

TITLE 8**ALCOHOLIC BEVERAGES**¹**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 five percent (5%) of alcohol by weight. (1989 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

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8-201. Creation, organization, etc. of beer board. There is hereby created a board of five (5) members, to be known as the Beer Board of the City of Puryear, Tennessee. All four (4) elected aldermen and the elected mayor shall constitute the membership of said beer board. Terms of the members of the beer board shall correspond to the terms of offices for said aldermen and mayor.

Regular meetings of the beer board shall be held on the second Tuesday of each month at 6:30 P.M. at the city hall.

The mayor shall serve as chairman of the board and the city recorder shall serve as secretary for the board. Minutes shall be kept of the meetings in permanent form and a record shall be kept of the action of the board with respect to every application for a permit. The concurring vote of at least three (3) members of the board shall be necessary to the approving, revocation, or suspension of any permit. Minute books of the board shall be a public record, and shall become a part of the records of the city recorder of the City of Puryear, Tennessee. (Ord. #17-93, Nov. 1993)

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).

8-202. Rules and regulations of the board. The beer board is authorized and empowered to adopt such reasonable rules and regulations as it or a majority thereof may deem necessary and proper for the operation and supervision of the business of the permittee. Provided, however, that such rules and regulations must be submitted to the board of aldermen of the City of Puryear, Tennessee, for approval before they have any force and effect. (Ord. #17-93, Nov. 1993)

8-203. Permit required. (1) It shall be unlawful to manufacture, distribute, sell or offer to sell, at wholesale or retail, in the City of Puryear, Tennessee, any beer or alcoholic beverage, of an alcoholic content of not more than five percent (5%) by weight, without having a permit under the provisions of this chapter, on in violation of the terms of this chapter.

(2) There shall be only one (1) permit issued for each location regulated by the terms of this chapter. The permit granted under this chapter shall be issued only to:

(a) Where the applicant is a sole proprietorship only to the owner of the business, or to any on-premises manager.

(b) Where the applicant is a partnership, only to a managing partner or to an on-premises manager.

(c) Where the applicant is a corporation only to the on-premises manager of the corporate location. (Ord. #17-93, Nov. 1993)

8-204. Enforcement of chapter. The beer board shall have full power to enforce the provisions of this chapter and to investigate reported violations thereof, and for this purpose is authorized to utilize the full facilities of the police department. (Ord. #17-93, Nov. 1993)

8-205. Applications for beer permits. All applications shall be made on a form prescribed by the beer board in conformity with the requirements of this section, and shall be filed with the board at least ten (10) days before approval for issuance.

All applications for permits shall be made in writing and signed by the applicant, or the duly authorized agent of a club or corporation, verified by oath or affidavit, and shall contain the following statements and information:

(1) The name, age, and address of the applicant in case of an individual; in the case of a partnership, the persons entitled to share in the profits thereof; and in the case of a corporation, the objects for which organized, the names and addresses of the officers and directors, and if a majority interest of the stock of such corporation is owned by one person, the name and address of such person.

(2) The citizenship of the applicant, his place of birth, and if a naturalized citizen, the time and place of his naturalization.

(3) The character of business of the applicant and the length of time said applicant has been in business of that character, or in the case of a corporation, the date when its charter was issued.

(4) The location and description of the premises or place of business which is to be operated under said permit.

(5) A statement whether the applicant has made application for a similar or other permit on premises other than described in this application, and the disposition of such application.

(6) Whether a previous or similar license by any state or subdivision thereof, has been revoked or suspended, and the reasons therefor. (Ord. #17-93, Nov. 1993)

8-206. Restrictions on licenses. No permit shall be issued to:

(1) A person who has been convicted of any violation of the laws provided by the State of Tennessee, or any other state, prohibiting the possession, sale, manufacture, or transportation of intoxicating beverages, or any felony, within the past ten (10) years.

(2) An applicant whose license under this chapter has been revoked or suspended for cause, including an applicant whose place of business is conducted by a manager or agent, even if said manager or agent possesses sufficient qualifications to be issued a permit under this chapter. Provided, however, that the board may, in its discretion, issue a license to such applicant for a probationary period to be determined by the board if, in the board's sole discretion, circumstances warrant the granting of said application.

(3) An applicant, who at the time of application for renewal of any license issued hereunder, would not be eligible for such license upon a first application.

(4) A partnership, unless all the members of such partnership shall be qualified to obtain a license. A corporation, its officers, managerial director thereof, or any stockholder or stockholders owning in the aggregate of more than five percent (5%) of the stock of such corporation, would not be eligible to receive a permit hereunder for any reason.

(5) An applicant whose place of business is conducted by manager or agent, unless said manager or agent possesses the same qualifications required of the applicant.

(6) Any employee of the city, mayor, aldermen, city recorder, city attorney, city judge, or any other such elected or appointed official of the city, who shall be interested in any way, either directly or indirectly, in the manufacture, sale, or distribution of alcoholic beverages as defined in this chapter.

(7) An applicant whose place of business does not meet the requirements of any other section of this chapter, or who is not a good character and reputation in this community.

(8) An applicant whose place of business is two hundred fifty (250) feet or nearer to the nearest property line of any church, school, public playground and public park. The distances shall be measured in a straight line¹ from the nearest point upon the property line from which the beer will be sold, manufactured or stored to the nearest point on the property line of the church, school, public playground or public park. Provided, however, that any business established prior to the effective date of this chapter may be continued. When a business not conforming with the provisions of this section is discontinued or abandoned for a period of one hundred eighty (180) consecutive days, then no application for a business not in conformance with the provisions of this section shall thereafter be approved.

(9) An applicant who has not reached the age of twenty-one (21) years of age at the time the application is submitted to the board. Provided, however, that any applicant who holds a permit under this chapter prior to the effective date of this chapter shall continue as a permit holder. (Ord. #17-93, Nov. 1993)

8-207. Investigation and examination of applicants. The beer board shall have the right to examine, or cause to be examined, any applicant for a permit or for a renewal thereof, to determine the validity of the statements made in any application, and to examine or cause to be examined the books and records of any such applicant. Any applicant making any false statement of any material fact in his application shall forfeit any permit received and shall not be eligible to receive another permit for a period of ten (10) years thereafter. Said fee shall be in the form of a cashier's check payable to the City of Puryear. An application fee of two hundred and fifty dollars (\$250.00) for use in offsetting the expense of investigating the applicant shall be charged pursuant to Tennessee Code Annotated, § 57-5-104(a) on any original application for a permit, provided, however, that such fee shall not be charged for renewal of an existing permit, an application for a new location from an applicant already a permit holder under this chapter, or by an applicant who is a manager of an establishment under this chapter that is currently holding a permit under this chapter. Regardless of whether or not an application is approved or denied, any portion of the fee collected in excess of that actually used in the investigation shall be the property of the City of Puryear and deposited in the general fund. (Ord. #17-93, Nov. 1993)

8-208. Term of permit; classification; permit to be posted.

(1) There shall be two (2) classes of permits issued by the board, as follows:

¹State law reference

See Watkins v. Naifeh, 625 S. W. 2d 104 (1982) and other cases cited therein which establish the straight line method of measurement.

- Class A: An "off-premises" permit to any applicant engaged in the sale of alcoholic beverages where they are not to be consumed by the purchaser upon or near the premises of such seller. All "off-premises" permits shall only be issued hereafter to applicants for locations immediately adjacent to Highway 641 and shall be known as the "off-premises" permit zone.
- Class B: An "on-premises" permit to any applicant engaged in the sale of alcoholic beverages where they are consumed by the purchaser or his guest upon the premises of the seller. No permit for any "on-premises" permit shall be issued to any applicant other than those whose premises are located in the "on-premises" permit zone that is hereafter defined as all property immediately adjacent to Highway 641 and north of the southern boundary line of property known as Tax Map 29, Parcel 2.00, according to the records of the Tax Assessor of Henry County, Tennessee, and the records of the City of Puryear.

(2) Surrender of permit upon termination of business. Any permittee who ceases the active operation of a business location offering for sale alcoholic beverages under the provisions of this chapter for a period of greater than thirty (30) days shall be deemed to have surrendered the permit issued under the provisions of this chapter. In addition, when said termination of the business permitted under this chapter shall cease, a permittee shall be required to surrender said permit to the city business office, and any permit not so surrendered shall prohibit the permittee from securing a new permit at a later date without permission of the beer board. The beer board shall further have the power to revoke and remove from the records of the City of Puryear any permits not surrendered, permits of any businesses who have ceased operation under the provisions of this section. (Ord. #17-93, Nov. 1993)

8-209. Records of permits. The city recorder shall keep a complete record of all such permits issued and shall furnish the police department with a copy thereof; upon revocation or suspension of any permit the city recorder shall immediately give written notice thereof to the police department. (Ord. #17-93, Nov. 1993)

8-210. Prohibited acts, acts required. The following conduct shall be regulated by the beer board:

(1) All premises used for the retail sales of beverages covered by this chapter, or for the storage of such beverages for sale, shall be kept in full compliance with ordinances or codes regulating the conditions of premises used for the sale of food for human consumption.

(2) In premises upon which the sale of beverages for consumption on the premises is permitted, no screen, blind, curtain, partition, article, or thing shall be permitted in the windows or upon the doors of such premises, nor inside said premises, which shall prevent a clear view into the interior of such premises from the street, road or sidewalk at all times, and no booth, screen, partition or other obstruction nor any arrangement of lights or lighting shall be permitted in or about the interior of such premises which shall prevent a clear view of the entire interior from the street. In order to enforce the provisions of this section, the board shall have the right to require the filing of plans, drawings, and photographs showing the clearance of the view as above required. Provided, however, that any business established prior to the effective date of this chapter may be continued. When a business not conforming with the provisions of this section is discontinued or abandoned for a period of one hundred eighty (180) consecutive days, then no application for a business not in conformance with the provisions of this section shall thereafter be approved.

(3) No person engaging in the business regulated by this chapter shall make or permit to be made the sales to minors. No one employed by him shall be a person who has been convicted of any violation of the laws against possession, sale, manufacture, and transportation of intoxicating liquor, or any felony, within the last ten (10) years.

(4) No alcoholic beverage shall be sold, offered for sale, or given away between the hours of 3:00 A.M. and 6:00 A.M. No such beverage shall be consumed, or open for consumption, on or about any premises licensed hereunder, in either bottle, glass or other container, after 3:15 A.M. and no premises licensed hereunder shall allow persons on said premises in any manner whatsoever after 4:00 A.M. No such beverage shall be sold, offered for sale, or given away between 3:00 A.M. on Sunday to 12:00 noon on Sunday.

(5) It shall be unlawful to sell, give or deliver alcoholic beverages to any person under the age of twenty-one (21) years. It shall be unlawful for any permittee or his/her agent or employee to suffer or permit any person under the age of twenty-one (21) years to be or to remain in any room or place where such "on sale" premises is located, providing that this sentence shall not apply to any minor on any licensed premises which derives more than fifty percent (50%) of its revenue from the sale of services or commodities other than alcoholic beverages.

(6) It shall be unlawful for the holder of any permit issued under this section to sell, deliver or give alcoholic beverages to any intoxicated person.

(7) It shall be unlawful for the holder of a permit under this chapter to maintain or operate the licensed business in such manner as to be detrimental to the public health, safety or morals.

(8) It shall be unlawful for the holder of a permit issued under this chapter to violate any of the terms and conditions of any other sections of this chapter.

(9) If a business ceases operation for any reason, for more than a period of thirty (30) days, then the permit issued shall automatically expire. If a permit holder shall die, then the permit shall expire upon death of the permittee and shall not descent by the laws of testate or intestate devolution, provided, however, that the legal representative of the estate shall be allowed to continue the operation of said business for a period of thirty (30) days from the death of said permittee, during which time the legal representative, or a successor to the business, shall be allowed to apply for a permit without interruption of the business. Provided, further, that for those permit holders whose business is run by a manager and the business' manager holds the permit, and in the event of change of management the business shall be allowed to continue for a period of thirty (30) days from said change of management, during which time the new manager shall be allowed to apply for a permit without interruption of the business conducted by the permittee.

(10) A permit issued hereunder shall permit the sale of alcoholic beverages only in the premises described in the permit and application. Such location may be changed only upon application to the board and such request for change shall be reviewed as in the manner of a new permit application. No change of location shall be permitted unless the proposed new location is in compliance with the provisions and regulations of this chapter.

(11) It shall be unlawful for any permittee or any agent thereof, to permit any person under the age of eighteen (18) years to engage in the sale, drawing, pouring, or mixing of any alcoholic beverage in any permitted premises, provided, however, that any permittee holding a Class A permit shall be allowed to employ persons age seventeen (17) years or older for the sale of items regulated by this chapter under the same terms and conditions as employees eighteen (18) years or older as stated previously in this section.

(12) It shall be unlawful for any permittee or any agent thereof, to allow on the premises described in the permit any type of live entertainment commonly known as "topless" dancing or other types of dancing of either sex, or of both sexes, that are patently obscene because of "nudity" as defined by Tennessee Code Annotated, § 39-17-901(9) as follows:

"Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any portion therefore below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state. (Ord. #17-93, Nov. 1993, modified, as amended by Ord. #32-01, Jan. 2001)

8-211. Minors. It shall be unlawful for any person under the age of twenty-one (21) years of age to purchase or obtain any alcoholic beverage where such beverage is sold. It shall be unlawful for any parent or guardian to permit

any person under the age of twenty-one (21) years of which he/she may be parent or guardian to violate any provision of this section. It shall be unlawful for any person to misrepresent his/her age for the purposes of purchasing or obtaining alcoholic beverages from any premises where a permit has been issued and alcoholic beverages are sold. (Ord. #17-93, Nov. 1993)

8-212. Procedures for revocation. The beer board shall have the power to revoke any permits, upon notice to the permittee and hearing thereon, for any violation of any provision of this chapter. Notice of a hearing shall be sent by the city recorder to permittee at least seven (7) days prior to the hearing, stating the particular violations of this chapter upon which the hearing will be held. The board shall examine or cause to be examined, any witnesses, books, records, and may take such testimony as proof as is required and shall have the power to compel the presence of witnesses by the issuance of subpoenas for the purpose of obtaining all information required for such hearing. The permittee shall be entitled to representation by counsel and the board shall keep a full and complete transcript of the proceedings before the board. The board shall make public the date and time of such hearing. At the hearing the permit holder or any other interested person may have the right to present evidence as to the facts of said violation and any other fact which may aid the board in determining whether this chapter has been violated and the purposes of the permit have been abused. At the hearing, if the board determines that a witness or other information necessary for the just determination of the issue before the board is not present, the board may recess the hearing, to a date and time certain not to exceed thirty (30) days, to compel the attendance or witnesses or production of information required for such hearing. If the board determines that the terms and conditions of the permit have been violated, the board shall then proceed to enact such penalties as may be required under § 8-213 of this chapter. (Ord. #17-93, Nov. 1993)

8-213. Penalties; revocation and suspension period. (1) If it is determined by the beer board that a violation of this chapter has occurred under the procedures provided for § 8-212, then the board shall revoke any permit, previously granted, for a period of not less than one (1) year. If, however, it should appear to the board that such violation should not result in an outright revocation, but that the permittee should have his/her permit suspended, then the board is specifically authorized to suspend such permit for a period of time said revocation or suspension shall be in effect, and further said revocation or suspension shall preclude the issuance of a permit to any other person or persons, partnerships or corporations, as is more specifically outlined in § 8-205.

(2) No permit at license shall be revoked on the grounds the holder of any permit, or any person working for the holder of such permit, sells alcoholic beverages to a person over the age of eighteen (18) if such person exhibits an identification, false or otherwise, indicating their age to be twenty-one (21) or

over, if the appearance as to maturity is such that the holder of the permit or his employee might reasonably presume said person to be such age and is unknown to such person making the sale. Said permit may be suspended for a period not to exceed ten (10) days. However, this shall not be construed in any way to relieve the said person from liability for making such an illegal purchase as provided for in § 8-211. (Ord. #17-93, Nov. 1993)

8-214. Judicial review of the beer board action. The action of the beer board in connection with the issuance, revocation or suspension of a permit, may be reviewed by the statutory writ of certiorari, said writ of certiorari to be addressed to the Circuit or Chancery Court of Henry County, Tennessee. Immediately upon the grant of the writ of certiorari, the beer board shall cause to be made, certified and forwarded to said court, a complete transcript of the proceedings before the board.

Said provisions of this section shall be the sole and exclusive remedy and method of review of any action or order that may have been issued by the beer board, including the refusal or failure to grant any license or permit. (Ord. #17-93, Nov. 1993)

8-215. Civil penalty in lieu of suspension or revocation. Pursuant to Tennessee Code Annotated, § 57-5-108(a)(2) the board may assess a civil penalty against a permit holder in lieu of suspension or revocation of said permit. Such penalty may be up to one thousand five hundred dollars (\$1500) for each offense of making or allowing sales to minors and up to one thousand dollars (\$1000) for any other violation. The permit holder will have seven days to pay aforementioned penalty before the suspension or revocation takes effect. Payment of the penalty does not effect the permit holders right to seek judicial review of the suspension or revocation pursuant to the general laws of the State of Tennessee. (Ord. #17-93, Nov. 1993)

8-216. Wholesale beer tax. The City of Puryear, specifically by this chapter, in addition to the creation of the beer board thereto, does adopt all of the provisions of the wholesale beer tax law that is codified in Tennessee Code Annotated, § 57-6-103. (Ord. #17-93, Nov. 1993)

8-217. 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). 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 City of Puryear, 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. #17-93, Nov. 1993)