

**TITLE 8****ALCOHOLIC BEVERAGES<sup>1</sup>****CHAPTER**

1. INTOXICATING LIQUORS: ON PREMISES CONSUMPTION.
2. INTOXICATING LIQUORS: RETAIL PACKAGE STORES.
3. BEER.

**CHAPTER 1****INTOXICATING LIQUORS: ON PREMISES CONSUMPTION****SECTION**

- 8-101. Definition of alcoholic beverages.
- 8-102. Consumption of alcoholic beverages on premises.
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- 8-104. Annual privilege tax to be paid to the city recorder.
- 8-105. Concurrent sales of liquor by the drink and beer.
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**8-101. Definition of alcoholic beverages.** As used in this chapter, unless the context indicated otherwise: "Alcoholic beverages" means and includes alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, other than patented medicine or beer, where the latter contains an alcoholic content of five percent (5%) by weight, or less. (Ord. #2004-12, April 2005)

**8-102. Consumption of alcoholic beverages on premises.** Tennessee Code Annotated, title 57, chapter 4, inclusive, is hereby adopted so as to be applicable to all sales of alcoholic beverages for on premises consumption which are regulated by the said code when such sales are conducted within the corporate limits of Baxter, Tennessee. It is the intent of the board of mayor and aldermen that the said Tennessee Code Annotated, title 57, chapter 4, inclusive, shall be effective in Baxter, Tennessee, the same as if said code section were copied herein verbatim. (Ord. #2004-12, April 2005)

**8-103. Privilege tax on retail sale of alcoholic beverages for consumption on the premises.** Pursuant to the authority contained in

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<sup>1</sup>State law reference

Tennessee Code Annotated, title 57.

Tennessee Code Annotated, § 57-4-301, there is hereby levied a privilege tax (in the same amounts levied by Tennessee Code Annotated, title 57, chapter 4, section 301, for the City of Baxter general fund to be paid annually as provided in this chapter) upon any person, firm corporation, joint stock company, syndicate, or association engaging in the business of selling at retail in the City of Baxter on alcoholic beverages for consumption on the premises where sold. (Ord. #2004-12, April 2005)

**8-104. Annual privilege tax to be paid to the city recorder.** Any person, firm, corporation, joint stock company, syndicate or association exercising the privilege of selling alcoholic beverages for consumption on the premises in the City of Baxter shall remit annually to the city recorder the appropriate tax described in § 8-103. Such payments shall be remitted not less than thirty (30) days following the end of each twelve (12) month period from the original date of the license. Upon the transfer of ownership of such business or the discontinuance of such business, said tax shall be filed within thirty (30) days following such event. Any person, firm, corporation, joint stock company, syndicate, or association failing to make payment of the appropriate tax when due shall be subject to the penalty provided by law. (Ord. #2004-12, April 2005)

**8-105. Concurrent sales of liquor by the drink and beer.** Any person, firm, corporation, joint stock company, syndicate or association which has received a license to sell alcoholic beverages in the City of Baxter, pursuant to Tennessee Code Annotated, title 57, chapter 4, shall, notwithstanding the provisions of title 8, chapter 3 of this code, qualify to receive a beer permit from the city. (Ord. #2004-12, April 2005)

**8-106. Advertisement of alcoholic beverages.** All advertisement of the availability of liquor for sale by those licenced pursuant to Tennessee Code Annotated, title 57, chapter 4, shall be in accordance with the rules and regulations of the Tennessee Alcoholic Beverage Commission. (Ord. #2004-12, April 2005)

## CHAPTER 2

### INTOXICATING LIQUORS: RETAIL PACKAGE STORES<sup>1</sup>

#### SECTION

- 8-201. Generally.
- 8-202. Chapter not applicable to beer.
- 8-203. Certificate of compliance.
- 8-204. Restrictions on buildings and locations of retail stores.
- 8-205. Retail liquor license.
- 8-206. Inspection fee.
- 8-207. Operational rules and regulations.
- 8-208. Advertising.
- 8-209. Violations.
- 8-210. Alcoholic beverage control board.

**8-201. Generally.** (1) Definitions. Whenever used in this chapter the following terms shall have the following meanings unless the context necessarily requires otherwise:

(a) "Alcoholic beverage." Alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits or wine capable of being consumed by a human being, other than patented medicine, beer or wine, where either of the latter has an alcoholic content of five (5%) percent by weight, or less.

(b) "Applicant." The party applying for a certificate of compliance or a license which shall include each person to have any interest, direct or indirect, in the license as owner or partner or in the case of a corporation as officer, director, or stockholder. (See additional definition under "corporation.")

(c) "Application." The form or forms an applicant is required to file in order to obtain a certificate of compliance or a license.

(d) "Certificate of compliance." The certificate provided for in Tennessee Code Annotated, title 57, chapter 3, in connection with the prescribed procedure for obtaining a state liquor retailer's license.

(e) "Corporation." All certificated entity forms recognized in the State of Tennessee, including, without limitation, limited liability companies, and "stockholder" and "officer" shall be deemed to include

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<sup>1</sup>State 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).

members, limited partners, managers, principals and equity holders in said entities.

(f) "Inspection fee." The monthly fee a licensee is required by this chapter to pay the amount of which is determined by a percentage of the gross sales of a licensee.

(g) "License." A license issued by the state under the provisions of this chapter for the purpose of authorizing the holder thereof to engage in the business of selling alcoholic beverages at retail in the city.

(h) "Licensee." The holder of a license.

(i) "Liquor store." The building or the part of a building where a licensee conducts any of the business authorized by this license.

(j) "Retail sale or sale at retail." A sale to a consumer or to any person for any purpose other than for resale.

(k) "Retailer." Any person who sells at retail any beverage for the sale of which a license is required under the provisions herein.

(l) "State Alcoholic Beverage Commission." The Tennessee Alcoholic Beverage Commission, provision for which is made in the state statutes, including without limitation the provisions of Tennessee Code Annotated, title 57, chapter 3.

(m) "State liquor retailer's license." A license issued under the state statutes (including the provisions contained in Tennessee Code Annotated, title 57, chapter 1) for the purpose authorizing the holder thereof to engage in the business of selling alcoholic beverages at retail.

(n) "State rules and regulations." All applicable rules and regulations of the state applicable to alcoholic beverages as now in effect or as they may hereafter be changed, including without limitation the local option liquor rules and regulations of the state alcoholic beverage commission.

(o) "State statutes." The statutes of the state now in effect or as they may hereafter be changed.

(p) "Wholesale sale or sale at wholesale." A sale to any person for purposes of resale.

(q) "Wholesaler." Any person who sells at wholesale any beverage for the sale of which a license is required under the provisions of Tennessee Code Annotated, §§ 57-3-101 through 57-3-110.

(r) "Wine." The product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climate, saccharine, and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed twenty-one percent (21%) by volume. No other product shall be called "wine" unless designated by appropriate prefixes descriptive of the fruit or other product from which the same was predominately produced, or an artificial or imitation wine.

(2) Compliance with all applicable laws and ordinances required. It shall be unlawful for any person either to engage in the business of selling, storing, transporting, or distributing any alcoholic beverage, or to sell, store, transport, distribute, purchase or possess any alcoholic beverage, except as provided by the state statutes, by the state rules and regulations, by the federal statutes and by this chapter.

(3) Wholesalers. Unless hereafter authorized by ordinance, no wholesaler's license shall be granted to any person for the operation of any business for the sale at wholesale of any alcoholic beverage. Any wholesaler, whose business is located outside the city and who holds a valid state license and who has paid to the city all privilege taxes and fees applicable to such wholesale business, may sell at wholesale any alcoholic beverage to a licensee in the city and such licensee may purchase any alcoholic beverage from such wholesaler, but only as provided by the state statutes, the state rules and regulations, the federal statutes, and by this chapter.

(4) Sale legalized. It shall be lawful for a licensee to sell any alcoholic beverage at retail in a liquor store, within the corporate limits, provided such sales are made in compliance with applicable federal statutes, state statutes, state rules and regulations, and the provisions of this chapter.

(5) Liability of licensee for acts of others. Each licensee shall be responsible for all acts of such licensee's officers, stockholders, directors, employees, agents and representatives, so that any violation of this chapter by any officer, stockholder, director, employee, agent or representative of a licensee shall constitute a violation of this chapter by such licensee.

(6) Contraband beverages. Police officers shall take possession of any alcoholic beverages which have been received by, or are in the possession of, or are being transported by any person in violation of state statutes or regulations, federal statutes or this chapter. All beverages shall be turned over to the Tennessee Alcoholic Beverage Commission in accordance with Tennessee Code Annotated, title 57, chapter 9. (Ord. #2008-21, Feb. 2009)

**8-202. Chapter not applicable to beer.** No provision of this chapter shall be considered or construed as in any way modifying, changing or restricting the rules and regulations governing the sale, storage, transportation, etc., or tax upon beer or other liquids with an alcoholic content of five (5%) percent or less. (Ord. #2008-21, Feb. 2009)

**8-203. Certificate of compliance.** (1) Certificate of good moral character. When application is made for the certificate of good moral character required by Tennessee Code Annotated, § 57-3-208 as a condition to the issuance or renewal of a state alcoholic beverage license, such certificate shall be signed by the mayor, upon direction of a majority of the board of mayor and aldermen following an investigation by the chief of police and review of the city attorney, each of whom shall submit their findings to the board of mayor and aldermen

within sixty (60) days of the date each application was filed with the city recorder.

The certificate shall become invalid if an application has not been filed with the Tennessee Alcoholic Beverage Commission within sixty (60) days of issuance.

(2) Application - filing; contents. For the first applications submitted after the effective date, each application shall be accompanied with non-refundable certified funds of two hundred fifty dollars (\$250.00) and those applications selected for the first two (2) certificates issued, said selected applications must be accompanied with non-refundable certified funds in the amount of seven hundred fifty dollars (\$750.00). Thereafter, each applicant for a certificate of compliance shall file with the city recorder a non-refundable application fee of one thousand dollars (\$1,000.00), a completed form of application, on a form to be provided by the city recorder, and which shall contain all of the following information:

(a) The name and street address of each person to have any interest, direct or indirect, in the license as owner, partner, or in the case of a corporation as officer, director or stockholder or otherwise;

(b) A statement of applicant's prior business experience;

(c) The proposed name of the liquor store to be operated under the license;

(d) The address of the liquor store to be operated under the license;

(e) The statement that each applicant has been a resident of Tennessee for at least two (2) years immediately prior to the time the application is filed. If the applicant is a partnership or a corporation, each of the partners or stockholders must have been a bona fide resident of Tennessee not less than two (2) years at the time the application is filed;

(f) The agreement of each applicant to comply with the state, federal and city laws and ordinances and with the rules and regulations of the state alcoholic beverage commission with reference to the sale of alcoholic beverages, and the agreement of each applicant to the validity of and the reasonableness of the regulations, inspection fees and taxes provided in this chapter with reference to the sale of alcoholic beverages.

(g) The financial interest of the owners, partners, stockholders or directors, whether the same is a firm, partnership or corporation.

The application form shall be accompanied by a questionnaire form completed by each person having interest in the business and five (5) copies of a scale plan drawn to a scale of not less than one inch equals fifty feet (1" = 50'), giving the following information:

(i) The shape, size and location of the lot upon which the liquor store is to be operated under the license;

(ii) The shape, size, height and location of all buildings, whether they are to be erected, altered, moved or existing, upon the lot;

(iii) The off-street parking space and off-street loading and unloading space to be provided including the vehicular access to be provided from these areas to a public street; and

(iv) The identification of every parcel of land within five hundred feet (500') of the lot upon which the liquor store is to be operated indicating ownership thereof and the locations of any structures situated thereon, and the use being made of every such parcel. The application form shall be signed and verified by each person to have any interest in the license either as owner or partner or in the case of a corporation, as officer, director or stockholder or otherwise.

(3) Misrepresentation or concealment of material fact. If any applicant misrepresents any material fact or conceals any material fact in any application form filed for the purpose of complying with the requirements contained in § 8-203(1), such applicant shall be deemed to have violated the provisions of this chapter.

(4) Restrictions upon issuance. (a) No certificate of compliance shall be issued unless a license issued on the basis thereof can be exercised without violating any provision of this chapter.

(b) The mayor shall not sign any certificate of compliance for any applicant until:

(i) Such applicant's application has been filed with the city recorder;

(ii) The location stated in the certificate has been approved by the council as a suitable location for the operation of a liquor store, and considering geography of the area to be served;

(iii) The application has been considered at a meeting of the council and approved by the vote of at least three (3) members thereof.

(5) Restrictions upon corporate licenses. If a licensee is a corporation, then in addition to the other provisions of this chapter:

(a) No person owning stock in or who is an officer or director in such corporate licenses shall have any interest as an owner, stockholder, officer, director or otherwise in any business licensed to engage in the sale at wholesale or retail of alcoholic beverage in the state.

(b) No stock of such corporate licensee shall be transferred by sale, gift, pledge, operation of law or otherwise to any person who has not been a resident of the Tennessee for the two (2) consecutive years immediately preceding the date of any such transfer; nor shall any of said stock be so transferred to any person who would not be otherwise

qualified as an original stockholder of an initial corporate applicant for a license hereunder.

(6) Term, renewal. Certificates of compliance shall be valid for two (2) years from issuance. Certificate renewals shall follow all guidelines and requirements as if they were an original application. Renewals shall be subject to compliance with all applicable state statutes, all applicable state rules and regulations and provisions of this chapter. (Ord. #2008-21, Feb. 2009)

**8-204. Restrictions on buildings and locations of retail store.**

(1) Liquor store must be located no more than three thousand feet (3,000') from I-40 or no more than three thousand feet (3,000') of an intersection of two (2) major arterial highways. The distance between liquor stores must be not less than one (1) mile.

(2) It shall be unlawful for any person to operate or maintain any retail establishment for the sales, storage, or distribution of alcoholic beverages except at locations zoned for that purpose as set forth by the valid, current Baxter Zoning Ordinance in effect.

(3) All retail sales shall be confined to the premises of the licensee. No curbside service is permitted nor shall there be permitted drive-in windows.

(4) No liquor store shall be located in the city on any premises above the ground floor. Each such store shall have only one (1) main entrance for use by the public as a means of ingress and egress for the purpose of purchasing alcoholic beverages at retail; provided, that any liquor store adjoining the lobby of a hotel or motel may maintain an additional entrance into such lobby as long as such lobby is open to the public.<sup>1</sup> Liquor sales room shall consist of an area of not less than one thousand five hundred (1,500) square feet.

(5) No retail stores shall be in closer proximity to any school (public or private), any community center, any church or religious building, any public library, any hospital, any funeral parlor, or any public recreation area, than two hundred fifty feet (250') as measured in a straight line from the main entrance of said retail store to the main entrance of said aforementioned institutions or facilities.

(6) To the fullest extent consistent with the nature of the establishment, full, free, and unobstructed vision shall be afforded from the street and public highway to the interior of the place of sale or dispensing of alcoholic beverages there sold or dispensed.

(7) No form of entertainment, including pin ball machines, music machines, or similar devices, shall be permitted to operate upon any premises from which alcoholic beverages are sold. (Ord. #2008-21, Feb. 2009)

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<sup>1</sup>State law reference.

Tennessee Code Annotated, § 57-3-404(f).

**8-205. Retail liquor license.**<sup>1</sup> (1) Qualifications of applicant. To be eligible to apply for or to receive a retail liquor license in the City of Baxter, an application must satisfy all of the requirements of the state statutes and of the state rules and regulations for a holder of a state liquor retailer's license and must have been a resident of Tennessee, at least two (2) years immediately preceding the date when the application is filed with the city recorder. Applicant must have secured a location which complies with all restrictions of the laws, ordinances, and resolutions and have initial investment capital of not less than three hundred thousand dollars (\$300,000.00).

(2) Only one (1) establishment to be operated by retailer. No retailer shall operate, directly or indirectly, more than one (1) place of business for the sale of alcoholic beverages in the city. The word "indirectly," as used in this section, shall include and mean any kind of interest in another place of business by way of stock, ownership, loan, partner's interest or otherwise.

(3) Nature of license; suspension or revocation. The issuance of a license does not vest a property right in the license but is a privilege subject to revocation or suspension by the Tennessee Alcoholic Beverage Commission. The mayor shall have the authority to report to the commission any violation of this chapter by the licensee or by any person for whose acts the licensee is responsible.

(4) Display. The licensee shall display and post, and keep displayed and posted his license in a conspicuous place in the licensee's liquor store at all times when any activity or business authorized hereunder is being done by the licensee.

(5) Number of licenses. There shall be a limit of two (2) licenses issued and outstanding in the city.

(6) Transfer. A licensee shall not sell, assign, or transfer his license or any interest therein to any other person without a certificate of compliance by the board. Provided, however, licensees who are serving in the military forces of the United States in time of war may appoint an agent to operate under the

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<sup>1</sup>State law references for §§ 8-205(2), (4), (6), (7)(a), (7)(b), (7)(c), (7)(d), (7)(e), (7)(f), 7(g) are listed below:

Tennessee Code Annotated, § 57-3-406.

Tennessee Code Annotated, § 57-3-211.

Tennessee Code Annotated, § 57-3-212.

Tennessee Code Annotated, § 57-3-210(b).

Tennessee Code Annotated, § 57-3-210(c).

Tennessee Code Annotated, § 57-3-210(d).

Tennessee Code Annotated, § 57-3-210(e).

Tennessee Code Annotated, § 57-3-210(f).

Tennessee Code Annotated, § 57-3-210(h).

Tennessee Code Annotated, § 57-3-210(i).

license of the licensee during the absence of the licensee. In such instances, the license shall continue to be carried and renewed in the name of the owner. The agent of the licensee shall conform to all the requirements of a licensee. No person who is ineligible to obtain a license shall be eligible to serve as the agent of a licensee under this section. In any case where a licensee is an individual and the individual dies or becomes incapacitated during the term of the license, upon proper application to the board and upon compliance with all regulations hereunder and all applicable laws of the state or regulations of the alcoholic beverage commission of the state, the widow or duly qualified and appointed personal representative or guardian or conservator of said licensee may be issued a license for said retail establishment for the duration for the term of the original licensee's license. If a partnership, the surviving partner may do likewise, having said license issued to him as an individual.

(7) Miscellaneous restrictions upon licensees and their employees.

(a) No retailer's license shall be issued to a person who is a holder of a public office, either appointive or elective, or who is a public employee, either national, state, city or county. It shall be unlawful for any such person to have any interest in such retail business, directly or indirectly, either proprietary or by means of any loan, mortgage or lien, or to participate in the profits of any such business. The foregoing shall not apply to uncompensated appointees to municipal boards and commissions where the boards or commission on which such appointees serve have no duty to vote for, overlook, or in any manner superintend the sale of alcoholic beverages.

(b) No retailer shall be a person who has been convicted of a felony involving moral turpitude within ten (10) years prior to the time he or the legal entity which he is connected shall receive a license; provided, that this provision shall not apply to any person who has been so convicted, but whose rights of citizenship have been restored or judgment of infamy has been, removed by a court of competent jurisdiction; and in the case of any such conviction occurring after a license has been issued and received, the license shall immediately be revoked, if such convicted felon be an individual licensee, and if not, the partnership, corporation or association with which he is connected shall immediately discharge him.

(c) No license shall, under any condition, be issued to any person who within ten (10) years preceding application for such license or permit shall have been convicted of any offense under the laws of the state or of any other state or of the United States prohibiting or regulating the sale, possession, transportation, storing, manufacturing or otherwise handling intoxicating liquors or who has, during such period, been engaged in business alone or with others, in violation of any such laws or rules and regulations promulgated pursuant thereto, or as they existed or may exist thereafter.

(d) No manufacturer, brewer or wholesaler shall have any interest in the licensee's rental, occupancy or revenues.

(e) It shall be unlawful for any person to have ownership or to participate, either directly or indirectly, in the profits of any retail business licensed, unless his interest in such business and the nature, extent and character thereof shall appear on the application; or if the interest is acquired after the issuance of a license, unless it shall be fully disclosed to the city recorder and approved by the mayor. Where such interest is owned by such person on or before the application for any license, the burden shall be upon such person to see that this section is fully complied with, whether he, himself, signed or prepared the application or whether the same is prepared by another; or if such interest is acquired after the issuance of the license, the burden of such disclosure of the acquisition of such interest shall be upon the seller and the purchaser.

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

(g) No retailer shall employ in the storage, sale or distribution of alcoholic beverages, any person who, within ten (10) years prior to the date of his employment, shall have been convicted of a felony involving moral turpitude, and in case an employee should be convicted he shall immediately be discharged; provided that this provision shall not apply to any person who has been so convicted, but whose rights of citizenship have been restored or judgment of infamy has been removed by a court of competent jurisdiction.

(h) No licensee shall employ any canvasser, agent, solicitor or representative otherwise for the purpose of receiving an order from a consumer of any alcoholic beverages at the residences or places of business of such consumer, nor shall any such licensee receive or accept any such order which shall have been solicited or received at the residence or place of business of such consumer. This paragraph shall not be construed so as to prohibit the solicitation by a state licensed wholesaler of any order from any licensed retailer at the licensed premises.

(i) The issuance of a license does not vest a property right in the licensee, but is a privilege subject to revocation or suspension under this chapter. (Ord. #2008-21, Feb. 2009)

**8-206. Inspection fee.** (1) Levied. The City of Baxter 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.

(2) Invoices. (a) It shall be unlawful for any wholesaler to supply, ship or otherwise deliver any alcoholic beverage to a licensee, and it shall be unlawful for any licensee to receive any alcoholic beverage, unless there shall be issued and delivered to the licensee by the wholesaler, currently with each such shipment or delivery, an invoice showing:

(i) The date of the transaction;

(ii) The name and address of the wholesaler and of the licensee;

(iii) The brand name and quantity of alcoholic beverage covered by the invoice; and

(iv) The unit wholesale price and the gross wholesale price for each item listed thereon.

(b) The wholesaler's invoice shall be issued and delivered to the licensee as hereinabove provided without regard to the terms of payment of the invoice so as to include all such transactions whether for cash or on credit or partly for cash and partly on credit.

(3) Form for reports; rules and regulations. The city recorder shall prepare and make available to each wholesaler or other source vending alcoholic beverages to licensees sufficient forms for the monthly report of inspection fees payable by each licensee making purchases from such wholesaler or other source; and the city recorder is authorized to promulgate reasonable rules and regulations to facilitate the reporting and collection of inspection fees and to specify the records of such sales and fees to be kept by each wholesaler or other vending source.

(4) Collection. Collection of the inspection fee levied herein shall be made by the wholesaler or other source, vending to the licensee at the time the sale is made to the licensee, and in such case payment of the inspection fee by such collecting wholesaler or other source shall be made to the city recorder on or before the fifteenth day of each calendar month. Nothing herein shall relieve the licensee of the obligation of the payment of the inspection fee, and it shall be the licensee's duty to see that the payment of the inspection fee is made to the city recorder on or before the fifteenth day of each calendar month.

(5) Effect of failure to report and pay. The failure to pay the inspection fee and to make the required reports accurately and within the time prescribed in this chapter shall be reported by the mayor to the Tennessee Alcoholic Beverage Commission as a violation of this chapter.

(6) Use of funds. All funds derived from the inspection fees imposed herein shall be paid into the general fund of the city. The city shall defray all expenses in connection with the enforcement of this chapter, including particularly the payment of the compensation of officers, employees or other

representatives of the city in investigating and inspecting licensees and applicants and in seeing that all provisions of this chapter are observed; the board finds and declares that the amount of those inspection fees is reasonable and that the funds expected to be derived from these inspection fees will be reasonably required for said purposes.

(7) Supplemental nature. The inspection fee levied herein shall be in addition to any general gross receipts, sales or other general taxes applicable to the sale of alcoholic beverages and shall not be a substitute for such taxes.

(8) Inspections. The mayor, the city recorder, or the authorized representative of either of them, are authorized to examine the books, papers, and records of any licensee at any and all reasonable times for the purpose of determining whether the provisions of this chapter are being observed. The mayor, the city recorder, the chief of police and any other police officer of the city is authorized to enter and inspect the premises of a liquor store at any time the liquor store is open for business. Any refusal to permit the examination of the books, papers and records of a licensee, or the inspection and examination of the premises of a liquor store shall be unlawful. The mayor shall forthwith report such violation to the state alcoholic beverage commission with the request that appropriate action be taken to revoke the license of the offending licensee. (Ord. #2008-21, Feb. 2009)

**8-207. Operational rules and regulations.**<sup>1</sup> (1) Records to be kept by licensee. In addition to any records specified in the rules and regulations promulgated by the city recorder pursuant to this chapter, each licensee shall keep on file at such licensee's liquor store the following records:

(a) Original invoices required herein for all alcoholic beverages bought by or otherwise supplied to the licensee;

(b) The original receipts for any alcoholic beverages returned by such licensee to any wholesaler; and

(c) An accurate record of all alcoholic beverages lost, stolen, damaged, given away, or disposed of other than by sale, and showing for each such transaction the date thereof, the quantity and brands of alcoholic beverages involved, and, where known, the name of the person or person receiving the same. All such records shall be preserved for a period of at least two (2) years unless the city recorder gives the licensee written permission to dispose of such records at an earlier time.

(2) Hours and days of operation. No liquor store shall be open and no licensee shall sell or give away any alcoholic beverage on Christmas Day, on

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<sup>1</sup>State law references for §§ 8-207(2), (4) and (5) are listed below:

Tennessee Code Annotated, § 57-3-406(e).

Tennessee Code Annotated, § 57-3-406(c).

Tennessee Code Annotated, § 57-3-406(d).

Thanksgiving Day, on New Years Day, on Labor Day, on the 4th of July or on any Sunday. On other days, no liquor store shall be open and no licensee shall sell or give away any alcoholic beverage before 8:00 A.M. or after 11:00 P.M.

(3) Management. Each liquor store licensed hereunder shall be personally and actively managed by the holder of the license, if the licensee is an individual, or by a partner or corporate officer, if the licensee is a partnership or corporation. In every case where alcoholic beverage is sold by a licensee that is either a partnership or a corporation, the name and address of the managing partner or the corporate officer who will be in active control and management of the liquor store shall be designated in the application, and any future changes in such manager shall be reported forthwith in writing to the city recorder.

(4) No retailer shall sell, lend, or give away any alcoholic beverages to any person who is drunk, nor shall any retailer selling alcoholic beverages sell, lend, or give away such beverages to any person accompanied by a person who is drunk.

(5) No retailer shall sell, lend, or give away any alcoholic beverages to a person under twenty-one (21) years of age. It shall be the responsibility of the retailer, or his agents or employees, for ascertaining the age of any persons hereunder and, in the absence of false representations by any person under the age of twenty-one (21) years, reasonably relied upon by said retailer, his agent or employees, and any selling, lending, or giving away to persons under twenty-one (21) years of age shall be a violation of this section.

**8-208. Advertising.** No outdoor sign, advertisement or display that advertises alcoholic beverages may be erected or maintained on the property on which an establishment holding a valid retail liquor license from the State of Tennessee and the City of Baxter is located other than one (1) sign, advertisement or display which makes reference to the fact that the establishment sells alcoholic beverages but does not use brand names, pictures, numbers, prices, or diagrams relating to alcoholic beverages. Any other advertising shall be confined to the interior of the premises for which the permit applies and permittees shall not place signs in the window which are visible to any persons outside of the premises. (Ord. #2008-21, Feb. 2009)

**8-209. Violations.** Any person violating any provision of this chapter shall be guilty of an offense, and shall be fined a minimum of fifty dollars (\$50.00) and a maximum of one hundred dollars (\$100.00) for each such violation. Any licensee violating any provision of this chapter shall be subject to having his license suspended or revoked for such violation as provided in this chapter, or by the state statutes, or by the state rules and regulations. Whenever any person licensed hereunder fails to account for or pay over to the city recorder any license fee or inspection fee, the city recorder shall report the same to the city attorney who shall immediately institute the necessary action for the recovery of any such license or inspection fee. (Ord. #2008-21, Feb. 2009)

**8-210. Alcoholic beverage control board.** The board of mayor and aldermen shall serve as the alcoholic beverage control board. (Ord. #2008-21, Feb. 2009)

## CHAPTER 3

### BEER<sup>1</sup>

#### SECTION

- 8-301. Authority to grant, revoke, etc., beer permits.
- 8-302. Permit required for engaging in beer business.
- 8-303. Privilege tax.
- 8-304. Applicant shall file written application containing certain specific requirements.
- 8-305. Permits issued for sale of beer within corporate limits for off-premises and on-premises consumption.
- 8-306. Permits limited.
- 8-307. Sales to minors or intoxicated persons unlawful.
- 8-308. Hours and days of sale, etc., regulated.
- 8-309. Permittees not to allow minors to loiter about premises.
- 8-310. Unlawful for minor to misrepresent age.
- 8-311. The board of mayor and aldermen vested with the authority to conduct hearings on revocation or suspension of beer permits issued under this chapter.
- 8-312. Revocation or suspension of beer permits.
- 8-313. Civil penalty in lieu of revocation or suspension.
- 8-314. Loss of clerk's certification for sale to minor.
- 8-315. Violations.

**8-301. Authority to grant, revoke, etc., beer permits.** The board of mayor and aldermen is designated, appointed, and given authority for the purpose of granting, refusing, rescinding, or revoking permits for sale, storage and warehousing of beer or other alcoholic beverage with an alcoholic content not exceeding five percent (5%) of weight within the corporate limits of Baxter, Tennessee. (1987 Code, § 2-201)

**8-302. Permit required for engaging in beer business.** It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture

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<sup>1</sup>Municipal code references

Open container law; minors in beer places: title 11, chapter 1.  
Tax provisions: title 6.

State 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).

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, § 57-5-101(b), and 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 Baxter. Each applicant must be a person of good moral character and certify that he has read and is familiar with the provisions of this chapter. (1987 Code, § 2-202)

**8-303. Privilege tax.** There is hereby imposed on the business of selling, distributing, storing or manufacturing beer and annual 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 on January 1, 1994, and each successive January 1, to the City of Baxter, 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. (1987 Code, § 2-203)

**8-304. Applicant shall file written application containing certain specific requirements.** Before any permit is issued by the board of mayor and aldermen, the applicant therefore shall file with the board of mayor and aldermen a sworn petition in writing and shall establish the following:

- (1) The name and residence of the applicant.
- (2) The location of the premises at which the business shall be conducted.
- (3) The owner or owners of such premises.
- (4) That the applicant shall not engage in the sale of such beverages except at the place or places for which the board of mayor and aldermen has issued permits or permit, to such applicant.
- (5) That no sale of such beverages will be made except in accordance with the permit granted.
- (6) The applicant shall state as to whether the permit for the sale of beer is sought for consumption on the premises or for sale to be carried off the premises with no consumption on the premises.
- (7) The application, if for a Class A off-premises consumption permit, is for a grocery store/convenience store; if for a Class A on-premises consumption permit is for a restaurant; if for Class B on-premises consumption permit (Tennessee Motor Speedway Track). All applicants shall state how many years that they have been in business at the premises to be licensed, and the straight-line distances to the closest school, the closest church, and to any other nearby place of public gathering.
- (8) That neither the applicant nor any persons employed, or to be employed by him in such distribution or sale of such beverage, has ever been

convicted of any violation of the law against prohibition, sale, possession, manufacture, or transportation of intoxicating liquor, or of any crime involving moral turpitude within the past ten (10) years.

(9) That the applicant has not had a license for the sale of legalized beer or other beverages of like alcoholic content revoked.

(10) The application shall state whether the person applying will conduct the business in person, or whether he is acting as agent for any other person.

(11) That no brewer or distiller of legalized beer or any other beverage of like alcoholic content has any interest, financial or otherwise, in the premises upon or in which the business to be licensed is carried on.

(12) That no brewer or distiller of legalized beer or any other beverages of like alcoholic content has any interest, financial or otherwise, in the business which is licensed, or requested to be licensed.

(13) That the applicant will not thereafter convey or grant any brewer or distiller of legalized beer or any other beverage of like alcoholic content any interest in either the business which is licensed to be carried on, or in any other property at which such business may thereafter be carried on.

(14) That the applicant has, at the time of making such application, no indebtedness or other financial obligation to any brewer or distiller of legalized beer or other beverage of like alcoholic content, and will not, during the period such license shall be in force, contract any financial obligation to any brewer or distiller of legalized beer or other beverage of like alcoholic content other than for the purchase of such beer or other beverage of like alcoholic content.

(15) This application shall be verified by the affidavit of the applicant, made before a notary public or the city recorder, and if any false statement is made in any part of such application the permit or license granted or issued to the applicant shall be revoked by the board of mayor and aldermen. (1987 code, § 2-205, as modified by Ord. #2002-9, Sept. 2002, modified)

**8-305. Permits issued for sale of beer within corporate limits for off-premises and on-premises consumption.** No permit for the sale of beer shall be issued to any person, persons, firm, corporation, joint stock company, syndicate, partnership, or association for the sale of beer or other alcoholic beverage with an alcohol content not exceeding five percent (5%) by weight within the corporate limits of Baxter, Tennessee, except as defined by the following classes of businesses:

(1) Class A off-premises consumption. To qualify for a Class A off-premises permit, an establishment must, in addition to meeting the other regulations in this chapter:

(a) Be a grocery store or a convenience type market; and

(b) In either case, be primarily engaged in the sale of grocery and personal and home care and cleaning articles, but may also sell gasoline.

(c) The business privilege sales, and ad valorem taxes are maintained in a paid status at all times, and the majority of the gross sales of said businesses are derived from the retail sales of groceries, and which is not located within two hundred feet (200') of a church or other public gathering place, and which is not located within five hundred feet (500') of a school. No beer will be sold, warehoused, or distributed from any building other than the one to which the permit is for sale in the said grocery store shall be permitted. Any beer or alcoholic beverage sold by Class A permit holder shall not be opened or consumed on the licensed premises.

(2) Class A on-premises consumption. To qualify for a Class A on-premises consumption permit, an establishment must, in addition to meeting other regulations and restrictions in this chapter:

(a) Be primarily a restaurant or an eating place; and

(b) Be able to seat a minimum of thirty (30) people, including children, in booths and at tables, in addition to any other seating it may have;

(c) Have all seating in the interior of the building under a permanent roof; and

(d) In addition, the monthly beer sales of any establishment which holds a Class A on-premises consumption permit shall not exceed fifty percent (50%) of the gross sales of the establishment. Any such establishment which for two (2) consecutive months or for any three (3) months in any calendar has beer sales exceeding fifty percent (50%) of its gross sales, shall have its beer permit revoked. The business privilege sales, and ad valorem taxes are maintained in a paid status at all times, and the majority of the gross sales of said businesses are derived from the retail sales of groceries, and which is not located within two hundred feet (200') of a church or other public gathering place, and which is not located within five hundred feet (500') of a school.

(3) Class B on-premises consumption. The property located at 8401 Ditty Road, Baxter, Tennessee, known as Tennessee Motor Speedway, is not located within one thousand feet (1,000') of a church or other public gathering place, and which is not within one thousand five hundred feet (1,500') of a school. No outside advertising of beer, or of various brands of beer, for sale on the said licensed premises shall be permitted. Any beer or alcoholic beverage sold by the permit holder shall not be removed from the premises, or left on the premises when the purchaser exits the facility. All sales and consumption of beer or alcoholic beverage on the licensed premises shall occur only inside the paid entrance gate of the facility, and shall be subject to such other rules and regulations as the operator of the facility deems necessary. Should Tennessee Motor Speedway be operated as a business other than primarily as a racetrack, such Class B on-premises consumption permit shall be null and void. (Ord. #2002-9, Sept. 2002)

**8-306. Permits limited.** No more than one (1) permit for the retail sale of beer or other alcoholic beverage with an alcoholic content not exceeding five percent (5%) of weight shall be issued and outstanding for each one thousand (1,000) persons residing in the City of Baxter, Tennessee, according to the 1970 Federal Census, or any subsequent Federal Census. (1987 Code, § 2-208)

**8-307. Sales to minors or intoxicated persons unlawful.** It shall be unlawful to sell or offer for sale any beverage falling within the provisions of this chapter to a person under the age of twenty-one (21) years or to a person in an intoxicated or partially intoxicated condition. (1987 Code, § 2-209)

**8-308. Hours and days of sale, etc., regulated.** It shall be unlawful for any person, firm, corporation, joint stock company, syndicate, or association to offer for sale or sell beer or other alcoholic beverage with an alcoholic content not exceeding five percent (5%) by weight within the corporate limits of Baxter, Tennessee, between the hours of 3:00 A.M. and 8:00 A.M. on weekdays, or between the hours of 3:00 A.M. and 8:00 A.M. on Sundays. (1987 Code, § 2-210, as amended by Ord. #2005-10, Sept. 2005)

**8-309. Permittees not to allow minors to loiter about premises.** It shall be unlawful for the management of any place where any beer or other beverage of like alcoholic content is sold within the corporate limits of Baxter, Tennessee, to allow any minor to loiter about such place or business and the burden of ascertaining the age of minor customers shall be upon the owner or operator of such place of business. (1987 Code, § 2-211)

**8-310. Unlawful for minor to misrepresent age.** It shall be unlawful and a misdemeanor for any person under twenty-one (21) years of age to knowingly misrepresent his age in order to obtain or purchase beer within the corporate limits of the City of Baxter, Tennessee, or to remain in a location where beer is legally being sold under the provisions of this chapter and where minors are not allowed. (1987 Code, § 2-212)

**8-311. The board of mayor and aldermen vested with the authority to conduct hearings on revocation or suspension of beer permits issued under this chapter.** The board of mayor and aldermen of the City of Baxter, Tennessee is vested with full and complete power to investigate charges against any permit holder who is cited to appear and show cause why his and/or its permit should not be suspended or revoked for the violation of the provisions of this chapter or the provisions of the state beer laws of the State of Tennessee. Complaints filed against any permit holder for the purpose of suspending or revoking such permits shall be made in writing and filed with the board of mayor and aldermen. When the board of mayor and aldermen shall have reason to believe that any permit holder shall have violated any of the

provisions of this chapter or any of the provisions of the state beer act, the board of mayor and aldermen is authorized, in its discretion, to notify the permittee of said violations and to cite said permittee by written notice to appear and show cause why his permit should not be suspended or revoked for such violations. Said notice to appear and show cause shall state the alleged violations charged and shall be served upon permittee either by register mail or by a member of the police department of the City of Baxter. The notice shall be served upon the permittee at least ten (10) days before the date of the hearing. At the hearing the board of mayor and aldermen shall publicly hear the evidence both in support of the charges and on behalf of the permittee. After such hearing, if the charges are sustained by the evidence, the board of mayor and aldermen, in its discretion, may suspend or revoke said permit. The action of the board of mayor and aldermen in all such hearings shall be final, subject only to review by the court as provided in the state beer act. When a permit is revoked, no new permit shall be issued hereunder for the sale of beer at the same location, until the expiration of one (1) year from the date said revocation becomes final. In the event any person or persons, firm, corporation, joint stock company, syndicate, or association has its beer permit revoked for the second time for the violation of the provisions of this chapter or the state beer act of the State of Tennessee, then that person or persons, firm, corporation, joint stock company, syndicate, or association shall not be granted a new permit for a period of three (3) years. In the event any person or persons, firm corporation, joint stock company, syndicate, or association has its beer permit revoked for a third violation of the provisions of this chapter or the provisions of the state beer act of the State of Tennessee, then that person or persons, firm, corporation, joint stock company, syndicate, or association shall never be granted a beer permit under the provisions of this chapter. (Ord. #2008-15, Aug. 2008)

**8-312. 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, § 67-5-606 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

aa 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, § 57-6-608, 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.

**8-313. 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.

**8-314. 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.

**8-315. Violations.** Except as provided in § 8-314, 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.