

**TITLE 8**

**ALCOHOLIC BEVERAGES<sup>1</sup>**

**CHAPTER**

1. INTOXICATING LIQUORS.
2. BEER.

**CHAPTER 1**

**INTOXICATING LIQUORS**

**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 within the corporate limits of this city except as provided by Tennessee Code Annotated, title 57. (as added by Ord. #201106, Dec. 2011)

**8-102. Application for certificate of compliance.** Before any certificate, as required by Tennessee Code Annotated, § 57-3-208 or a renewal

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<sup>1</sup>State law reference

Tennessee Code Annotated, title 57.

as required by § 57-3-213 shall be signed by the mayor, or by any aldermen,<sup>1</sup> an application in writing shall be filed with the city recorder on a form to be provided by the city, giving the following information:

- (1) Name, age and address of the applicant.
- (2) Evidence of being a bona fide resident of Henderson County for not less than one (1) year or evidence of being continuously licensed pursuant to Tennessee Code Annotated, § 57-3-204 for seven (7) consecutive years.
- (3) Occupation or business and length of time engaged in such occupation or business.
- (4) Whether or not the applicant has been convicted of a violation of any state or federal law or of the violation of this code or any city ordinance, and the details of any such conviction.
- (5) If employed, the name and address of employer.
- (6) If in business, the kind of business and location thereof.
- (7) The location of the proposed store for the sale of alcoholic beverages.
- (8) The name and address of the owner of the store.
- (9) (a) If the applicant is a partnership, the name, age and address of each partner, and his occupation, business or employer.  
(b) If the applicant is a corporation, the name, age and address of the stockholders and their degrees of ownership of stock in the corporation.

The information in the application shall be verified by the oath of the applicant. If the applicant is a partnership or a corporation, the application shall be verified by the oath of each partner, or by the president of the corporation.

Each application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars (\$250.00). (as added by Ord. #201106, Dec. 2011)

**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, the ordinances of the city, and the rules and regulations of the Alcoholic Beverage Commission of the State for sale of alcoholic beverages. (as added by Ord. #201106, Dec. 2011)

**8-104. Applicant to appear before board of mayor and aldermen; duty to give information.** An applicant for a certificate of compliance may be required to appear in person before the board of mayor and aldermen for such

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<sup>1</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.

reasonable examination as may be desired by the board. (as added by Ord. #201106, Dec. 2011)

**8-105. Action on application.** Every application for a certificate of compliance shall be referred to the chief of police for investigation, the building inspector for verification and to the city attorney for review, each of whom shall submit their findings to the board of mayor and aldermen within thirty (30) days of the date each application was filed.

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 mayor and aldermen. (as added by Ord. #201106, Dec. 2011)

**8-106. Residency requirement.**<sup>1</sup> The applicant for a certificate of compliance shall have been a bona fide resident of Henderson County for not less than one (1) year at the time the application is filed. If the applicant is a partnership or a corporation, each of the partners or stockholders must have been a bona fide resident of Henderson County for not less than one (1) year at the time the application is filed. This section shall not apply to any applicant who has been continuously licensed pursuant to Tennessee Code Annotated, § 57-3-204 for seven (7) consecutive years. (as added by Ord. #201106, Dec. 2011)

**8-107. Applicants for certificate who have criminal record.** No certificate of compliance for the manufacture or sale at wholesale or retail of alcoholic beverages, or for the manufacture or vinting of wine, 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 or regulating the sale, possession, transportation, storage, manufacturing or otherwise handling of intoxicating liquors, or who has during such period been engaged in business, alone or with others, in violation of such laws. (as added by Ord. #201106, Dec. 2011)

**8-108. Only one establishment to be operated by retailer.** No retailer shall operate, directly or indirectly, more than one (1) place of business for the sale of alcoholic beverages in the city. The word "indirectly," as used in this section, shall include and mean any kind of interest in another place of business by way of stock, ownership, loan, partner's interest or otherwise. (as added by Ord. #201106, Dec. 2011)

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<sup>1</sup>State law reference

Tennessee Code Annotated, § 57-3-208(c).

**8-109. 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 B2 and BP along and adjoining Highway 22 and Highway 412, but in no event shall any establishment be located within five hundred feet (500') of a public or private school, child care facility, hospital, established place of worship, public park, public space, or any other similar public open space or place of public gathering, measured in a straight line<sup>1</sup> between the nearest point on the property line upon which sits the building from which the alcoholic beverages will be sold, stored or distributed, and the nearest point on the property line of the public or private school, child care facility, hospital, established place of worship, public park, public space, or any other similar public open space or place of public gathering. Applicant must submit written documentation from a licensed surveyor that confirms the business location complies with these distance requirements. (as added by Ord. #201106, Dec. 2011)

**8-110. Retail stores to be on ground floor; entrances.** No retail store shall be located anywhere on premises 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; and provided further, that any salesroom adjoining the lobby of a hotel may maintain an additional door into such lobby as long as the lobby is open to the public. (as added by Ord. #201106, Dec. 2011)

**8-111. Limitation on number of retailers.**<sup>2</sup> There shall be no limit on the number of retail licenses for the sale of alcoholic beverages issued under this chapter. (as added by Ord. #201106, Dec. 2011)

**8-112. Sales for consumption on premises.** No alcoholic beverages shall be sold for consumption on the premises of the seller. (as added by Ord. #201106, Dec. 2011)

**8-113. Amusement devices and seating facilities prohibited in retail establishments.** No pinball machines, slot machines or other devices which tend to cause persons to congregate in such place shall be permitted in

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<sup>1</sup>State law reference

See Watkins v. Naifeh, 635 S.W.2d 104 (Tenn. 1982) and other cases cited therein which establish the straight line method of measurement.

<sup>2</sup>State law reference

Tennessee Code Annotated, § 57-3-208(c).

any retail establishment. One (1) radio and/or one (1) television shall be permitted in establishment. No seating facilities shall be provided for persons other than employees. (as added by Ord. #201106, Dec. 2011, and replaced by Ord. #201301, Jan. 2013)

**8-114. Inspection fee.** The City of Lexington 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. #201106, Dec. 2011)

**8-115. 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. 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. (as added by Ord. #201106, Dec. 2011)

## 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. Privilege tax.
- 8-209. Beer permits shall be restrictive.
- 8-210. Interference with public health, safety, and morals prohibited.
- 8-211. Issuance of permits to persons convicted of certain crimes prohibited.
- 8-212. Prohibited conduct or activities by beer permit holders.
- 8-213. Suspension and revocation of beer permits.
- 8-214. Civil penalty in lieu of suspension or revocation.
- 8-215. Violations.
- 8-216. Revocation of license.
- 8-217. Minors in beer places.

**8-201. 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.

**8-202. 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.

**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

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<sup>1</sup>Municipal code references

Minors in beer places: § 11-102.

Tax provisions: title 5.

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).

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.

**8-204. 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.

**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 city in accordance with the provisions of this chapter.

**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.

**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, § 57-5-101(b), and shall be accompanied by a non-refundable application fee of two hundred and fifty dollars (\$250.00).<sup>1</sup> Said fee shall be in the form of a cashier's check payable to the City of Lexington. 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.

**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). 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, to the City of Lexington, Tennessee. At the time a new permit is issued to any business subject to this

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<sup>1</sup>State law reference

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

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.

**8-209. 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 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.

**8-210. 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 hospitals, schools, churches, day cares 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 sale of beer for on premises consumption within five hundred (500) feet of any hospital, school, church, day care or other place of public gathering. The distance shall be measured in a straight line<sup>1</sup> from the nearest point on the property line upon which sits the building from which the beer will be sold for on premises consumption to the nearest point on the property line of the hospital, school, church, day care or other place of public gathering. No permit shall be suspended, revoked or denied on the basis of proximity of the establishment to a hospital, school, church, day care 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 for on premises consumption at that location during any continuous six-month period after January 1, 1993. (as amended by Ord. #200212, Oct. 2002)

**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 or who has been convicted of driving under the influence of an intoxicant, drug or

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<sup>1</sup>State 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.



drug producing stimulant; or convicted of public intoxication; or convicted of any crime involving alcohol and/or drugs 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 or who has been convicted of driving under the influence of an intoxicant, drug or drug producing stimulant; or convicted of public intoxication; or convicted of any crime involving alcohol and/or drugs within the past ten (10) years. (as amended by Ord. #200104, June 2001)

**8-212. 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 eighteen (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 between 12:01 A.M. Sunday and 1:00 P.M. Sunday, and 6:00 P.M. Sunday to 6:00 A.M. Monday. No beer shall be consumed, or opened for consumption, on or about any premises licensed, in either bottle, glass, or other container, after 12:15 A.M. Tuesday through Sunday nor after 6:15 P.M. on Sunday evening.

(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. (as amended by Ord. #200102, March 2001)

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

**8-214. Civil penalty in lieu of suspension or revocation.** Pursuant to Tennessee Code Annotated, § 57-5-108(a)(2) the board may assess a civil penalty against a permit holder in lieu of suspension or revocation of said permit. Such penalty may be up to one thousand five hundred dollars (\$1,500) for each offense of making or allowing sales to minors and up to one thousand dollars (\$1,000) for any other violation. The permit holder shall have seven (7) days to pay aforementioned penalty before the suspension or revocation takes effect. Payment of the penalty does not effect the permit holders right to seek judicial review of the suspension or revocation pursuant to the general laws of the State of Tennessee.

**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 clause of this code. Each day a violation shall be allowed to continue shall constitute a separate offense.

**8-216. Revocation of license.** Where a permit or license is revoked, no new license or permit shall be issued to permit the sale of beer on the same premises until after the expiration of one (1) year from the date the revocation becomes final and effective. The board, in its discretion, may determine that issuance of a license or permit before the expiration of one (1) year from the date of revocation becomes final is appropriate, if the individual applying for such issuance is not the original holder of the license or any family member who could inherit from such individual under the statute of intestate succession.

**8-217. Minors in beer places.**<sup>1</sup> (1) Definitions. (a) Minor shall be any person under twenty-one (21) years of age.

(b) Loitering shall mean that a minor may not be allowed in nor stay on the premises of any establishment that sells beer for on premises consumption as hereinafter stated.

(2) No minor shall be allowed to loiter on the premises of any establishment that sells beer for on premises consumption unless such establishment has a gross revenue of seventy percent (70%) of its income derived from the sale of food. (As added by Ord. #200003, March 2000)

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<sup>1</sup>Municipal code reference

Minors in beer places: § 11-102.