alarm which emits an audible sound when the exit gate or door is opened. The fence or wall shall be permanently affixed to the ground per building officials' recommendation and approval. Any deck, patio, porch or other outdoor serving area and the fence or wall shall comply with any applicable provisions of the International Building Code.

Prior to any existing or new restaurant adding an outdoor dining area wherein beer may be sold for consumption, the owner of the restaurant and the permit holder shall submit a site plan for the outdoor dining area which meets the requirements of the Ducktown Zoning Code to the Ducktown Planning Commission for approval. The site plan shall show that the new outdoor serving area meets all requirements of the zoning district it lies within, to include, but not limited to parking and land coverage requirements. The site plan shall show that the new outdoor serving area meets all requirements of the landscaping and storm water ordinances. (as added by Ord. #68, June 2011)

8-212. Submittal of sales reports. All beer permit holders shall submit quarterly sales reports to the City of Ducktown on forms provided by the city to assure that the permit holder is in compliance with the provisions within this chapter. The city will keep these 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:

<u>Period</u>	<u>Report Due Date</u>
January - March	April 20 th
April - June	July 20 th
July - September	October 20 th
October - December	January 20 th

Any permit holder which for three (3) consecutive months or any four (4) months in any calendar year, who has beer sales exceeding the maximum allowable

percentages listed within this chapter, §§ 8-210 and 8-211 may have said permit suspended or revoked by the beer board. In the alternative, and in lieu of suspension or revocation of the permit, the beer board has the discretion to impose a civil penalty in lieu of suspension in accordance with the terms of Ducktown Municipal Code § 8-217. (as added by Ord. #68, June 2011)

8-213. 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 churches, schools, residences or licensed daycares, 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 feet (300') of any church, school, residence or licensed daycare. The distances shall be measured in a straight line between the nearest corner of the building proposed to sell, store or manufacture beer and the nearest corner of the building from which there must be a minimum distance. No permit shall be suspended, revoked or denied on the basis of proximity of the establishment to a church, school, residence or licensed daycare 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 six (6) month period. (as added by Ord. #68, June 2011)

8-214. 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 minor under eighteen (18) years of age in the sale, storage, distribution or manufacture of beer.
- (2) Make or allow the sale of beer between the hours of 1:00 A.M. and 6:00 A.M. Tuesday through Saturday, between the hours of 1:00 A.M. and 8:00 A.M. Sunday and between the hours of 12:00 midnight Sunday and 6:00 A.M. Monday.
- (3) Allow any person under twenty-one (21) years of age to loiter in or about his place of business.
- (4) Make or allow any sale of beer to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person.
- (5) Allow drunk persons to loiter about his premises.
- (6) 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.
- (7) Allow pool or billiard playing in the same room where beer is sold and/or consumed.
- (8) Fail to provide and maintain separate sanitary toilet facilities for men and women, if beer is consumed on the premises.

(9) Employ any person convicted of any offense regarding the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past five (5) years. (as added by Ord. #68, June 2011)

8-215. Regulation of use of beer signs. It shall be unlawful for any person authorized to sell, beer, either on or off-premises, to erect or maintain any more than one (1) sign on the inside or outside of the building displaying the word "beer" or the name of any brand of beer. Said advertising sign or display shall not exceed six inches (6") in height and any sign on the outside of the building shall be placed parallel to the building. (as added by Ord. #68, June 2011)

8-216. 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 sheriff 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. (as added by Ord. #68, June 2011)

8-217. 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. #68, June 2011)

8-218. 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, § 5-75-606, 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. #68, June 2011)

8-219. Violations. Except as provided in § 8-216, 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. (as added by Ord. #68, June 2011)