

TITLE 8**ALCOHOLIC BEVERAGES****CHAPTER****1. BEER.****CHAPTER 1****BEER¹****SECTION**

- 8-101. Beer board established.
- 8-102. Meetings of the beer board.
- 8-103. Record of beer board proceedings to be kept.
- 8-104. Requirements for beer board quorum and action.
- 8-105. Powers and duties of the beer board.
- 8-106. "Beer" defined.
- 8-107. Permit required for engaging in beer business.
- 8-108. Privilege tax.
- 8-109. Beer permits shall be restrictive.
- 8-110. Limitation on number of permits.
- 8-111. Interference with public health, safety, and morals prohibited.
- 8-112. Issuance of permits to persons convicted of certain crimes prohibited.
- 8-113. Prohibited conduct or activities by beer permit holders.
- 8-114. Revocation of beer permits.
- 8-115. Civil penalty in lieu of suspension.
- 8-116. Display of permit.
- 8-117. Beer tax levied.
- 8-118. Sanitation for premises covered by on premises permit.
- 8-119. Investigation of applicant, agent, and/or employees.
- 8-120. List of employees.
- 8-121. Open containers.
- 8-122. Parking space.
- 8-123. Beer permit holder to remain in business.

¹Municipal code references

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

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).

- 8-124. Violation and penalty.
- 8-125. Employees liable for violation of chapter.
- 8-126. Restrictions on granting permits.
- 8-127. [Repealed.]

8-101. Beer board established. There is hereby established a beer board to be composed of the board of mayor and aldermen. The mayor shall be the chairman of the beer board.

8-102. Meetings of the beer board. All meetings of the beer board shall be open to the public. Meetings of the beer board shall be held in the city hall immediately following the regular monthly meetings of the board of mayor and alderman. In no event shall special meetings of the beer board be called. The beer board may adjourn a meeting at any time to another time and place. (Replaced by Ord. #II-99, Jan. 1999)

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 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.

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.

8-105. 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.

8-106. "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.

8-107. 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, § 57-5-101(b), and 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 Elkton. 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. Applications must be submitted no later than five working days before the beer board meets.

8-108. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer a privilege tax of one hundred dollars (\$100). 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 January 1, 1994, and each successive January 1, to the City of Elkton, 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.

8-109. 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 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.

8-110. Limitation on number of permits. The number of permittees engaged in the retail sale of beer for off premises consumption only, shall be limited to no more than three (3). The number of permittees engaged in the on premises sale of beer, even though the permit may allow sale for off premises consumption also, shall be limited to no more than five (5). (as replaced by Ord. #VIII-98, Oct. 1998; amended by Ord. #III-99, March 1999, and replaced by Ord. #I-02, Jan. 2002)

8-111. 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 manufacture or storage of beer, or the sale of beer within five hundred (500) feet of any hospital, school, church or other place of public gathering. The distances shall be measured in a straight line¹ from the nearest point on the property line upon which sits the building from which the beer will be manufactured, stored or sold to the nearest point on the property line of the hospital, school, 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, 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.

8-112. 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 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.

8-113. 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 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) Sell, lend or give away beer between 2:00 A.M. and 12:00 noon on Sundays and between 2:00 A.M. and 6:00 A.M. Monday through Saturday of each week. However, the sale of beer by establishments permitted only for off premises consumption sales shall be allowed between 6:00 A.M. on Sunday and 2:00 A.M. on Monday of each week.

(4) Sell, lend, or give away beer an hour later on the morning that the time changes back to central standard time in the fall of each year, i.e. no beer shall be sold after 2:00 A.M. daylight savings time on that morning.

¹State 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.

- (5) Make or allow any sale of beer to a person under twenty-one (21) years of age.
- (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 intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person.
- (8) Allow drunk persons to loiter about his premises.
- (9) 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.
- (10) Fail to provide and maintain separate sanitary toilet facilities for men and women for establishments with on premises consumption.
- (11) During the hours that the sale, lending or giving away of beer is prohibited, no premises where beer is sold for consumption on the premises, shall be used for any private parties or public meetings where alcoholic beverages of any nature are consumed. (as amended by Ord. #VI-98, Sept. 1998, Ord. #I-01, Jan. 2001, and Ord. #02-09, June 2009)

8-114. Revocation of beer permits. 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.

Suspension or revocation proceedings may be initiated by the police chief or by any member of the beer board, and the board is vested with full 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 suspended or revoked.

Complaints filed against any permit holder for the purpose of suspending or revoking the permit shall be made in writing and filed with the board. When the board has reason to believe that any permit holder has violated the provisions of this chapter or of the state beer act, the board may notify the permittee of the violation and 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 mail or by a member of the police department of the City of Elkton. The notice shall be served upon the permittee at least five (5) days before the date of the 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. The action of the board in all such hearings shall be final, subject to review by the court as provided in the state beer act. When a permit is revoked, no permit shall be issued for the sale of beer at the same location until the expiration of one (1) year from the date the revocation becomes final. (Ord. #IV-87, Aug. 1987, modified)

8-115. 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 \$1,500 for each offense of making or permitting to be made any sales to minors or, a civil penalty not to exceed \$1,000 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.

8-116. Display of permit. The permit required by this chapter shall be posted in a conspicuous place on the premises of the permit holder, together with all other permits, licenses, and stamps as required by law. (Ord. #IV-87, Aug. 1987)

8-117. Beer tax levied. There is hereby levied and imposed on the sale of beer at wholesale a tax of seventeen percent (17%) of the wholesale price of same. Said tax is imposed pursuant to the provisions of Tennessee Code Annotated, title 57, chapter 6 and the appropriate sections of said chapter 6 are hereby adopted by reference.

All permittees selling beer within the corporate limits must purchase said beer directly from a Tennessee wholesaler for sale at the permittees place of business in Elkton, Tennessee, so as not to deny the City of Elkton the tax to be collected thereon.

Any permittee purchasing beer for retail sale from a source whereby the City of Elkton is denied the 17% wholesale tax thereon, shall have his or her license suspended for a minimum period of sixty (60) days or permanently revoked. (Ord. #IV-87, Aug. 1987)

8-118. Sanitation for premises covered by on premises permit. Any person holding a permit under this chapter for sale for consumption on the premises shall keep and maintain the premises in a clean and sanitary condition. Any city police officer or any properly authorized person may enter the premises at all reasonable times for the making of any necessary inspection. The determination of the sanitary conditions is solely a question for the City of Elkton. (Ord. #IV-87, Aug. 1987)

8-119. Investigation of applicant, agent, and/or employees.

Applications for a retail permit under this section are subject to be investigated by municipal, county, and state authorities, and any agent of the applicant must register with the police department of the City of Elkton prior to beginning work, submit such information and records as the beer board may require, and secure a permit from the police department. (Ord. #IV-87, Aug. 1987)

8-120. List of employees. All permittees shall furnish a complete list of their employees to the beer board and they shall likewise furnish an up-to-date list of the names of new and terminated employees, as the case may be. All persons in whose name a beer permit has been issued shall devote a minimum of twenty (20) hours per month to the operation of the business at which the permit is held. The permittee shall keep and maintain an accurate log which will show the exact days and hours that the permittee worked in the business. The chief of police and any police officer of the City of Elkton shall have the right to examine the logs at any time during normal business hours. (Ord. #IV-87, Aug. 1987)

8-121. Open containers. It shall be unlawful for any person to drink or consume or have an open can or bottle of beer in or on any public street, alley, avenue, highway, sidewalk, public park, public school ground, or other public place unless the place has a beer permit and license for on premises consumption.

Permittees having a license for on premises consumption shall not allow any person to drink or consume, or have an open container of beer, in open or unenclosed areas adjacent to or outside the main premises. Prohibited areas shall include but not be limited to unenclosed porches and picnic areas. (Ord. #IV-87, Aug. 1987)

8-122. Parking space. All permittees having a permit for the sale of beer for on premises consumption shall make and have available one (1) automobile parking space for each fifty (50) square feet of floor space, or portion thereof, contained in the building where the permit has been issued. The floor space shall be calculated by measuring the outside walls of the building, and the required parking spaces shall be located within the perimeter of one hundred and twenty-five (125) feet of the outside walls of the building.

During the first week in January of each consecutive year, all permittees having a license for on premises consumption of beer shall give evidence in writing to the city recorder of the location and number of the automobile parking spaces which they have available to customers.

This provision shall apply only to permittees receiving licenses on and after October 1, 1984. (Ord. #IV-87, Aug. 1987)

8-123. Beer permit holder to remain in business. Any person who has been issued a beer permit from the beer board shall remain in business in order to maintain a valid beer permit. If for any reason, the licensed premises are closed for at least thirty (30) days, or if the permittee fails to open his business upon being granted a permit, the beer board shall automatically revoke the beer permit. Upon revocation, the location shall be eligible for the issuance of a new beer permit provided all requirements of the beer board are met.

To insure the return and surrender of beer permits by permittees who cease to do business, all permittees prior to being issued a beer permit shall post with the city recorder a cash bond in the sum of two hundred fifty dollars (\$250.00). Upon the surrender of the beer permit to the city recorder the bond shall be returned to the permittee. In the event that permittee fails to surrender his beer permit within thirty (30) days of the date that he ceases to do business, the bond shall be forfeited in its entirety to the City of Elkton. (Ord. #IV-87, Aug. 1987)

8-124. Violation and penalty. Each day's violation of each provision of this chapter by any permit holder, or each sale made in violation of any provisions of this chapter shall constitute a separate misdemeanor which shall be punishable by a fine of not less than one dollar (\$1.00) nor more than fifty dollars (\$50.00) or by suspension or revocation of the permit issued hereunder or by both fine or suspension or revocation. (Ord. #IV-87, Aug. 1987)

8-125. Employees liable for violation of chapter. Any employee of any permittee who violates any provision of this chapter or any provision of the state beer act while employed by the permittee shall be guilty of a misdemeanor which shall be punishable by a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00). (Ord. #IV-87, Aug. 1987)

8-126. Restrictions on granting permits. (1) No permit shall be issued to sell any beverage coming within the provisions of this section:

- (a) In violation of any provisions of the state law.
- (b) In violation of any ordinance of the City of Elkton.
- (c) Within five hundred (500) feet of the Elkton city hall or fire hall.
- (d) Within five hundred (500) feet from any church or other structure used for religious assemblies and any public or private cemetery.
- (e) Within the perimeter of the following section of the City of Elkton: Beginning in the centerline of Market Street at the intersection of that street with Beaty Brook; thence with the centerline of Market Street to its convergence with Persimmon Island Road; thence with the centerline of Persimmon Island Road to its intersection with the corporate limits of the City of Elkton; thence generally northwest with

the perimeter of the corporate limits to the intersection of the limits with Beaty Brook; thence with the meanders of the brook to the point of beginning.

(2) The number of permits issued within the corporate limits of the City of Elkton shall be limited to fourteen (14).

(3) Subsections (c), (d), and (e), of subsection (1) of this section shall not apply to any building or premises now used for the retail sale of beer. If any such building or premises ceases to be used for the retail sale of beer for a period in excess of 365 days, then no permit shall be issued for the building or premises.

8-127. [Repealed.] (as added by Ord. #IV-97, June 12, 1997, and repealed by Ord. #04-08, Dec. 2008, and Ord. #01-09, Jan. 2009)