

TITLE 8

ALCOHOLIC BEVERAGES¹

CHAPTER

1. INTOXICATING LIQUORS.
2. BEER.

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 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 six percent (6%) of alcohol by weight. (Ord. #70, Aug. 1993, as replaced by Ord. #08-04, Nov. 2008)

¹State law reference
Tennessee Code Annotated, title 57.

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

CHAPTER 2

BEER¹

SECTION

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8-201. Beer board established. There is hereby established a beer board to be composed of the board of mayor and aldermen. The mayor shall be the chairman of the beer board. (Ord. #70, Aug. 1993, as replaced by Ord. #2000-01, May 2000, and Ord. #08-04, Nov. 2008)

8-202. Meetings of the beer board. All meetings of the beer board shall be open to the public. The beer board shall conduct business during the regular meetings of the mayor and board of aldermen. When there is business that requires a special meeting, a special meeting may be called by the chairman

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).

provided he gives a reasonable notice to each member. The board may adjourn a meeting at any time, to another time and place. Any applicant seeking a beer permit must be present when the board considers the application. (Ord. #70, Aug. 1993, as replaced by Ord. #2000-01, May 2000, and Ord. #08-04, Nov. 2008)

8-203. Record of beer board proceedings to be kept. The city recorder shall make a record of the proceedings of all meetings of the beer board. The record shall be public 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., 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. #70, Aug. 1993, as replaced by Ord. #2000-01, May 2000, and Ord. #08-04, Nov. 2008)

8-204. 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 city in accordance with the provisions of this chapter. (Ord. #70, Aug. 1993, as replaced by Ord. #2000-01, May 2000, and Ord. #08-04, Nov. 2008)

8-205. "Beer" defined. The term "beer" as used in this chapter shall mean and include all beer, ales, and other malt liquors having an alcoholic content of not more than six percent (6%) by weight. (Ord. #70, Aug. 1993, as replaced by Ord. #2000-01, May 2000, and Ord. #08-04, Nov. 2008)

8-206. 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 beer board shall prescribe and/or furnish, 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 City of Milan. Each applicant must be a person of good moral character and must certify that he or she will become familiar with the provisions of this chapter. All new permit holders must meet with the city recorder for a review of the beer ordinance prior to issuance of the permit. Each new permit holder will receive a copy of this ordinance. Once this permit is issued, the permit holder must activate the permit by opening the business within ninety (90) days of approval of the permit. Failure to open within the ninety (90) days will result in revocation of the permit. If an individual other than the named applicant is to operate the business, such operator must meet the same qualification as the applicant. Applicant must be duly registered for sales tax purposes. (Ord. #70, Aug. 1993, as replaced by Ord. #2000-01, May 2000, and Ord. #08-04, Nov. 2008)

8-207. Privilege tax. Effective January 1, 1994 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, distributing, storage or manufacture of beer shall remit the tax on January 1, 1994, and each successive January 1, to the City of Milan, 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. (Ord. #70, Aug. 1993, as replaced by Ord. #2000-01, May 2000, and Ord. #08-04, Nov. 2008)

8-208. Limitation on number of permits. The beer board shall limit the number of permits in four (4) various classes as follows:

(1) On-premise consumption permits are limited to twelve (12) permits. Current holders of permits are grandfathered and will continue to be so until the total number is reduced to twelve (12) through attrition.

(2) Bona fide restaurant beer permits shall be determined as follows:
(a) Sixty percent (60%) of the gross income of such restaurants is derived from the sale of food.

(b) The seating capacity is at least seventy-five (75).

(c) The restaurant has commercial cooking equipment.

(d) Each location shall keep and maintain the premises in a safe, clean and sanitary condition as required for a rating of class "B" or better as established by the Tennessee State Department of Conservation, Division of Hotels and Restaurant Inspections.

(e) Restaurant has a minimum of one thousand fifty (1,050) square feet of dining area.

(f) The front or main door shall face the adjacent street.

(3) Convenience store permits shall be determined as follows:

(a) Sell an array of products.

(b) Open a minimum of six (6) days.

(c) Open a minimum of sixteen (16) hours per day.

(d) Located in permitted zone.

(e) Glass store front requirements:

(i) Street level glass store fronts.

(ii) Be designed whereas the interior can be easily viewed from the sidewalk, parking area, or street in front of the premises.

(iii) The front of the building shall be a minimum of eighty-five percent (85%) glass. Tinted glass is prohibited.

(iv) Front or main door shall be made of a glass or/and transparent material that allows viewing into the building. The door shall be a minimum of thirty-six inches (36") wide and/or double doors shall be a minimum of seventy-two inches (72") wide.

(f) Required lighting layout:

- (i) Maintain proper lighting.
- (ii) Open parking facilities shall not be less than 6 lux (minimum on pavement) or 0.6 footcandles (minimum on pavement) of a uniformity ratio (average minimum) of 4:1. These are the recommended, maintained, horizontal illuminance for parking facilities.
- (g) Parking area: Shall be paved and maintained in clean, sanitary manner on a timely basis.
- (h) The front or main door shall face the adjacent street.
- (4) Grocery stores, drug stores and super stores may qualify for a beer permit based on the following definition.
 - (a) A grocery store must be located in a zone authorized by the zoning and planning board and must generally sell food items destined for home preparation and consumption, as well as health and beauty aids and household items. Beer sales cannot exceed forty percent (40%) of gross income.
 - (b) A drug store must be located in a zone authorized by the zoning and planning board and must sell prescription drugs, medicine, health and beauty aids and household items. Beer sales cannot exceed forty percent (40%) of gross income.
 - (c) A super store must be located in a zone authorized by the zoning and planning board and must sell a combination of the items sold by grocery and drug stores, plus electronics, clothing, or appliances. Beer sales cannot exceed forty percent (40%) of gross income. (Ord. #70, Aug. 1993, as amended by Ord. #1998-06, Aug. 1998, and replaced by Ord. #2000-01, May 2000, and Ord. #08-04, Nov. 2008)

8-209. Interference with public health, safety, and morals prohibited. No permit (on premise or off premise) authorizing the sale of beer will be issued when such business would cause congestion of traffic or would interfere with schools, churches, child care facilities, or other places of public gathering, or would otherwise interfere with public health, safety or morals. In no event will a permit be issued authorizing on premise consumption of beer within eight-hundred feet (800') of any hospital, school, church, day care facility, or other place of public gathering. In no event will any permit be issued authorizing the manufacture of storage of beer, or the sale of beer within three hundred feet (300') of any hospital, school, church, day care facility, or other place of public gathering. The distances described herein shall be measured in a straight line from building to building, or in the case of a public playground or public park, from the closest point in the nearest property line of the public playground or public park. (Ord. #70, Aug. 1993, as replaced by Ord. #2000-01, May 2000, and Ord. #08-04, Nov. 2008)

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 immediately preceding the application for a beer permit. (Ord. #70, Aug. 1993, as replaced by Ord. #2000-01, May 2000, and Ord. #08-04, Nov. 2008)

8-211. 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 during such employment or within ten (10) years immediately preceding such employment;

(2) 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, at any time on Sunday, at any time in public facilities, or at any time on public property;

(3) Allow any loud, unusual, or obnoxious noises to emanate from the premises;

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

(5) Allow any person under the age of twenty-one (21) years to loiter in or about the business;

(6) Make or allow any sale of beer to any intoxicated person or to any feebleminded, insane, or otherwise mentally incapacitated person;

(7) Allow drunken persons to loiter about the premises;

(8) Serve, sell, or allow the consumption on the premises of any alcoholic beverage with an alcoholic content of more than six percent (6%) by weight;

(9) Fail to provide and maintain separate sanitary toilet facilities for men and women;

(10) Fail to have the place of business, by holders of on-premise consumption permits, cleared of all customers by 1:00 A.M.;

(11) Allow assaults, fighting, damaging of property and breaches of the peace occurring on or in the premises where beer is sold;

(12) Allow any person to consume beer while in a motor vehicle parked on the premises;

(13) Sale of beer without registering with the State of Tennessee for sales tax;

(14) Have the area of business activity inaccessible by locked front doors of any establishment, public or private, during the hours of selling and or serving beer as established in this chapter;

(15) Not allow law enforcement to enter the establishment at any time during, before and after the hours of selling and or serving beer as established in this chapter;

(16) Allow any person to sell or serve beer while consuming beer, alcohol and/or indulge in the consumption of illegal drugs and/or be intoxicated;

(17) For any permit holder whose business is solely for the on premise consumption of beer, to employ any person under the age of eighteen (18) on the premises in any capacity whatsoever; or

(18) Advertise any alcoholic beverage on a sign other than a sign on the windows of the permitted establishment. Such signs shall not substantially restrict the view from the outside into the premises. (Ord. #70, Aug. 1993, modified, as replaced by Ord. #2000-01, May 2000, and Ord. #08-04, Nov. 2008)

8-212. Suspension and revocation of beer permits. The beer board shall have the power to 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 the application or of violating any of the provisions of this chapter. However, no beer permit shall be revoked until the board holds a public hearing 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. (Ord. #70, Aug. 1993, as replaced by Ord. #2000-01, May 2000, and Ord. #08-04, Nov. 2008)

8-213. Unobstructed view into licensed premises required. It shall be unlawful for any person to, in any way, manner, form, or attempt, obstruct the vision through any windows. No public building, within the corporate limits of the City of Milan, which sells beer or other related alcoholic beverages may stack merchandise higher than thirty-six inches (36") from the floor in front of windows. (Ord. #70, Aug. 1993, as replaced by Ord. #2000-01, May 2000, and Ord. #08-04, Nov. 2008)

8-214. Limitation upon issuance of beer permits. No permit shall be issued by the beer permit board:

- (1) In violation of any provision of the State of Tennessee law;
- (2) In violation of the Zoning Ordinance of the City of Milan;
- (3) If the person named in the application is not present when the board considers the application;
- (4) For any location that does not offer restrooms for both sexes complete with commode and washbasin. (Ord. #70, Aug. 1993, as replaced by Ord. #2000-01, May 2000, and Ord. #08-04, Nov. 2008)

8-215. Permit to be displayed. The permit required by this section shall be posted in a conspicuous place on the premises of the permit holder at all times. (As added by Ord. #2000-01, May 2000, and replaced by Ord. #08-04, Nov. 2008)

8-216. Beer permit not transferable. Any permit issued under the provisions of this chapter is not transferable, as to location or person, or as to successor, by purchase or otherwise, of the business for which the permit was issued, and in any such case a new permit is required in the manner provided herein. (As added by Ord. #2000-01, May 2000, and replaced by Ord. #08-04, Nov. 2008)

8-217. Sale, consumption must be on ground floor; exceptions. In any building or on any premises where the retail sale of beverages coming within the provisions of this chapter is permitted and under licenses hereafter issued, no alcoholic beverage shall be sold, served or consumed in any basement room or room other than on the ground floor. Chartered clubs may be exempt from the provisions of this section at the discretion of the beer permit board. (As added by Ord. #2000-01, May 2000, and replaced by Ord. #08-04, Nov. 2008)

8-218. Contents of application for permit; qualifications of applicant; application fee. Prior to any beer permit issuance by the beer board, the applicant shall file with the beer board a sworn petition in writing on forms prescribed and furnished by the City of Milan and shall establish the following:

- (1) The location of the premises at which the business shall be located;
- (2) The owner or owners of the premises;
- (3) The applicant will not engage in the sale of such beverages except at the place or places for which the beer board has issued a permit or permits to such applicant;
- (4) That any permit for off-premise consumption, including convenience store permit and grocery, drug and super store permits, shall not allow on-premise consumption.
- (5) That no sale will be made to minors, and that the applicant will not permit minors or disorderly or disreputable persons heretofore connected with the violation of liquor or beer laws or ordinances to loiter around the place of business.
- (6) The beer board may require the applicant to secure a certificate or a statement from the Tennessee State Department of Conservation, Division of Hotels and Restaurant Inspections, for the location that is the subject of the application.
- (7) The applicant will not allow any gambling or gambling devices on premises.
- (8) The applicant will not allow any beer with alcoholic content greater than such weight, volume or alcoholic content as is allowed by the laws of the State of Tennessee, to be consumed on his/her premises.
- (9) That neither the applicant nor any persons employed or to be employed in such distribution or sale of such beverage have been convicted of any violation of the law against prohibition, sale, manufacture or transportation

of intoxicating liquor, or of any crime involving moral turpitude within ten (10) years immediately preceding the application.

(10) That the applicant will conduct the business in person for himself or, if he is acting as agent, the applicant shall state the person, firm, corporation, syndicate, association or joint stock companies for whom and only for whom, the applicant intends to act.

(11) That no beer shall be sold from coin-operated dispensers.

(12) No wholesaler, or retailer, or any employee thereof, engaged in the physical storage, sale, or distribution of alcoholic beverages, shall be a person under the age of eighteen (18) years. It shall be unlawful for any wholesaler or retailer to employ any person under eighteen (18) years of age, for the physical storage, sale, distribution of alcoholic beverages, or to permit any such person under eighteen (18) years of age in the place of business, to engage in the manufacture, storage, sale or distribution of alcoholic beverages.

(13) Each permit shall be issued to an individual to conduct the business at the location set forth and specified in said application. (as added by Ord. #2000-01, May 2000, and replaced by Ord. #08-04, Nov. 2008)

8-219. Hours for furnishing and/or consumption on license premises. It shall be unlawful and it is hereby declared to be a misdemeanor for any person, firm, or corporation, or any agent thereof, to sell or distribute any of the beverages regulated hereunder, within the City of Milan between the hours of 12:00 midnight and 6:00 A.M. daily, Monday through Saturday, at any time on Sunday, in public facilities, or on public property. No such beverage shall be consumed or opened for consumption on or about the premises of a permit holder, in either bottle, glass, or other container after 12:15 A.M. and before 6:00 A.M. daily, Monday-Saturday, at any time on Sunday, in public facilities, or on public property. (as added by Ord. #2000-01, May 2000, and replaced by Ord. #08-04, Nov. 2008)

8-220. Violation of chapter as grounds for civil penalties, suspension or revocation of permit. Each day's violation of each or any provision of this chapter by any permit holder or such permit holder's employee(s) or agent(s), or each sale made in violation of any provision of this chapter shall constitute a separate misdemeanor for which the permit issued hereunder may be suspended or revoked at the discretion of the beer board. Any offense other than selling to a person under twenty-one (21) years of age may carry a civil penalty of up to one thousand dollars (\$1,000.00) as an alternative to revocation or suspension of the beer permit.

The first offense of selling and/or serving beer to a person under twenty-one (21) years of age will result in a civil penalty up to one thousand dollars (\$1,000.00). The second offense of selling and/or serving beer to a person under twenty-one (21) years of age will carry a suspension of the beer permit up to thirty (30) days and a civil penalty not to exceed one thousand dollars

(\$1,000.00). The third offense of selling and/or serving beer to a person under twenty-one (21) years of age will result in permanent revocation of the beer permit. Any combination of offenses totaling three (3) or more will result in revocation of the beer permit.

The permit holder shall have seven (7) days within which to pay a civil penalty before the revocation or suspension of the beer permit is imposed.

When a permit is revoked, no new permit shall be issued for the sale of beer at the same location for one (1) year after the revocation. The beer board may, at its discretion, determine that a permit may be issued prior to the expiration of the one (1) year revocation period, if the individual applying for the permit is not the original holder or any family member of such individual. (as added by Ord. #2000-01, May 2000, and replaced by Ord. #08-04, Nov. 2008)

8-221. Prospective application of ordinance. Any holder of a valid permit issued prior to the effective date of the ordinance comprising this chapter shall not be affected by the provisions of this chapter, but such permit holder shall continue to be regulated by the ordinances in existence prior to the effective date of the ordinance comprising this chapter. Any permit for a business operated by a holder of a valid permit prior to the effective date of the ordinance comprising this chapter shall be revoked if such business is discontinued or abandoned for a period of one hundred eighty (180) consecutive days. Any such permit holder who seeks to sell or distribute beer shall make application for a new permit and shall be subject to the provisions of this chapter. (as added by Ord. #2000-01, May 2000, and replaced by Ord. #08-04, Nov. 2008)