

TITLE 8**ALCOHOLIC BEVERAGES**¹**CHAPTER**

1. INTOXICATING LIQUORS.
2. BEER.
3. BROWN-BAGGING.

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

8-101. Prohibited generally.

8-101. Prohibited generally. Except as authorized by applicable laws² 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 the City of Henderson. "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. (1976 Code, § 2-101)

¹State law reference
Tennessee Code Annotated, title 57.

²State law reference
Tennessee Code Annotated, title 39, chapter 17.

CHAPTER 2

BEER¹

SECTION

- 8-201. Beer board established.
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- 8-203. Record of beer board proceedings to be kept.
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- 8-205. Powers and duties of the beer board.
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- 8-209. Beer permits shall be restrictive; on premises consumption not allowed; surrendering permits.
- 8-210. Interference with public health, safety, and morals prohibited.
- 8-211. Issuance of permits to persons convicted of certain crimes prohibited.
- 8-212. Prohibited conduct or activities by beer permit holders.
- 8-213. Revocation and suspension of beer permits.
- 8-214. Suspension or revocation of beer permits for subsequent sales to minors.

8-201. Beer board established. There is hereby established a beer board to be composed of all the members of the board of mayor and aldermen. A chairman shall be elected annually by the board from among its members. All members of the beer board shall serve without additional compensation. (1976 Code, § 2-201)

8-202. Meetings of the beer board. All meetings of the beer board shall be opened to the public. The board shall hold regular meetings at a location set by the board on the second Thursday night of each month 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 or any two members, provided reasonable notice thereof is given to each member at least three (3) days in advance of such meeting. The board may adjourn a meeting at any time to another time and place. (1976 Code, § 2-202, as amended by Ord. #286, March 1995, modified)

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).

8-203. Record of beer board proceedings to be kept. The recorder shall keep 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 date 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. (1976 Code, § 2-203)

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. (1976 Code, § 2-204)

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 municipality in accordance with the provisions of this chapter. (1976 Code, § 2-205)

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.

As used herein, where the context permits, the word person or persons shall be deemed to include natural persons as well as firms, corporations, joint stock companies, syndicates, associations, and any other type of business organization, as well as clubs, societies, and fraternities. (1976 Code, § 2-206)

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 from the beer board a permit. No application will be accepted for a location if the local zoning ordinance does not allow a business or this type of business at the proposed location. Applicants for new permits will be required to pay a non-refundable application fee of two hundred and fifty dollars (\$250.00) when filing the application with the city recorder. The application shall remain on file with the city recorder at least thirty (30) days prior to being placed on the agenda of the beer board. During this period notice of the application shall be published for two (2) consecutive weeks in the "Chester County Independent" newspaper at the expense of the applicant. Both the application and the notice shall be on forms prescribed and furnished by the board. 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. (1976 Code, § 2-207, as amended by Ord. #267, July 1993, and Ord. #286, March 1995)

8-208. Annual privilege tax. An annual privilege tax is required for all permit holders. The due date of the privilege tax is January 1 of each year. The city is required to mail written notice at least 30 days prior to the due date of the tax, notifying them of the due date and that it is to be remitted to the city recorder. If the permit holder does not pay the tax by January 31, then the recorder shall send a notice of delinquency by certified mail. Once the delinquent notice is received, the permit holder has ten (10) days to remit the tax. If not remitted during this period, the permit automatically becomes void. Permit holders who get beer permits after January 1 of each year are required to pay a prorated amount of the tax for each month or portion thereof they have a permit until the next due date. Any permit holder who has paid the privilege tax and goes out of business at anytime after payment of the tax, will not be eligible for a refund of any portion of the tax. (Ord. #267, July 1993)

8-209. Beer permits shall be restrictive; on premises consumption not allowed; surrendering permits. 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 phrase of the beer business not expressly authorized by his/her/their 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/her/their permit by the beer board.

There shall be no sales of beer for on premises consumption within the city limits. Any existing business which holds a permit for the on premises sale and consumption of beer under a prior ordinance will be allowed to operate lawfully under this section provided, however, that if the holders of the on premises permit(s) violate any provision of the beer law, such permits may be revoked by the beer board.

Beer permit holders must surrender the permit within fifteen (15) days of the termination of business, change of ownership, relocation, or change in the business name. (1976 Code, § 2-208, as amended by Ord. #267, July 1993, and Ord. #286, March 1995)

8-210. Interference with public health, safety, and morals prohibited. No permit authorizing the retail sales of beer will be issued when such business would cause congestion of traffic or would interfere with 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 the storage, sale or manufacture of beer at places within one thousand feet (1,000 feet) of any school, church, or other place of public

gathering. In ascertaining the above distances, measurements will be in a straight line.

All existing businesses in the retail sale of beer for off the premises consumption, which were legal under the prior ordinance, but which are less than 1,000 feet from a school, church or other place of public gathering, shall be allowed to operate lawfully under this section; provided, however, that if the holders of permits at such existing business violate any provision of the beer law, such permits shall be revoked by the beer board. (1976 Code, § 2-210, as amended by Ord. #286, March 1995)

8-211. 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. (1976 Code, § 2-211)

8-212. Prohibited conduct or activities by beer permit holders. It shall be unlawful for any beer permit holder to:

(1) Employ any person convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude, within the past ten (10) years.

(2) Employ any minor under eighteen (18) years of age in the sale, storage, distribution, or manufacture of beer.

(3) Make or allow any sale of beer between the hours of 12:00 midnight and 6:00 A.M. during any night of the week; or at any time on Sunday.

(4) Make or allow any sale of beer to a minor under twenty-one (21) years of age.

(5) Allow any minor under eighteen (18) years 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 or disreputable persons to loiter about his premises.

(8) Sell 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) Operate, use, or permit the operation or use of any phonograph, music box, radio, television or other musical instrument or like machine in such a manner as to create loud or offensive noises or to in any way be offensive or a nuisance.

(12) Permit any loud talking, noises or profane or indecent or vulgar language on the premises.

(13) Sell beer imported from without the State of Tennessee and on which no Tennessee taxes have been imposed.

(14) Operate or permit any employee or any other person to operate any gambling device or game of chance whatsoever.

(15) It shall be unlawful for any beer permit holder or any employee, to allow any fight, altercation, or disturbance to take place on or near the premises of said beer permit holder without notifying the Police Department of the City of Henderson immediately. (1976 Code, § 2-212, as amended by Ord. #286, March 1995)

8-213. Revocation and suspension of beer permits. The beer board shall have the authority 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, failing to pay any applicable taxes or license fees, or for violating any of the provision of this chapter or state law. 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 proceedings may be initiated by the chief of police or by any member of the beer board. The beer board shall have the power to adopt and prescribe the rules and regulations to be following in such hearings. The beer board may offer to the permit holder the option of paying a civil penalty instead of suspension or revocation of the beer permit. Such penalty may be up to one thousand five hundred dollars (\$1,500.00) for each offense of making or allowing sales to minors or up to one thousand dollars (\$1,000.00) for any other offense. If the option of paying a civil penalty is given, the permit holder has seven days to pay before the suspension or revocation takes effect. (1976 Code, § 2-213, as amended by Ord. #267, July 1993, and Ord. #286, March 1995)

8-214. Suspension or revocation of beer permits for subsequent sales to minors. As an alternative to other penalties the beer board may levy against permit holders, the beer board is empowered to suspend or revoke the beer permits of holders who have previously been found in violation of the prohibition of the sale of beer to minors. Such suspensions or revocation shall be as follows:

(1) For one (1) subsequent sale to a minor within a twelve-month period after the initial violation the holders permit may be suspended for a period of up to ninety (90) days.

(2) For two (2) subsequent violations of sale to a minor within a twelve-month period after the initial violation the holders permit may be revoked. (as added by Ord. #373, Dec. 2002)

CHAPTER 3

BROWN-BAGGING

SECTION

8-301. Brown-bagging prohibited.

8-302. Definitions.

8-303. Violation.

8-301. Brown-bagging prohibited. No owner, operator or employee of any restaurant, club, or any other business of every kind and description, shall permit or allow any person to open, or to have open, or to consume inside or on the premises a bottle, can, flask or container of any kind or description, of alcoholic beverages or beer. (Ord. #310, Aug. 1997)

8-302. Definitions. For the purposes of interpreting this ordinance, the term "alcoholic beverages" shall mean and include alcohol, spirits, liquor, wine and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, other than patent medicine, or beer where the latter contains an alcoholic content of five percent (5%) by weight or less. The term shall also include any liquid product containing distilled alcohol capable of being consumed by a human being, manufactured or made with distilled alcohol irrespective of alcoholic content, including, but not limited to, "home brew" and "moonshine."

For the same purposes, the term "beer" shall mean all beers, ales and other malt liquors having an alcoholic content of not more than five percent (5%) by weight. (Ord. #310, Aug. 1997)

8-303. Violation. Any person violating this ordinance shall be punished by a fine not to exceed \$50.00. Each day any violation of this ordinance occurs shall be considered a separate offense. (Ord. #310, Aug. 1997)