

TITLE 8

ALCOHOLIC BEVERAGES¹

CHAPTER

1. INTOXICATING LIQUORS.
2. BEER.

CHAPTER 1

INTOXICATING LIQUORS

SECTION

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8-101. State law incorporated by reference; 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 municipality except as provided by Tennessee Code Annotated, title 57, as amended, or as hereafter amended, and by the rules and regulations promulgated thereunder, all of which are incorporated by reference as if fully set out herein, and as provided by this chapter. (1983 Code, § 2-101)

8-102. Manufacture prohibited. The manufacture of alcoholic beverage is prohibited within the corporate limits. (1983 Code, § 2-102)

¹Municipal code references

Driving under the influence: § 15-104.

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

State law reference

Tennessee Code Annotated, title 57.

8-103. Wholesale business prohibited. No person, firm, or corporation shall engage in the business of selling alcoholic beverages at wholesale within the corporate limits. (1983 Code, § 2-103)

8-104. Certificate of moral character - application.¹ Any person, firm, or corporation desiring to sell alcoholic beverages to patrons or customers, in sealed packages only, and not for consumption on the premises, shall make application to the city clerk for a certificate of moral character, which application shall be in writing on forms prescribed and furnished by the city clerk.

A nonrefundable two hundred fifty dollar (\$250.00) investigation fee shall accompany each application for a certificate of good moral character whether the application relates to the acquisition of an initial retail business license or to its renewal.

A majority of the city council may issue a certificate of moral character. No certificate of moral character will be granted for the operation of a retail store for sale of alcoholic beverages within two hundred (200') feet of a church, school, or place of public gathering. A certificate of moral character issued under this chapter is not valid except at the premises recited in the application.

No certificate of moral character shall be granted for the operation of a retail store for the sale of alcoholic beverages where, in the opinion of the council, expressed by a majority thereof, the carrying on of such a business at the premises covered by the application for a certificate or moral character would be in too close proximity of a church, school, or public institution, or otherwise inimical to the public interest. A certificate of moral character issued under this chapter shall not be valid except at the premises recited in the application. (1983 Code, § 2-104, as amended by Ord. #872, Feb. 2007)

8-105. Certificate of moral character - content. The certificate of moral character shall state: (1) That the applicant or applicants who are to be in actual charge of said business have not been convicted of a felony within a ten (10) year period immediately preceding the date of application and, if a corporation, that the executive officers or those in control have not been convicted of a felony within a ten (10) year period immediately preceding the date of the application; and further, that in the official's opinion the applicant will not violate any of the provisions of this chapter.

(2) That the applicant or applicants have secured a location for said business which complies with all restrictions of any local law, ordinance or resolution, duly adopted by the local authorities as to location within the city or county, and that the applicant or applicants meet all residency requirements.

¹State law reference

Tennessee Code Annotated § 57-3-208.

(3) That the applicant or applicants have secured a location for said business which complies with all relevant restrictions of any local law, ordinance, or resolution adopted by the local authorities within the City of Winchester or Franklin County, Tennessee. (1983 Code, § 2-105, as amended by Ord. #872, Feb. 2007)

8-106. Location and size restrictions on retail businesses. No retail store shall be located except on the ground floor and it shall have one (1) main entrance opening on a public street and such place of business shall have no other entrance for use by the public except as hereafter provided. When a retail store is located on the corner of two (2) public streets such retail store may maintain a door opening on each of the public streets. Provided, however, that any sales room adjoining the lobby of a hotel or other public building may maintain an additional door into such lobby so long as same shall be open to the public, and provided, further, that every retail store shall be provided with whatever entrances and exits may be required by existing or future municipal ordinances. (1983 Code, § 2-106)

8-107. [Deleted.] (1983 Code, § 2-107, as deleted by Ord. #872, Feb. 2007)

8-108. Limitation on number of retailers.¹ No more than three (3) retail licenses for the sale of alcoholic beverages shall be issued under this chapter. (1983 Code, § 2-108)

8-109. Inspection fee. The City of Winchester hereby imposes an inspection fee in the maximum amount allowed by Tennessee Code Annotated § 57-3-501 on all licensed retailers of alcoholic beverages located within the corporate limits of the city. (1983 Code, § 2-109)

8-110. 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 city judge to immediately certify said conviction, whether on appeal or not, to the Tennessee Alcoholic Beverage Commission. (1983 Code, § 2-110)

¹State law reference

Tennessee Code Annotated § 57-3-208(c).

CHAPTER 2

BEER¹

SECTION

- 8-201. Beer board established.
- 8-202. Meetings of the beer board.
- 8-203. Record of beer board proceedings to be kept.
- 8-204. Requirements for beer board quorum and action.
- 8-205. Powers and duties of the beer board.
- 8-206. "Beer" defined.
- 8-207. Permit required for engaging in beer business.
- 8-208. Privilege tax.
- 8-209. Beer permits shall be restrictive.
- 8-210. Limitation on number of permits.
- 8-211. Interference with public health, safety, and morals prohibited.
- 8-212. Prohibited conduct or activities by beer permit holders, employees and persons engaged in the sale of beer.
- 8-213. Revocation or suspension of beer permits.
- 8-214. Civil penalty in lieu of revocation or suspension.
- 8-215. Loss of clerk's certification for sale to minor.
- 8-216. Violations.
- 8-217--8-226. [Deleted.]

8-201 Beer board established. There is hereby created a board of five (5) members to be known as the beverage board of the City of Winchester, Tennessee. The five (5) members shall be appointed by the mayor and shall be approved by the Winchester City Council. Terms of office for members of the beer board are three (3) years in duration. A chairman shall be elected annually by the board from among its members. All members of the beer board shall serve without compensation. (Ord. #612, Oct. 1990, as replaced by Ord. #660, § 1, Oct. 1993, and Ord. #890, March 2008)

¹Municipal code references

Public drunkenness, minors in beer places, etc.: title 11, chapter 2.

Tax provisions: title 5.

State law reference

For a leading case on municipality's authority to regulate beer, see the Tennessee Supreme court decision in Watkins V. Naifeh, 635 S.W.2d 104 (1982).

8-202. Meetings of the beer board. All meetings of the beer board shall be open to the public. The beer board may hold regular or special called 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. (Ord. #612, Oct. 1990, as amended by Ord. #616, April 1991, and replaced by Ord. #660, § 1, Oct. 1993, and Ord. #890, March 2008)

8-203. Record of beer board proceedings to be kept. A member of the beer board 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. (Ord. #612, Oct. 1990, as replaced by Ord. #660, § 1, Oct. 1993, and Ord. #890, March 2008)

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. (Ord. #612, Oct. 1990, as replaced by Ord. #660, § 1, Oct. 1993, and Ord. #890, March 2008)

8-205. Powers and duties of the beer board.¹ 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. (Ord. #612, Oct. 1990, as replaced by Ord. #660, § 1, Oct. 1993, and Ord. #890, March 2008)

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; provided however, that no more that forty-nine percent (49%) of the overall alcoholic content of such

¹State law reference

Tennessee Code Annotated, § 57-5-106.

beverage may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol. (Ord. #612, Oct. 1990, as replaced by Ord. #660, § 1, Oct. 1993, and Ord. #890, March 2008)

8-207. Permit required for engaging in beer business.¹ (1) 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 and fifty dollars (\$250.00). Said fee shall be in the form of a cashier's check payable to the City of Winchester. 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.

(2) Each applicant shall certify in its application for a beer license that all persons selling beer for on and off premises consumption shall be certified through the TIPS Program, and that all future sales employees will continue to be certified. (Ord. #612, Oct. 1990, as amended by Ord. #616, April 1991, replaced by Ord. #660, § 1, Oct. 1993, and Ord. #890, March 2008, and amended by Ord. #937, Jan. 2012)

8-208. Privilege tax.² 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 Winchester, 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. #612, Oct. 1990, as replaced by Ord. #660, § 1, Oct. 1993, and Ord. #890, March 2008)

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

¹State law reference

Tennessee Code Annotated, 57-5-103.

²State law reference

Tennessee Code Annotated, § 57-5-104(b).

manufacturing. Beer permits for retail sale of beer may be further restricted so as to authorize sales only for off premises consumption. A single permit may be issued for on premise and off premise consumption. 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 (Ord. #612, Oct. 1990, as replaced by Ord. #660, § 1, Oct. 1993, and Ord. #890, March 2008)

8-210. Limitation on number of permits. The number of licenses for the sale of beer shall not be limited. Provided that all requirements of this chapter are complied with, all existing permits for the sale of beer within the corporate limits of the city at the date of the passage of the ordinance comprising this chapter shall continue to be renewed. A new permit may be issued to a qualified purchaser of an existing establishment in which a permit is now held for the sale of beer, and the permit used only within the establishment or building purchased.(Ord. #612, Oct. 1990, as replaced by Ord. #660, § 1, Oct. 1993, and Ord. #890, March 2008)

8-211. 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, 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 manufacture or storage of beer, or the sale of beer within two hundred (200) feet of any school, residence, church or other place of public gathering. Such distance requirement shall not apply to any licensed businesses located in the

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.

downtown district as depicted on the attached map as Exhibit A.¹ The distances shall be measured in a straight line from the nearest point on the property line upon which sits the building from which the beer will be manufactured, stored or sold to the nearest point on the property line 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-month period. (Ord. #612, Oct. 1990, as replaced by Ord. #660, § 1, Oct. 1993, amended by Ord. #767, Aug. 2000, replaced by Ord. #890, March 2008, and amended by Ord. #923, Oct. 2010)

8-212. 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, employee or person engaged in the sale of beer to:

- (1) Make any sale of beer for on premises or off premises consumption to any person under the age of twenty-one (21) years.
- (2) Employ any minor under 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 3:00 A.M. and 6:00 A.M. on Monday through Saturday and on Sunday between the hours of 3:00 A.M. and 12:00 noon.
- (4) Allow any person under twenty-one (21) years of age to loiter in or about place of business.
- (5) Make or allow any sale of beer to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person.
- (6) Allow intoxicated or drunk persons to loiter about his premises.
- (7) 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.
- (8) Allow pool or billiard playing in the same room where beer is sold and/or consumed.
- (9) Fail to provide and maintain separate sanitary toilet facilities for men and women.
- (10) Prior to making a sale of beer for off premises consumption or for on premises consumption, the adult consumer must present to permit holder or any employee thereof a valid, government issued document, such as driver's

¹Exhibit A is available in the office of the city recorder.

license, or other form of identification deemed acceptable to the permit holder, which includes the photograph and birth date of the adult consumer attempting to make such purchase of beer. Persons exempt under state law from the requirement of having a photo identification shall present identification that is acceptable to the permit holder. The permit holder or employee shall make a determination from the information presented whether the purchaser is an adult. In addition to the prohibition of making a sale to a minor, no sale of beer for off the premises consumption shall be made to a person who does not present such a document or other form of identification to the permit holder or any employee thereof. Responsible vendors must post signs on the vendor's premises informing customers of the vendor's policy against selling beer to underage persons. Such signs shall be not less than 8-1/2" x 11" and contain the following language:

STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER
(Ord. #612, Oct. 1990, as replaced by Ord. #660, § 1, Oct. 1993, and Ord. #890, March 2008)

8-213. 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 suspend 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-month period. The revocation

shall be for three (3) years.(Ord. #612, Oct. 1990, as replaced by Ord. #660, § 1, Oct. 1993, and Ord. #890, March 2008)

8-214. 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 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. (Ord. #612, Oct. 1990, as replaced by Ord. #660, § 1, Oct. 1993, and Ord. #890, March 2008)

8-215. 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. (Ord. #612, Oct. 1990, as replaced by Ord. #660, § 1, Oct. 1993, and Ord. #890, March 2008)

8-216. 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.

(Ord. #612, Oct. 1990, as replaced by Ord. #660, § 1, Oct. 1993, and Ord. #890, March 2008)

8-217. [Deleted.] (Ord. #612, Oct. 1990, as replaced by Ord. #660 § 1, Oct. 1993, and deleted by Ord. #890, March 2008)

8-218. [Deleted.] (Ord. #612, Oct. 1990, as replaced by Ord. #660 § 1, Oct. 1993, and deleted by Ord. #890, March 2008)

8-219. [Deleted.] (Ord. #612, Oct. 1990, as replaced by Ord. #660 § 1, Oct. 1993, and deleted by Ord. #890, March 2008)

8-220. [Deleted.] (Ord. #612, Oct. 1990, as replaced by Ord. #660 § 1, Oct. 1993, amended by Ord. #767, Aug. 2000, and deleted by Ord. #890, March 2008)

8-221. [Deleted.] (Ord. #612, Oct. 1990, as replaced by Ord. #660 § 1, Oct. 1993, and deleted by Ord. #890, March 2008)

8-223. [Deleted.] (Ord. #612, Oct. 1990, as replaced by Ord. #660 § 1, Oct. 1993, and deleted by Ord. #890, March 2008)

8-224. [Deleted.] (Ord. #546, March 1985, as amended by Ord. #547, May 1985, replaced by Ord. #660, § 1, Oct. 1993, and deleted by Ord. #890, March 2008)

8-225. [Deleted.] (Ord. #535, Jan. 1984, as replaced by Ord. #660 § 1, Oct. 1993, and deleted by Ord. #890, March 2008)

8-226. [Deleted.] (as added by Ord. #660 § 1, Oct. 1993, and deleted by Ord. #890, March 2008)