

TITLE 8

ALCOHOLIC BEVERAGES¹

CHAPTER

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2. BEER.

CHAPTER 1

INTOXICATING LIQUORS

SECTION

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8-101. Alcoholic beverages subject to regulation. It shall be unlawful to engage in the business of selling, storing, transporting, distributing, or to purchase or possess alcoholic beverages within the corporate limits of this town except as provided by Tennessee Code Annotated, title 57.

¹Municipal code references

Driving under the influence: section 15-104.

Minors in beer places, public drunkenness, etc.: title 11, chapter 2.

State law reference

Tennessee Code Annotated, title 57.

8-102. Application for certificate of good moral character.¹ Before any character certificate, as required by Tennessee Code Annotated, section 57-3-208 or a renewal as required by 57-3-213 shall be signed by the mayor, or by any aldermen,² an application in writing shall be filed with the town recorder on a form to be provided by the town, giving the following information:

- (1) Name, age and address of the applicant.
- (2) Number of years residence in the town.
- (3) Occupation or business and length of time engaged in such occupation or business.
- (4) Whether or not the applicant has been convicted of a violation of any state or federal law or of the violation of this code or any town ordinance, and the details of any such conviction.
- (5) If employed, the name and address of employer.
- (6) If in business, the kind of business and location thereof.
- (7) The location of the proposed store for the sale of alcoholic beverages.
- (8) The name and address of the owner of the store.
- (9) If the applicant is a partnership, the name, age and address of each partner, and his occupation, business or employer. If the applicant is a corporation, the name, age and address of the stockholders and their degrees of ownership of stock in the corporation.

The information in the application shall be verified by the oath of the applicant. If the applicant is a partnership or a corporation, the application shall be verified by the oath of each partner, or by the president of the corporation.

Each application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars (\$250.00).

8-103. Applicant to agree to comply with laws. The applicant for a certificate of good moral character shall agree in writing to comply with the state and federal laws and ordinances of the town and rules and regulations of the Alcoholic Beverage Commission of the State for sale of alcoholic beverages.

¹State law reference

Tennessee Code Annotated, section 57-3-208.

²State law reference

Tennessee Code Annotated, section 57-3-208 requires the certificate of good moral character to be signed by the mayor or a majority of the governing body.

8-104. Applicant to appear before board of mayor and aldermen; duty to give information. An applicant for a certificate of good moral character may be required to appear in person before the board of mayor and aldermen for such reasonable examination as may be desired by the board.

8-105. Action on application. Every application for a certificate of good moral character shall be referred to the chief of police for investigation and to the town attorney for review, each of whom shall submit his findings to the board of mayor and aldermen within thirty (30) days of the date each application was filed.

The mayor or a majority of the board of mayor and aldermen may issue a certificate of moral character to any applicant.

8-106. Residency requirement. The applicant for a certificate of good moral character shall have been a bona fide resident of the Town of Gainesboro for not less than one (1) year at the time his application is filed. If the applicant is a partnership or a corporation, each of the partners or stockholders must have been a bona fide resident of the Town of Gainesboro not less than one (1) year at the time the application is filed.

8-107. Applicants for certificate who have criminal record. No certificate of good moral character for the manufacture or sale at wholesale or retail of alcoholic beverages or for the manufacture or vinting of wine shall be issued to any person, (or if the applicant is a partnership, any partner, or if the applicant is a corporation, any stockholder), who, within ten (10) years preceding the application for such certificate of good moral character, has been convicted of any felony or of any offense under the laws of the state or of the United States prohibiting the sale, possession, transportation, storage or otherwise handling of intoxicating liquors, or who has during such period been engaged in business, alone or with others, in violation of such laws.

8-108. Only one establishment to be operated by retailer. No retailer shall operate, directly or indirectly, more than one place of business for the sale of alcoholic beverages in the town. The word "indirectly," as used in this section, shall include and mean any kind of interest in another place of business by way of stock, ownership, loan, partner's interest or otherwise.

8-109. Where establishments may be located. It shall be unlawful for any person to operate or maintain any retail establishment for the sale, storage or distribution of alcoholic beverages in the town except at locations zoned commercial or industrial as appears on the official zoning map of the Town of Gainesboro on the date of application, but in no event shall any establishment

be located within three hundred (300) feet of a hospital, church or school, or any other place of public gathering, measured in a straight line¹ between the nearest point on the property line upon which sits the building from which the alcoholic beverages will be sold, stored or distributed, and the nearest point on the property line of the hospital, school, church, or other place of public gathering.

8-110. Retail stores to be on ground floor; entrances.² No retail store shall be located anywhere on premises in the town except on the ground floor thereof. Each such store shall have only one main entrance; provided, that when a store is located on the corner of two (2) streets, such store may maintain a door opening on each such street; and provided further, that any salesroom adjoining the lobby of a hotel may maintain an additional door into such lobby as long as the lobby is open to the public.

8-111. Limitation on number of retailers.³ No more than three (3) retail licenses for the sale of alcoholic beverages shall be issued under this chapter.

8-112. Sales for consumption on premises. No alcoholic beverages shall be sold for consumption on the premises of the seller.

8-113. Radios, amusement devices and seating facilities prohibited in retail establishments. No radios, pinball machines, slot machines or other devices which tend to cause persons to congregate in such place shall be permitted in any retail establishment. No seating facilities shall be provided for persons other than employees.

8-114. Inspection fee. The Town of Gainesboro hereby imposes an inspection fee in the maximum amount allowed by Tennessee Code Annotated, section 57-3-501 on all licensed retailers of alcoholic beverages located within the corporate limits of the town.

¹State law reference

See Watkins v. Naifeh, 635 S.W.2d 104 (1982) and other cases cited therein which establish the straight line method of measurement.

²State law reference

Tennessee Code Annotated, section 57-3-708(b).

³State law reference

Tennessee Code Annotated, section 57-3-208(c).

8-115. Violations. Any violation of this chapter shall constitute a misdemeanor and shall, upon conviction, be punishable by a fine under the general penalty clause of this code. Upon conviction of any person under this chapter, it shall be mandatory for the town judge to immediately certify the conviction, whether on appeal or not, to the Tennessee Alcoholic Beverage Commission.

CHAPTER 2

BEER¹

SECTION

- 8-201. Authority to grant, revoke, etc., beer permits.
- 8-202. Permit required for engaging in beer business.
- 8-203. Permits are not transferable.
- 8-204. Permits forfeited if permittee is convicted of certain offenses.
- 8-205. Applicant shall file written application containing specific requirements.
- 8-206. Permits authorized for certain businesses.
- 8-207. Permits issued for sale of beer within corporate limits not for consumption on the premises.
- 8-208. Sale to minors or intoxicated persons unlawful.
- 8-209. Hours and days of sale, etc., regulated.
- 8-210. Permittees not to allow minors to loiter about premises.
- 8-211. Purchase of beer by minors.
- 8-212. Hearings on revocation or suspension of beer permits.
- 8-213. Permits not required for certain retail and wholesale beer establishments.
- 8-214. Violations.
- 8-215. Inspection and inspection fee.
- 8-216. Privilege tax.
- 8-217. Civil penalty in lieu of suspension.

8-201. Authority to grant, revoke, etc., beer permits. The board of mayor and aldermen is designated, appointed, and given authority for the purpose of granting, refusing, rescinding, or revoking permits for the sale, storage and warehousing of beer or other alcoholic beverage with an alcoholic content not exceeding five percent (5%) by weight within the corporate limits of Gainesboro, Tennessee.

¹Municipal code references

Public drunkenness, minors in beer places, etc.: title 10, ch. 2.

Tax provisions: title 6.

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).

8-202. 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 T.C.A. § 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 cashiers check payable to the Town of Gainesboro. Each applicant must be a person of good moral character and certify that he/she has read and is familiar with the provisions of this chapter. (as replaced by Ord. #94-1-1. § I, March 1994)

8-203. Permits are not transferable. Permits issued hereunder shall be issued and shall remain in full force and effect until they are cancelled and revoked or suspended by the board of mayor and aldermen, and no permit shall be transferable. Should the holder of a permit, whether it be a person, firm, corporation, joint stock company, syndicate, or association, go out of business or move its place of business from one point in Gainesboro, Tennessee, to another point within the town, immediately upon the cessation of business at the original place, the permit theretofore granted shall be rescinded and be of no further force or effect, and is immediately null and void.

8-204. Permits forfeited if permittee is convicted of certain offenses. Any person, firm, corporation, joint stock company, syndicate, or association who shall have been granted a permit to sell or distribute beer or other beverages of like alcoholic content, who shall, after having obtained said permit, be convicted by any court of competent jurisdiction of violating any of the laws against possession, sale, manufacture, and/or transportation of intoxicating liquor, or of any crime involving moral turpitude, forthwith shall forfeit his or its permit to sell beer or any other beverages of like alcoholic content within the corporate limits of Gainesboro, Tennessee, and each sale of beer or like beverage, after any conviction, shall be deemed to constitute a separate offense.

8-205. Applicant shall file written application containing certain specific requirements. Before any permit is issued by the board of mayor and aldermen, the applicant therefor shall file with the board of mayor and aldermen a sworn petition in writing and shall establish the following:

- (1) The name and residence of the applicant.
- (2) A statement that the applicant is a citizen of the United States.
- (3) The location of the premises at which the business shall be conducted.
- (4) The owner or owners of such premises.

(5) That no person will be employed in the sale, storage for resale or distribution of such beverages except those who are citizens of the United States.

(6) That the applicant shall not engage in the sale of such beverages except at the place or places for which the board of mayor and aldermen has issued permits or permit, to such applicant.

(7) That no sale of such beverages will be made except in accordance with the permit granted.

(8) The applicant shall state as to whether the permit for the sale of beer is sought for consumption on the premises or for sale to be carried off the premises with no consumption on the premises.

(9) The application is for a grocery store, and that the beer is to be carried off the premises with no consumption on the premises. The applicant shall also state how many years that he has been in business at the premises and the distance to the closest school, church or other place of public gathering.

(10) That neither the applicant nor any persons employed, or to be employed by him in such distribution or sale of such beverage, has ever been convicted of any violation of the law against the prohibition, sale, possession, manufacture, or transportation of intoxicating liquor, or of any crime involving moral turpitude within the past ten (10) years.

(11) That the applicant has not had a license for the sale of legalized beer or alcoholic beverages revoked.

(12) The application shall state whether the person applying will conduct the business in person, and whether he is conducting the business as his own enterprise or whether he is acting as agent for any other person.

(13) That no brewer or said distiller of legalized beer or any other alcoholic beverage has any interest, financial or otherwise, in the premises upon or in which the business to be licensed is carried on.

(14) That no brewer or distiller of legalized beer or any other alcoholic beverage has any interest, financial or otherwise, in the business which is licensed, or requested to be licensed.

(15) That the applicant will not thereafter convey or grant any brewer or distiller of legalized beer or any other alcoholic beverage any interest in either the business which is licensed to be carried on, or in any other property at which such business may thereafter be carried on.

(16) That the applicant has, at the time of making such application, no indebtedness or other financial obligation to any brewer or distiller of legalized beer or other alcoholic beverage, and will not, during the period such license shall be in force, contract any financial obligation to any brewer or distiller of legalized beer or other alcoholic beverage other than for the purpose of obtaining such beer or other alcoholic beverage to be authorized to be sold under this chapter in the ordinary course of business.

(17) This application shall be verified by the affidavit of the applicant, made before a notary public or the town clerk, and if any false statement is made in any part of such application the permit or license granted or issued to the applicant shall be revoked by the board of mayor and aldermen.

8-206. Permits authorized for certain businesses. In order to protect the general welfare and morals of the citizens of the Town of Gainesboro, Tennessee, and to avoid the congestion of traffic or interfere with the public health, safety and morals of the citizens of Gainesboro, Tennessee, it shall be unlawful for any person, firm, corporation, joint stock company, syndicate, association, or any other legal entity to sell beer at retail or other alcoholic beverage with an alcoholic content not exceeding five percent (5%) within the corporate limits of Gainesboro, Tennessee, or to possess the same for the purpose of resale except a grocery store which qualifies under the rules and regulations herein prescribed.

8-207. Permits issued for sale of beer within corporate limits not for consumption on the premises. No permit for the sale of beer shall be issued to any person or persons, firm, corporation, joint stock company, syndicate, or association for the sale of beer or other alcoholic beverage with an alcoholic content not exceeding five percent (5%) by weight within the corporate limits of Gainesboro, Tennessee, except for off premises consumption and only from a legitimate operated full line grocery store, which includes a full line of meats, fruits and vegetables, and is duly licensed by the State of Tennessee, Jackson County, and the Town of Gainesboro, Tennessee, and whose grocery privilege and valorem taxes are maintained in a paid status at all times. In addition, the majority of the gross sales of said business is derived from retail sales of staple groceries. The business shall not be located within two hundred (200) feet of a church or public gathering place or within five hundred (500) feet of a school as measured in a straight line from the nearest property line of the boundaries and the church, public gathering place or school. No beer will be sold, warehoused, or distributed from any building other than the one to which the permit is issued. No outside advertising of beer or various brands for sale in the said grocery store shall be permitted. A sign as "beer to go" is authorized.

8-208. Sale to minors or intoxicated persons unlawful. It shall be unlawful to sell or offer for sale any beverage falling within the provisions of this chapter to a person under the age of twenty-one years or to a person in an intoxicated or partially intoxicated condition.

8-209. Hours and days of sale, etc., regulated. It shall be unlawful for any person or persons, firm, corporation, joint stock company, syndicate, or

association to offer for sale or sell beer or other alcoholic beverage with an alcoholic content not exceeding 5% by weight within the corporate limits of Gainesboro, Tennessee, between the hours of 12:00 o'clock Midnight and 6:00 o'clock A.M. during any night of the week, and any time Sunday except between the hours 1:00 P.M. to 6:00 P.M., or on Election days before or while the polls are lawfully open until one hour after closing.

8-210. Permittees not to allow minors to loiter about premises. It shall be unlawful for the management of any place where any beer or other beverage of like alcoholic content is sold within the corporate limits of Gainesboro, Tennessee, to allow any person under twenty-one (21) years of age to loiter about such place of business and the burden of ascertaining the age of minor customers shall be upon the owner or operator of such place of business.

It shall be unlawful for any beer permit holder to employ any person under eighteen (18) years of age in the sale, storage, of distribution of beer.

8-211. Purchase of beer by minors. It shall be unlawful for any person under twenty-one years of age to knowingly misrepresent his age in order to obtain or purchase beer within the corporate limits of the Town of Gainesboro, Tennessee.

8-212. Hearings on revocation or suspension of beer permits. The board of mayor and aldermen of the Town of Gainesboro, Tennessee is vested with full and complete power to investigate charges against any permit holder who is cited to appear and show cause why his and/or its permit should not be suspended or revoked for the violation of the provisions of this chapter or the provisions of the state beer laws of the State of Tennessee. Complaints filed against any permit holder for the purpose of suspending or revoking such permits shall be made in writing and filed with the board. When the board shall have reason to believe that may permit holder shall have violated any of the provisions of this chapter or any of the provisions of the State Beer Act, the board is authorized, in its discretion, to notify the permittee of the violations and to cite the permittee by written notice to appear and show cause why his permit should not be suspended or revoked for such violations. The notice to appear and show cause shall state the alleged violations charged and shall be served upon permittee either by registered mail or by a member of the Police Department of the Town of Gainesboro. 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 the permit. The action of the board in all such hearings shall be final, subject only to review by

the Court as provided in the State Beer Act. When a permit is revoked, no new permit shall be issued hereunder for the sale of beer at the same location, until the expiration of one (1) year from the date said revocation becomes final. In the event any person or persons, firm, corporation, joint stock company, syndicate, or association has its beer permit revoked for a second time for the violation of the provisions of this chapter or the State Beer Act of the State of Tennessee, then that person or persons, firm, corporation, joint stock company, syndicate, or association shall not be granted a new permit for a period of three years. In the event any person or persons, firm, corporation, joint stock company, syndicate, or association has its beer permit revoked for a third violation of the provisions of this chapter or the provisions of the State Beer Act of the State of Tennessee, then that person or persons, firm, corporation, joint stock company, syndicate, or association shall never be granted a beer permit under the provisions of this chapter.

8-213. Permits not required for certain retail and wholesale beer establishments. No person, firm, corporation, joint stock company, syndicate, or association holding a lawful and valid permit from the Jackson County governing Body or the Jackson County Beer Board for the sale of beer at retail or for the storage or warehousing of beer whose place of business described in said permit which has been annexed and incorporated into the corporate limits of the Town of Gainesboro, Tennessee, need apply for a town permit for the sale, storage, or warehousing of beer. However, any person, firm, corporation, joint stock company, syndicate, or association holding such an existing permit shall be exempt from the requirements herein of obtaining a town permit. However, any person, firm, corporation, joint stock company, syndicate, or association holding such an existing permit shall observe and be bound by all the rules and regulations contained in the above provisions relative to the sale and storage of beer within the town limits of the Town of Gainesboro, Tennessee.

8-214. Violations. Any violation of the provisions of this chapter relative to the conducting of beer business as regulated herein shall be a misdemeanor punishable under the general penalty clause for this code.

8-215. Inspection and inspection fee. Any permit holder shall be subject to an inspection of the premises as may be deemed necessary by the board of mayor and aldermen and/or beer board.

At the time an inspection is made a fee, the maximum fee allowed by Tennessee Code Annotated, section 57-3-501, shall be charged.

8-216.¹ 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, storage, distribution, or manufacture of beer shall remit the tax on January 1, 1994, and each successive January 1, to the Town of Gainesboro, 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. #94-1-1, § I, March 1994)

8-217. Civil penalty in lieu of suspension. The beer board may at the time it imposes a revocation or suspension, offer a permit holder the option of paying a civil penalty not to exceed \$1,500.00 for each offense of making or permitting to be made any sales to minors or a civil penalty not to exceed \$1,000.00 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. (as added by Ord. #94-1-1, § I, March 1994)

¹Ord. #94-1-1 numbered these provisions as section 8-215. However, since a section number 8-215 already existed, the compiler has added these provisions as sections 8-216 and 8-217.