

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

1. INTOXICATING LIQUORS.
2. BEER.
3. SALE OF INTOXICATING LIQUOR FOR CONSUMPTION ON PREMISES.

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

8-101. Intoxicating liquors prohibited; exception.

8-102. Public intoxication.

8-101. Intoxicating liquors prohibited, exception. (1) As used in this section, the words "intoxicating liquor" shall be construed to include whiskey, wine, "homebrew," "moonshine" and all other intoxicating, spiritous, vinous or malt liquors and beers which contain more than five percent (5%) of alcohol by weight.

(2) It shall be unlawful for any person to manufacture or attempt to manufacture, receive, possess, store, transport, sell or attempt to sell or furnish any intoxicating liquor within the city.

(3) Nothing in subsection (2) shall make it unlawful:

(a) For any priest or minister of any religious denomination or sect to receive and possess wines for sacramental purposes or for any common or other carrier to ship or transport wine to any priest or minister for such purposes.

(b) For any common carrier to transport intoxicating liquor through the city when the carrier has a valid bill of lading for the intoxicating liquor which is consigned from and addressed to persons located outside the city in areas where the possession of intoxicating liquor has been legalized. (Ord. #2007-19, May 2007)

8-102. Public intoxication. It shall be unlawful for any person to be intoxicated in a public place. (Ord. #2007-19, May 2007)

¹State law reference

Tennessee Code Annotated, title 57.

CHAPTER 2

BEER¹

SECTION

- 8-201. Possession and sale lawful, subject to state law and this chapter.
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8-201. Possession and sale lawful, subject to state law and this chapter. The transportation, storage, sale, distribution, possession or manufacture of beer or ale of an alcoholic content of not more than five percent (5%) by weight within the city shall be lawful, but subject to the regulations prescribed by the state in Tennessee Code Annotated, title 57, chapter 2, and as prescribed in this chapter. (Ord. #2007-19, May 2007)

8-202. Consumption or possession in public places. It shall be unlawful for any person to drink or consume, or to have an open can or bottle of beer, on the public streets, alleys, avenues, highways, sidewalks, public parks,

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).

public school grounds or any other public place within the city unless the premises has a beer permit issued pursuant to this chapter. (Ord. #2007-19, May 2007)

8-203. Privilege license required. It shall be unlawful for any person to sell, store or manufacture beer or other beverage subject to this chapter without first obtaining a privilege license therefor as required by §5-101. (Ord. #2007-19, May 2007)

8-204. Hours of sale. It shall be unlawful for any person to sell or distribute any beer or other beverage subject to this chapter within the city between the hours of 3:00 A.M. and 8:00 A.M. on weekdays or 1:00 A.M. and noon on Sundays. (Ord. #2007-19, May 2007)

8-205. Wholesale beer tax. The recorder shall collect for the city the seventeen percent (17%) wholesale beer tax levied by the Wholesale Beer Tax Act as set out in Tennessee Code Annotated, chapter 3, title 57. (Ord. #2007-19, May 2007)

8-206. Beer board--created; composition; appointment of members. There is hereby created a board, to be known as the Beer Board of the City of Newport, consisting of three (3) members appointed by the board of mayor and aldermen. (Ord. #2007-19, May 2007)

8-207. Beer board--qualifications of members. No person shall be eligible for membership on the beer board unless he shall have been a resident and taxpayer of the city for at least one (1) year next preceding the date of his appointment, shall be at least twenty-one (21) years of age and shall be a resident citizen of the United States. (Ord. #2007-19, May 2007)

8-208. Beer board--terms of members. All members of the beer board shall serve and hold office for a term of one (1) year and until their successors are appointed and qualified. (Ord. #2007-19, May 2007)

8-209. Beer board--filling vacancies. When any vacancy occurs in the beer board by reason of the death, resignation or removal of a member or other cause, the vacancy shall be filled by an appointment made by the board of mayor and aldermen at its next succeeding regular meeting after the vacancy occurs, or as soon thereafter as is reasonably practicable. (Ord. #2007-19, May 2007)

8-210. Beer board--organization; chairman. Within ten (10) days after their appointment, the members of the beer board shall hold a meeting for the purpose of effecting the organization of the beer board. The beer board shall select one of its number to act as chairman. The chairman shall preside at all

meetings of the beer board and shall keep a detailed and accurate record of all action taken by the beer board. (Ord. #2007-19, May 2007)

8-211. Beer board--meetings. Meetings of the beer board shall be held at such times as designated by it and upon the call of its chairman, when necessary and proper to effectually carry out the provisions of this chapter. (Ord. #2007-19, May 2007)

8-212. Beer board--quorum. At all meetings of the beer board, a majority shall constitute a quorum and the beer board shall act only by vote of a majority of all its members. (Ord. #2007-19, May 2007)

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 fifty dollars (\$250.00). Said fee shall be in the form of cash or check made payable to the City of Newport. Each applicant must be a person of good moral character and certify that he has read and is familiar with the provisions of this.

(1) Privilege tax. There is hereby imposed in the business of selling, distributing, storing or manufacturing beer an annual privilege tax of one hundred dollars (\$100.00). 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 Newport, 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 payment date.

(2) 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 one thousand five hundred dollars (\$1,500.00) for each offense of making or permitting to be made any sales to minors or, 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. #2007-19, May 2007)

8-214. Application. (1) Each applicant for a permit required by this chapter shall submit a written application which shall establish the following:

(a) That if the applicant is a firm or corporation it is authorized to conduct business in the state.

(b) That the applicant has not been convicted of any violation of the laws of the state prohibiting the possession, sale, manufacture or transportation of intoxicating liquor or of any other crime involving moral turpitude within the past ten (10) years.

(c) That, in the contemplated place of business, proper sanitary facilities are available.

(d) That the contemplated place of business is so located as not to likely cause congestion of traffic or interference with schools or churches or interfere otherwise with the public health, safety and morals.

(e) That the applicant is of good character and repute.

(f) That the applicant is the owner or a stockholder, if the business is a firm or corporation, and whether a wholesale or retail sale or distribution is contemplated.

(2) Each application for a permit required by this chapter shall be filed with the chairman of the beer board, shall at all times be kept on file by the beer board and shall be open to inspection by the general public at all reasonable times.

(3) Any person making any false statement in his application for a permit required by this chapter shall forfeit his permit and shall not be eligible to receive another permit required by this chapter for a period of ten (10) years thereafter.

(4) Each application for a permit required by this chapter shall be carefully examined by the beer board and a complete record of its action thereon shall be kept in writing as a part of the regular proceedings of the beer board.

(5) A temporary permit may be issued by the finance director to allow the continued sale of alcoholic beverages at a location which presently has a valid permit. A temporary permit may be issued in order to allow a new application to be administratively processed and considered by the beverage board. The applicant for a temporary permit shall meet all requirements set forth in these ordinances and the temporary permit shall not be issued for more than sixty (60) days and regardless of stated ending date, the temporary permit ends the date the beer board rules on the applicant's permanent beer sales permit. The non-refundable application fee for a temporary beer permit is fifty dollars (\$50.00). (Ord. #2007-19, May 2007)

8-215. Limitation on number of beer permits authorized to be issued. (1) The beer board is expressly prohibited from issuing any permit required by this chapter when the number of existing, currently effective beer permits for on premises consumption in the city equals one (1) for each two hundred seventy-five (275) inhabitants of the city according to the latest federal census. Any beer permit issued in violation of this section shall be null and void.

(2) Beer permits issued for "off premises consumption" are not governed by the limitations of this section. (Ord. #2007-19, May 2007)

8-216. Locations ineligible for permit. (1) No beer permit for on premises consumption shall be issued to any person to sell or distribute any beer or other beverage regulated by this chapter at any location which is situated closer than three hundred and fifty (350) feet from premises upon which is located a church or other place of public worship, or upon which is located a school. Any permit issued pursuant to this chapter in violation of this section shall be null and void.

(2) Beer permits issued for "off premises consumption" are not governed by the limitations of this section. (Ord. #2007-19, May 2007)

8-217. Issuance; contents. Upon favorable action by the beer board on any application submitted to it for a permit required by this chapter, the permit shall be issued to the applicant. The permit shall contain the name of the applicant, the type of beer business authorized, the location of the premises where the business is authorized, the date of issuance, the signature of the chairman of the beer board and such reasonable conditions or restrictions as the beer board may direct. (Ord. #2007-19, May 2007)

8-218. Duration of permit. Any permit issued by the beer board pursuant to this chapter which is not utilized within a period of fifteen (15) days and then thereafter continuously so used, for the purpose for which it was issued shall lapse and become null and void; otherwise, it shall remain in full force and effect until its revocation by the beer board in the manner prescribed in this chapter. (Ord. #2007-19, May 2007)

8-219. Scope of permit; bond. A permit issued pursuant to this chapter shall entitle the permittee, upon his payment of all applicable privilege taxes and conditioned upon his continuing to pay the applicable privilege taxes and any fines assessed against him for violations of this chapter, to obtain from the recorder the privilege license required by this chapter. (Ord. #2007-19, May 2007)

8-220. Restrictions on signs. It shall be unlawful for any person holding a beer permit issued pursuant to this chapter to hang or maintain any sign advertising beer so that the sign extends perpendicularly over any street or sidewalk. No person holding a beer permit issued pursuant to this chapter shall maintain outside or window beer signs with a combined total area exceeding six (6) square feet. (Ord. #2007-19, May 2007)

8-221. Grounds for revocation; unlawful acts. It shall be unlawful and grounds for the revocation of a permit issued pursuant to this chapter for any permittee under this chapter to do, permit or suffer any of the following acts:

- (1) To make or permit to be made any sales or distribution of beer to persons under twenty-one (21) years of age;
- (2) To employ directly in the sale or distribution of beverages subject to this chapter or to permit persons under twenty-one (21) years of age to loiter on the premises;
- (3) To sell or distribute beverages subject to this chapter to intoxicated persons or under the influence of intoxicating beverages;
- (4) To sell or distribute beverages subject to this chapter to persons who are feeble-minded, insane or otherwise mentally incapacitated;
- (5) To fail to provide proper sanitary facilities;
- (6) To fail to provide unobstructed visibility, except for hotels and incorporated clubs and lodges, in the front windows;
- (7) To sell or distribute beverages subject to this division at any place where pool or billiards is played unless the sale, distribution and consumption of the beverages is made in the front of the room or place and where a solid partition or wall separates the place from the pool or billiard parlor;
- (8) To sell or distribute beverages subject to this chapter at any place where gambling or dancing is allowed or permitted;
- (9) To allow loud, unusual or obnoxious noises or disorderly conduct on his premises;
- (10) To employ any person who has been convicted of any violation of state statutes prohibiting the possession, sale, manufacture or transportation of intoxicating liquor or of any other crime involving moral turpitude within the past ten (10) years;
- (11) To tolerate within his premises any intoxicating liquor as defined in this chapter;
- (12) To otherwise violate any provision of this chapter or any reasonable condition or restriction written into his permit by the beer board. (Ord. #2007-19, May 2007)

8-222. Suspension or revocation; grounds. (1) Complaints brought for the purpose of suspending or revoking a permit issued pursuant to this chapter shall be made in writing and filed with the chairman of the beer board, who shall thereupon give or cause to be given written notice, accompanied by a copy of the written complaint, commanding the permittee under this chapter to appear, at a time and place designated in the notice, before the beer board and show cause why the permit issued pursuant to this chapter should not be suspended or revoked. The notice shall be served either by registered letter or by any police officer of the city at least ten (10) days prior to the date of the hearing when the permittee is cited to appear. On the specified date, the beer board shall publicly hear and determine the nature and merits of the complaint and, for this purpose, the chairman of the beer board is authorized to compel the attendance of witnesses by subpoena. After the hearing, the beer board may for proper cause suspend or revoke any permit issued pursuant to this chapter.

(2) Upon final hearing and determination by the beer board, either party may remove the cause by certiorari to the next term of the circuit court of the county. (Ord. #2007-19, May 2007)

CHAPTER 3

**SALE OF INTOXICATING LIQUOR FOR
CONSUMPTION ON PREMISES****SECTION**

- 8-301. Subject to certain statutes and restrictions.
- 8-302. Terms defined.
- 8-303. Intoxicating liquors for consumption on premises.
- 8-304. Regulations and prohibited practices.
- 8-305. Revocation of beer permit reported to ABC.
- 8-306. Prohibited sexual or pornographic conduct.
- 8-307. Privilege taxes.
- 8-308. Violations; penalty.
- 8-309. Chapter cumulative and supplemental.

8-301. Subject to certain statutes and restrictions. (1) The general provisions of the state law relating to intoxicating liquors contained in Tennessee Code Annotated, § 57-4-101, et seq., are hereby adopted as part of this chapter and by reference are fully incorporated in this chapter.

(2) Various rules and regulations promulgated from time to time by the Tennessee Alcoholic Beverage Commission and Department of Revenue regarding the sale of intoxicating liquors for consumption on premises are hereby adopted as a part of this chapter and by reference are fully incorporated herein.

(3) It shall be unlawful to sell wine and other alcoholic beverages as defined in Tennessee Code Annotated, § 57-4-102 to be consumed on the premises of any hotel, commercial passenger boat company, restaurant, commercial airlines, passenger trains, premiere type tourist resort or club, convention center, historic performing arts center, permanently constructed facility within an urban park, any historic interpretive center, community theater, historic mansion house site, any restaurant in the terminal building of a commercial air carrier airport, any zoological institution, any museum, within the corporate limits of the City of Newport, Tennessee, except as provided by Tennessee Code Annotated, title 57, and by the rules and regulations promulgate thereunder, and as provided in this chapter. (Ord. #__, Dec. 2004)

8-302. Terms defined. The definitions set forth in Tennessee Code Annotated, § 57-4-102 are hereby incorporated herein as if copied verbatim in their entirety. (Ord. #__, Dec. 2004)

8-303. Intoxicating liquors for consumption on premises. (1) No business which sells intoxicating liquors for consumption on the premises shall be permitted in a location which is zoned other than C-2, C-3, C-4. In addition,

no such business shall be located close to a church (excluding churches in C-2 zone) , or school, or part-time than the minimum distance of separation required for the zone in which the building is located, measured by the length of a straight line drawn from the closest points of the church or school building or park boundary and the building proposed for the sale of intoxicating liquors for consumption on premises. Said minimum distances of separation shall be as follows:

<u>Zone</u>	<u>School</u>	<u>Church</u>	<u>Park</u>
C-1	200'	200'	200'
C-2	200'	200'	200'
C-3	200'	200'	200'

For the purpose of this section the terms "church" and "church building" shall not include any church building or building used for church purposes which is located on privately owned real property. "School" shall mean any primary or secondary public or private school building which is used for school purposes, and shall not include a vocational school or university. "Park" shall mean municipal property designated public parks and maintained as such by the municipality.

(2) A licensee holding a license for selling intoxicating liquors for consumption on the premises of a restaurant shall illustrate that he has adequate parking to provide one (1) parking space for an automobile for each two (2) seats in his place of business. (Ord. #__, Dec. 2004)

8-304. Regulations and prohibited practices. It shall be unlawful for any person, firm or corporation holding a license to sell intoxicating liquors for consumption on the premises to violate the rules, regulations, and prohibited practices set forth in Tennessee Code Annotated, §§ 57-4-201 and 57-4-203, which code sections are incorporated herein as if copied verbatim in their entirety. (Ord. #__, Dec. 2004)

8-305. Revocation of beer permit reported to ABC. When any person, firm or corporation holds both a license to sell intoxicating liquors for consumption on the premises and a beer permit, should the beer permit be revoked or suspended, the city recorder is hereby directed to send a certified copy of the revocation to the alcoholic beverage commission pursuant to Tennessee Code Annotated, § 57-4-202(b). In addition, when the person, beer board, or city council is considering the suspension or revocation of such beer permit, consideration shall also be given to suspending the licensee's license for sale of intoxication liquors for consumption on the premises as provided in Tennessee Code Annotated, § 57-4-202. Said person, beer board, or city council shall have the authority to suspend the liquor license of any such person, firm, or corporation as authorized by Tennessee Code Annotated, § 57-4-204. (Ord. #__, Dec. 2004)

8-306. Prohibited sexual or pornographic conduct. Tennessee Code Annotated, § 57-4-204 is incorporated herein as if copied verbatim in its entirety. The City of Newport Police Department is hereby authorized and directed to investigate and police the places of business holding a license to sell intoxicating liquors for consumption on premises and shall report violations to the alcoholic beverage commission as authorized, by Tennessee Code Annotated, § 57-4-204(e). (Ord. #__, Dec. 2004)

8-307. Privilege taxes. (1) Pursuant to Tennessee Code Annotated, § 57-4-301(b)(2) the City of Newport hereby levies the following taxes for the privilege of selling intoxicating liquors for consumption on premises, which taxes shall be for municipal purposes to be paid annually to-wit:

- (a) Private club..... \$300.00
- (b) Hotel and motel..... \$1,000.00
- (c) Convention center..... \$500.00
- (d) Premier type tourist resort..... \$1,500.00
- (e) Restaurant, according to seating capacity, on licensed premises:
 - (i) 75 through 125 seats. \$600.00
 - (ii) 126 through 175 seats..... \$750.00
 - (iii) 176 through 225 seats. \$800.00
 - (iv) 226 through 275 seats. \$900.00
 - (v) 276 seats and over. \$1,000.00

If a restaurant is licensed by the commission to sell wine only under Tennessee Code Annotated, § 57-4-101(n), the privilege tax imposed shall be one-fifth (1/5) the amount specified in this subdivision (b)(1).

- (a) Historic performing arts center. \$300.00
- (b) Urban park center..... \$500.00
- (c) Commercial passenger boat company. \$750.00
- (d) Historic mansion house site. \$300.00
- (e) Historic interpretive center. \$300.00
- (f) Community theater..... \$300.00
- (g) Zoological institution. \$300.00
- (h) Museum..... \$300.00
- (i) Establishment in a terminal building of a commercial air traffic airport. \$1,000.00
- (j) Commercial airline travel club..... \$500.00

The foregoing taxes shall be payable on the date the license is issued by the ABC and the foregoing taxes shall be prorated from said date of issuance until the next following October 1, at which time, a full year's taxes shall then be due and immediately payable.

(2) In addition to the privilege taxes levied in subsection (1), there further levied a tax equal to the rate of fifteen percent (15%) of the sales price of all alcoholic beverages sold for consumption on the premises the tax to be

computed on the gross sales of alcoholic beverages for consumption on the premises for the purpose of remitting the tax due the state, and to include each and every retail thereof.

(3) No tax authorized or imposed by this section shall be levied or assessed from any charitable, nonprofit, or political organization selling alcoholic beverages at retail pursuant to a special occasion license.

(4) When any licensee shall fail to pay the initial privilege tax or any annual taxes due each October 1, there shall be imposed a penalty in the amount of five percent (5%) from each month of delinquency or part thereof not to exceed a total of twenty-five percent (25%), provided however each licensee shall have thirty (30) days from the due date before any penalty starts to accrue, interest on the taxes shall accrue at the rate of twelve percent (12%) per annum until paid.

(5) All penalties imposed by this section and taxes provided by this section may be collected as other taxes payable to the city.

(6) Should the licensee also hold a beer permit issued by the city, a failure to pay taxes under this section shall constitute grounds for suspension or revocation of the beer permit. Repeated violations of this section will constitute grounds for permanent revocation of a beer permit. (Ord. #__, Dec. 2004)

3-308. Violations; penalty. Any violation of the provisions of this chapter shall constitute a misdemeanor and shall, upon conviction, be punishable by a fine of not less than fifty dollars (\$50.00). Upon conviction of any person under this chapter, it shall be mandatory for the city judge to immediately certify said conviction, whether on appeal or not, directly to the Tennessee Alcoholic Beverage Commission. (Ord. #__, Dec. 2004)

3-309. Chapter cumulative and supplemental. That the provisions of this chapter shall be cumulative and supplemental to any other ordinance or law now existing or hereafter enacted; and it is not the intent of the board of mayor and aldermen by enacting this chapter to repeal by implication any other ordinance or law not existing or hereafter enacted. (Ord. #__, Dec. 2004)