

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

1. INTOXICATING LIQUORS.
2. BEER.

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

8-101. Prohibited generally.

8-101. Prohibited generally. Except when he is lawfully acting pursuant to the authority of an applicable state law², it shall be unlawful for any person, acting for himself or for any other 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. (1970 Code, § 2-101)

¹State law reference
Tennessee Code Annotated, title 57.

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

CHAPTER 2

BEER³

SECTION

- 8-201. "Beer" defined.
- 8-202. Permit required for engaging in beer business; application therefor; collection of application fee.
- 8-203. Beer permits shall be restrictive.
- 8-204. Issuance of permits to aliens prohibited.
- 8-205. Interference with public health, safety, and morals prohibited.
- 8-206. Issuance of permits to persons convicted of certain crimes prohibited.
- 8-207. Prohibited conduct or activities by beer permit holders.
- 8-208. Privilege tax.
- 8-209. Civil penalty in lieu of revocation or suspension.
- 8-210. Revocation of beer permits.
- 8-211. Beer permit board.
- 8-212. Loss of certification for sale to minor.
- 8-213. Signage requirements of permittees.

8-201. "Beer" defined. The term "beer" as used in this chapter means and includes all beers, ales and other malt beverages or any other beverage having an alcoholic content of not more than eight percent (8%) by weight; provided, however, no more than forty-nine percent (49%) of the overall alcoholic content of such beverages may be derived from the addition of flavors and other non-beverage ingredients containing alcohol. (1970 Code, § 2-201, as replaced by Ord. #325, Dec. 2022 *Ch6_06-13-23*)

8-202. Permit required for engaging in beer business; application therefor; collection of application fee. (1) 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 board of mayor and aldermen.

(2) The application shall be made on such form as the board of mayor and aldermen shall prescribe and/or furnish and shall be accompanied by a non-refundable fee in the amount of two hundred fifty dollars (\$250.00) to cover the cost of administration and for investigation of the applicant. A separate application and payment of a separate fee shall be required for each location for

³State 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).

which the applicant shall seek a permit and a separate permit shall be held by an applicant for each and all locations where such applicant seeks to sell, store for sale, distribute for sale, or manufacture beer as authorized in this chapter.

(3) Each application shall be accompanied by and there shall remain in full force and effect during all times that a permit shall be outstanding a bond in the penal amount of \$2,000 in favor of the Board of Mayor and Aldermen of the City of McEwen, Tennessee, conditioned that the applicant and permittee shall at all times be lawfully engaged in the sale, storage for sale, distribution for sale, or manufacture of beer pursuant to the permit granted to such applicant and shall at all times operate pursuant to the provisions of and in accordance with the McEwen Municipal Code and the laws of the State of Tennessee and in default thereof such amount to be recoverable by the city. Such bond shall be made by the applicant with two good and solvent sureties as may be approved by the board of mayor and aldermen.

(4) Every person granted a permit pursuant to this chapter shall be a person of good moral character and the applicant shall certify on the application that he or she has read and is familiar with the provisions of this chapter. (1970 Code, § 2-202, as amended by Ord. #167, Jan. 1994)

8-203. Beer permits shall be restrictive. (1) All beer permits shall be restrictive as to the type of beer business authorized under an issued permit.

(2) Beer permits for the retail sale of beer may be for either off-premises consumption or for on-premises consumption.

(3) Beer permits for on-premises consumption will only be issued to a restaurant which derives at least seventy-five percent (75%) of its gross sales revenue from the sale of food. In no event will a retail permit issue to an applicant for on-premises consumption of beer at a bar, tavern, beer joint, honky tonk, or dance hall nor to operate any business of any kind where twenty-five percent (25%) or more of gross annual revenue is derived from sale of beer.

(4) No restaurant having a permit for on-premises consumption will be allowed to sell beer to go, or for pick up or to at patron purchasing beer to on leaving the establishment.

(5) No holder of a permit to sell beer for on-premises consumption will allow dancing, billiard playing, video and digital game machines, pinball, or juke boxes on the premises; provided, however, live musical performances will be allowed.

(6) No permit holder will engage in any type or phase of beer business not expressly allowed under the permit issued.

(7) Sale of beer by permit holders for off-premises consumption will be allowed seven (7) days per week without limitation as to daily hours.

(8) Sale of beer by permit holders for on-premises consumption will be allowed seven (7) days per week between the hours of 11:00 o'clock A.M. and 11:00 P.M. (1970 Code, § 2-203, as replaced by Ord. #325, Dec. 2022
Ch6_06-13-23)

8-204. Issuance of permits to aliens prohibited. No permit to sell beer shall be granted to a natural person who is not a citizen of the United States nor who has not been a lawful resident of the United States for at least one (1) year immediately preceding the date of application for a permit nor to a nonnatural person such as a privately held corporation, limited liability company, syndicate, partnership or other similar form of organization unless all members, interest holders and beneficiaries thereof meet said citizenship and residency requirements; provided, however, such citizenship and residency requirement will not apply to an applicant whose shares or ownership interests are publically traded. (1970 Code, § 2-204, as replaced by Ord. #325, Dec. 2022, *Ch6_06-13-23*)

8-205. 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. (1970 Code, § 2-205, as replaced by Ord. #325, Dec. 2022, *Ch6_06-13-23*)

8-206. 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. (1970 Code, § 2-206)

8-207. Prohibited conduct or activities by beer permit holders. It shall be unlawful for any beer permit holder to:

(1) Employ any person who shall have been convicted for any violation of the intoxicating liquor laws or of any crime involving moral turpitude.

(2) Employ any person in connection with the sale, storage, distribution or manufacture of beer who shall be under the age of eighteen (18) years.

(3) Make or allow a sale of beer to a person under twenty-one (21) years of age.

(4) Allow any person to loiter in or about his or her or its place of business who shall be under the minimum age as may be prescribed by the general laws of the State of Tennessee to purchase beer.

(5) Make or allow any sale of beer to any intoxicated person or to any feeble minded, insane, or otherwise mentally incapacitated person.

(6) Allow drunk or disruptable persons to loiter about his or her or its premises.

(7) Allow dancing on his or her or its premises.

(8) Allow pool or billiard playing or the playing of pinball or video game machines in the same room on his or her or its premises where beer is

sold. (1970 Code, § 2-207, modified, as amended by Ord. #250, Feb. 2008, Ord. #252, June 2008, and Ord. #325, Dec. 2022 *Ch6_06-13-23*)

8-208. Privilege tax. There is hereby imposed and levied upon every holder of a permit issued pursuant to title 8, chapter 2 of the McEwen Municipal Code an annual privilege tax of one hundred dollars (\$100.00). Such tax shall be remitted and paid to the recorder, without proration, at the time of the payment of a required permit application fee. If the permit is not granted the tax as paid shall be refunded in full. The holder of a permit on December 31 of any calendar year as a condition for retaining such permit for the succeeding calendar year shall pay such annual privilege tax to the recorder no later than the 10th day of January following. Upon payment the same shall be non-refundable. Failure to pay such annual privilege tax by the due date shall result in the immediate suspension of any existing permit held by such permit holder and upon due notice the permit shall be revoked. (Ord. #167, Jan. 1994)

8-209. 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 pursuant to Tennessee Code Annotated, § 57-5-601, et seq.

(2) Penalty, revocation or suspension. At the time it imposes a revocation or suspension the board may offer a permit holder who 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 a sale to a minor or a civil penalty not to exceed one thousand dollars (\$1,000.00) for any other offense.

(3) If a civil penalty is initially imposed on a responsible vendor pursuant to § 8-210(2) or is offered and accepted as an alternative to revocation or suspension pursuant to § 8-209(2) the permit holder shall have seven (7) days within which to pay the civil penalty before the revocation or suspension goes into effect. If the civil penalty is paid within that time an order of revocation or suspension shall be deemed withdrawn.

(4) Payment of a civil penalty pursuant to § 8-210 by a permit holder shall be an admission of the violation as charged and shall be paid to the exclusion of any other penalty that the city may impose. (Ord. #167, Jan. 1994, as replaced by Ord. #250, Feb. 2008)

8-210. Revocation of beer permits. (1) The board of mayor and aldermen 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 of mayor and aldermen 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 board of mayor and aldermen.

(2) The board shall not immediately revoke nor suspend the permit of a vendor who is qualified under the requirements of Tennessee Code Annotated, § 57-5-606, whose status as a certified responsible vendor has not been revoked, for a violation of this chapter when committed by a person then properly certified and who has attended annual meetings since his or her original certification, but shall impose a civil penalty not to exceed one thousand dollars (\$1,000.00) for each offense. (1970 Code, § 2-208, as amended by Ord. #250, Feb. 2008)

8-211. Beer permit board. To exercise the authority of the board of mayor and alderman relative to issuance, revocation and suspensions of beer permits and imposition of civil penalties relative thereto in lieu of suspensions, but not for the purpose of adopting rules or regulations relative to engaging in beer business within the municipal corporation, there is established the "McEwen Beer Permit Board" to consist of three (3) persons resident of the municipal corporation. Such members shall be appointed by the mayor and confirmed by the board of aldermen. Members shall serve at the pleasure of the mayor. Members shall not engage, directly or indirectly, in the beer business. Decisions of the McEwen Beer Permit Board shall not be reviewed by the board of mayor and alderman, but review thereof shall be as otherwise provided by law from final decisions of the board of mayor and alderman relative to granting, revoking or suspending of beer permits. (as added by Ord. #227, Sept. 2003)

8-212. Loss of certification for sale to minor. If the board determines that a clerk of an off-premises beer permit holder who is certified under Tennessee Code Annotated, § 57-5-606 has sold beer to a minor, the chief of police shall report the name of the clerk to the state alcoholic beverage commission within fifteen (15) days of such determination. The certification of the clerk shall be invalid and the clerk may not reapply for a new certification for a period of one (1) year from the date of such determination. (as added by Ord. #250, Feb. 2008)

8-213. Signage requirements of permittees. Permit holders shall at all times:

(1) Have posted a clearly visible eight and one-half inch by five and one-half inch (8 1/2" x 5 1/2") sign that reads as follows: "If You Aren't 21 and Are In Possession of Beer, You Could Lose Your Driver's License;" and

(2) Have posted a clearly visible sign eight and one-half inch by eleven inch (8 1/2" x 11") sign that shall read as follows: "State Law Requires Identification For The Sale of Beer." (as added by Ord. #250, Feb. 2008)