TITLE 8

ALCOHOLIC BEVERAGES

CHAPTER
1. INTOXICATING LIQUORS.
2. BEER.

CHAPTER 1

INTOXICATING LIQUORS

SECTION

8-101. Prohibited generally. Except as authorized by applicable laws and/or ordinances, it shall be unlawful for any person to manufacture, receive, possess, store, transport, sell, furnish, or solicit orders for any intoxicating liquor within this town. "Intoxicating liquors" shall be defined to include whiskey, spirituous, vinous, or malt liquors and beers which contain more than five percent (5%) of alcohol by weight. (Ord. #93-09-02, Sept. 1993, as replaced by Ord. #06-16-02B, Feb. 2006)

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1 State law reference
   Tennessee Code Annotated, title 57.

2 State law reference
CHAPTER 2

BEER

SECTION
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8-201. Beer board established. There is hereby established a beer board to be composed of the town council. The mayor shall be the chairman of the beer board. (Ord. #93-09-02, Sept. 1993, as replaced by Ord. #06-16-02B. Feb. 2006)

8-202. Meetings of the beer board. All meetings of the beer board shall be open to the public. The board shall hold regular meetings in the town

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).
hall at such times as it shall prescribe. When there is business to come before the beer board, a special meeting may be called by the chairman, provided he gives a reasonable notice thereof to each member. The board may adjourn a meeting at any time to another time and place. (1989 Code, § 2-202, as replaced by Ord. #06-16-02B. Feb. 2006)

8-203. **Record of beer board proceedings to be kept.** The recorder shall make a record of the proceedings of all meetings of the beer board. The record shall be a public record and shall contain at least the following: The day of each meeting; the names of the board members present and absent; the names of the members introducing and seconding motions and resolutions etc., before the board; a copy of each such motion or resolution presented; the vote of each member thereon; and the provisions of each beer permit issued by the board. (Ord. #93-09-02, Sept. 1993, as replaced by Ord. #06-16-02B. Feb. 2006)

8-204. **Requirements for beer board quorum and action.** The attendance of at least a majority of the members of the beer board shall be required to constitute a quorum for the purpose of transacting business. Matters before the board shall be decided by a majority of the members present if a quorum is constituted. Any member present but not voting shall be deemed to have cast a "nay" vote. (Ord. #93-09-02, Sept. 1993, as replaced by Ord. #06-16-02B. Feb. 2006)

8-205. **Powers and duties of the beer board.** The beer board shall have the power and it is hereby directed to regulate the selling, storing for sale, distributing for sale, and manufacturing of beer within this town in accordance with the provisions of this chapter. (Ord. #93-09-02, Sept. 1993, as replaced by Ord. #06-16-02B. Feb. 2006)

8-206. "**Beer**" defined. The term "beer" as used in this chapter shall mean and include all beers, ales, and other malt liquors having an alcoholic content of not more than five percent (5%) by weight. (Ord. #93-09-02, Sept. 1993, as replaced by Ord. #06-16-02B. Feb. 2006)

8-207. **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 and fifty dollars ($250.00). Said fee shall be in the form of a cashier's check payable to the Town of Oliver Springs. Each applicant must be a person of good moral character and he must certify that he has read and is familiar with the
provisions of this chapter.  (Ord. #93-09-02, Sept. 1993, as replaced by Ord. #06-16-02B. Feb. 2006)

8-208. **Transfer of permits prohibited.** Notice to board of transfer of beer business ownership required. The transfer of a beer permit to any other person, firm or corporation is prohibited. However, any person, firm or corporation holding a beer permit under this chapter who proposes to sell or otherwise transfer the business to another person, firm or corporation with the intention or expectation that the buyer or transferee will engage in the business of selling beer at the same location shall be required to notify the beer board of his or her intention to sell or transfer the business.  (Ord. #93-09-02, Sept. 1993, as replaced by Ord. #06-16-02B. Feb. 2006)

8-209. **Application of new owner.** The board shall be furnished with the name of the proposed buyer or transferee, who shall be required to make application for a permit to the board. Such application shall conform to the requirements for other applications for permits as set out in this chapter.  (Ord. #93-09-02, Sept. 1993, as replaced by Ord. #06-16-02B. Feb. 2006)

8-210. **Beer permits shall be restrictive.** All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, distributing, and manufacturing. It shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by his permit. It shall likewise be unlawful for him not to comply with any and all express restrictions or conditions which may be written into his permit by the beer board.  (Ord. #93-09-02, Sept. 1993, as replaced by Ord. #06-16-02B, Feb. 2006)

8-211. **Grounds for denial of permit.** No application for permit for the sale of beer shall be approved where in the reasonable determination of the board such sale would cause a dangerous congestion of traffic or interfere with the peaceful and orderly operation of schools, churches, playgrounds, parks, or other places of public gathering, or where the applicant has once held a permit and it has been revoked less than one (1) year form the time of his present application, or where it would otherwise interfere with the public health, safety and morals.  (Ord. #93-09-02, Sept. 1993, as replaced by Ord. #06-16-02B, Feb. 2006)

8-212. **Types of consumption permits.** Permits may be applied for and issued to grocery businesses, for the sale of beer for off premises consumption only. The store must have five thousand dollars ($5,000.00) wholesale inventory of groceries. For the purpose of this chapter a "grocery business" is hereby defined as a place for the selling of general supplies for the table and household use. Permits may be applied for and be issued to
restaurants for the sale of beer for on premises consumption only. The restaurant shall serve both noon and evening meals; offer a family dining atmosphere; and serve meals which may be consumed within the interior of the restaurant at tables or booths. For the purpose of this chapter, a "restaurant" is defined as a structure in a commercial zoned district which is designed for, and engaged primarily in, the preparation and sale of meals served by waiters and waitresses for consumption within the structure. Any business which offers drive-up or drive-through service is not a restaurant for the purpose of this paragraph. All establishments within the town limits of Oliver Springs engaged in the lawful and licensed sale of beer for either on premises or off premises consumption prior to July 14, 1984, may continue such lawful sale of beer in accordance with their applicable license until such time as they discontinue beer sales for a continuous period of at least one hundred (100) days. (Ord. #93-09-02, Sept. 1993, as replaced by Ord. #06-16-02B. Feb. 2006)

8-213. **Public display of license required.** (1) Any business that is issued a permit to sell beer is required to publicly display a license to sell beer in accordance with the laws of the State of Tennessee.

(2) The beer board shall issue said license at the same time that it issues the permit to sell beer to the applicant's business.

(3) The failure of a business to comply with the requirement to publicly display said license shall be a violation of the laws of the State of Tennessee and the Town of Oliver Springs. (Ord. #93-09-02, Sept. 1993, as amended by Ord. #96-10-17, Oct. 1996, and replaced by Ord. #06-16-02B, Feb. 2006)

8-214. **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 hospitals, schools, churches, or other places of public gathering, or would otherwise interfere with the public health, safety, and morals. In no event will a permit be issued authorizing on premise consumption of beer to restaurants within five hundred feet (500') of any hospital, schools, churches, or other places of public gathering. The distance shall be measured in a straight line from the nearest point on the property line upon which sits the building from which the beer will be sold, manufactured or stored to the nearest point on the property line of the hospital, school, church or other place of public gathering.\(^1\) (1989 Code, § 2-214, as replaced by Ord. #06-16-02B, Feb. 2006)

\(^1\)State law reference
See *Watkins v. Naifeh*, 625 S.W.2d 104 (Tenn. 1982) and other cases cited therein which establish the straight line method of measurement.
8-215. **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. (Ord. #93-09-02, Sept. 1993, as replaced by Ord. #06-16-02B, Feb. 2006)

8-216. **Prohibited conduct or activities by beer permit holders.** It shall be unlawful for any beer permit holder to:

1. Employ any person under eighteen (18) years of age in the sale, storage, distribution or manufacture of beer. (This provision shall not apply to grocery stores selling beer for off-premises consumption only.)
2. Make or allow any sale of beer between the hours of 3:00 A.M. and 6:00 A.M. during any night of the week; 3:00 A.M. till Noon on Sunday.
3. Allow any loud, unusual, or obnoxious noises to emanate from his premises.
4. Make or allow any sale of beer to any person who is not allowed to purchase or consume beer under Tennessee State Law.
5. Allow any person under twenty-one (21) years of age to loiter in or about his place of business.
6. Make or allow any sale of beer to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person.
7. Allow drunk persons to loiter about his premises.
8. Serve, sell, or allow the consumption on his premises of any alcoholic beverage with an alcoholic content of more than five percent (5%) by weight.
9. Allow dancing on his premises.
10. Allow pool or billiard playing in the same room where beer is sold and/or consumed.
11. Fail to provide and maintain separate sanitary toilet facilities for men and women. In addition, it shall be unlawful for any Class 2 on premises permit holder to employ any person under the age of eighteen (18) on the premises in any capacity whatsoever.
12. Identification required prior to sale. Any person, before purchasing or attempting to purchase beer, is required to furnish to the permittee, his or her agent or employee, a photo identification produced by the State of Tennessee, or by any other state or territory of the United States, or any other county of the world, which contains the birth date of the person. All beer sales require a photo identification check to confirm the age of the person, regardless of appearance of the person to be of legal age.
13. Permittees shall prominently display on or near the cash register where payment for the sale of beer is made and recorded, and on the beer cooler or where beer is merchandised signs not less than six inches (6") high and ten inches (10") wide, which states:
"A MINOR WHO PURCHASES OR ATTEMPTS TO PURCHASE BEER SHALL BE PROSECUTED TO THE FULLEST EXTENT OF THE LAW." (Ord. #93-09-02, Sept. 1993, as replaced by Ord. #06-16-02B, Feb. 2006, and amended by Ord. #07-19-07D, July 2007)

8-217. Restrictions on permit holder. It shall hereafter be unlawful for any person, firm, corporation or association to engage in the business regulated hereunder to make or permit to be made any sales or distribution of such beverages to minors; to allow any minor to loiter about such place of business and the burden of establishing the age of any such minor shall be upon the owner or employees of such place of business; all beer sales requires an identification check to confirm age regardless of appearance of purchaser to be of legal age; to employ minors directly in the sale of such beverages; to sell or distribute such beverages to persons who are feebleminded, intoxicated, insane, or otherwise mentally incapacitated; to allow consumption of beverages regulated hereunder upon the premises; to employ any person who has been convicted of any violation of the state statutes prohibiting the sale, possession, manufacture and transportation of alcoholic beverages or any other crime involving moral turpitude within the past ten (10) years. (Ord. #93-09-02, Sept. 1993, as replaced by Ord. #06-16-02B, Feb. 2006)

8-218. Suspension and revocation of beer permits. The beer board shall have the power to suspend or 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 suspended or revoked until a public hearing is held by the board after reasonable notice to all the known parties in interest. Suspension or revocation 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. (as added by Ord. #06-16-02B, Feb. 2006, and amended by Ord. #07-19-07D, July 2007)

8-219. Permit may be suspended or revoked for cause. (1) All permits issued by the beer board under the provisions of this chapter shall be subject to suspension or revocation by said board for the violation of any of the provisions of this chapter.

(2) The board created by this chapter is vested with full and complete power to investigate charges against any permit holder and to cite any permit holder to appear and show cause why his permit should not be suspended or revoked for the violation of the provisions of this chapter.

(3) Complaints filed against any permit holder for the purpose of suspending or revoking such permit shall be made in writing 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 chapter. The board is authorized, in its discretion, to notify the permittee of said violations and to cite said permittee by written notice to appear and show cause why his permit should not be suspended or revoked for such violation. Said notice to appear and show cause shall state the alleged violation as charged, and shall be served upon the permittee either by registered letter or by a member of the Police Department of the Town of Oliver Springs, Tennessee. The notice shall be served upon the permittee at least ten (10) days before the date set for 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 beer board has the option at the time it imposes a suspension or revocation of offering the 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 of one thousand dollars ($1,000.00) for any other violation of this chapter. If a civil penalty is offered as an alternative to pay the civil penalty before the revocation, the permit holder shall have seven (7) days within which to pay the civil penalty before the revocation or suspension is effective. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn. The action of the board in all such hearings shall be final, subject only to review by the court as provided in Tennessee code Annotated, § 57-5-109. (as added by Ord. #06-16-02B, Feb. 2006)

8-220. Beer signs. No alcoholic beverage signs shall be visible from the outside of any establishment. (as added by Ord. #06-16-02B, Feb. 2006)

8-221. Privilege tax. There is hereby imposed on 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 Town of Oliver Springs, 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. (as added by Ord. #06-16-02B, Feb. 2006)

8-222. **Prior permit holders.** Any person, firm, corporation, or legal entity heretofore issued a permit for the sale of beer by the town council of the Town of Oliver Springs, Tennessee, and conducting sales under such permit shall, in order to continue such sales, be required to apply for a permit for the sale of beer within the municipality under the provisions of this chapter within twenty (20) days from its passage. Be it further enacted and ordained that in the event any part of this chapter shall be declared invalid for any reason, the remainder of said chapter shall remain in full force and effect and not be affected thereby. (as added by Ord. #06-16-02B, Feb. 2006)

8-223. **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. (as added by Ord. #07-19-07D, July 2007)

8-224. **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. #07-19-07D, July 2007)

8-225. Mandatory training requirements for employees of beer permit holders. (1) No person holding a permit or license to sell beer in the municipal limits of Oliver Springs shall allow any employee to sell or serve beer unless that employee has attended and completed a program of alcoholic beverage sale or server instruction approved by the Oliver Springs Beer Board and certified by the Tennessee Alcoholic Beverage Commission.

(2) No employee of a person holding a beer permit or license to sell beer in the municipal limits of Oliver Springs shall be allowed to sell or serve beer unless that person has attended and completed a program of alcoholic sale or server instruction approved by the Oliver Springs Beer Board and certified by the Tennessee Alcoholic Beverage Commission.

(a) Existing employees of permit holders will have six (6) months from the date of passage of this section to obtain proper certification.

(b) New employees of permit holders will have thirty (30) days to obtain proper certification from the date of hire.

(c) Employees holding a valid Tennessee Alcoholic Beverage Commission certification or license shall be exempt from the terms of this section.

(3) An extension waiving compliance with this section may be granted by the Oliver Springs Beer Board upon proper application of good cause shown by existing permit holder for up to an additional six (6) months in order to achieve full compliance.

(4) The Oliver Springs Beer Board may issue show cause orders to any permit holder or any employees to command their presence and answer charges before the board upon information and belief received that a violation of this section has occurred.

(5) Upon a finding of guilt, proven by clear and convincing evidence, the Oliver Springs Beer Board may suspend a beer permit for up to ten (10) days, or in the alternative impose a monetary fine of up to fifty dollars ($50.00) per occurrence and/or require the employee to successfully repeat the program of alcoholic beverage sale or server instruction approved by the Oliver Springs Beer Board and certified by the Tennessee Alcoholic Beverage Commission.

(6) Documentation demonstrating compliance with the terms of this section shall be maintained on premises and shall be available for inspection by proper authorities at all times beer is being served or sold.
(7) The Oliver Springs Recorder shall cause a copy of this section to be mailed to all beer permit holders within thirty (30) days of passage and all new applicants shall be provided a copy of this section at the time of application.

(8) The terms of this section are incorporated by reference into the Oliver Springs Beer Board Rules and Regulations. (as added by Ord. #12-21-06G, June 2012)