

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

1. INTOXICATING LIQUORS.
2. BEER.

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

- 8-101. Prohibited generally.
8-102. Brown-bagging prohibited.

8-101. Prohibited generally. Except when he is lawfully acting pursuant to applicable state laws², 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 this city. "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. (1980 Code, § 2-101)

8-102. Brown-bagging prohibited. (1) Unless otherwise authorized by law, no owner, operator, or employee of any restaurant, club, or any other business of every kind and description, shall permit or allow any patron or customer 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.

(2) For the purposes of interpreting this section, 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

¹State law reference

Tennessee Code Annotated, title 57.

²State law reference

Tennessee Code Annotated, title 39, chapter 17.

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.

(3) Any person violating any provision of this section shall be guilty of an offense and upon conviction shall pay a penalty of not less than one dollar (\$1.00) nor more than fifty dollars (\$50.00) for each offense. Each occurrence shall constitute a separate offense. (as added by Ord. #2010-01, April 2010)

CHAPTER 2

BEER¹

SECTION

- 8-201. Beer board established.
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8-201. Beer board established. There is hereby established a beer board to be composed of all the members of the governing body. A chairman shall be elected annually by the board from among its members. All members of the beer board shall serve without additional compensation. (1980 Code, § 2-201)

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 city 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.

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 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 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.

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.

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.

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, except wine as defined in Tennessee Code Annotated, § 57-3-101(a)(20); provided however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol.

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, § 57-5-104(a), shall be accompanied by a non-refundable application fee of two hundred fifty dollars (\$250.00). Said fee shall be in the form of a cashier's check payable to the City of Middleton. 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.

8-208. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer a 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 each successive January 1 to the City

of Middleton, 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.

8-209. 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 in his permit.¹

8-210. 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. (1980 Code, § 2-211)

8-211. Permits for the retail sale of beer. Permits for the retail sale of beer shall be restricted to the sale of beer to be consumed off the premises.

8-212. 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 schools, residences, 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 manufacture or storage of beer, or the sale of beer within one thousand five hundred feet (1,500') of any school, church or other place of public gathering, or within three hundred feet (300') of any residence provided that the owner of the residential dwelling appears in person before the beer board and

¹State law reference

Tennessee Code Annotated, § 57-5-301(a) provides that neither beer permit holders nor persons employed by them may have been "convicted of any violation of the laws against possession, sale, manufacture and transportation of intoxicating liquor or any crime involving moral turpitude" within the previous ten years. Under Tennessee Code Annotated, § 57-5-301(b), violations are punishable under state law as a Class A misdemeanor. Under Tennessee Code Annotated, § 16-18-302, city courts may only enforce local ordinances that mirror, substantially duplicate or incorporate by reference Class C misdemeanors. City courts are thus prohibited from enforcing ordinances making violations of Tennessee Code Annotated, § 57-5-301(a) a local offense.

objects to the issuance of such permit. The distance shall be measured in a straight line from the closest point of the applicant's building to the closest point of the building of the school, residence, church, or other place of public gathering. No permit shall be suspended, revoked or denied on the basis of proximity of the establishment to a school, residence, church or other place of public gathering if a valid permit had been issued to any business on that same location unless beer is not sold, distributed or manufactured at that location during any continuous six (6) month period. (modified)

8-213. Prohibited conduct or activities by beer permit holders, employees and persons engaged in the sale of beer. It shall be unlawful for any beer permit holder to:

- (1) Employ any minor under eighteen (18) years of age in the sale, storage, distribution or manufacture of beer.
- (2) Make or allow the sale of beer between the hours of 3:00 A.M. and 6:00 A.M. on weekdays; except, on Sunday, make or allow between 3:00 A.M. and noon.
- (3) Allow any person under twenty-one (21) years of age to loiter in or about his place of business.
- (4) Make or allow any sale of beer to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person.
- (5) Allow drunk persons to loiter about his premises.
- (6) 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.
- (7) Allow pool or billiard playing in the same room where beer is sold and/or consumed.
- (8) Fail to provide and maintain separate sanitary toilet facilities for men and women.
- (9) Make or allow any sale of beer to a minor under twenty-one (21) years of age.
- (10) Allow gambling on his premises.
- (11) Allow dancing on his premises.

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. (modified)

8-214. Revocation or suspension of beer permits. The beer board shall have the power to revoke or suspend any beer permit issued under the provisions of this chapter when the holder thereof is guilty of making a false statement or misrepresentation in his application or of violating any of the provisions of this chapter. However, no beer permit shall be revoked or suspended until a public hearing is held by the board after reasonable notice to

all the known parties in interest. Revocation or suspension proceedings may be initiated by the police chief or by any member of the beer board.

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

8-215. Civil penalty in lieu of revocation or suspension.

(1) Definition. "Responsible vendor" means a person, corporation or other entity that has been issued a permit to sell beer for off-premises consumption and has received certification by the Tennessee Alcoholic Beverage Commission under the "Tennessee Responsible Vendor Act of 2006," Tennessee Code Annotated, § 57-5-601, et seq.

(2) Penalty, revocation or suspension. The beer board may, at the time it imposes a revocation or suspension, offer a permit holder that is not a responsible vendor the alternative of paying a civil penalty not to exceed two thousand five hundred dollars (\$2,500.00) for each offense of making or permitting to be made any sales to minors, or a civil penalty not to exceed one thousand dollars (\$1,000.00) for any other offense.

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

If a civil penalty is offered as an alternative to revocation or suspension, the holder shall have seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn.

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

8-216. 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.

8-217. Violations. Except as provided in § 8-215, any violation of this chapter shall constitute a civil offense and shall, upon conviction, be punishable by a penalty under the general penalty provision of this code. Each day a violation shall be allowed to continue shall constitute a separate offense.