

**TITLE 8****ALCOHOLIC BEVERAGES**<sup>1</sup>**CHAPTER**

1. INTOXICATING LIQUORS.
2. BEER.

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

8-101. Prohibited generally.

**8-101. Prohibited generally.** Except as authorized by applicable laws and/or ordinances,<sup>2</sup> 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 the City of Westmoreland. "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)

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<sup>1</sup>State law reference  
Tennessee Code Annotated, title 57.

<sup>2</sup>State law reference  
Tennessee Code Annotated, title 39, chapter 17.

**CHAPTER 2****BEER<sup>1</sup>****SECTION**

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<sup>1</sup>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).

- 8-232. Conditions under which issuance of a permit prohibited.
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**8-201. Definitions.** For the purposes of this chapter, the following words and phrases shall have the meanings respectively set opposite them:

(1) "Authorized wholesaler." The term "authorized wholesaler" shall mean a person to whom a permit is required by the ordinance has been issued by the council.

(2) "Beer." The term "beer" shall mean beer, ale or any other beverage having an alcoholic content of not more than five percent (5%) by weight.

(3) "Church." The term "church" shall mean a building or property where a congregation regularly meets at least one day per week for religious worship.

(4) "City." The term "city" shall mean the City of Westmoreland, Tennessee.

(5) "Council." The term "council" shall mean the mayor and council members for the City of Westmoreland, Tennessee.

(6) "Permit." The term "permit" shall mean any permit issued pursuant to this chapter.

(7) "Permittee." The term "permittee" shall mean any person to whom any permit has been issued pursuant to this chapter.

(8) "Premises." The term "premises" means a building, portion of a building, or property that is utilized for a particular business enterprise. (See also definition of "retailer on-premises.")

(9) "Retailer." The term "retailer" means any person licensed by the council to sell beer for consumption and not for resale.

(10) "Retailer off-premises permit." The term "retailer off-premises permit" shall mean a permit issued pursuant to this chapter allowing the sale of beer which is not to be consumed by the purchaser upon the premises of the permittee.

(11) "Retailer on-premises permit." The term "retailer on-premises permit" shall mean a permit issued pursuant to this chapter allowing the sale of beer to be consumed by the purchaser only upon the premises and within the building of such permittee.

A permit issued by the council allowing the sale of beer which is to be consumed by the purchaser means consumption must occur only within the retailer's business building and not outside of that building.

(12) "Sell." The term "sell" shall include taking or receiving an order for, keeping or exposing for sale, delivery for value, keeping for intent to sell and trafficking in beer.

(13) "Wholesale beer permit." The term "wholesale beer permit" shall mean a permit issued pursuant to this chapter allowing the sale of beer by distributors, manufacturers, brewers or any branch of a brewery or manufacturer selling beer solely to retailers.

(14) "Wholesaler." The term "wholesaler" shall mean any person licensed by the council to sell beer to retailers. The term "wholesaler" shall include a distributor, manufacturer, brewer or brewery branch properly licensed by the council and making sales of beer directly to retailers. (Ord. #238, March 1991)

**8-202. Sales, etc., legalized; conditions generally.** It shall be lawful to transport, store, sell, distribute, possess, receive or manufacture beer, of alcoholic content of not more than five percent (5%) by weight or any other beverage of like alcoholic content of not more than five percent (5%) by weight within the corporate limits of the City of Westmoreland, subject to all the regulations, limitations and restrictions provided by the Tennessee Code Annotated, title 57, chapter 2 or other laws of the State of Tennessee and subject to rules, regulations, limitations and restrictions hereinafter provided or hereafter promulgated. (Ord. #238, March 1991)

**8-203. Restrictions on sales by wholesalers.** It shall be unlawful for any authorized wholesaler to sell beer to anyone other than a person, firm, corporation, syndicate or association having been licensed by the council as a retailer. (Ord. #238, March 1991)

**8-204. Limitation on purchases from persons not holding permits.** No person, except an authorized retailer, may sell or store beer for resale within the city unless such beer has been purchased from an authorized wholesaler. (Ord. #238, March 1991)

**8-205. Selling or exchanging beer between retailers prohibited.** It shall be unlawful for any retailer holding a permit issued by the council to purchase, accept as a gift or loan, or to receive, swap or exchange, beer, for the purpose of resale, from any person who is not the holder of a valid wholesale permit. (Ord. #238, March 1991)

**8-206. Sale, etc., of beer by retailer limited to place of permit.** Retailers holding permits to sell beer are authorized to sell and store beer at only the location authorized by the council and specifically designated on their respective permits as the place for which the permit is issued. The sale or storage of beer by a retailer at any place other than the location authorized by

the council and specifically named on the face of his permit is prohibited. (Ord. #238, March 1991)

**8-207. Retailer may deliver beer only on premises of permit.**

Retailers holding permits from the beer board are only authorized to deliver beer on the premises for which the permit is issued. The delivery of beer by a retailer permit holder at any place other than the premises for which his permit is issued is prohibited. No retail permit holder shall enter into any agreement with any person or conspire with any person to cause beer to be delivered off of the premises for his permit is issued or at any location other than the one authorized by his permit for the sale of beer.

It shall be unlawful for any holder of a retail beer permit to knowingly permit the purchase of beer at his place of business by anyone for resale and delivery to another. Holders of retail beer permits issued by the council are prohibited from selling beer to any person when the retail permit holder knows or should have reason to know that such beer is purchased for resale and delivery off of the premises for which his permit is issued. (Ord. #238, March 1991)

**8-208. Revocation of permit for unlawful closing.** Any person who has been issued a beer permit from the council shall remain in business in order to maintain a valid license. If, for any reason, the licensed premises shall be closed for a period of at least six (6) months, the beer board shall automatically revoke the beer permit. Upon revocation, the location shall be eligible for the issuance of a new beer permit provided all requirements of this chapter and other city ordinances regarding the location of on-premises and off-premises beer permits shall be met. (Ord. #238, March 1991)

**8-209. Accounting for fees collected.** All fees collected under the provisions of this chapter shall be deposited to the credit of the general fund. The city recorder shall keep a record of all fees paid and all permits issued pursuant to this chapter. (Ord. #238, March 1991)

**8-210. Containers to show manufacturer's name.** No person shall distribute or sell beverages in bottles or other containers unless such containers bear a label or cap showing the name of the manufacturer and the contents thereof. (Ord. #238, March 1991)

**8-211. From whom retailers may purchase beer.** No retailer shall purchase beer except from the manufacturers, distributors, licensed to manufacture or distribute such beverage in the State of Tennessee. (Ord. #238, March 1991)

**8-212. To whom sales for resale may be made.** No manufacturer or distributor shall sell any beverage or beer for resale except to those persons who have been licensed by the council pursuant to this chapter. (Ord. #238, March 1991)

**8-213. Places of sale to be fixed by permits.** No person shall engage in the sale of beer except in a place for which the council has issued the permit. (Ord. #238, March 1991)

**8-214. Off-premises permittees—sales restricted.** No person licensed to sell beer for off-premises consumption shall sell beer for on-premises consumption. (Ord. #238, March 1991)

**8-215. Off-premises permittees—storage, etc., of beer to be in original containers.** No person licensed to sell beer for off-premises consumption shall keep for sale any beer except in the original containers as received from wholesaler and/or distributor. (Ord. #238, March 1991)

**8-216. Consumption, etc., near off-premises establishment.** No person shall consume or encourage any other person to consume, any beer within two hundred (200) yards of the establishment of any person licensed to sell beer for off-premises consumption. (Ord. #238, March 1991)

**8-217. Persons to whom beer may not be furnished.** No persons shall sell, furnish or give away beer to any person visibly intoxicated, to any insane person, to any minor, to any habitual drunkard, or to any person of known intemperate habit. (Ord. #238, March 1991)

**8-218. Presence of minors, disorderly persons, etc., on business premises.** No person shall permit any person under eighteen (18) years of age or any disorderly or disreputable person to be around or to frequent his place of business. (Ord. #238, March 1991)

**8-219. Gambling.** No person shall allow gambling or gambling devices on the premises. (Ord. #238, March 1991)

**8-220. Illicit liquors in establishments.** No persons shall allow any liquors or beverages of alcoholic content greater than five percent (5%) by weight to be brought into his premises. (Ord. #238, March 1991)

**8-221. Hours and days for sale.** It shall be unlawful for any beer permit holder, his agent or employees to sell, give away, furnish or allow beer to be consumed on any premises or to sell, give away or furnish beer consumed off premises from 12:00 A.M. (midnight) to 7:00 A.M. Monday through

Saturdays and at no time on Sundays. On New Year's Eve, regardless of the day of the week upon which New Year's Eve falls, beer sales may continue until 2:00 A.M. unless New Year's Eve falls on a Sunday, on which event, there will be no beer sales. (Ord. #238, March 1991)

**8-222. License required.** No person shall engage in the storing, selling, distributing or manufacturing of beer within the corporate limits of the City of Westmoreland until he shall have received a permit to do so from the city recorder. (Ord. #238, March 1991)

**8-223. Penalties.** Any person who is convicted of violating any provision of this chapter is guilty of an offense and shall be fined a sum not exceeding fifty dollars (\$50.00). Each provision violated shall constitute a separate offense as to each provision and shall be punishable as such. In addition, any person or permittee or their agent or employee or any other person who violates any provision of this chapter may have their permit revoked and/or the permit of the premises on which said violation occurs. (Ord. #238, March 1991)

**8-224. Permit required.** No person shall sell beer within the territorial jurisdiction of the city without being the holder of a valid permit. (Ord. #238, March 1991)

**8-225. Types of permits.** The following types of permits may be issued by the council:

(1) A wholesaler's permit may be issued to each distributor, manufacturer, brewer or brewery or manufacturer's branch selling beer only directly to retailers.

(2) A retailer's "off-premises" permit may be issued to any person engaged in the sale of beer for consumption and not resale where the beer sold is not to be consumed by the purchaser upon or near the premises of such retailer.

(3) A retailer's "on-premises" permit may be issued to any person engaged in the sale of beer where the beer is to be consumed by the purchaser or his guests upon the premises of the seller. (Ord. #238, March 1991)

**8-226. Applications; agreements by applicant; floor plans.** (1) Any person desiring a beer permit shall file in person with the council a written application under oath at least ten (10) days prior to the date of hearing. No such permit shall be issued until the council has approved written application for the permit which application shall contain questions necessary to determine whether or not the applicant has met all the laws of this state and all the ordinances of the city then in effect. The form of such application shall be prescribed by the council. The application shall be sworn to and signed by the applicant. Any fraud or misrepresentation of statements on the application

whether intentional or not may completely disqualify that applicant from obtaining a permit for a period of one (1) year from the discovery of said fraud or misrepresentation or misstatement.

(2) Along with the letter of application, the applicant must submit letters from a licensed surveyor indicating the distance between the nearest door of the applicant's business establishment and the nearest door of any nearby church, school or other place of public gathering. The cost of this survey and letter as required herein is to be born by the applicant.

(3) Additionally, the applicant shall establish the following:

(a) That the applicant is a legal resident of the United States, or if a syndicate or association, that all the members are legal residents of the United States; or if a corporation, that the corporation is a Tennessee corporation; or if a foreign corporation, that the corporation has been domesticated in the State of Tennessee.

(b) That the owner of the business and/or the applicant will be on the business premises for which permit is requested, for a minimum of forty (40) hours per week. Further, that the manager is a resident of the State of Tennessee.

(c) The location of the premises where the business will be conducted and the names and addresses of the owners of such premises.

(d) That neither applicant nor any persons employed by him in such distribution or sale of beer shall be a person who has been convicted of any violation of the laws against possession, sale, manufacture or transportation of intoxicating liquor or any felony, or any crime involving moral turpitude within the past ten (10) years.

(e) In said application the person so applying shall state that he will conduct the business in person, or he shall indicate whether he is acting as agent for any other person, firm, corporation, syndicate, association, or joint stock company and if so, the name of the person who will be the manager of the business and on premises for a minimum of forty (40) hours per week.

(f) The specific type establishment applicant proposes to operate and the specific address of the proposed establishment.

(4) The council in its discretion may include in the application such other questions and inquiries as it deems relevant and material to protect the public health, safety and morals of the inhabitants of the city.

(5) No permittee shall open his premises to the public for the sale of beer until the permittee shall first have filed with the council floor plans and diagrams completely disclosing and designating a physical arrangement of the premises.

(6) Any person making false statement in such application shall forfeit his permit, and shall not be eligible to receive any permit for a period of ten (10) years. (Ord. #238, March 1991)



**8-227. Permit fees.** (1) All applications for the issuance of permits shall be accompanied by an application fee of one hundred dollars (\$100.00) for use in offsetting the expenses of investigating the applicant and processing the application.

(2) All applications for the issuance of permits for the change in on-premises management of an establishment licensed by the council shall be accompanied by a change in on-premises management fee in the amount of one hundred dollars (\$100.00) for use in offsetting expenses of investigating the applicant and processing the application. (Ord. #238, March 1991)

**8-228. Investigation of applicant.** The police department of the City of Westmoreland shall conduct an investigation of each applicant for a permit and specifically to ascertain whether or not the applicant has ever been convicted of any offense which would prohibit issuance of a permit. (Ord. #238, March 1991)

**8-229. Conditions of permits.** Every person to whom a beer permit is issued agrees to the following conditions:

(1) The premises are declared to be a public place for the purpose of inspection by officers of the police department or by any other duly authorized officials.

(2) The permit holder shall keep invoices and all other memoranda fully descriptive relating in any way to the storing, sale, distribution by sale or gift or manufacture of beer, and he shall permit the director of finance or his duly authorized agents, representatives or employees to inspect, at any time during the business hours of the day, all such articles, containers, packages, invoices, books, papers and memoranda as may be deemed necessary in the opinion of the director of finance or his authorized agent, representative or employee in ascertaining whether or not all state and local taxes have been paid or in determining the amount of such taxes that may be due. On-premises permit holders shall keep a separate record clearly indicating the receipts from sale of alcoholic beverages and the percentage of such receipts in relation to the gross receipts of the business, and shall produce such records to the council or the city's director of finance upon request.

(3) The permit holder shall display all permits issued pursuant to this chapter in a conspicuous place, together with all other permits, licenses and stamps required by law.

(4) The permit holder shall comply with all ordinances of the city. (Ord. #238, March 1991)

**8-230. Minimum distance from church, school, etc.; conditions under which issuance of a permit prohibited.** No permit authorizing the sale of beer will be issued when such business would cause congestion of traffic, would interfere with schools, churches, state institutions, or places of public

gathering or would otherwise interfere with public health, safety and morals. In no event will a permit be issued authorizing the storage, sale, manufacture of beer at places within three hundred feet (300') of any church, school, or state institution, as measured from the nearest door to the nearest door of each establishment; provided, however, this provision shall not affect those businesses which had valid permits on the date of this ordinance being passed. Further, this provision would not affect such a location if it should change ownership in the future. (Ord. #491, March 2010)

**8-231. When license not to issue--unsuitable types of establishments.** The following establishments are hereby declared unsuitable for the retail sale of beer, no permit, therefore, shall be granted:

- (1) Establishments in predominantly residential districts.
- (2) Establishments which are not kept in a clean and sanitary condition.
- (3) Establishments which are not equipped with necessary toilet facilities approved by the city health department.
- (4) Establishments that are not adequately lighted and ventilated.
- (5) Establishments situated in alleys, upstairs, or in basements.
- (6) Establishments which are equipped with windows which are painted or otherwise not transparent. (Ord. #238, March 1991)

**8-232. Conditions under which issuance of a permit prohibited.**

- (1) No permit shall be issued to any person for a location which fails to comply with any state law or any zoning ordinance of the city, expressly including any zoning ordinance.
- (2) Where a beer permit is revoked, no new permit shall be issued to permit the sale of beer on the same premises until after the expiration of one year from the date such revocation becomes final and effective.
- (3) No permit shall be issued where the applicant has had revoked, within ten (10) years, either a permit issued for the sale of beer by any board duly created within a county or municipality of this state or any license for the sale of liquor in any form by the alcoholic beverage commission of this state. (Ord. #238, March 1991)

**8-233. Address of location where sales authorized to be specified on permit.** The specific address and description of the premises where beer is authorized to be sold shall be stated on the face of each permit issued by the council, and no permit shall be valid unless such address and description of the premises are stated on the face of such permit, along with a photograph of the permit-holder. (Ord. #238, March 1991)

**8-234. Non-transferability.** Permits issued by the council shall not be transferred from one person to another. Where the holder of a permit desires

to move his place of business from one location to another, he shall apply for a new permit for the new location and shall surrender the permit for the location which he has abandoned. (Ord. #238, March 1991)

**8-235. Suspension and revocation.** The council shall have the power to revoke or suspend, and shall be charged with the duty of revoking or suspending any permits issued by it upon notice to the permittee and a hearing thereon, for any violation of any provision of state or federal law regulating the sale, storage and transportation of alcoholic beverages or for any violation of any provision of state or federal law regulating the sale, storage and transportation of alcoholic beverages or for any violation of any provision of this chapter, expressly including the prohibited acts herein, or any statute of the State of Tennessee regulating beer or other alcoholic beverage. (Ord. #238, March 1991)

**8-236. Wholesale beer tax.** The city recorder is hereby directed to take appropriate action to ensure payment to the city of the wholesale beer tax levied by the Wholesale Beer Tax Act, Tennessee Code Annotated, § 57-6-101, et seq. (Ord. #238, March 1991)

**8-237. Public dances and dance halls.** (1) Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this subsection:

(a) "Known." Such term, used in connection with the words "prostitute," "male or female procurer" or "vagrant," shall mean known to the manager, owner or lessee of a public dance hall, or to the person conducting a public dance, or to the police or other authorities having to do with the regulation and supervision of public dance halls or public dances, to be one of the persons named, or who has such general reputation or character, or one who has pleaded guilty to or has been convicted of being a prostitute, male or female procurer or vagrant.

(b) "Public dance." Any dance to which admission can be had by payment directly or indirectly of a fee or any dance to which the public generally may gain admission with or without the payment of a fee, and where beer is sold.

(c) "Public dance hall." Any room, place or space in which a public dance shall be held, and where beer or alcoholic beverages are sold.

(2) Permit from council; permit fee. It shall be unlawful to hold or conduct a public dance or to operate any public dance hall within the city until such dance hall or other place in which such public dance may be held shall first have been issued a permit by the council for the operation of such dance hall or for the holding of such dance. An application fee of one hundred dollars (\$100.00) per year shall be required to maintain said permit.

(3) Requirements for permit to operate public dance halls. No permit for the operation of a public dance hall shall be issued until it shall be found

that the place for which the same is issued complies with and conforms to all laws, ordinances, health and fire regulations applicable thereto, is properly ventilated and supplied with separate and sufficient toilet conveniences for each sex and is a safe and proper place for the purpose for which it shall be used. The permit for such dance hall shall be in writing and shall be posted in a conspicuous place in the dance hall at all times when the same shall be operated.

(4) Revocation and re-issuance of permit; duties of council. The permit to operate any public dance hall may be revoked for the violation of any provision of this chapter or other ordinances or laws relating to such places, and upon the revocation of the permit to operate such public dance hall, at least three months shall elapse before another permit shall be granted to the manager, owner, lessee of such dance hall to operate the same.

The procedure provided by the laws of the city relative to the council and by the rules and regulations adopted by the council for the revocation of permits to sell beer shall be applicable to the revocation of permits of public dance halls or public dances. The council shall be charged with the duty of supplying application forms for permits for permission to operate a public dance hall or a public dance and such forms shall contain such pertinent questions to be answered by the applicant, and to be sworn to, as is deemed to be necessary and proper by a majority of the members of the council. The council is hereby authorized to adopt such rules and regulations for the proper regulation and supervision of public dance halls and public dances as a majority of the council shall decide in conformity with the provisions of this chapter.

(5) Conduct at public dances; prohibitions. It shall be unlawful for any person to whom a dance hall permit has been issued for any person conducting a public dance hall or public dance to allow or permit in such dance hall or at such dance any indecent act to be committed or any disorder or conduct of a gross, violent or vulgar character, or to permit in any such dance hall or at any such dance any known prostitute, pimp, or procurer. It shall be unlawful for any known prostitute, male, female procurer or vagrant to be present at any public dance or at any public dance hall.

(6) Minors at dances. It shall be unlawful for any person to whom a dance hall permit has been issued or for any person conducting a public dance hall to permit in such dance hall any person under the age of eighteen (18) years when beer is sold on the premises, unless such minor is accompanied by one or both of his parents, or a legal guardian or an adult who has been given parental permission.

(7) Hours of closing. All public dances shall be discontinued and all public dance halls closed from 12:00 A.M. (Midnight) to 8:00 A.M. Monday through Saturday and at no time on Sundays. On New Year's Eve, regardless of the day of week upon which New Year's Eve falls, dance halls may continue until 2:00 A.M. unless New Year's Eve falls on a Sunday, on which event, there will be no opening of dance halls. (Ord. #238, March 1991)

**8-238. Revocation or suspension of beer permits.** The beer board shall have the power to revoke or suspend 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 or suspended until a public hearing is held by the board after reasonable notice to all the known parties in interest. Revocation or suspension proceedings may be initiated by the police chief or by any member of the beer board.

Pursuant to Tennessee Code Annotated, § 57-5-608, the beer board shall not revoke or suspend the permit of a "responsible vendor" qualified under the requirements of Tennessee Code Annotated, § 57-5-606 for a clerk's illegal sale of beer to a minor if the clerk is properly certified and has attended annual meetings since the clerk's original certification, unless the vendor's status as a certified responsible vendor has been revoked by the alcoholic beverage commission. If the responsible vendor's certification has been revoked, the vendor shall be punished by the beer board as if the vendor were not certified as a responsible vendor. "Clerk" means any person working in a capacity to sell beer directly to consumers for off-premises consumption. Under Tennessee Code Annotated, § 57-5-608, the alcoholic beverage commission shall revoke a vendor's status as a responsible vendor upon notification by the beer board that the board has made a final determination that the vendor has sold beer to a minor for the second time in a consecutive twelve (12) month period. The revocation shall be for three (3) years.

**8-239. 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 by the Tennessee Alcoholic Beverage Commission under the "Tennessee Responsible Vendor Act of 2006," Tennessee Code Annotated, § 57-5-601, et seq.

(2) Penalty, revocation or suspension. The beer board may, at the time it imposes a revocation or suspension, offer a permit holder that 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 any sales to minors, or a civil penalty not to exceed one thousand dollars (\$1,000.00) for any other offense.

The beer board may impose on a responsible vendor a civil penalty not to exceed one thousand dollars (\$1,000.00) for each offense of making or permitting to be made any sales to minors or 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.

Payment of the civil penalty in lieu of revocation or suspension by a permit holder shall be an admission by the holder of the violation so charged and shall be paid to the exclusion of any other penalty that the city may impose.

**8-240. Loss of clerk's certification for sale to minor.** If the beer board determines that a clerk of an off-premises beer permit holder certified under Tennessee Code Annotated, § 57-5-606, sold beer to a minor, the beer board shall report the name of the clerk to the alcoholic beverage commission within fifteen (15) days of determination of the sale. The certification of the clerk shall be invalid and the clerk may not reapply for a new certificate for a period of one (1) year from the date of the beer board's determination.