

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 municipality. "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. (1978 Code, § 2-101)

¹State law reference
Tennessee Code Annotated, title 57.

²State law reference
Tennessee Code Annotated, title 39, chapter 17.

CHAPTER 2

BEER¹

SECTION

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8-201. Beer business lawful but subject to regulation. As set forth by Tennessee Code Annotated, § 57-5-101 it shall hereafter be lawful to sell, store for resale, distribute, or manufacture beer of alcoholic content of not more than five percent (5%) by weight, or other beverages of a like alcoholic content, within the corporate limits of the Town of Linden, Tennessee, subject to all of the regulations, limitations, and restrictions hereinafter provided. (1978 Code, § 2-201)

8-202. Beer board created. There is hereby created a board, which shall be known and designated as the "beer board" of the Town of Linden, Tennessee. Such board shall be composed of the mayor and aldermen of the Town of Linden, Tennessee, or a board composed of three (3) members appointed by the board of mayor and aldermen. (1978 Code, § 2-202)

8-203. Restrictions on issuance of permits. Permits issued for the retail sale of beverages coming within the provisions of this chapter shall be

¹State 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).

restricted to permits providing for off-premise consumption only. Further, permits will be restricted to locations where the principal business activity of the permittee is the sale of groceries, food supplies, other related items and for any legitimate business activity. The determination of the principal business activity of the permittee will be based on an average inventory over a period of one calendar year, wherein the inventory of beer stored and sold shall not exceed 49% of the total of such average inventory. (1978 Code, § 2-204, as amended by Ord. #03-4-A, May 2003)

8-204. Application for permit. Before any permit is issued by the beer board, the applicant therefor shall file with the beer board a sworn petition in writing on forms prescribed and furnished by the board, and shall establish the following:

- (1) That the applicant is a citizen of the United States, or if a syndicate or association, that all the members thereof are citizens of the United States.
- (2) The location of the premises at which the business shall be conducted.
- (3) The owner or owners of such premises.
- (4) That no person will be employed in the sale, storage for resale, distribution, or manufacture of such beverages except those who are citizens of the United States.
- (5) That the applicant will not engage in the sale of such beverages except at the place or places for which the beer board has issued permits to such applicant.
- (6) That no sale of such beverages will be made except in accordance with the permit granted.
- (7) That no sale will be made for consumption on the premises and that no consumption will be allowed on the premises thereof.
- (8) That no sale will be made to minors, and that the applicant will not permit minors or disorderly or disreputable persons heretofore connected with the violation of liquor laws to loiter around the place of business.
- (9) That neither the applicant nor any persons employed, or to be employed, by him in such distribution or sale of such beverage, has ever been convicted of any violation of the law against prohibition, sale, manufacture, or transportation of intoxicating liquor, or of any crime involving moral turpitude within the past ten (10) years.
- (10) That the applicant will conduct the business in person, for himself, or if he is acting as agent, the applicant shall state the person, firm or corporation, syndicate, association or joint stock company, or companies for whom the applicant intends to act. (1978 Code, § 2-205)

8-205. Suspension or revocation of permits; hearings. All permits issued by the beer board under the provisions of this chapter shall be subject to

suspension or revocation by said board for the violation of any of the provisions of the state beer act or any of the provisions of this chapter.

The board created by this chapter is vested with full and complete 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 for the violation of the provisions of this chapter or the provisions of the state beer act.

Complaints filed against any permit holder for the purpose of suspending or revoking his permit shall be made in writing and filed with the board. When the board shall have reason to believe that any permit holder shall have violated any of the provisions of this chapter or any of the provisions of the state beer act, the board is authorized, in its discretion, to notify the permittee of said violations and to cite said permittee by written notice to appear and show cause why his permit should not be suspended or revoked for such violation. Said notice to appear and show cause shall state the alleged violations charged and shall be served upon the permittee either by registered letter or by a member of the police department of the Town of Linden, Tennessee. The notice shall be served upon the permittee at least ten (10) days before the date set for 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 such hearing, if the charges are sustained by the evidence, the board may, in its discretion, suspend or revoke said permit. The action of the board in all such hearings shall be final, subject only to review by the court as provided in the state beer act. When a permit is revoked, no new permit shall be issued hereunder for the sale of beer at the same location, until the expiration of one (1) year from the date said revocation becomes final. (1978 Code, § 2-206)

8-206. Permit to be posted. The permit required by this chapter shall be posted in a conspicuous place on the premises of the permit holder. (1978 Code, § 2-207)

8-207. Permit not transferable. Permits issued under the provisions of this chapter are not transferable, either as to location or to successor by purchase, or otherwise, of the business for which the permit was issued, and in either case, a new permit is required in the manner provided herein.

However, when a proper application for a beer permit has been filed as provided in § 8-204 and the required application fee has been paid and the application is prima facie valid, the mayor or city recorder has the authority to issue a temporary beer permit where a new permit is required because of a change as to location or to successor by purchase, or otherwise, of the business for which a permit was originally issued, said permit to be valid for a period of thirty (30) days from date of issuance or until the next meeting of the beer board, whichever occurs first, unless said temporary permit is revoked because

of a violation of other sections of this section or applicable state law. (1978 Code, § 2-208, as amended by Ord. #83-5, _____)

8-208. Wholesalers, distributors, etc., to sell only to licensed retailers. It shall be unlawful for any wholesaler, distributor, or manufacturer of beer, or any of their salesmen or representatives, to sell or deliver beer enroute, or from delivery vehicles, to any person other than holders of valid retail permits and it shall be the duty of such wholesaler, distributor, or manufacturer, their salesmen or representatives, to ascertain whether or not such purchaser is a holder of a valid retail beer permit. (1978 Code, § 2-209)

8-209. Permittees not to sell to persons who are intoxicated, feeble minded, etc. It shall be unlawful and it is hereby declared to be a misdemeanor for any person, firm, corporation, or association, engaged in the business regulated hereunder, to make, or to permit to be made, any sales or distribution of such beverages to persons intoxicated or to sell or distribute such beverages to persons who are feeble minded, insane, or otherwise mentally incapacitated. (1978 Code, § 2-210)

8-210. Hours of sale regulated. It shall hereafter be unlawful and it is hereby declared to be a misdemeanor for any person, persons, firm, corporation, or association to sell or distribute any such beverage regulated hereunder, within the corporate limits of the Town of Linden, Tennessee, between the hours of 12 Midnight and 6:00 A.M. daily, and between the hours of 12 Midnight and 12:00 Noon on Sunday. (1978 Code, § 2-211, as amended by Ord. #97-1, § 1, Aug. 1997)

8-211. Location of beer places restricted. No permit for the sale, storage for resale, distribution, or manufacture of beer of alcoholic content of not more than five percent (5%) by weight, or other beverage of a like alcoholic content shall be issued to an applicant whose building is located within three hundred (300) feet of any church or public school. Such distance shall be measured in a direct line from the church or public school building to the nearest point of the applicant's building. (1978 Code, § 2-212)

8-212. Pinball machines, etc., prohibited in business places selling beer. No gambling devices, pool tables, pinball machines, coin operated music machines or devices shall be permitted to operate upon any premises from which beer is sold. The term "pinball machine" is defined to mean any machine, apparatus, contrivance, appliance, or device which may be operated or played upon the placing or depositing therein of any coin, check, slug, ball or any other article or device, and as a result of the play, action, or operation of such machine, apparatus, contrivance, appliance, or device whether by skill or by chance, a score or result of such play, action or operation is in any way recorded,

exhibited, or made known; including, but not limited to tape machine, card machine, pinball machine, bowling game machine, shuffleboard machine, marble game machine, horse racing machine, basketball game machine, football game machine, pool game machine, or any other similar machine or video device. (1978 Code, § 2-213)

8-213. 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 cash and/or check payable to the Town of Linden. Each applicant must be a person of good moral character and certify that he/she has read and is familiar with the provisions of this chapter. (Ord. #93-3, Oct. 1993)

8-214. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer an annual 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 Town of Linden, Tennessee. At the time a new permit is issued to any business subject to this tax, the permit holder shall be required to pay a privilege tax on a prorated basis for each month or portion thereof remaining until the next tax payment date. (Ord. #93-3, Oct. 1993)

8-215. 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. (Ord. #93-3, Oct. 1993)