

TITLE 8

ALCOHOLIC BEVERAGES¹

CHAPTER

1. INTOXICATING LIQUORS.
2. BEER.
3. RETAIL PACKAGE STORES.

CHAPTER 1

INTOXICATING LIQUORS

SECTION

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8-101. Definition of alcoholic beverages. As used in this chapter, unless the context indicates otherwise, "alcoholic beverages" means and includes alcohol, spirits, liquor, wine, and every liquid containing alcohol which is capable of being consumed by a human being, other than patented medicine or beer, is defined as "alcoholic beverages" as defined by *Tennessee Code Annotated*, § 57-3-101. (Ord. #679-15, March 2015)

8-102. Consumption of alcoholic beverages on premises. *Tennessee Code Annotated*, title 57, chapter 4, inclusive, is hereby incorporated 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 Erwin, Tennessee. It is the intent of the board of mayor and alderman that the said *Tennessee Code Annotated*, title 57, chapter 4 inclusive,

¹Municipal code reference

Minors in beer places: § 11-102.

Wholesale beer tax: title 5, ch. 4.

State law reference

Tennessee Code Annotated, title 57.

shall be effective in Erwin, Tennessee, the same as if said code sections were copied herein verbatim. (Ord. #679-15, March 2015)

8-103. Privilege tax on retail sale of alcoholic beverages for consumption on premises. Pursuant to the authority contained in *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 Town of Erwin 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 Town of Erwin alcoholic beverages for consumption on the premises where sold. (Ord. #679-15, March 2015)

8-104. Annual privilege tax to be paid to the town 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 Town of Erwin shall remit annually to the town recorder the appropriate tax described in § 8-103. Such payment 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 each 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. #679-15, March 2015)

8-105. Gross sales tax. It shall be the responsibility of the town recorder to ensure that the town receives its share of the fifteen percent (15%) tax levied on the gross sales of alcoholic beverages sold at retail for consumption on the premises and collected by the commissioner of the alcoholic beverage commission under *Tennessee Code Annotated*, § 57-4-301(c), and distributed to the state and its political subdivisions under *Tennessee Code Annotated*, § 57-4-306. (Ord. #679-15, March 2015)

8-106. Sale otherwise prohibited. Except as authorized by applicable laws, the provisions of this title and/or other ordinances, it shall be unlawful for any person to manufacture, receive, possess, store, transport, sell, furnish, or solicit orders for any alcoholic beverages within the Town of Erwin. "Intoxicating liquor" shall be defined to include whiskey, wine, "home break," "moonshine," and all other intoxicating, spirituous, vinous, or malt liquors and beer which are defined as "alcoholic beverages" by *Tennessee Code Annotated*, § 57-3-101. (Ord. #679-15, March 2015)

8-107. Intoxicating liquor on public property. It shall be unlawful for any person to drink or consume, or have an opened container of beer or

intoxicating liquor in or upon any public street, alley, avenue, highway, sidewalk, public park, public school ground, or other public place. (Ord. #679-15, March 2015)

8-108. Advertisement on alcoholic beverages. All advertisement of the availability of liquor for sale by those licensed 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. #679-15, March 2015)

CHAPTER 2**BEER¹****SECTION**

- 8-201. Definitions.
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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).

- 8-229. Price reductions or adjustments by wholesalers for breakage, etc., restricted.
- 8-230. Taxes.
- 8-231. Privilege tax.
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- 8-234. Civil penalty in lieu of suspension.
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- 8-238. Limitations on number of beer permits issued for off-premises beer sales.
- 8-239. Violations and penalty.

8-201. Definitions. (1) "Convenience store or market." A business establishment whose business is the retail sale of gasoline and petroleum products, food merchandise, household supplies, and sundries. A "convenience store" or market shall maintain at all times an inventory of fuel products, food merchandise, household supplies, and sundries having a fair retail market value of not less than ten thousand dollars (\$10,000.00). A convenience store shall have not less than one thousand (1,000) square feet of food selling space.

(2) "Craft beer." A beer manufactured by breweries with an annual production of six million (6,000,000) barrels or less.

(3) "Craft beer enterprise." A business which the retail sale or manufacturing of craft beer constitutes at least eighty percent (80%) of the gross revenue of the business.

(4) "Drug store." A business establishment whose primary business is the retail sale of pharmaceuticals, food merchandise, household items, and sundries. A "drug store" shall maintain at all times an inventory of food merchandise, household supplies, and sundries having a fair retail market value of not less than ten thousand dollars (\$10,000.00).

(5) "Food sales." Sales at a restaurant or dining establishment of all food and nonalcoholic beverages.

(6) "Food store or grocery." A business establishment whose primary business is the retail sale of food merchandise and household items. A "food store or grocery" shall maintain at all times an inventory of food merchandise, household supplies, and sundries having a fair retail market value of not less than ten thousand dollars (\$10,000.00).

(7) "Growler." A refillable rigid glass, plastic, aluminum or stainless steel container with a flip-top or screw-on lid that is no larger than two (2) liters (0.5283 gallons) into which craft beer is prefilled, filled or refilled for off-premises consumption.

(8) "Live entertainment." A performance in person by an entertainer or entertainers on the premises of the establishment.

(9) "Manufacturing of craft beer." The manufacture or production of craft beer of at least two hundred (200) barrels each calendar year on the licensed premises.

(10) "Moral turpitude." Murder, all sex-related crimes, the illegal sale of schedule I and schedule II substances as designated under *Tennessee Code Annotated*, §§ 39-17-405 to 39-17-408, and embezzlement.

(11) "Restaurant or dining facility." Any place kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and a seating capacity of at least forty (40) people at tables, having employed a sufficient number and kind of employees to cook, prepare, and serve suitable food for its guests. At least one (1) meal per day shall be served at least five (5) days per week, with the exception of holidays, vacations and periods of redecorating, and the serving of such meals shall be the principal business conducted. At least sixty percent (60%) of the total annual business receipts of the restaurant or dining establishment must be received from the sale of food. (Ord. #700-18, May 2018, as amended by Ord. #742-23, Feb. 2023)

8-202. Beverage board; creation, membership, duties, powers, organization; issuance, suspension, and revocation of permits. (1) There is hereby created a board, which shall be known and designated as the "Beverage Board of the Town of Erwin," hereinafter referred to in this chapter as the "board." This board shall be composed of all members of the Town of Erwin Board of Mayor and Aldermen.

(2) It shall be the duty of the board to regulate and supervise the issuance of permits to manufacture, store more than five (5) gallons, distribute, and sell beer and other beverages which are not defined as "alcoholic beverages" as defined by *Tennessee Code Annotated*, § 57-3-101, hereinafter referred to as "beer," to the persons and in the manner provided in this chapter.

(3) It is hereby declared that the sale, storage, manufacture, and distribution of beer in the town is a privilege and such board is hereby empowered to issue, revoke, and suspend all permits to sell, store, manufacture, or distribute beer in the town, including the sole right to determine the suitability and approve the general appearance of the proposed structure according to the ordinance.

(4) The board is empowered to elect its own chairman and other officers to be elected to yearly terms from December to the following November, to make its own regulations with respect to meetings or hearings, and may deny the issuance of any permit whenever it determines that such issuance would be detrimental to the public health and safety. The board may likewise suspend or revoke the permit of any permit holder who violates any of the laws of the United States, the State of Tennessee, or the Town of Erwin, or whenever it

shall satisfactorily appear that the premises or business of any permit holder are being maintained and operated in such manner as to be detrimental to the public health and safety.

(5) Where a permit is revoked, no new permit shall be issued to such permit holder for a period of three (3) years. (Ord. #700-18, May 2018)

8-203. Applicant must agree to comply with laws. It is unlawful to operate any business engaged in the sale, distribution, manufacture, or storage of beer without a beer permit issued by the Town of Erwin. The applicant must agree in the application to comply with all of the laws of the United States and the State of Tennessee, and all ordinances of the Town of Erwin, and said application shall be supported by an affidavit or oath that the facts therein stated are true. (Ord. #700-18, May 2018)

8-204. Contents of application. The application shall be on a form provided by the Town of Erwin and shall contain:

(1) The name and residence of the applicant and how long the applicant has resided there;

(2) The particular place for which a permit is desired, designated by street and number, if practicable, and if not, by such other apt description as finitely locates it;

(3) The kind of permit desired, whether an "on-premises" or an "off-premises" beer permit:

(a) On-premises. On-premises permits shall be issued for the consumption of beer on the business premises in accordance with this chapter.

(b) Off-premises. Off-premises permits shall be issued for the sale of beer only for consumption off the business premises in accordance with the provisions of this chapter.

(4) The name of the owner of the premises upon which the business is licensed to be carried on;

(5) A sworn statement that the applicant will not engage in the sale, storage, manufacture, or distribution of beer except at the place for which the permit was issued to such applicant; and that no sale, storage, manufacture, or distribution of such beverage will be made except within the permit granted;

(6) A sworn statement that no sale of beer will be made to any person under twenty-one (21) years of age, that no person under eighteen (18) years of age may be employed in the direct sale, storage, manufacture, distribution, or serving of beer, and that no minors shall be allowed to loiter about the applicant's premises;

(7) A sworn statement that neither the applicant nor any person or persons employed by the applicant in the sale, storage, manufacture, or distribution of legalized beer has had a permit for the sale, storage, manufacture, or distribution of legalized beer revoked;

(8) A sworn statement that neither the applicant nor any person employed or to be employed by the applicant in the distribution, storage, manufacture, or sale of beer has been convicted of any violation of the law against prohibition, sale, manufacture, storage, distribution, usage, or transportation of intoxicating liquor, or of any felony crime, or of any crime involving moral turpitude within the past ten (10) years preceding the filing of such application. If the applicant or an employee or person to be employed by the applicant has been so convicted, the applicant will give the date, the nature of the offense, the name of court where convicted and the disposition of the conviction;

(9) A statement that the applicant will conduct the business in person, or if the applicant is acting as agent, the applicant shall state the person, firm, corporation, syndicate, association, or joint stock company for whom the applicant intends to act;

(10) That no brewer, manufacturer, distributor, or warehouseman of legalized beer has any interest in the business, financial or otherwise, or in the premises upon or in which the business to be permitted to sell beer at retail is to be carried on;

(11) A statement that the applicant is willing to be fingerprinted by the Police Department of the Town of Erwin and is willing to be investigated by municipal, county, and federal law enforcement agencies concerning the applicant's background and record, and the applicant will sign a general release for such investigation to be made;

(12) If the applicant is a partnership, the names and addresses of all partners in the business;

(13) If the applicant is a corporation, the names and addresses of the officers of the corporation, and the names and addresses of shareholders who hold more than a ten percent (10%) interest in the corporation;

(14) An oath or affidavit by the applicant that the facts set forth in the application are true;

(15) The date of the application;

(16) The signature of the applicant; and

(17) A statement that the applicant acknowledges receipt of a copy of the Town of Erwin beer ordinance and that the applicant has read and understands the same.

(18) All on-premise applications for permit shall have a current certificate of occupancy before the application can be considered for approval. (Ord. #700-18, May 2018, as amended by Ord. #742-23, Feb. 2023)

8-205. Additional application requirements; effect of false statements; action of board on application; issuance of permit; term of permit. (1) The applicant shall state distinctly whether the person so applying will conduct the business in person, or whether the applicant is acting as an agent for any other person, corporation, or association, and shall also state

specifically the name of the owner or owners of such business, and whether a wholesale or retail sale or distribution will be made.

(2) The application shall at all times be kept on file by said board and shall be open to inspection by the general public, and any person, firm, corporation, or association making any false statement in his/her/its application shall forfeit the permit issued, and shall not be eligible to receive any permit for a period of three (3) years.

(3) Upon filing of such written application at Erwin Town Hall, it shall be carefully examined by the members of said board and its action thereon shall be kept in writing as part of the regular proceedings of said board. The board may, in its discretion and subject to the provisions of this chapter, either approve or deny the permit application. The application, showing the disposition of the board, shall be signed and dated by the chairman of the board. If the permit application is approved, a permit shall be issued to the applicant, describing the type of permit issued, and bearing the name of the town recorder. The permit thus obtained shall entitle the applicant to sell, store, and/or distribute such beverage, but no permit shall be issued by the Town of Erwin until and unless the permit application has been approved by the beverage board. (Ord. #700-18, May 2018)

8-206. Waiting period on new applications; temporary permits.

New applications must be filed at Erwin Town Hall, with a two hundred and fifty dollar (\$250.00) cashier's check or other certified funds, which are non-refundable, for at least thirty (30) days before final action can be taken on the beer permit application. A temporary permit for thirty (30) days can be granted upon the discretion of the board. (Ord. #700-18, May 2018)

8-207. Discretionary powers of board; no permits for premises near churches or schools, or premises with attached living quarters (1)

All beer permits for the sale of beer in the Town of Erwin shall be issued at the discretion of the board subject to ordinances of the town, and the board shall issue such permits to such applicants for the sale of beer as said board, in the exercise of its discretion, feels shall serve the best interest of the Town of Erwin.

(2) No permit for the sale of beer shall be issued to any person or establishment whose place of business is within two hundred feet (200') of any established church or school building, except where such place of business is located within the downtown overlay district. The two hundred foot (200') measurement shall be measured in a straight line from the building of the applicant to the church or school building by a licensed Tennessee surveyor. The points of the building to be measured shall be from the nearest point of the building of the church or school. If the applicant's place of business is located within a building that has more than one (1) business, then the point of measurement shall be from the nearest point of the applicant's actual premises

within the larger building in relation to the nearest point of the building of the church or school. The applicant shall bear the expense of said survey.

(3) No permit for the sale of beer in the Town of Erwin shall be issued to any person or establishment which has any entrances directly from the business into living quarters within the building or doors or other openings from the business into any area used for a living quarter, unless the living quarters are exclusively used by the owner of the establishment as their private residence. (Ord. #700-18, May 2018)

8-208. Issuance of permit. (1) Applications for beer permits that are complete and accompanied by the required fee shall be acted upon by the board and be either approved or disapproved. The decision to deny the permit application cannot be arbitrary and/or capricious.

(2) If the application is approved by the board, a permit shall be issued by the town recorder upon payment of the privilege taxes set out herein.

(3) If the application is denied, the application becomes null and void, cannot be later considered, and shall not receive any priority in the granting of any future beer permits. (Ord. #700-18, May 2018)

8-209. On-premises beer permits. Beer permits for on-premises sales may be issued, in the discretion of the Beverage Board of the Town of Erwin, to restaurants and dining facilities, provided that:

(1) At least sixty percent (60%) of the total annual business receipts of the restaurant are received from the sale of food. When applying for a beer permit, the applicant must certify in its application a reasonable expectation that at least sixty percent (60%) of its total annual business receipts will be from the sale of food. Prior to renewing the beer permit (and in no event later than January 31 of each calendar year), the restaurant or dining facility must file with the Erwin Town Recorder's office a sworn affidavit setting out its total annual business receipts, total dollar food sales, and total beer sales for the prior calendar year. No beer permit for a restaurant or dining facility may be renewed until this annual affidavit is filed with the town recorder's office. The town recorder shall review the affidavit to confirm that the requirements of this section have been met.

(2) The restaurant or dining facility must have a minimum seating capacity of at least forty (40) persons, as verified by the Building Inspector for the Town of Erwin.

(3) Craft beer enterprise requirements and restrictions. (a) A craft beer enterprise shall meet that definition found in § 8-201.

(b) Have forty (40) seats in the interior of the building under a permanent roof and enclosed on all sides. Seats in an open-air or patio area, as permitted by subsection (3)(d) below, shall not count toward meeting the requirement of forty (40) interior seats required for this category of permit.

(c) A permittee having this category of license shall be allowed to sell and serve on a patio or open-air area, for which access is provided only by going through the interior of the building. The patio or open-air area shall be enclosed by a permanent fence, railing, or similar structure, a minimum of forty-two inches (42") in height, which obstructs normal walking access to the patio or open-air area, except by entry through the interior of the building. The fence, railing, or other structure shall have a least one (1) emergency exit, to be opened only in the event of an emergency and so marked, which will emit an audible sound, such as a bell, siren or other like sound, when the emergency exit is opened. Additional such exits may be required depending on the size of the fenced in area, as specified by the Erwin Fire Protection Ordinance.

(d) Within thirty (30) minutes from the time that sale of beer has ceased as required by § 8-215, all containers, glasses or other vessels of any type which have been used for serving and consumption of beer shall be removed by permittee from the area or areas where the beer had been consumed and shall be placed in areas not for access by patrons of the establishment. (Ord. #700-18, May 2018)

8-210. Off-premises beer permits. (1) New beer permits for off-premises sales shall be issued only to:

- (a) Food stores or grocery stores;
- (b) Convenience stores or markets;
- (c) Drug stores;
- (d) Beer distributors or manufacturers; and
- (e) Growler sales.

(2) Beer shall not be sold through any "drive-through" window. (Ord. #700-18, May 2018)

8-211. "Grandfather" clause. Provided that all requirements of this chapter are complied with, all existing permits for the sale of beer within the corporate limits of the town at the date of the passage of the ordinance comprising this chapter shall continue to be renewed as long as beer sales have not ceased for six (6) consecutive months pursuant to *Tennessee Code Annotated*, § 57-5-109. (Ord. #742-23, Feb. 2023)

8-212. Display of permit; sales by manufacturers, etc.; term of permit; permits to be restrictive. (1) All permit holders shall display and keep displayed their beer permit in a conspicuous place on the premises where they are permitted to conduct such business.

(2) No manufacturer, distributor, or warehouseman shall sell beer or alcoholic beverages to anyone except a licensed beer dealer.

(3) All beer permits shall be restrictive as to the type of beer business authorized under them, stating whether the permit is for on-premises

consumption or off-premises 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 the permit holder's permit. It shall likewise be unlawful for the permit holder not to comply with any and all expressed restrictions or conditions which may be written into his/her/its permit by the board.

(4) A permit shall be valid for all privately-owned decks, patios, and other outdoor serving areas that are owned by the business which holds the permit and are contiguous to the exterior of the building in which the business for which the permit is issued is located and that are operated by the same business unless a contiguous sidewalk or parking area is used by other businesses. Permits shall not be valid to serve alcohol on any public property.

(5) A permit is valid only for a business operating under the name identified in the permit application.

(6) It is unlawful for any person or entity to sell, distribute or manufacture beer without having a valid certificate indicating that purchases of beer by that person are for resale. Within ten (10) days after being issued a permit to sell, distribute, or manufacture beer, a person shall file with the Erwin Town Recorder and with each person from whom the person buys beer a copy of a valid certificate indicating that the purchases of beer are for resale, and shall subsequently maintain at all times a valid resale certificate on file with the Town of Erwin and with each person from whom the person buys beer. (Ord. #700-18, May 2018)

8-213. Bond required. Every person, firm, corporation, or association, before being issued a permit to sell at retail within the corporate limits of the Town of Erwin any of such beverages permitted to be sold hereunder, shall make and deliver to the town recorder a joint and several bond in the amount of one thousand, five hundred dollars (\$1,500.00) payable to the Town of Erwin, Tennessee. Said bond shall be signed by some solvent surety company authorized to carry on a general surety business within the State of Tennessee, or by solvent personal sureties, and shall be conditioned that the principal will pay any fine which may be assessed against such principal by any court of competent jurisdiction of any violation of the provisions of this chapter. At the end of the first twelve (12) months, and every twelve (12) months thereafter, said bond shall be renewed and a fee of ten dollars (\$10.00) shall be paid to the town recorder for taking and renewing said bond. (Ord. #700-18, May 2018)

8-214. Permits not transferrable. (1) A permit shall be valid only for the applicant to whom the permit was issued, and cannot be transferred to any other person or entity. A permit may, in the discretion of the board, be issued to the owner of the business, whether a person, firm, corporation, joint stock company, syndicate, or association. If the owner is a corporation, a change in ownership shall occur when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner.

(2) A separate permit shall be obtained for each location at which and from which any applicant is to manufacture, store, distribute, or sell beer. A permit is valid only for a single location and cannot be transferred to another location.

(3) When any person or entity shall move the location of his/her/its place of business or there is any change in the ownership of the business where such beverages are sold (whether voluntary or involuntary), then in all cases shall the permit holder be required to apply for a new permit in the manner herein provided by said board.

(4) A permit holder must return the permit to the Town of Erwin within fifteen (15) days of termination of the business, or a change in ownership of the business, or the death of the person to whom the permit is issued, or a relocation of the business, or a change in the name of the business; provided that, notwithstanding the failure of the permit holder to return his/her/its beer permit, the beer permit shall automatically expire upon a termination of the business, a change in ownership, a relocation of the business, or the death of the owner of the business, or a change of the name of the business, unless otherwise provided herein. (Ord. #700-18, May 2018)

8-215. Hours of sales restricted. It shall be unlawful for any person to sell beer on any day, Monday through Saturday, between the hours of 3:00 A.M. until 8:00 A.M. It shall be unlawful for any person to sell beer between 3:00 A.M. and 10:00 A.M. on Sunday. (Ord. #700-18, May 2018)

8-216. Miscellaneous regulations for distributors, wholesalers, etc. (1) In addition to other requirements set out in this chapter, all distributors, wholesalers, warehousemen, and manufacturers shall be duly licensed under the law to do business in the State of Tennessee.

(2) All distributors, wholesalers, manufacturers, and warehousemen of beer having a place of business within the corporate limits of the Town of Erwin shall locate in areas designated and zoned for manufacturing under laws and ordinances of the Town of Erwin, Tennessee.

(3) It shall be unlawful within the corporate limits of the Town of Erwin for any wholesaler, distributor, warehouseman, or manufacturer of beer or for any of their salesmen or representatives to sell or deliver beer enroute or from delivery vehicles to any person or place other than the holders of valid retail beer permits, and it shall be the duty of such wholesaler, representative, etc., to ascertain whether or not such person or place has been issued a valid retail beer permit by the Town of Erwin. (Ord. #700-18, May 2018)

8-217. Persons underage. It shall be unlawful for any person engaged in the sale of beer to make or permit to be made any sales of beer to any person under twenty-one (21) years of age. The burden of ascertaining the age of each patron shall be upon the permit holder of such place of business. Customers

must have upon their persons a valid photo ID which lists their correct birth dates. (Ord. #700-18, May 2018)

8-218. Dancing. Dancing is permitted in establishments that hold on-premises beer permits. However, all dancers must be fully clothed and shall not be clothed in wet t-shirts, lewd, or opaque clothing and no dancer shall engage in simulated sexual activity. (Ord. #700-18, May 2018)

8-219. Proper sanitary facilities required. In the places of business where such beverages will be sold or distributed, restrooms shall be provided as set out in the currently adopted plumbing code. (Ord. #700-18, May 2018)

8-220. Visibility through front required. Proper visibility through the front of the establishment shall be maintained, to the result that the interior of the establishment shall be visible to investigating officers. (Ord. #700-18, May 2018)

8-221. Lighting of establishment. All establishments who hold permits to sell beer within the corporate limits of Erwin, Tennessee shall maintain clear visibility within said establishment. The use of black lights, strobe lights, or any other type of lighting which restricts clear vision or which could restrict the identity of persons within the establishment is prohibited. (Ord. #700-18, May 2018)

8-222. Live entertainment permitted. In a place of business where such beverages will be sold or distributed, live entertainment is permitted. However; all entertainers shall be fully clothed. No wet t-shirts, opaque, or lewd attire shall be permitted, and no simulated sexual activity shall be permitted. In all such establishments, no loud music, or unusual or obnoxious noises shall be allowed, and the applicant shall conduct such place of business otherwise in an orderly, peaceable and lawful manner. (Ord. #700-18, May 2018)

8-223. Purchases by or for underage persons prohibited. It shall be unlawful for any person to purchase beer for the purpose of selling or giving same to any person under the age of twenty-one (21) years. (Ord. #700-18, May 2018)

8-224. Loitering and sales to certain persons prohibited. It shall be unlawful for any permit holder to allow persons to loiter around the place of business, and it shall be unlawful for any such permit holder to make, permit, or allow to be made, any sale of beer to any person who is intoxicated, feeble-minded, insane, or otherwise mentally incapacitated. (Ord. #700-18, May 2018)

8-225. Possession of open beer restricted. It shall be unlawful for any person to possess open cans, bottles, or containers of beer upon the public streets, sidewalks, or other public places in the Town of Erwin not otherwise permitted by this chapter. (Ord. #700-18, May 2018)

8-226. Delivery of beer restricted. It shall be unlawful for any holder of a beer permit to sell beer or deliver beer away from the premises designated and described in the permit. It shall further be unlawful for any owner or operator of a public conveyance such as a taxi or other form of public transportation to purchase or deliver beer or to any person who is not present at the premises designated and described in the permit. (Ord. #700-18, May 2018)

8-227. Permits for non-conforming premises prohibited. No beer permit shall be issued to any person to sell beer from any place, premises, or location which constitutes a "nonconforming use" under the zoning laws and ordinances of the Town of Erwin in effect at the time of application for such permit. (Ord. #700-18, May 2018)

8-228. Inspections. It shall be the duty of the Police Department of the Town of Erwin or of any special police officers appointed by the board of mayor and aldermen to inspect the places of business and premises of the holders of permits under this chapter, and it shall be unlawful for any permit holder or agent of the permit holder to refuse to permit any such inspection during any time that such place is open. (Ord. #700-18, May 2018)

8-229. Price reductions or adjustments by wholesalers for breakage, etc., restricted. In order to accurately determine the tax to be paid, no wholesaler shall make any reduction or adjustment for shortages or broken bottles, including chips and flats, except at the time of sale and delivery. All beer shall be inspected and accepted by the permit holder or the agent of the permit holder at the time of delivery, and no adjustment or refund for merchandise damage, breakage, or shortage shall be made by any wholesaler subsequent to the time of delivery. (Ord. #700-18, May 2018)

8-230. Taxes. The tax rate established by this chapter is the maximum allowed by statute which will be levied on and paid by the wholesaler or distributor, and precludes any other fee or tax except the privilege license fee now authorized by acts of the General Assembly of Tennessee on the sale of beer, either at retail or wholesale. (Ord. #700-18, May 2018)

8-231. Privilege tax. There is hereby imposed on the business of selling, distributing, storing, or manufacturing beer an annual privilege tax, which shall be the maximum amount set out in *Tennessee Code Annotated*,

§ 57-5-104(b), but shall be no less than one hundred dollars (\$100.00) annually for each permit. Any person, firm, corporation, joint stock company, syndicate, or association engaged in the sale, distribution, storage, or manufacture of beer shall remit the tax for the calendar year by January 31 of that year to the Town of Erwin. 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 pro rata basis for each month or portion thereof remaining until the next tax payment date. All privilege taxes thereafter shall be paid annually by January 31 in advance and shall not be subject to refund in whole or in part. No beer permits may be renewed until all property taxes, business taxes, or fines imposed by the state, county, or town governments which are due are paid. (Ord. #700-18, May 2018)

8-232. Notices of privilege tax. The Town of Erwin shall mail written notice to each permit holder of the payment date of the annual privilege tax at least thirty (30) days prior to each January 1. Notice shall be mailed to the address specified by the permit holder on its permit application. If a permit holder does not pay the tax by January 31, or within thirty (30) days after the written notice of the tax was mailed, whichever is later, the Town of Erwin shall notify the permit holder by certified mail that the tax payment is past due. If the permit holder does not pay the tax within ten (10) days after receiving notice of its delinquency by certified mail, then the beer permit shall automatically terminate without further hearing before the board. (Ord. #700-18, May 2018)

8-233. Violations. (1) Any person violating any provision of this chapter shall be subject to a penalty under the general penalty clause for this chapter. Furthermore, any permit holder violating any provision of this chapter may, in the discretion of the board, be cited to the board for a hearing to determine whether the beer permit should be suspended or revoked.

(2) Each day's violation of any provision of this chapter by any permit holder, and each sale made in violation of any provision of this chapter shall constitute a separate offense. (Ord. #700-18, May 2018)

8-234. Civil penalty in lieu of suspension. The beverage board may, in its discretion, at the time it imposes a suspension or revocation, offer a permit holder the alternative of paying a civil penalty of:

(1) First offense: One thousand, five hundred dollars (\$1,500.00) civil penalty for violating any provision or section of this chapter other than making or permitting to be made the illegal sale of beer to a minor;

(2) Second offense: Three thousand dollars (\$3,000.00) civil penalty for violating any provision or section of this chapter other than making or permitting to be made the illegal sale of beer to a minor; or

(3) Third offense: Five thousand dollars (\$5,000.00) civil penalty for violating any provision or section of this chapter other than making or permitting to be made the illegal sale of beer to a minor.

If a civil penalty is offered as an alternative to suspension or revocation of permit, the permit holder shall have seven (7) calendar days within which to pay the civil penalty before the suspension or revocation shall be imposed. If the civil penalty is paid within that seven (7) calendar day period, the suspension or revocation of permit shall be deemed withdrawn, but the offense shall still be recorded as the establishment's first, second, or third offense. (Ord. #700-18, May 2018)

8-235. Revocation and suspension of beer permits. (1) Pursuant to *Tennessee Code Annotated*, § 57-5-608, the beverage 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 beverage board as if the vendor was not certified as a responsible vendor. "Clerk" means any person working in a capacity to sell beer directly to consumers for off-premises consumption.

(2) 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 beverage 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.

(3) If the permit holder or any person employed by the permit holder who has applied for and received a permit is convicted of any violation of the law against prohibition, sale, manufacture, storage, usage or transportation of intoxicating liquor or any felony crime, or of any crime involving moral turpitude the permit holder shall report in writing the name of the person so convicted, the nature of the conviction, and the name of the court in which the person was convicted to the Town of Erwin within fifteen (15) days of the conviction. The Town of Erwin shall then set a show cause hearing before the beverage board to determine whether the permit will be revoked. Failure to notify the Town of Erwin of a conviction will also be grounds to revoke the permit. (Ord. #700-18, May 2018)

8-236. Sale of beer to a minor. (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 beverage board may impose the following penalties if the violation of sale of beer to a minor has been determined to have occurred and:

- (a) The permit holder is not a responsible vendor.
- (i) First offense: A ninety (90) day suspension of the permit holder's permit for the offense of making or permitting to be made any sales to minors; or, in the alternative, a civil penalty in the amount of one thousand, five hundred dollars (\$1,500.00), to be paid within seven (7) days of the penalty's imposition.
 - (ii) Second offense: A one hundred and eighty (180) day suspension of the permit holder's permit for the offense of making or permitting to be made any sales to minors; or, in the alternative, a civil penalty in the amount of three thousand dollars (\$3,000.00), to be paid within seven (7) days of the penalty's imposition.
 - (iii) Third offense: Revocation of the permit holder's permit for the offense of making or permitting to be made any sales to minors; or, in the alternative, a civil penalty in the amount of five thousand dollars (\$5,000.00), to be paid within seven (7) days of the penalty's imposition.

If a civil penalty is offered as an alternative to revocation or suspension, the permit 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 period, 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 permit holder of the violation so charged and shall be paid to the exclusion of any other penalty that the town may impose.

- (b) The permit holder is a responsible vendor.
- (i) First offense: A seven hundred and fifty dollar (\$750.00) civil penalty for the offense of making or permitting to be made any sales to minors.
 - (ii) Second offense: A one thousand dollar (\$1,000.00) civil penalty for the offense of making or permitting to be made any sales to minors.
 - (iii) Third offense: A one thousand dollar (\$1,000.00) civil penalty for the offense of making or permitting to be made any sales to minors.
 - (iv) In the event that the beverage board determines that a responsible vendor has sold beer to a minor for the second time in a consecutive twelve (12) month period, that vendor shall be reported to the alcoholic beverage commission and a three (3) year revocation of the vendor's responsible vendor status shall be requested. (Ord. #700-18, May 2018)

8-237. Loss of clerk's certification for sale to minor. If the beverage 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 beverage 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 beverage board's determination. (Ord. #700-18, May 2018)

8-238. Limitations on number of beer permits issued for off-premise beer sales. Off-premise permits. Beer permits for off-premise sales shall be limited to two (2) per each thousand (1,000) people residing within the town limits as of the most recent official federal census. (Ord. #742-23, Feb. 2023)

8-239. Violations and penalty. Upon a finding by the beverage board that an establishment has violated any provision or section of this chapter other than making or permitting to be made the illegal sale of beer to a minor, the board shall, upon first offense, invoke a ninety (90) day suspension of the establishment's beer permit, or may revoke the establishment's beer permit. For a second offense, the board shall invoke a one hundred and eighty (180) day suspension of the establishment's beer permit, or may revoke the establishment's beer permit. For a third offense, there shall be a mandatory revocation of the establishment's permit. All establishments within the town who currently hold a valid beer permit on the effective date of this chapter shall be deemed to have no past offenses as of the effective date of this chapter. (Ord. #700-18, May 2018)

CHAPTER 3

RETAIL PACKAGE STORES

SECTION

- 8-301. Definition.
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8-301. Definition. "Package or retail liquor store." A store licensed by the State of Tennessee and the Town of Erwin to sell "alcoholic beverages" as defined by *Tennessee Code Annotated*, § 57-3-101 at retail in compliance with federal, state, and town rules and regulations. (Ord. #679-15, March 2015)

8-302. Sale authorized. It shall be lawful for a licensee to sell alcoholic beverages at retail in a package store within the corporate limits of Erwin, provided such license has been appropriately approved by the town and the state, and such sales are made in compliance with applicable state and federal statutes, rules, and regulations along with all applicable Town of Erwin rules and regulations, as well as the provisions established in this chapter. 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 the town except as provided by this chapter and *Tennessee Code Annotated*, title 57. (Ord. #679-15, March 2015)

8-303. License and certificate required. It shall be unlawful for any person, firm or corporation to sell alcoholic beverages at retail without first obtaining a license for such privilege through the State of Tennessee Alcoholic Beverage Commission and without obtaining a certificate of compliance for a specific store location from the Erwin Board of Mayor and Aldermen as required by *Tennessee Code Annotated*, § 57-3-208. (Ord. #679-15, March 2015)

8-304. License restrictions. The requirements or restrictions established in *Tennessee Code Annotated*, §§ 57-3-204 to 57-3-210 apply to applicants for a retail package store license in Erwin, including, but not limited to the following:

(1) No retail license shall be issued to a person who is a holder of public office, either appointive or elective, or who is a public employee, either national, state, town or county except as specified in *Tennessee Code Annotated*, § 57-3-210(b)(i).

(2) No retailer or employee shall be an individual who has been convicted of a felony involving moral turpitude within ten (10) years prior to the time of the application, with the exception of such person whose rights of citizenship have been restored or judgment of infamy has been removed by a court of competent jurisdiction. No license shall be issued to a retailer who within ten (10) years preceding the application has been convicted of any offense under the laws of Tennessee or any other state in the United States prohibiting or regulating the sale, possession, transportation, storing, or manufacturing or otherwise handling of intoxicating liquors.

(3) No person shall have ownership in, or participate in, either directly or indirectly, the profits of any wholesale or retail package business licensed through *Tennessee Code Annotated* unless the interest in such business and the nature, extent and character thereof shall appear on the application or unless such interest is fully disclosed to the alcoholic beverage commission and is approved by it.

(4) No person shall be employed in a retail package store within the Town of Erwin unless they are a citizen of the United States.

(5) No retailer or any employee thereof shall be a person under eighteen (18) years of age.

(6) The Town of Erwin, or their representative, may make unscheduled inspections of retail package stores within the Town of Erwin at any time. (Ord. #679-15, March 2015)

8-305. License for application. Any person, firm, or corporation desiring to sell alcoholic beverages at a retail package store and not for consumption on premises, shall make application to the alcoholic beverage commission for a retail package store license. The following conditions apply:

(1) Conditions established in *Tennessee Code Annotated*, § 57-3-204 must be met, including payment of the application fee mandated by the State

of Tennessee, as well as compliance with any applicable rules and regulations of the Alcoholic Beverage Commission.

(2) The license application must be accompanied by a certificate of compliance issued from the Town of Erwin.

(3) The license expires in twelve (12) months following the date of issuance. Each licensee must submit renewal applications annually to the alcoholic beverage commission accompanied by the annual license fee.

(4) The applicant for a license must meet the public notice requirements established in §§ 0100-03-.09(10) and (11) of the rules of the alcoholic beverage commission and must submit to the Town of Erwin a copy of the newspaper notice with paper header showing compliance with this requirement. (Ord. #679-15, March 2015)

8-306. Application for certificate of compliance. An applicant for a license shall first obtain a certificate of compliance from the Town of Erwin, as provided in *Tennessee Code Annotated*, § 57-3-208. The application for the certificate shall be in writing on forms prescribed and furnished by the town recorder or his/her designee. The application includes a request for a certificate of good moral character, as provided by *Tennessee Code Annotated*, §§ 57-3-208, *et seq.* Applications shall include, but are not limited to, the following information:

(1) The name, date of birth and street address of each person to have an interest, whether direct or indirect, in the license as owner, partner or shareholder who holds more than a ten percent (10%) interest in the corporation, director, officer, member or otherwise. In the event that a corporation, partnership, limited liability company or other legally recognized entity is an applicant or member of an applicant group, each person with an interest therein must be disclosed and must provide the information herein required by the town.

(2) Occupation or business name and location of such business of the applicant or persons in the applicant group, and length of time engaged in such occupation or business, including the name of the licensee and address of any other off-premises package stores in which an ownership interest is held by the applicant or any member of the applicant group, identifying the applicant or group members holding each interest.

(3) In the case where the applicant is a partnership, corporation, limited liability company or other such legally recognized entity, the application shall be accompanied by a copy of the partnership agreement, corporate charter, operations agreement or other such document as well as a breakdown of all partners, shareholders, members, etc. with their ownership percentages.

(4) The identity of the applicant(s) who will be in actual charge of the day-to-day operation of the retail package store.

(5) Certification that the applicant or applicant group and any employee, now intended or in the future, that will be employed to manage or

assist in the operation of the retail package store has not been convicted of a felony within the ten (10) year period immediately preceding the date of the application of any violation of any state or federal law, or of any violation of any municipal ordinance involving alcohol related offenses. This certification shall be accompanied by a criminal background check or consent to and request for same for each applicant, applicant group and management employee of the package store. The cost of obtaining such criminal background checks shall be borne and paid by the applicant, applicant group, or the employer of the management employee(s).

(6) Name of the retail package store proposed in the application and the zoning designation applicable to such location.

(7) Address of the retail package store proposed in the application.

(8) A site plan drawn to a scale by a licensed surveyor or engineer, of not less than one inch (1") equals twenty feet (20') that includes the following information:

(a) All information required by the Town of Erwin's Zoning Ordinance.

(b) Designation of the zoning district of the lot and the adjoining properties.

(c) Owner names, use designations, and business names of adjoining properties.

(d) The identification of every parcel within two hundred feet (200') of the lot which the package store is to be operated, indicating ownership thereof, and the locations of structures situated thereon and the use being made of every such parcel.

(9) Certification by the applicant stating that the premises of the proposed retail package store are in full compliance with the distance requirements established in § 8-308(2) of this chapter.

(10) The agreement of each applicant to comply with state and federal statutes, Erwin regulations governing retail package stores, and all state rules and regulations with reference to the sale of alcoholic beverages.

(11) Verification that the applicant has secured the location for the business at the location submitted in the application.

(12) A time schedule detailing any construction or renovation of the store building, improvements to the grounds, and store opening date.

(13) Copies of all submittal documentation required by the alcoholic beverage commission for a retail package store license from the State of Tennessee.

(14) Applicant's business plan for the retail package store including, but not limited to, start-up funding, cost of establishing and opening the business and projected sales for the first twenty-four (24) months of operation.

(15) The application form shall be signed and verified by each person who has any interest in the license either as owner, partner, shareholder who

holds more than a ten percent (10%) interest in the corporation , director, officer or otherwise.

(16) The application for a certificate of compliance shall be submitted with payment of the non-refundable application fee of five hundred dollars (\$500.00). This application fee is also required for existing businesses that are renewing their license with the alcoholic beverage commission. (Ord. #679-15, March 2015)

8-307. Review and consideration of applications for certificate of compliance. Applications to the town for a certificate of compliance shall be submitted to the town recorder. The town recorder or his/her designee will review materials submitted for compliance, and will to the extent possible, identify insufficient information. It is the responsibility of the applicant to provide all of the required information. An application shall not be deemed "filed" until it contains all of the required information. In reviewing the application, the board of mayor and alderman shall consider the following:

(1) Whether the application meets all state and federal requirements.
 (2) When there are more applications for a certificate of compliance than the maximum number of retail package store licenses authorized by this chapter, the board of mayor and alderman shall consider the following without necessity of regard for the order in which the applications were filed:

(a) The retail store locations submitted and the consideration of safety, lighting, ingress and egress, size of store, impact on traffic patterns, and ease of enforcement relative to each location.

(b) The most suitable circumstances and location in consideration of the health, safety and welfare of the citizens of Erwin and the lawful operation of a retail package store.

(c) The ability of the applicant to obtain the necessary license from the state, and to construct, renovate or otherwise develop the premises necessary for the retail store and open it to the public in a timely manner.

(d) The compatibility of the building and landscaping with the surrounding properties.

(e) An applicant for a certificate of compliance shall appear at the board of mayor and alderman meeting when the consideration of their application is on the agenda.

(3) If a retail package store makes any voluntary request to transfer an existing and operating store, the location shall be evaluated and considered based on the criteria in §§ 8-306 and 8-307 along with any other requirements of the alcoholic beverage commission.

(4) Applications and all matters submitted with or as a part of such applications become, at the time they are submitted, the sole and exclusive property of the town and constitute public records open to public inspection.

(5) Applications for a certificate of compliance shall be held by the town until the retail package store(s) approved are open and operating. At that time, the applications may be disposed of by the town. If an approved store is not licensed by the alcoholic beverage commission or fails to make substantial progress within six (6) months of the date the applicant was issued a license by the alcoholic beverage commission the certificate of compliance shall become null and void. However, the board of mayor and alderman may grant extensions due to hardships or unforeseen circumstances. At such time the applications on file for a certificate of compliance may be reactivated and considered submitted upon written request by the applicant. (Ord. #679-15, March 2015)

8-308. Restrictions on location of and access to retail package stores. Locations for a retail package store shall only be approved for premises that are:

- (1) Based on the current Town of Erwin Municipal Zoning Code.
- (2) No certificate of compliance for a retail package store shall be issued to any person or establishment whose place of business is within two hundred feet (200') of any established church or school building. The two hundred feet (200') measurement shall be measured in a straight line from the building of the applicant to the church or school building by a licensed Tennessee surveyor. The points of the building to be measured shall be from the nearest point on the building of the applicant in relation to the nearest point of the building of the church or school. If the applicant's place of business is located within a building that has more than one (1) business, then the point of measurement shall be from the nearest point of the applicant's actual premises within the larger building in relation to the nearest point of the building of the church or school. The applicant shall bear the expense of said survey. The restrictions set forth herein as to locations apply to conditions existing as of the time the application for a certificate is filed, and the future presence of any uses listed above in this subsection necessitating the two hundred foot (200') distance requirement shall not be grounds for revocation of a licensee or denial of a certificate if a valid license had been issued to any retail package store at the same location and the business has been in continuing operation since that date.
- (3) Located in or developed in a building in which the retail package store is only on the ground floor.
- (4) The retail package store shall have one (1) entrance for use by the public. However, in the event the building is located on a corner with building entrances and parking fronting on both intersecting streets the applicant may petition the board of mayor and alderman for approval of a second public entrance to the retail package store. Such petition must be accompanied by all supporting documentation as is required for a second entrance to a retail package store under the statutes and regulations provided by the State of Tennessee.

(5) The retail package store must meet all Town of Erwin regulations concerning commercial buildings and nothing shall be "grandfathered in" from a prior business location. Any non-conforming business premises, excluding property line setbacks, shall comply with current Town of Erwin standards prior to locating a retail package store on said premises. (Ord. #679-15, March 2015, as amended by Ord. #742-23, Feb. 2023)

8-309. Number of stores. There shall be only two (2) package stores within the Town of Erwin. However, the board of mayor and alderman retains the power and authority to modify the number of total retail package stores by resolution. (Ord. #679-15, March 2015)

8-310. Restrictions on issuance of certificate of compliance. No original or renewal certificate of compliance shall be issued for any location until:

- (1) An application has been filed with the town recorder.
- (2) All requirements to obtain a certificate have been met and the application complies with all restrictions as to location and number of retail package store licenses issued within the town.
- (3) A written certification is submitted by the applicant stating that the premises of the retail package store are in full and complete compliance with the distance requirements established in § 8-308(2) of this chapter.
- (4) The application has been signed and verified by each person to have an interest in the retail package store either as an owner, partner, member, shareholder who holds more than a ten percent (10%) interest in the corporation or otherwise.
- (5) The application has been considered at a regular or called meeting of the Erwin Board of Mayor and Aldermen and approved by majority vote.
- (6) The five hundred dollars (\$500.00) non-refundable application fee has been paid in full. (Ord. #679-15, March 2015)

8-311. Term of certificate of compliance. Once issued by the board of mayor and aldermen a certificate of compliance, required by *Tennessee Code Annotated*, § 57-3-208, shall be valid for two (2) years. Therefore, a new certificate of compliance is required every other year, to be submitted to the alcoholic beverage commission with the application for the annual license renewal. (Ord. #679-15, March 2015)

8-312. Full and accurate disclosure required. (1) It shall be unlawful for any person to have ownership in or participate, either directly or indirectly, in the profits of any retail store license under this chapter, unless his/her interest in the business and the nature, extent and character thereof shall appear on the application for a certificate of compliance; or if the interest is acquired after the issuance of a license, it is fully disclosed to and approved

by the board of mayor and aldermen. Where such interest is owned by such a person on or before the application for any certificate, the burden shall be upon such person to see that this section is not violated, whether he/she signs or prepares the application, or whether the same is prepared by another; or if the interest is acquired after the issuance of the certificate, the burden of disclosure of the acquisition of such interest shall be upon the seller and the purchaser.

(2) Misrepresentation of a material fact, or concealment of a material fact, required to be shown in the application for a license or certificate shall be a violation of this chapter. The board of mayor and aldermen may refuse to issue a certificate if, upon investigation, the town finds that the applicant for a certificate has concealed or misrepresented in writing or otherwise any material fact or circumstance concerning the operation of the retail package store, or if the interest of any applicant in the operation of the business is not truly stated in the application, or in case of any fraud or false swearing by any applicant concerning any matter related to the operation of the business. All data, written statements, affidavits, evidence, or other documents submitted in support of an application are part of the application.

(3) If the provisions of this section and chapter are alleged to have been violated, the board of mayor and aldermen may by majority vote revoke any certificate which has been issued, after first providing an opportunity for the applicant(s) or licensee to refute such allegations and give reasons for why the certificate should not be revoked. (Ord. #679-15, March 2015)

8-313. Regulations of retail sales. Retailers licensed under *Tennessee Code Annotated*, § 57-3-204 shall comply with the regulation of retail sales established in *Tennessee Code Annotated*, § 57-3-406 including, but not limited to, the following:

(1) Hours and days of operation. No retailer shall sell or give away or otherwise dispense any alcoholic beverages between the hours of 12:00 midnight and 6:00 A.M. on weekdays and between the hours of 12:00 midnight on Saturday and 12:00 noon on Sunday, except the holidays specified below. No retailer shall sell or give away alcoholic beverages between 11:00 P.M. on Saturday and 8:00 A.M. on Monday each week.

(2) Sale during holidays. No retailer shall sell or give away alcoholic beverages on Thanksgiving Day, Christmas Day, and Easter.

(3) No audible radio, pinball machine, slot machine, video game, audible music machine, or other amusement devices which would cause persons to congregate in such place shall be maintained in any retail package store. This provision shall not prevent the broadcast of background music or personal music devices heard only by one (1) person.

(4) The sale and delivery of alcoholic beverages at a retail package store shall be confined to the building premises of the licensee, and no curb or drive-thru service is permitted. (Ord. #679-15, March 2015, modified)

8-314. License display. Persons granted a license to carry on any business or undertaking contemplated herein shall, before being qualified to do business, display and post and keep displayed and posted, in the most conspicuous place in their premises, such license. (Ord. #679-15, March 2015)

8-315. Advertising and signage. Advertising by a licensee, including, but not limited to, signs, displays, posters and designs intended to advertise any alcoholic beverages, shall be governed by the applicable rules of the Tennessee Alcoholic Beverage Commission and the sign provisions and restrictions of the underlying zoning district. (Ord. #679-15, March 2015)

8-316. Transfer of license and certificate. The holder of a license for a retail package store may not sell, assign or transfer such license to any other person, and such license shall be good and valid only for the twelve (12) months after the same was issued. Except as expressly authorized, there shall be no transfer of any license from one (1) location to another. An application for a retail package store license from the alcoholic beverage commission resulting from a change in ownership or store location shall require a re-submittal of an application for a certificate of compliance. (Ord. #679-15, March 2015)

8-317. Inspection fee levied. For the purpose of providing a means of regulating the sale of alcoholic beverages within the town, and to provide means of enforcing the provisions of this chapter, there is hereby levied and imposed an inspection fee of eight percent (8%) of the wholesale price of all alcoholic beverages sold by wholesalers to any licensed retail package store within the corporate limits of Erwin. Collection of this inspection fee by wholesalers shall be undertaken under regulations established in *Tennessee Code Annotated*, §§ 57-3-501 to 57-3-503, including, but not limited to, the following:

(1) The inspection fee is imposed upon licensed retailers, but is collected by wholesalers.

(2) The inspection fee shall be collected by the wholesaler at the time of the sale or at the time the retailer makes payment for the delivery of the alcoholic beverages, and said fee may be added by the wholesaler to the invoice for alcoholic beverages sold to the licensed retailers.

(3) Each wholesaler making sales to retailers located within the Erwin town limits shall make monthly payments to the town of the inspection fees invoiced.

(4) Monthly payments shall be paid by the twentieth day of the month following which sales were made and shall be accompanied with monthly reports that include the information required in *Tennessee Code Annotated*, § 57-3-503.

(5) Wholesalers collecting and remitting inspection fees to the town shall be entitled to reimbursement for this collection service, a sum equal to five percent (5%) of the total amount of the inspection fees collected, and such

reimbursement may be deducted and shown on the monthly report to the Town of Erwin.

(6) Failure to collect, report, or pay the inspection fee collected by the day required shall result in a penalty of ten percent (10%) of the fee due, which shall also be paid to the town.

(7) The Town of Erwin has the authority to audit the records of wholesalers supplying retail package stores and reporting sales to retail package stores in Erwin to determine the accuracy of reports.

(8) Nothing herein shall relieve the licensee of the obligation for 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 town recorder.

(9) The inspection fee levied in this chapter shall be in addition to any general gross receipts, sales and other general taxes applicable to the sale of alcoholic beverages, and shall not be in substitution for such taxes. (Ord. #679-15, March 2015)

8-318. Surrender of license if business is discontinued. Whenever any licensee discontinues business for any reason, he/she shall immediately notify the alcoholic beverage commission and the town recorder in writing and surrender the license and certificate of compliance. (Ord. #679-15, March 2015)

8-319. Revocation procedures. Whenever the board finds that a licensee has been, or is, in violation of the *Tennessee Code Annotated*, title 57, the rules and regulations of the alcoholic beverage commission, or the provisions of this chapter, the board shall certify such violation(s) to the alcoholic beverage commission, in such form as the commission requires. The alcoholic beverage commission shall have the responsibility for determining whether the offender's license shall be revoked. The board of mayor and aldermen, upon determination of violations of state or local regulations governing the retail sale of alcoholic beverages may revoke the town issued certificate of compliance, and shall communicate said revocation to the alcoholic beverage commission for possible further action. (Ord. #679-15, March 2015)

8-320. Automatic revocation of certificate. In the event that the Erwin Board of Mayor and Alderman issues a certificate of compliance to an applicant who is subsequently denied a license from the alcoholic beverage commission, the certificate of compliance shall become null and void. (Ord. #679-15, March 2015)

8-321. Violations and penalty. Any violation of the provisions of this chapter shall constitute a misdemeanor and shall, upon conviction, be punishable by a fine of fifty dollars (\$50.00). Each day such violation shall continue shall be deemed to be a separate violation. Upon conviction of any person under this chapter, it shall be mandatory for the town judge to

immediately certify such conviction, whether on appeal or not, directly to the alcoholic beverage commission, together with a petition that all licenses be revoked, pursuant to the provisions of *Tennessee Code Annotated*, chapter 3, title 57 and the rules and regulations of said commission. (Ord. #679-15, March 2015)