TITLE 8

ALCOHOLIC BEVERAGES

CHAPTER
1. INTOXICATING LIQUORS.
2. BEER.

CHAPTER 1

INTOXICATING LIQUORS

SECTION

8-101. Prohibited generally. Except when he is lawfully acting pursuant to applicable state laws, 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 Town of Cumberland Gap. "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. (1979 Code, § 2-101)

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1State law reference
   Tennessee Code Annotated, title 57.

2State law reference
CHAPTER 2

BEER

SECTION
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8-201. Generally. Except when he is lawfully acting pursuant to applicable state laws, it shall be unlawful for any person, acting for himself or for any other person, to manufacture, receive, possess, store, transport, sell,

\footnote{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).}
furnish, or solicit orders for any intoxicating liquor within the Town of Cumberland Gap. (1979 Code, § 2-201, as replaced by Ord. #1-2006, May 2006)

8-202. Definitions. "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.

"Beer" shall be defined as any beverage with contains five percent (5%) or less of alcohol by weight as defined by Tennessee law.

"Restaurant" shall be defined as any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served with or without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and seating capacity of at least seventy-five (75) people (TCA 57-4-101) at tables, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for guest. At least one meal per day shall be served at least five days a week, with the exception of holidays, vacations and periods of redecorating, and the serving of such meals shall be the principal business conducted. (TCA 57-4-102. Definitions) (1979 Code, § 2-202, as replaced by Ord. #1-2006, May 2006, and amended by Ord. #1-2007, Feb. 2007)

8-203. Beer business lawful, but subject to regulations, etc. It shall hereafter be lawful to transport, store, sell, distribute, possess, receive, or manufacture beer of alcoholic content of not more than five percent (5%) by weight, as is allowed by the statutory law of the State of Tennessee, or any other beverage of like alcoholic content, within the corporate limits of the Town of Cumberland Gap, Tennessee, subject to all the regulations, limitations, and restrictions promulgated by authorized public officials or boards. (1979 Code, § 2-203, as replaced by Ord. #1-2006, May 2006)

8-204. Beer permit board created; quorum. There is hereby created a beer permit board which shall consist of all the members of the board of mayor and aldermen who shall hold office for a period coterminous with their respective terms of office. A majority of the beer permit board shall constitute a quorum. Members of the beer board shall serve without additional compensation. (1979 Code, § 2-204, as replaced by Ord. #1-2006, May 2006, as amended by Ord. #7-2008, Oct. 2008)

8-205. The city recorder shall be ex officio secretary of the beer board. It shall be her duties to keep a record of all the proceedings of the board and to keep on file in her office all original applications, as well as duplicate of each permit issued by the board. The recorder shall monitor the convictions of
city court dealing with beer law violations and advise the board. (1979 Code, § 2-205, as replaced by Ord. #1-2006, May 2006)

8-206. 

**Permits limitation, permit required for engaging in beer business.** It shall be unlawful for any person, corporation or partnership 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, pursuant to Tennessee Code Annotated, § 57-5-101 (b), and shall be accompanied by a non-refundable application fee of two hundred and fifty dollars ($250). Said fee shall be in the form of cash or a cashier's check payable to the Town of Cumberland Gap. No person, firm, joint-stock company, syndicate, or association having at least a five percent (5%) ownership interest in the applicant nor any person to be employed in the distribution or sale of beer shall have been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years. Furthermore, any person, firm, joint-stock company, syndicate or association must obtain a certificate from the chief of police that they have submitted to a background check and further certify that they have read and are familiar with the provisions of this section and the beer laws of the State of Tennessee. (1979 Code, § 2-206, as replaced by Ord. #1-2006, May 2006, as amended by Ord. #1-2007, Feb. 2007 and Ord. #7-2008, Oct. 2008)

8-207. 

**Places where permits will be issued.** (1) Generally. Permits shall be issued to sell beer under the following circumstances:
(a) Where applicants and permit holders are not in violation of any provision of the state laws.
(b) Where such sales will not cause traffic congestion or interference with schools, churches or other places of public gathering or otherwise interfere with the public health, safety and morals. The judgment of the town's beer board on such matters shall be final except as the same is subject to review in law.
(c) Where the businesses are no closer than two hundred (200) feet of a church, places of public gathering, or a school. Such measurement shall be in a straight line at 90 degree angles at turns.
(d) In an area of the town that is zoned C-1, C-2, or C-3 commercial by town zoning.
(2) Restrictions for on premises consumption permits.
(a) On-premises consumption permits may be issued to any restaurant in a C-1, C-2, and C-3 commercial area only if the restaurant has a Class 1 rating from the State of Tennessee and has the capacity to seat and serve a minimum of seventy-five (75) people.
(b) Establishments that hold an on-premises consumption permit cannot have beer sales that exceed more than forty-nine percent
(49%) of the gross sales of the establishment (At least fifty-one percent (51%) of sales must be food or items other than beer.)

c) For beer sales where outside seating is provided, the outside seating area must be enclosed by a fence.

(i) Definition of "fence." For the purposes of this section, a fence shall be defined as a rigid or self-standing structure or partition, all of which shall contain a continuous wall to enclose the outside seating area of an establishment that holds an on-premises consumption permit.

(ii) Permitted fence materials. Fence wall surfaces shall be constructed of redwood cedar, pressure treated lumber, wood and vinyl plank or lattice, wrought iron, concrete, stone or masonry material.

(iii) Prohibited fence. Fences made of plywood, plastic sheeting, cloth and similar nondurable materials are prohibited.

d) Beer permits shall not be granted to drive-in restaurants or restaurants offering curb service.

(3) There shall be no beer sales/food or other items sales ratio restriction on the sale of beer in establishments that hold off-premises consumption permits.


8-208. Establishments from which beer may be sold. All beer permits shall be restrictive as to the type of beer business authorized under them. It shall be unlawful for any person not to comply with any and all express restrictions or conditions which may be written into the permit by the beer board.

Beer may be sold at the following types of establishments;

(1) Establishments for consumption off the premises. This is an establishment for the sole purpose of selling beer for consumption elsewhere than the vending location. Under no circumstances may beer be consumed at the establishment.

(2) Establishments for consumption on the premises. A regularly opened restaurant which seats seventy-five (75) or more. This establishment may be opened in a regularly operated motel or hotel which has a restaurant or lounge in connection therewith that has a seating capacity of seventy-five (75) seats or more. Under no circumstances are these establishments allowed to sell beer for consumption off the premises. (1979 Code, § 2-208, as amended by Ord. #____, Jan. 1994, and replaced by Ord. #1-2006, May 2006, as amended by Ord. #1-2007, Feb. 2007, as amended by Ord. #7-2008, Oct. 2008)
8-209. **Signage.** No outdoor sign, advertisement or display that advertises beer may be erected or maintained on the property on which a retail beer establishment is located other than one (1) sign, advertisement or display which makes reference to the fact that the establishment sells beer but does not use brand names, pictures, numbers, prices or diagrams relating to beer. The sign cannot be any larger than three (3) feet by five (5) feet.

Additional signage is required for off-premises permit holders that states "No Consumption on These Premises." This additional signage must be printed on a sign at least eighteen (18) inches by twenty-four (24) inches and must be posted on the walls adjacent to all entrances and above all exits.

Additional signage is required for on-premises permit holders to be posted at exit locations of exterior seating areas that state "No alcoholic beverages allowed beyond this point."

Responsible vendors (as defined in § 8-214) shall post signs on the vendor's premises informing customers of the vendor's policy against selling beer to underage persons. The signs shall be not less than eight and one-half inches by eleven (8 ½ x 11 inches), and contain the following language: STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER.

Furthermore, vendors shall post signs on the vendor's premises informing customers of the vendor's policy against selling beer to underage persons. The signs shall be not less than eight and one-half inches by five and one-half (8 ½ x 5 ½ inches), and shall contain the following language: IF YOU AREN'T AGE TWENTY-ONE (21) OR OLDER AND ARE IN POSSESSION OF BEER, YOU COULD LOSE YOUR DRIVER LICENSE. (1979 Code, § 2-209, as replaced by Ord. #1-2006, May 2006, as replaced by Ord. #7-2008, Oct. 2008)

8-210. **Application for permit; requirements as to applicants; regulations to be followed.** (1) Before any permit is issued by the beer permit board, the applicant shall file a sworn application to the board in writing, and establish the following:

(a) Names of owners, corporations principle officers, partnerships, firm, syndicate, association or joint stock company who will own the premises.

(b) Names of the persons or agents who will be responsible to operate the business.

(c) The location of the premises at which the business shall be conducted.

(d) That the applicant will not engage in the sale of such beverages except in the place or places for which the beer permit board has issued the permits.

(e) The applicant will apply for a "on premises" permit for consumption on the premises or for an "off premises" permit for beer sales to go.
(f) That the applicant will only make beer sales in accordance with the permit issued by the board by not allowing any consumption on the premises of a "off premises" permit and the holders of a "on premises" permits shall not sell beer to go off premises.

(g) That no sales will be made to minors and the applicant will not permit minors, disorderly or disreputable persons heretofore connected with the violation of liquor laws to loiter around the place of business.

(h) That no minors will be employed directly in the sales or distribution of such beverages.

(i) That the applicant will not allow gambling or gambling devices on the premises of the business.

(j) That neither the applicant nor any persons employed or to be employed by him/her in such distribution or sale of such beverages has been convicted of any violation of the laws against provision, sale, the manufacture or transportation of intoxicating liquors or of any crime involving moral turpitude within the past five (5) years.

(2) Any applicant who applies for a permit without an existing building may receive approval for a permit to be issued upon the completion of the building, but the building must be under construction within six (6) months or completed within one (1) year from the date of approval for the permit. (1979 Code, § 2-210, as replaced by Ord. #1-2006, May 2006)

8-211. **Duration of permit.** All permits issued by the beer board shall be perpetual or until revoked by the beer board for just cause and, there is hereby imposed on the business of selling, distributing, storing or manufacturing beer an annual privilege tax of one hundred dollars ($100). Any person, firm, corporation, joint stock company, syndicate or association engaged in the sale, distribution, storage or manufacturing of beer shall remit the tax on January 1, 2007, and each successive January 1, to the Town of Cumberland Gap, 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 tax payment date. (1979 Code, § 2-211, as replaced by Ord. #1-2006, May 2006)

8-212. **Revocation or suspension of permits.** All permits issued by the beer board under the provisions of this ordinance shall be subject to suspension or revocation by said board for the violation of any of the provisions of the state beer laws or any of the provisions of this ordinance. The board 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 revoked for any violation of the provisions of this chapter or the provisions of the state beer laws.
Any complaint filed against a permit holder for the purpose of suspending or revoking his permit shall be made in writing and filed with the board. When the board shall have reason to believe that any permit holder shall have violated any of the provisions of this ordinance, or any of the provisions of the state beer laws, the board is authorized, in its discretion, to notify the permittee in writing, of said alleged violations and to cite said permittee, by such notice to appear and show cause why his permit should not be suspended or revoked for such violations. Said notice to appear and show cause shall state the alleged violations charged and shall be served upon the permittee either by registered letter or a designated member of any law enforcement agency. The notice shall be served upon the permittee at least ten (10) days before the date of the hearing. At the hearing the board shall publicly hear the evidence both in support of the charges and on behalf of the permittee. After such hearing, if the charges are sustained by the evidence, the board may, in its discretion, suspend or revoke said permit. The action of the board in all such hearings shall be final, subject only to review by the courts as provided in the state beer laws.

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. (1979 Code, § 2-212, as amended by Ord. #____, March 1988; Ord. #____, March 1992; and Ord. #____, July 1993; and replaced by Ord. #1-2006, May 2006, as amended by Ord. #7-2008, Oct. 2008)

8-213. **Display of permit.** The permit required by this chapter shall be posted in a conspicuous place on the premises of the permit holder. (1979 Code, § 2-213, as amended by Ord. #____, Dec. 1993, and replaced by Ord. #1-2006, May 2006)

8-214. **Civil penalty in lieu of 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

(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.


**8-215. Permits not transferable.** Permits issued under the provisions of this ordinance are not transferable, either as to location or to successor by purchase, or otherwise, of the business for which the permit was issued, and in either case, a new permit is required in the manner provided herein. (1979 Code, § 2-216, as replaced by Ord. #1-2006, May 2006)

**8-216. Sales to certain persons prohibited; proper sanitary facilities required.** Hereafter, it shall be unlawful and it is hereby declared to be a misdemeanor for any person, firm, corporation, or association engaged in the business regulated hereunder to make, or to permit to be made, any sales or distribution of such beverages to persons who are feeble minded, intoxicated, insane, or otherwise mentally incapacitated or to fail to provide proper sanitary facilities for the consumers of said beverages. (1979 Code, § 2-217, as amended by Ord. #_____, Dec. 1988, and replaced by Ord. #1-2006, May 2006)

**8-217. All existing permits to be in force.** All existing permits to be in force as per § 8-211 of this ordinance. (1979 Code, § 2-218, as replaced by Ord. #1-2006, May 2006)

**8-218. All beer sales areas to be constructed so that beer sales are not conducted during "No Sale" hours.** Any business with a beer permit issued under this chapter that is open on a twenty four (24) basis must be able
to close all beer sales areas of the business during the hours specified in this ordinance. (as added by Ord. #1-2006, May 2006)

8-219. **Wholesalers, etc., to deliver only to holders of retail beer permits.** It shall be unlawful for any wholesaler, distributor, or manufacturer of beer, or any of their salesmen or representatives to sell or deliver beer enroute, or from delivery vehicles, to any person other than to holders of valid retail beer permits, and it shall be the duty of such wholesaler, distributor, or manufacturer, their salesmen or representatives, to ascertain whether each purchaser is a holder of a valid retail beer permit. It shall be unlawful for any wholesaler, distributor, or manufacturer of beer to have any interest in any retail sale of beer other than the interest as a wholesaler, distributor, or manufacturer. (as added by Ord. #1-2006, May 2006)

8-220. **Days and hours of sales.** It shall hereafter be unlawful and it is hereby declared to be a misdemeanor for any permit holder of the town to sell, distribute or allow consumption on the premises any of such beverages regulated by permit, within the limits of the Town of Cumberland Gap, Tennessee during the hereafter listed hours.

Off-the-premises establishments are prohibited from selling beer between the hours of 12:00 midnight and 6:00 A.M, or anytime on Sunday after 12:00 midnight and before 1:00 P.M., or after 9:00 P.M.

On the premises establishments shall not sell beer between the hours of 12:00 midnight and 6:00 A.M. The premises must be vacated by 12:30 A.M. (as added by Ord. #1-2006, May 2006, as deleted and renumbered by Ord. #7-2008, Oct. 2008)

8-221. **Violations generally.** Each day's violation of each or any provision of this chapter by any permit holder, or each sale made in violation of any provision of this chapter shall constitute a separate misdemeanor which shall be punishable by a fine or penalty under the general penalty clause for this code or by suspension or revocation of the permit issued hereunder, or by both such fine or penalty and suspension or revocation. (as added by Ord. #1-2006, May 2006, as renumbered by Ord. #7-2008, Oct. 2008)

8-222. **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. (as added by Ord. #1-2006, May 2006, as replaced and renumbered by Ord. #7-2008, Oct. 2008)
8-223. Clubs. Clubs, as defined in Tennessee Code Annotated, § 57-4-102, selling liquor shall first apply to the board of mayor and aldermen for a certificate of good moral character and shall meet all zoning and building regulations and codes of the city. In addition, no such club shall locate in a congested area; within two thousand feet of a school (either public or private), church, or other place of public gathering; closer than five hundred feet to a residence; or where such sale will interfere with the public health, safety, and morals. (as added by Ord. #1-2006, May 2006, as renumbered by Ord. #7-2008, Oct. 2008)

8-224. Permit holder requirements. (1) Begin the sale of beer in the establishment for which the permit has been issued, within thirty (30) days following the issuance of the permit. The establishment for which the permit is issued shall continuously remain open during the time and hours prescribed by this chapter, and shall sell beer in such establishment during the entire life of the beer permit.

(2) Permit holders are required to submit to the beer board by the 20th of each month proof of beer purchases of five hundred dollars ($500.00) or greater from a beer distributor or beer distributors.

If for any reason the permit holder does not comply with the provisions of this section for more than thirty (30) (days/months) with respect to subsection (1), or one (1) months with respect to subsection (2), the permit shall be subject to revocation, unless the permit holder can show good cause to the beer board for the violation of this section, and can offer to the beer board a plan satisfactory for coming into compliance with this section within a reasonable time.

This provision shall apply to both present and future beer permit holders. (as added by Ord. #1-2006, May 2006, as amended and renumbered by Ord. #7-2008, Oct. 2008)

8-225. Permit holder and wholesaler restriction. No retailer or permit holder shall purchase any alcoholic beverages from anyone other than a licensed wholesaler, nor shall any wholesaler sell alcoholic beverages to anyone other than a licensed retailer, or a licensed wholesaler. (as added by Ord. #1-2006, May 2006, as renumbered by Ord. #7-2008, Oct. 2008)

8-226. Grandfathered permittees. Existing permittees are grandfathered as to the distance requirements from schools, churches, or residences. All other regulations under the police powers of the town are applicable upon adoption of this ordinance. (as added by Ord. #1-2006, May 2006, as renumbered by Ord. #7-2008, Oct. 2008)
8-227. **Special event/temporary beer permits.** Special event/temporary beer permits must comply with all other regulations found in title 8, chapter 2 with the exception of §§ 8-207(1), (2)(a) and (b); 8-208(2); 8-211 and 8-224. Special event/temporary beer permits are permissible in the Town of Cumberland Gap with the following additional requirements:

1. Permits are valid for the length of the event or a maximum of seventy-two (72) hours during town-sanctioned and/or sponsored festivals, celebrations, and events.

2. No more than two (2) permits will be issued for a single festival, celebration and event.

3. Permit applications must be submitted thirty (30) days prior to the start of the event for which a permit is requested.

4. In addition to the permit application requirements described in §§ 8-206 and 8-210 the following information must be submitted with an application for a special event permit:
   
   a. The organization applying for the special event permit, contact person, address and phone number.

   b. Date(s) and time(s) of event.

   c. The sponsors of the event and the sponsor's contact person's address and phone number.

   d. The specific location where beer is to be sold or served.

   e. The individual(s) with such organization responsible for supervising the sale and dispensing of the beer.

   f. Plans for security and policing the area(s) where beer is sold.

   g. If the events covered by the "special event permit" will be held on land not owned by the applicant, a written statement of approval from the landowner must accompany the special event application.

5. Permit applications are valid only for on-premises consumption inside an enclosed and/or fenced area with restricted ingress/egress points.

6. The sponsors of the proposed event and the applicant shall send a representative or representatives to such Town of Cumberland Gap Beer Board meeting to address any questions or issues arising out of the proposed special event/temporary permit.

7. If approved the special event/temporary permit shall have affixed on its face the name of the proposed vendor(s) of beer, the specific location(s) and date(s) where such vendor is permitted to sell beer under the special event permit. (as added by Ord. #2-2010, April 2010)