

TITLE 8

ALCOHOLIC BEVERAGES¹

CHAPTER

1. INTOXICATING LIQUORS.
2. BEER.
3. RETAIL FOOD STORE WINE LICENSES.

CHAPTER 1

INTOXICATING LIQUORS

SECTION

8-101. Prohibited generally.

8-101. Prohibited generally. Except as authorized by applicable laws² and/or ordinances, it shall be unlawful for any person acting for himself or for any other person, to manufacture, receive, possess, store, transport, sell, furnish, or solicit orders for any intoxicating liquor within this town. "Intoxicating liquor" shall be defined to include whiskey, wine, "home brew," "moonshine," and all other intoxicating, spirituous, vinous, or malt liquors and beers which contain more than five percent (5%) of alcohol by weight. (1978 Code, § 2-101)

¹State law reference
Tennessee Code Annotated, title 57.

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

CHAPTER 2

BEER¹

SECTION

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8-201. Beer board established. There is hereby established a beer board to be composed of the board of mayor and aldermen. The mayor shall be the chairman of the beer board. (1978 Code, § 2-201, as amended by Ord. #8-07, Oct. 2007)

8-202. Meetings of the beer board. All meetings of the beer board shall be open to the public. The board shall hold regular meetings in the city hall at such times as it shall prescribe. When there is business to come before the beer board, a meeting will be scheduled on the date of the next regularly scheduled city council meeting, immediately following the adjournment of the city council meeting. The board may adjourn a meeting at any time to another time and place. (1978 Code, § 2-202, as amended by Ord. #8-07, Oct. 2007)

¹Municipal code references

Minors in beer places, etc.: title 11, chapter 1.

Tax provisions: title 5.

State law reference

For a leading case on a municipality's authority to regulate beer, see Watkins v. Naifeh, 635 S.W.2d 104 (Tenn. 1982).

8-203. Record of beer board proceedings to be kept. The recorder shall make a record of the proceedings of all meetings of the beer board. The record shall be a public record and shall contain at least the following: The date of each meeting; the names of the board members present and absent; the names of the members introducing and seconding motions and resolutions, etc., before the board; a copy of each such motion or resolution presented; the vote of each member thereon; and the provisions of each beer permit issued by the board. (1978 Code, § 2-203, as amended by Ord. #8-07, Oct. 2007)

8-204. Requirements for beer board quorum and action. The attendance of at least a majority of the members of the beer board shall be required to constitute a quorum for the purpose of transacting business. Matters before the board shall be decided by a majority of the members present if a quorum is constituted. Any member present but not voting shall be deemed to have cast a "nay" vote. Applicants for beer permits shall appear in person before the board will consider their application. (1978 Code, § 2-204, as amended by Ord. #8-07, Oct. 2007)

8-205. Powers and duties of the beer board. The beer board shall have the power and it is hereby directed to regulate the selling, storing for sale, distributing for sale, and manufacturing of beer within this municipality in accordance with the provisions of this chapter. (1978 Code, § 2-205, as amended by Ord. #8-07, Oct. 2007)

8-206. "Beer" defined. The term "beer" as used in this chapter shall mean and include all beers, ales and other malt liquors of alcoholic content of not more than five percent (5%) alcohol by weight, or any other beverage of like alcohol content except wine. (1978 Code, § 2-206, as amended by Ord. #8-07, Oct. 2007)

8-207. Permit required for engaging in beer business. It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the beer board.

(1) Each applicant shall be furnished an application pursuant to Tennessee Code Annotated, § 57-5-103, and each submitted application shall be accompanied by a nonrefundable application fee of two hundred and fifty dollars (\$250.00). Said fee shall be in cash or equivalent payable to the Town of White Pine.

(2) Each applicant must be a person of good moral character and he or she must certify that he or she has read and is familiar with the provisions of this chapter.

(3) A permit is void at midnight of the day a permit holder ceases business for which the permit was granted and must be surrendered to the recorder's office within fifteen (15) working days.

(4) If application is being made for an establishment that has not been constructed or is under construction, a complete site plan and floor plan must be submitted with the application. The plans must provide a description of the entire premises, including open and parking areas available to and for the use of the business. If construction is not commenced within six (6) months or is not completed within eighteen (18) months from the date of approval of the beer permit; or if after completion of the construction, the facility differs materially from the submitted plans or violates any provisions of this chapter in effect at the time of approval of the permit, any permit issued for the facility becomes immediately void.

(5) A permit is not transferable. (1978 Code, § 2-207, as amended by Ord. #8-07, Oct. 2007)

8-208. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer a privilege tax of one hundred dollars (\$100.00) per year. 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 issuance of the permit, and each successive January 1, to the Town of White Pine, Tennessee. If said privilege tax is not paid on or before January 10, the beer permit issued to said person, firm, corporation, joint stock company, syndicate or association shall be void, and said permit holder shall have to apply for a new permit. If said tax is paid after January 1 but before January 10, a penalty of twenty-five dollars (\$25.00) shall be charged for each successive day the tax is not paid. 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. (1978 Code, § 2-214, as amended by Ord. #8-07, Oct. 2007)

8-209. Beer permits shall be restrictive. All beer permits shall be restrictive as to the type of beer business authorized under them.

(1) Beer permits for retail sale of beer may be further restricted by the beer board so as to authorize sales only for 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 his or her permit. It shall likewise be unlawful for him or her not to comply with any and all express restrictions or conditions that are written into his or her permit by the beer board.

(2) No on premise permit shall be issued for a premise other than a restaurant. For purposes of this chapter, "on premise" shall include the interior of the business enclosed by permanent walls and covered by a permanent roof.

On premise establishments must provide separate public restroom facilities for both sexes.

(a) "Restaurant" means any public 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, such place being provided with adequate and sanitary kitchen and dining room equipment and a seating capacity of at least seventy-five (75) people at tables, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. At least one (1) meal per day shall be served at least five (5) days a week, with the exception of holidays, vacations and periods of redecorating, and the serving of such meals shall be the principal business conducted, except where the restaurant is located in a hotel or motel which provides at least thirty (30) rooms or suites for guests, in which case, the restaurant business may be secondary to the hotel or motel business. A restaurant shall also be eligible for an on premise permit hereunder if the restaurant serves at least one (1) meal a day at least four (4) days a week with the exception of holidays, vacations and periods of redecorating, and if the serving of such meals is the principal business conducted, and if such restaurant is only open for four (4) days a week. In no case shall beer be sold at times other than when meals are being served.

(b) A permit is required for all employees involved in the selling or dispensing of beer for on premises consumption. There shall be a fee imposed for such permit by resolution of city council, as it may act from time to time, in such amounts and for such duration as the council deems appropriate. Applicants for employee permits must be certified in alcohol server training under the "Training for Intervention Procedures" (TIPS) program, and maintain certification during employment, or be certified under a comparable program formally approved and adopted by the beer board. The training must include, but not be limited to, recognition of possible impairment of patrons, criminal and civil liability issues related to serving alcoholic beverages, and the legal and social consequences of unlawful consumption of alcoholic beverages.

(c) Annual sales of beer as defined in this chapter shall not exceed twenty five percent (25%) of total taxable sales for any on premise permit holder. In the application of this section, total taxable sales shall be defined as those food and nonalcoholic beverage sales subject to state and local sales taxes. It shall be a violation of this section if the beer sales exceed the twenty-five percent (25%) limit in two (2) consecutive months or three (3) months in any calendar year.

(3) No off premise permit shall be issued for a premise other than full line grocery stores, drugstores, or convenience stores. Such establishments must be constructed so that the cashier(s) or checkout counter(s) are clearly visible from a public street or shopping center parking lot. For the application of this

section, a full line grocery store shall be defined as a store that maintains an inventory of staple food items including fresh meats, vegetables, produce, and fruits. A drug store shall be defined as a business whose primary business is the sale of prescription drugs and associated items. A convenience store shall be defined as a store that maintains an inventory of basic food items such as luncheon meats, snack items, milk products, bread products, and canned goods. A permit is required for all managers and other employees involved in the selling or dispensing of beer for off premise consumption. There shall be a fee imposed for such permit by resolution of city council, as it may act from time to time, in such amounts and for such duration as the council deems appropriate.

The on site manager and any other employee who makes off premises sales of beer must be certified in alcohol server training under the "Training for Intervention Procedures" (TIPS) program, and maintain certification during employment, or be certified under a comparable program formally approved and adopted by the beer board.

(4) Each holder of a beer permit shall continuously maintain in Town of White Pine:

(a) A registered office which may be the same as the permitted place of business; and

(b) A registered agent, who shall be an individual who resides in Jefferson County and whose business office is identical with the registered office.

(5) No brewer, wholesaler or manufacturer of beer, nor any agent of such brewer, wholesaler or manufacturer, shall be permitted to make a loan of money or furnish any fixtures of any kind or have any interest either directly or indirectly in the business of any retailer of beer, or in the premises occupied by such retailer. No person holding and/or exercising a valid permit issued pursuant to this chapter shall while so doing convey or grant or contract to convey or grant any interest in the business located at the place named on the permit, or an interest in the premise or any property therein, to any brewer, wholesaler or manufacturer of beer regulated by this chapter. No person holding and/or exercising a valid permit issued pursuant to this chapter shall incur or contract any indebtedness or financial obligation to any brewer, wholesaler or manufacturer of beer regulated by this chapter, except for the purchase of the beverages. No permit shall be granted under this chapter to any applicant who at the time of making application, is indebted or financially obligated to any such brewer, wholesaler or manufacturer, except for the purchase of the beverages. (1978 Code, § 2-208, as amended by Ord. #8-07, Oct. 2007)

8-210. Limitation on permits issued. The beer board shall not issue permits for beer sales that would result in the number of permits in effect numbering more than fourteen (14). The limiting number is based on the 1990 Federal Census and shall be adjusted by one (1) permit for each change of the population by two hundred fifty (250) persons as established by a Federal

Census or any special census conducted by the Town of White Pine or the State of Tennessee. Businesses which may be annexed, and which possess a valid beer license at the time of their annexation; and business(es) which had been issued a valid permit which is existing at the time of the final passage of the ordinance comprising this chapter, but which experience a change of control (ownership) such as would require application for issuance of a new permit, shall not be denied a permit on the basis of the limitation of the number of permits to be issued by the city.

At least two (2) of the fourteen (14) beer permits described above shall be reserved for full line grocery store(s), at least six (6) of the fourteen (14) beer permits described above shall be reserved for "convenience stores," at least two (2) of the fourteen (14) beer permits described above shall be reserved for "restaurants," and at least two (2) of the fourteen (14) beer permits described above shall be reserved for "restaurants located in a hotel or motel." (1978 Code, § 2-209, as amended by Ord. #6-96, Aug. 1996, and Ord. #8-07, Oct. 2007)

8-211. Interference with public health, safety, and morals prohibited. No permit authorizing the sale of beer will be issued when such business would cause congestion of traffic or would interfere with hospitals, schools, churches, parks, or other places of public gathering, or would otherwise interfere with the public health, safety, and morals. For purposes of application of this section, in no event will a permit be issued authorizing the sale of beer within four hundred feet (400') of any hospital, public or private school, church, park or other place of public gathering.

The distances shall be measured in a straight line from the nearest point of any portion of the building from which the beer will be sold to the nearest point of any portion of the hospital, school, church, park, or other place of public gathering (i.e. building to building).

No permit shall be suspended, revoked or denied on the basis of proximity of the establishment to a hospital, school, church, park, or other place of public gathering if a valid permit had been issued to any business on that same location, unless beer is not sold, distributed or manufactured at that location during any continuous one (1) year period.

In no event will a permit be issued authorizing the sale of beer within one hundred feet (100') of a residential dwelling, measured from building to building. This provision shall not apply to locations where beer permits or licenses have been issued prior to the date of adoption of the ordinance comprising this chapter by the Town of White Pine, or to an application for a change in the licensee or permittee at such locations. "Residential dwelling" shall not include campers, temporary trailers, trailers to which utilities have not been provided and in which no person resides and "permanent" detached accessory buildings such as, garages, barns, storage buildings, etc.

"School" does not include private pre-school, private day care, home school or any institution of learning within the jurisdiction of the Tennessee Higher

Education Commission as set forth in Tennessee Code Annotated, § 49-7-203. Issuance of a permit pursuant to § 2-211 shall be subject to the provisions of § 2-207.

No permit shall be denied on the basis of proximity to any facility described above if the application for the permit was duly filed and accompanied with the appropriate filing fee prior to commencement of the use of any facility described above for the purposes which would otherwise prohibit the issuance of the permit. (1978 Code, § 2-211, as amended by Ord. #8-07, Oct. 2007)

8-212. Time restrictions on use of permits. (1) A beer permit issued under this section must be surrendered to the recorder if business is temporarily ceased at the location specified on the permit for a period longer than sixty (60) days. Any person in the possession of such a permit shall immediately notify the recorder of the reason and initial date of such closing. Said sixty (60) day period may be increased in increments of thirty (30) days, upon the permission of the board of mayor and aldermen, not to exceed total cessation period of six (6) months.

(2) A beer permit issued under this section must be surrendered to the recorder within (15) days of the termination of business, change in ownership, relocation, or change of the business name. (1978 Code, § 2-210, as amended by Ord. #3-06, April 2006, and Ord. #8-07, Oct. 2007)

8-213. Issuance of permits to persons convicted of certain crimes prohibited. No beer permit shall be issued to any person who has been convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years. No person, firm, corporation, joint-stock company, syndicate, or association having at least a five percent (5%) ownership interest in the business for which application is being made shall have been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years. (1978 Code, § 2-212, as amended by Ord. #6-69, Aug. 1996, modified, and amended by Ord. #8-07, Oct. 2007)

8-214. Prohibited conduct or activities by beer permit holders. It shall be unlawful for any beer permit holder, employee, or person engaged in the sale of beer to:

(1) Deleted.

(2) Employ any minor under eighteen (18) years of age in the sale, storage, distribution or manufacture of beer.

(3) Make or allow any sale of beer on Sunday (12:00 A.M. Saturday--8:00 A.M. Monday) or between the hours of 12:00 A.M. and 8:00 A.M. on any other day or on the Federally observed days for the following holidays: Thanksgiving Day and Christmas Day. Private clubs operating under a state of

Tennessee Alcoholic Beverage Control Board permit shall comply with the hours of operation dictated in that permit.

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

(5) Allow on the premises an owner, co-owner, operator, proprietor, or employee to drink or be under the influence of any of the beverages regulated by this chapter.

(6) Allow any person under twenty-one (21) years of age to loiter in or about his place of business.

(7) Make or allow any sale of beer to any person who appears, or would reasonably appear to be under the influence of any intoxicant whatsoever.

(8) Allow intoxicated person to loiter about his premises.

(9) To erect or maintain more than one advertising display sign that is clearly visible from the exterior of the establishment to be placed either on the inside or outside of the building. Such sign may use the word "beer" or the name of any brand of beer. Such advertising or display sign shall not exceed four inches (4") in depth and eighteen inches (18") in length, and the sign, if on the outside of the building, shall be placed parallel with the building.

(10) Have on the premises any pool or billiard tables. This section shall not apply to any private clubs operating under a State of Tennessee Alcoholic Beverage Control Board permit. However, if said premises is purchased, conveyed or otherwise transferred to another individual, corporation or entity, and said individual, corporation or entity is issued a beer permit by the Town of White Pine, the prohibition contained in this subsection (10) shall apply.

(11) Make or allow the sale of beer directly to the occupants of a vehicle or through "drive-through" windows.

(12) Provide for or allow any gambling or games of chance involving exchange of money on the premises, excepting activities authorized pursuant to the Tennessee Education Lottery Implementation Law codified at Tennessee Code Annotated, § 4-51-101 et seq.

(13) Knowingly or intentionally permit or allow any person to appear in the establishment or on the premises for which the permit was issued and to:

(a) Publicly or openly perform acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any other sexual acts prohibited by law;

(b) Publicly or openly engage in the actual or simulated touching with the hand, facial area or mouth, or caressing, or fondling of the breasts, buttocks, anus or genitals;

(c) Publicly or openly engage in the actual or simulated display to public view of any portion of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the display of the female breast with less than a fully opaque covering of the areola, or the showing of covered male genitals in a discernibly turgid state; or

(d) Publicly or openly wear or use any device or covering exposed to public view which simulates the display to public view of any portion of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the display of the female breast with less than a fully opaque covering of the areola, or the showing of covered male genitals in a discernibly turgid state; or

(e) To employ, use or allow any person in the sale or service of food, wine, beer or other alcoholic beverages while such person is publicly or openly unclothed or in such attire, costume or clothing as to expose to view any portion of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the female breast with less than a fully opaque covering of the areola, or the showing of covered male genitals in a discernibly turgid state; or

(f) To employ, use or allow the services of any hostess or other person to mingle with patrons while such hostess or other person is unclothed or in such attire, costume or clothing as to expose to view any portion of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the female breast with less than a fully opaque covering of the areola, or the showing of covered male genitals in a discernibly turgid state; or

(g) Publicly or openly permit any person to use artificial devices or any inanimate objects to depict any prohibited activities described above; or

(h) For the owner of the property, or the owner of any business operated thereon, or any employee thereof to allow or permit any person to remain in or upon the premises who is exposing to public view any portion of the human male or female genitals, pubic area, buttocks with less than a fully opaque covering, the female breast with less than a fully opaque covering of the areola, or the showing of covered male genitals in a discernibly turgid state.

(i) Publicly or openly show films, videotapes, laser discs, CD-ROMS, electronic reproductions or other visual reproductions that involve movement depiction of any of the following:

(i) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

(ii) Any person being touched, caressed, or fondled on the breasts, buttocks, anus or genitals;

(iii) Scenes wherein the person displays the vulva, the anus or the genitals;

(iv) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

(j) Nothing contained in this section shall be construed to prohibit persons of either sex from engaging in swimming or related activities while clad in attire customarily worn in the community for such purpose.

(k) Nothing contained in this section shall be construed to prohibit the broadcast or display of any television program subject to regulation by the Federal Communications Commission of the United States on the permitted premises. (1978 Code, § 2-213, as amended by Ord. #8-07, Oct. 2007, and Ord. #11-15, Dec. 2015)

8-215. Suspension and revocation of beer permits. The beer board shall have the power to revoke any beer permit issued under the provisions of this chapter when the holder thereof is guilty of making a false statement or misrepresentation in his application or of violating any of the provisions of this chapter. However, no beer permit shall be suspended or revoked until a public hearing is held by the board after reasonable notice to all the known parties in interest. Suspension or revocation proceedings may be initiated by the chief of police or by any member of the beer board. If a permit is revoked pursuant to this ordinance, no permit may be issued or considered for sales of beer from the same premises for one (1) year from the effective date of the revocation.

Pursuant to Tennessee Code Annotated, § 57-5-608, the beer board shall not revoke or suspend the permit of a "responsible vendor" qualified under the requirements of Tennessee Code Annotated, § 57-5-606 for a clerk's illegal sale of beer to a minor if the clerk is properly certified and has attended annual meetings since the clerk's original certification, unless the vendor's status as a certified responsible vendor has been revoked by the alcoholic beverage commission. If the responsible vendor's certification has been revoked, the vendor shall be punished by the beer board as if the vendor were not certified as a responsible vendor. "Clerk" means any person working in a capacity to sell beer directly to consumers for off-premises consumption. Under Tennessee Code Annotated, § 57-5-608, the alcoholic beverage commission shall revoke a vendor's status as a responsible vendor upon notification by the beer board that the board has made a final determination that the vendor has sold beer to a minor for the second time in a consecutive twelve (12) month period. The revocation shall be for three (3) years. (1978 Code, § 2-215, as replaced by Ord. #8-04, June 2004, and amended by Ord. #8-07, Oct. 2007, and Ord. #11-15, Dec. 2015)

8-216. 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 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. (as amended by Ord. #8-07, Oct. 2007, and Ord. #11-15, Dec. 2015)

8-217. Inspection of premises where alcoholic beverages sold.

Any police officer of the Town of White Pine shall have the right to inspect at any and all times the entire premises and property where or upon, on or in which the beverages regulated by this chapter are sold, stored, transported or otherwise dispensed or distributed or handled, whether retail or wholesale, in the city. The chief of police shall maintain a written record of each permittee of the findings of inspections conducted in accordance with this section. (as added by Ord. #8-07, Oct. 2007)

8-218. 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. (as added by Ord. #11-15, Dec. 2015)

CHAPTER 3

RETAIL FOOD STORE WINE LICENSES

SECTION

8-301. Inspection fee on retail food store wine licenses.

8-301. Inspection fee on retail food store wine licensees. Pursuant to the authority contained in Tennessee Code Annotated, § 57-3-501 et.al., there is hereby imposed an inspection fee on retail food store wine licensees. The inspection fee shall be eight percent (8%) of the wholesale price of alcoholic beverages as defined in Tennessee Code Annotated, § 57-3-101(a)(1)(A) supplied by a wholesaler to a retail food store wine licensee. (as added by Ord. #11-16, Jan. 2017)