

TITLE 8**ALCOHOLIC BEVERAGES¹****CHAPTER****1. BEER.****CHAPTER 1****BEER****SECTION**

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8-101. Beer board established. There is hereby established a beer board to be composed of the board of commissioners. The mayor shall be the chairman of the beer board. (1999 Code, § 8-101)

8-102. 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

¹State law reference

Tennessee Code Annotated, title 57.

hall at such times as it shall prescribe. When there is business to come before the beer board, a special meeting may be called by the chairman provided he gives a reasonable notice thereof to each member. The board may adjourn a meeting at any time to another time and place. (1999 Code, § 8-102)

8-103. Record of beer board proceedings to be kept. The recorder, or other designated individual, 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. (1999 Code, § 8-103)

8-104. 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. (1999 Code, § 8-104)

8-105. Powers and duties of the beer board. The beer board shall have the power and it is hereby directed to regulate, supervise, and control the issuance, suspension, and revocation of permits to sell, store for sale, distribute for sale, and manufacture beer within this municipality in accordance with the provisions of this chapter. (1999 Code, § 8-105)

8-106. "Beer" defined. The term "beer" as used in this chapter shall be the same definition appearing in Tennessee Code Annotated, § 57-5-101.

8-107. 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. The application shall be made on such form as the board shall prescribe and/or furnish, and pursuant to Tennessee Code Annotated, § 57-5-104(a), shall be accompanied by a non-refundable application fee of two hundred fifty dollars (\$250.00). Each applicant must be a person of good moral character and he must certify that he has read and is familiar with the provisions of this chapter. (1999 Code, § 8-107)

A permit shall be valid only for the owner to whom the permit is issued and cannot be transferred to another owner. A permit holder must return a permit to the city within fifteen (15) days of termination of the business, change in ownership, relocation of the business, or change in the business's name; provided, that notwithstanding the failure to return a beer permit, a permit

shall expire on termination of the business, change in ownership, relocation of the business or change of the business's name. (1999 Code, § 8-107)

8-108. Application requirements. Applications for such permits shall be made with the city recorder on a form provided by the city. Said form shall be signed by the applicant, if an individual, or by oath or affidavit if a corporation, and shall, at a minimum, contain the following information:

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

(2) The character of business of the applicant and in the case of a corporation, the objects for which it was formed, including a statement indicating what type or classification of permit desired.

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

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

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

(6) A statement that neither the applicant nor any persons employed by him in such business shall be a person who has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of intoxicating liquor or any crime involving moral turpitude within the past ten (10) years.

(7) A statement whether the person so applying will conduct the business in person or whether he is acting as agent for any other person, firm, corporation, syndicate, association, or joint-stock company.

(8) Whether a previous license by any county or municipality of the state has been revoked, and the reason therefor.

(9) A statement that no sale shall be made to minors.

(10) A statement that the applicant will not violate any of the laws of the State of Tennessee, or of the United States, or any ordinance of the City of Clifton in the conduct of his place of business, or knowingly allow any employee or agent of his to do so.

Any person making false statement in said application shall forfeit his permit and shall not be eligible to obtain another permit for a period of ten (10) years.

Applicants are responsible for any investigative background fees required for permitting purposes. (1999 Code, § 8-108, as amended by Ord. #220, Oct. 2009)

8-109. 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). The city shall notify each permit holder by December 1, of each year of the tax due date. 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 or before January 31, to the City of Clifton, Tennessee. If the tax is not paid by January 31, the city may take all action necessary to collect the tax as provided by Tennessee Code Annotated, § 57-5-104(3), including permit revocation or imposition of a civil penalty.

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. (1999 Code, § 8-109)

8-110. Beer permits—types of permits. All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, distributing, and manufacturing.

Permits for the retail sale of beer shall be of two (2) types:

(1) On-premise permits. On-premise permits shall be issued for the consumption of beer on the premises in accordance with the provisions of this chapter and any other restrictions required by the beer board.

(2) Off-premise permits. Off-premise permits shall be issued for the sale of beer for consumption off the business premises in accordance with the provisions of this chapter and any other restrictions required by the beer board.

A business desiring to sell beer for both on-premise and off-premise consumption shall indicate such on the permit application and the beer board may issue a single permit for such an operation. If a holder of a beer permit for either on-premises or off-premises consumption desires to change the permit holder's method of sale, the permit holder shall apply, at no cost, to the beer board for an amended permit.

It shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by his permit. It shall likewise be unlawful for him not to comply with any and all express restrictions or conditions which may be written into his permit by the beer board. (1999 Code, § 8-110)

8-111. Classification of on-premise permits. Permits for the sale of beer for on-premise consumption shall be issued according to the following classes:

(1) Restaurant. Restaurant shall mean any business establishment whose primary business is the sale of prepared food. A restaurant as so defined shall be a public place kept, used, maintained, advertised and held out to the

public as a place where meals are actually and regularly served, and such place being provided with adequate dining room equipment and a separate room dedicated to food preparation containing commercial grade cooking equipment including at a minimum a stove/oven, grill and refrigerator/freezer and having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. Said restaurant shall serve at least two (2) meals per day, five (5) days a week or derive at least fifty percent (50%) of its gross sales from the sale of food and non-alcoholic beverages.

(2) Tavern. Tavern shall mean a business establishment whose primary business is or is to be the sale of beer to be consumed on the premises or otherwise does not meet the definition of a restaurant or private club.

(3) Non-profit club. Non-profit club shall mean a nonprofit association organized and existing under the laws of the State of Tennessee consisting of members regularly paying dues, organized and operated exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any shareholder or member; and owing, hiring or leasing a building or space therein for the reasonable use of its members; provided that no member or officer, agent or employee of the club is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of beer or other permitted alcoholic beverages beyond the amount of such salary as may be fixed by its members at an annual meeting or by its governing body out of the general revenue of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder.

(4) Private club. Private club shall mean a for-profit club organized and existing under the laws of the State of Tennessee which has at least twenty-five (25) members regularly paying dues of at least one dollar (\$1.00) per year. Said club shall own, hire or lease a building or space therein for the exclusive use of its members and their guests, as defined and authorized in the club's written membership policy; provided that no member or officer, agent or employee of the club is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of beer or other permitted alcoholic beverage beyond the amount of such salary as may be fixed by its members or shareholders at an annual meeting or by its owner out of the general revenue of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. Such club shall not discriminate against any patron or potential member on the basis of gender, race, religion or national origin.

Permits shall be valid only for a single location and cannot be transferred to another location. An on-premise consumption permit shall be valid for all decks, patios, docks, and other outdoor serving areas that are operated by the business, unless otherwise restricted by the beer board at the time of permit issuance. (1999 Code, § 8-111)

8-112. Temporary permits. Temporary beer permits may be issued at the request of an applicant upon the same terms and conditions governing permanent permits. Temporary permits shall be issued as one (1) of two (2) types:

(1) A single event permit. A single event permit shall be valid for a maximum of thirty (30) days, with the actual number of days to be determined by the beer board based upon the information provided by the applicant.

(2) A multiple event permit. A multiple event permit may be issued for a fixed number of events during a calendar year. The exact dates and locations of each event must be approved by the beer board at the time of issuance of the permit, or if exact dates are not known at the time of permit issuance, subsequent approval at a future beer board meeting must be obtained prior to the event.

If the events covered by a temporary permit will be held on land not owned by the applicant, a written statement of approval from the landowner must accompany the temporary permit application. Such a temporary permit shall not allow the sale, storage or manufacture of beer on publicly owned property unless said applicant is a bona fide charitable or nonprofit organization and can show that the owner of the publicly owned property approves of the permit application. The beer board is authorized to place any and all restrictions it deems necessary on temporary permits, including but not limited to restricted hours of sale and limitations on the number of sale locations/stations. (1999 Code, § 8-112)

8-113. Interference with public health, safety, and morals prohibited. No permit authorizing the sale of beer will be issued when the beer board determines that such business would cause congestion of traffic or would interfere with schools, residences, churches, or other places of public gathering, or would otherwise interfere with the public health, safety, and morals. (1999 Code, § 8-113)

8-114. 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 applicant 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. (1999 Code, § 8-114)

8-115. Prohibited conduct or activities by beer permit holders, employees and persons engaged in the sale of beer. It shall be unlawful for any beer permit holder, employee or person engaged in the sale of beer to:

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

(2) For tavern on-premise consumption permits, make or allow any sale of beer between the hours of 2:00 AM and 6:00 AM during any night of the week; and between the hours of 2:00 AM and 11:59 AM on Sunday. Holders of permits for off-premise consumption only, restaurant on-premise consumption, non-profit club and private club on-premise consumption or combination off-premise consumption/restaurant on-premise consumption may make or allow the sale of beer at any time said business is open.

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

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

(5) Make or allow any sale of beer to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person.

(6) Allow drunk persons to loiter about his premises.

(7) Serve, sell, or allow the consumption on his premises of any alcoholic beverage with an alcoholic content of more than five percent (5%) by weight unless properly permitted by the state's alcoholic beverage commission.

(8) Fail to provide and maintain separate sanitary toilet facilities for men and women. (1999 Code, § 8-115, as amended by Ord. #213, Aug. 2007)

8-116. Revocation of beer permits. (1) 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 revoked or suspended until a public hearing is held by the board after reasonable notice to all the known parties in interest. Revocation or suspension proceedings may be initiated by the police chief or by any member of the beer board.

Where a permit is revoked, no new permit shall be issued to permit the sale of beer on the same premises until after the expiration of one (1) year from the date the revocation becomes final and effective. The board, in its discretion, may determine that issuance of a permit before the expiration of one (1) year from the date of revocation becomes final is appropriate, if the individual applying for such issuance is not the original holder of the permit or any family member who could inherit from such individual under the statute of intestate succession.

(2) No permit or license shall be revoked on the grounds the operator or any person working for the operator sells beer to a minor over the age of eighteen (18) years if such minor exhibits an identification, false or otherwise, indicating the minor's age to be twenty-one (21) or over, if the minor's appearance as to maturity is such that the minor might reasonably be presumed to be of such age and is unknown to such person making the sale. The license

or permit may be suspended for a period not to exceed ten (10) days or a civil penalty up to one thousand five hundred dollars (\$1,500.00) may be imposed pursuant to § 8-117.

(3) The action of the beer board in connection with the issuance of any order of any kind, including the revocation or suspension of a permit, imposition of a civil penalty or the refusal to grant a permit under this chapter, may be reviewed by statutory writ of certiorari, with a trial de novo as a substitute for an appeal, the petition of certiorari to be addressed to the circuit or chancery court of Wayne County.

(4) 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. (1999 Code, § 8-116, as amended by Ord. #213, Aug. 2007)

8-117. Civil penalty in lieu of suspension. (1) Definition. "Responsible vendor" means a person, corporation or other entity that has been issued a permit to sell beer for off-premises consumption and has received certification by the Tennessee Alcoholic Beverage Commission under the Tennessee Responsible Vendor Act of 2006, Tennessee Code Annotated, § 57-5-601, et seq.

(2) Penalty, revocation or suspension. The beer board may, at the time it imposes a revocation or suspension, offer a permit holder that is not a responsible vendor the alternative of paying a civil penalty not to exceed two thousand five hundred dollars (\$2,500.00) for each offense of making or permitting to be made any sales to minors, or a civil penalty not to exceed one thousand dollars (\$1,000.00) for any other offense. The beer board may impose on a responsible vendor a civil penalty not to exceed one thousand dollars (\$1,000.00) for each offense of making or permitting to be made any sales to minors or for any other offense.

If a civil penalty is offered as an alternative to revocation or suspension, the holder shall have seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn.

Payment of the civil penalty in lieu of revocation or suspension by a permit holder shall be an admission by the holder of the violation so charged and shall be paid to the exclusion of any other penalty that the city may impose. (Ord. #213, Aug. 2007)

8-118. Loss of clerk's certification for sale to minor. If the beer board determines that a clerk of an off-premises beer permit holder certified under Tennessee Code Annotated, § 57-5-606, sold beer to a minor, the beer board shall report the name of the clerk to the alcoholic beverage commission within fifteen (15) days of determination of the sale. The certification of the clerk shall be invalid and the clerk may not reapply for a new certificate for a period of one (1) year from the date of the beer board's determination. (Ord. #213, Aug. 2007)

8-119. Violations and penalty. Except as provided in § 8-117, any violation of this chapter shall constitute a civil offense and shall, upon conviction, be punishable under the general penalty provision of this code. Each day a violation shall be allowed to continue shall constitute a separate offense. (1999 Code, § 8-118)