

TITLE 8**ALCOHOLIC BEVERAGES¹****CHAPTER**

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2. BEER.

CHAPTER 1**RETAIL SALE OF ALCOHOLIC BEVERAGES****SECTION**

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8-101. Definitions. Whenever used in this chapter, unless the context requires otherwise:

(1) "Alcoholic beverage" or "beverages" means and includes alcohol, spirits, liquor, wine and every liquid containing alcohol, spirits, or wine and capable of being consumed by a human being, other than patented medicine,

¹State law reference

Tennessee Code Annotated, title 57.

beer or wine, where the latter two (2) contain an alcoholic content defined pursuant to *Tennessee Code Annotated*, § 57-5-101.

(2) "Applicant" means any person who shall file an application or request, in whatever form, with the city for a certificate.

(3) "Application fee" shall mean the fee, payable in current funds, to the city by every person applying for a certificate, to help defray the cost to the city in the investigation of the applicant to determine his or her or its qualification or entitlement or the issuance of a certificate.

(4) "Board" refers to the Board of Mayor and Aldermen of the City of Lobelville, Tennessee.

(5) "Certificate" means any certificate issued to any applicant pursuant to this chapter and as a pre-requisite to the issuance of a license under *Tennessee Code Annotated*, title 57, by the State of Tennessee Alcoholic Beverage Commission.

(6) "City" means the City of Lobelville, Tennessee.

(7) "Domiciled" means a person who is presently and has had continuous actual physical residence within the city with an established permanent residence. If a corporation, partnership, firm or association then means that each and every stockholder, officer, director, member, partner or beneficiary shall have such residence within the city.

(8) "Licensee" means any person issued a license or permit to be a retailer within the city by the State of Tennessee Alcoholic Beverage Commission.

(9) "Person" means any natural person as well as any corporation, partnership, firm or association.

(10) "Retail sale" or "sale at retail" means a sale of an alcoholic beverage to a consumer or to any person for any purpose other than for resale by a retailer.

(11) "Retailer" means any person who sells at retail any beverages covered by this chapter.

(12) "Wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed twenty-one percent (21%) by volume.

Words importing the masculine gender shall include the feminine and the neuter, and the singular shall include the plural. (Ord. #04-02, Jan. 2005)

8-102. Regulations applicable. (1) Pursuant to *Tennessee Code Annotated*, title 57, and a referendum held pursuant thereto in the city on the second day of November 2004, this chapter is enacted.

(2) It shall be unlawful to engage in the business of selling, storing, transporting, or distributing, or to purchase or possess alcoholic beverages within the corporate limits of the city, except in accordance with the provisions

of *Tennessee Code Annotated*, title 57, the rules and regulations promulgated there under, and as provided in this chapter. (Ord. #04-02, Jan. 2005)

8-103. Beer regulations unaffected. No provision of this chapter shall be considered or construed as in any way modifying, changing, or restricting the rules and regulations governing the sale, storage, transportation, or tax upon beer or other liquids with an alcoholic content defined pursuant to *Tennessee Code Annotated*, § 57-5-101. (Ord. #04-02, Jan. 2005)

8-104. State laws to be complied with. No person shall act as a retailer unless all the necessary state licenses and permits have been obtained. (Ord. #04-02, Jan. 2005)

8-105. Application fees to be paid by applicant; penalty. The application fee shall be payable by the person making application and no other person shall pay for any such fees. In addition to all other penalties provided for violations of this chapter, a violation of this section shall authorize and require the denial and/or revocation of any certificate issued pursuant to such application and forfeiture of the fee which was paid by another, and also the revocation of the certificate, if any, of the person so paying the application fee of another. (Ord. #04-02, Jan. 2005)

8-106. Failure of a licensee to pay inspection fees, etc. Whenever any licensee fails to account for or pay over to the city any tax, fine or inspection fee, or defaults in any of the conditions of his bond, the city recorder shall report the same to the city attorney who shall immediately institute the necessary action for the recovery of any such defaults in payments and for the revocation of any certificate issued to such person under this chapter. (Ord. #04-02, Jan. 2005)

8-107. Bonds of licensees. A licensee shall execute with a surety company duly authorized and qualified to do business in the State of Tennessee a bond to the city in the amount of two thousand five hundred dollars (\$2,500.00) which shall be conditioned that the principal thereof shall pay any fine, tax, or fee which may be owing or assessed against the principal. (Ord. #04-02, Jan. 2005)

8-108. Effect of conviction of felony involving moral turpitude or of violating laws relating to alcoholic beverages. (1) No certificate shall be issued to any applicant who, within ten (10) years preceding application for such certificate shall have been convicted of a felony involving moral turpitude or shall have been convicted of any offense under the laws of the State of Tennessee, or any other state, or the United States, prohibiting or regulating the sale, possession, transportation, storing or otherwise handling of alcoholic

beverages, or who has during said period been engaged in business, alone or with others, in violation of any such laws or the rules and regulations promulgated pursuant thereto. In case of any conviction occurring after a certificate has been issued hereunder, the certificate shall immediately be revoked, if such convict shall be an individual, and, if not, the partnership, corporation, or association with which he is connected shall immediately discharge him, and failure to do so shall result in the immediate revocation of its certificate.

(2) No retailer shall employ in the storage, sale, or distribution of alcoholic beverages, any person who within ten (10) years prior to the date of his employment shall have been convicted of any such violations as provided in subsection (1) above, and in case an employee should be so convicted, he shall be immediately discharged. Failure of a retailer to immediately discharge such employee shall be cause for revocation of the certificate of such retailer. (Ord. #04-02, Jan. 2005)

8-109. New certificate after revocation. Where a certificate is revoked, no new certificate shall be issued on the same premises of such retailer before the expiration of one (1) year from the date said revocation becomes final and effective. (Ord. #04-02, Jan. 2005)

8-110. Revocation or refusal of retailer to permit examination of books, records, etc. The city is authorized to examine the books, papers, and records of any retailer or applicant for the purpose of determining whether the provisions of this chapter are being complied with. Any refusal to permit the examination of any of such books, papers, and records, or the investigation and examination of such premises, shall constitute sufficient reason for the revocation of any certificate issued to such retailer or the refusal to issue a certificate of any applicant. (Ord. #04-02, Jan. 2005)

8-111. Location restrictions. (1) It shall be unlawful for any person to operate or maintain a retail store for the retail sale of alcoholic beverages in the city that is closer than one hundred feet (100') from a school, church, or public institution, or otherwise inimical to the public interest. A licensee shall not be engaged as a retailer except at the premises recited in his application.

(2) Any change of location of the business location of a retailer shall be cause for immediate revocation of the certificate issued by the board unless the new location is approved in writing prior thereto by the board. (Ord. #04-02, Jan. 2005)

8-112. Restriction on number of stores. There shall be no restriction on the number of stores or locations for the retail sale of liquor within the City of Lobelville. (Ord. #17-03, Aug. 2017)

8-113. Content of application for certificate. Each applicant for a certificate shall file an application on a form provided by the city. A copy of each application form, questionnaire, partnership agreement or any other form or document required to be filed with the State of Tennessee Alcoholic Beverage Commission in connection with an application by the applicant for a state retailer liquor license shall be attached to the city application form and shall become a permanent part thereof as if fully and completely copied verbatim therein. The city attorney shall review the applications and notify the applicants and the board of any errors or insufficiencies noted on the applications. The application form for a certificate shall be signed and verified under oath by all owners, partners, officers, stockholders, directors, members, or otherwise and shall reflect the name of all persons having any financial interest, directly or indirectly, in and to the proposed liquor store. (Ord. #04-02, Jan. 2005)

8-114. Certificate execution. A certificate shall be signed by a majority of the board while in session and conditioned upon the applicant fulfilling the following requirements:

(1) The applicant shall be of good moral character and be personally known to a majority of the board.

(2) If a corporations, partnership, association, or firm, the executive officers and those in control and all owners, partners, stockholders, directors and members shall be of good moral character and personally known to a majority of the board.

(3) The financial condition of the applicant, and in the case of a corporation, partnership, association, or firm, also its executive officers, partners, directors, stockholders and members, is such as in the opinion of a majority of the board shall be solvent so as to likely cause the proposed liquor store to be operated in a commercially reasonable and sound manner.

(4) The applicant has not violated any of the provisions of this chapter and is otherwise entitled to the issuance of a license by the State of Tennessee Alcoholic Beverage Commission.

(5) The disclosure of the location or site that the applicant proposes to do business as a retailer and the owner of such premises and mortgage holder, if any. If the premises are leased, a copy of the lease agreement shall be attached. If the premises are owned, a copy of the title deed shall be attached. If the premises are mortgaged, a copy of the mortgage instrument shall be attached.

(6) The disclosure of the financial interest of any person in the application or in the operation of the retailer upon licensing by the State of Tennessee.

(7) That no applicant shall, either individually or as a member of a partnership, association, and firm or as a stockholder, officer, or director of a corporation, be on more than one (1) application.

(8) The applicant, if an individual, and each and every partner, member, director, stockholder, or executive officer, if a firm, partnership, corporation, or association, shall have been domiciled for not less than one (1) year next preceding the date of the application.

(9) Each individual applicant or individuals on an application at the time of filing of an application for a certificate shall pay a non-refundable application fee of five hundred dollars (\$500.00) to partially defray the cost of investigation of each such applicant or individual and processing of said application. (Ord. #04-02, Jan. 2005)

8-115. Transfer of license or store. No sale, transfer or gift of any interest of any nature, either financial or otherwise, in any store or license of any licensee shall be made without first obtaining the written approval of the board and the issuance of a certificate to a proposed owner, stockholder, member, partner, director, or otherwise. (Ord. #04-02, Jan. 2005)

8-116. Inspection fees. (1) Definitions. For the purposes of this section, the material words and phrases shall have the meanings respectively ascribed to them under *Tennessee Code Annotated*, § 57-3-101, and by § 8-101 hereof.

(2) Amount. For the purposes of providing a means of regulating, inspecting, and supervising the liquor business in the city, there is levied and imposed upon each retailer an inspection fee at the rate of eight percent (8%) of the wholesale price of alcoholic beverages supplied by any wholesaler to such retailer. The fee shall be measured by the wholesale price of the alcoholic beverages sold by all such wholesalers and paid by all such retailers and shall be eight percent (8%) of such wholesale price.

(3) Collection by wholesaler from retailer. The inspection fee shall be collected by the wholesaler from the retailer at the time of the sale or at the time the retailer makes payment for the delivery of the alcoholic beverages.

(4) Fees to be held until paid to city. Every such wholesaler shall hold the fees imposed under the authority of this section until paid to the city as hereinafter provided.

(5) Monthly report and payment. Each wholesaler making sales to retailers located within the city shall furnish the city a report monthly and which report shall contain the following:

(a) The name and address of the retailer;

(b) The gross wholesale price of the alcoholic beverages sold to such retailer; and

(c) The amount of tax due under this section.

(6) Due date of wholesalers' reports and payment. The monthly report shall be furnished to the city recorder not later than the twentieth (20th) day of the month following which the sales were made and the inspection fees collected by the wholesaler from the retailers shall be paid to the city at the time the monthly report is made.

(7) Wholesalers' fee for collection of inspection fees. Wholesalers collecting and remitting the inspection fee to the city shall be entitled to reimbursement for this collection service in a sum equal to five percent (5%) of the total amount of inspection fees collected and remitted. Such reimbursement shall be deducted and shown on the monthly report to the city.

(8) Failure to report and remit fees. Each wholesaler who fails to collect and/or remit the inspection fees imposed hereunder shall be liable for a penalty of ten percent (10%) of the fees due the city.

(9) Audit of wholesalers' records. The city may audit the records of all wholesalers subject to the provisions of this section in order to determine the accuracy of said monthly reports.

(10) Disposition of fees. The city recorder shall deposit any and all monies collected pursuant to this section into the general fund of the city. (Ord. #04-02, Jan. 2005)

8-117. Sales to persons intoxicated, etc. No retailer shall sell any alcoholic beverages to any person who is drunk, nor to any person accompanied by a person who is drunk. (Ord. #04-02, Jan. 2005)

8-118. Public drinking and display prohibited. It shall be unlawful for any person to drink any alcoholic beverages or physically and openly possess, display, exhibit, or show an unsealed bottle containing any alcoholic beverage in the parking area of any drive-in restaurant, shopping center, or parking area of any business premises, or on any public street or sidewalk, or in any public park, playground, theater, stadium, school, or school ground. (Ord. #04-02, Jan. 2005)

8-119. Violations and penalty. Any person who shall violate any provision of this chapter shall be punishable by a fine of fifty dollars (\$50.00) and in the case of a retailer shall, in the discretion of the board, be cause for revocation of the certificate issued to such retailer. (Ord. #04-02, Jan. 2005)

CHAPTER 2

BEER¹

SECTION

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8-201. Beer business lawful but subject to regulation. It shall hereafter be lawful to sell, store for resale, distribute or manufacture beer of alcoholic content of not more than defined pursuant to *Tennessee Code Annotated*, § 57-5-101, or other beverage of like alcoholic content, within the corporate limits of the City of Lobelville, Tennessee, subject to the regulations, limitations and restrictions hereinafter provided. (1996 Code, § 8-201)

8-202. Beer board created. There is hereby created a board, which shall be known and designated as the Beer Board of the City of Lobelville, Tennessee. Such board shall be composed of the Board of Mayor and Aldermen of the City of Lobelville, Tennessee. (1996 Code, § 8-202)

8-203. Permit required for engaging in beer business. No person shall engage in the selling, storing for resale, distributing or manufacturing of beer or other beverage regulated hereby, within said corporate limits until he receives a permit to do so from the beer board. Said permit shall at all times be subject to the limitations and restrictions herein provided. (1996 Code, § 8-203)

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).

8-204. Limitations on issuance of permits. Off-premises permits issued for the retail sale of beverages coming within the provisions of this chapter for consumption off the premises of the permit holder shall be restricted to locations where the principal business activity of the permit holder is the sale of groceries, food supplies, and other related items. On-premises permits issued for the retail sale of beverages coming within the provisions of this chapter for consumption on and off the premises of the permit holder shall be restricted to private clubs chartered by the State of Tennessee prior to January 1, 1976, and in operation on or before January 1, 1976. (1996 Code, § 8-204)

8-205. Petitions for beer permits. Before any permit is issued by the beer board, the applicant shall file with the beer board a sworn petition in writing on forms prescribed by and furnished by the board, which shall establish the following:

(1) The location of the premises at which the business shall be conducted;

(2) The owner or owners of such premises;

(3) 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;

(4) That no sale of such beverages will be made except in accordance with the permit granted;

(5) That off-premises permit holders will make no sale for consumption on the premises and that no consumption will be allowed on the premises of off-premises permit holders;

(6) That no sale will be made to minors or persons intoxicated and that the applicant will not allow minors, disorderly or disreputable persons, or persons heretofore connected with the violation of liquor laws to loiter in or around the place of business;

(7) That neither the applicant nor any persons employed or to be employed by him in such distribution or sale has been convicted of any violation of the laws against possession, sale, manufacture or transportation of intoxicating liquor, or any crime involving moral turpitude, within the past ten (10) years; and

(8) 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, corporation, syndicate, association or joint stock company or companies for which the applicant intends to act.

Before any permit is issued by the beer board, the applicant shall appear before the beer board in person at a time and place not inconsistent with this code and the laws of the State of Tennessee. (1996 Code, § 8-205)

8-206. Suspension or revocation of permits. 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 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 state beer act. Any misrepresentation of a material fact in the application may be grounds for the suspension or revocation of the permit. Complaints against any permit holder for the purpose of suspending or revoking such permit may be filed by any person. Such complaints shall be made in writing, signed by the complaining party, and filed with the board. When the board has reason to believe that any permit holder has violated any of the provisions of this chapter or of the state beer act, then the board shall notify the permittee of the alleged violation and cite him by written notice to appear and show cause why his permit should not be suspended or revoked. Such citations shall be served upon the permittee either by registered letter to the address shown on his permit application or by personal delivery by a member of the board or its authorized representative. The notice shall be served upon the permittee at least ten (10) days before the date set for the hearing. Service by mail is complete one (1) day after mailing. At the hearing, which shall be public, the board shall hear the evidence 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 use at the same location, until the expiration of one (1) year from the date said revocation becomes final. (1996 Code, § 8-206)

8-207. Permits not transferable. Permits issued under the provisions of this chapter are not transferable, either as to location or to any heir or transferee of the permittee. (1996 Code, § 8-207)

8-208. Wholesalers, distributors, and manufacturers to sell and deliver only to licensed retailers. It shall be unlawful for any wholesaler, distributor, or manufacturer of beer or other beverage regulated hereunder, or any of their salesmen or representatives, to sell or deliver such beverages to any person in the corporate limits other than the 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 or deliverer is a holder of a valid beer permit. (1996 Code, § 8-208)

8-209. Sales to minors, intoxicated, or feeble-minded persons. 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 sale or distribution of such beverages to

a person who is a minor, or is intoxicated, feeble-minded, insane, or otherwise mentally incapacitated. (1996 Code, § 8-209)

8-210. Purchases by or for a minor. It shall be unlawful for any minor to purchase or attempt to purchase any beverage regulated hereunder and it shall be unlawful for any minor to present or offer to permittee, his agent or employee, any written evidence of his age which is false, fraudulent, or not actually his own, for the purpose of purchasing or attempting to procure such beverage. It shall also be unlawful for any person to purchase beer to be consumed by or delivered to a minor. (1996 Code, § 8-210)

8-211. Hours for sale and distribution. It shall hereafter be unlawful, and it is hereby declared to be a misdemeanor for any person, firm, corporation, or association to sell or distribute beer within the corporate limits of the City of Lobelville, Tennessee, between the hours of 12:00 midnight and 5:00 A.M. every day of the week. (1996 Code, § 8-211, as amended by Ord. #06-02, Aug. 2006)

8-212. Location near churches, schools, etc. No permit shall be issued to an applicant for use at a location which is less than one hundred feet (100') from a church, public school, public park or regulated public playground. In determining the distance from a church or public school, the distance shall be measured from the center of the nearest permanent entrance to the church or public school building being used for religious or educational purposes, following the usual and customary path of pedestrian travel, to the center of the main entrance of the applicant's place of business. The distance from a public park or regulated playground shall be measured from the nearest boundary of same to the center of the main entrance of the applicant's place of business. (1996 Code, § 8-212)

8-213. Public consumption. It shall be unlawful to consume any beverage regulated hereunder or to be in possession of an open container of same for the purpose of consumption, upon any street, alley, sidewalk or other public thoroughfare, or in any public building, park or other public place within the corporate limits of the City of Lobelville, Tennessee. (1996 Code, § 8-213)

8-214. Violations and penalty. Any person in violation of any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a penalty under the general penalty clause for this municipal code. In the case of an alleged violation by a person seventeen (17) years of age or less, he shall be taken before the Juvenile Judge of Perry County, Tennessee, for appropriate disposition. (1996 Code, § 8-214)