

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

1. INTOXICATING LIQUORS.
2. BEER.

**CHAPTER 1****INTOXICATING LIQUORS****SECTION**

8-101. Prohibited generally.

**8-101. Prohibited generally.** Except as authorized by applicable laws<sup>2</sup> 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. (1990 Code, § 2-101)

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<sup>1</sup>Municipal code references

Driving under the influence: § 15-112.

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

State law reference

Tennessee Code Annotated, title 57.

<sup>2</sup>State law reference

Tennessee Code Annotated, title 39, chapter 17.

## CHAPTER 2

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

#### 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. (1990 Code, § 2-201)

**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 town 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. (1990 Code, § 2-202)

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<sup>1</sup>Municipal code references

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

Tax provisions: title 5, chapter 3.

State law reference

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

**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. (1990 Code, § 2-203)

**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. (1990 Code, § 2-204, modified)

**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 town in accordance with the provisions of this chapter. (1990 Code, § 2-205)

**8-206. "Beer" defined.** The term "beer" as used in this chapter shall mean and include all beers, ales, and other malt liquors having an alcoholic content of not more than five percent (5%) by weight. (1990 Code, § 2-206)

**8-207. Permit required for engaging in beer business.** (1) It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the beer board. The application shall be made on such form as the board shall prescribe and/or furnish, as updated from time to time, and pursuant to Tennessee Code Annotated, § 57-5-104(a), and shall be accompanied by a non-refundable application fee of two hundred fifty dollars (\$250.00).

(2) The non-refundable application fee shall be in the form of cash or a cashier's check payable to the Town of Pegram, Tennessee.

(3) In addition, each applicant, at the time of making application for a permit, shall certify in writing that he/she has read, is familiar with and understands the provisions of this chapter and that he/she has not been convicted of any crime involving moral turpitude within ten (10) years preceding the making of his/her current permit application. (Ord. #1993-4, Sept. 1993, as replaced by Ord. #2005-25, Feb. 2005)

**8-208. Beer permits shall be restrictive.** All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, distributing, and manufacturing. 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. (1990 Code, § 2-208)

**8-209. Interference with public health, safety, and morals prohibited.** (1) No permit authorizing the sale of beer will be issued when such business would cause congestion of traffic or would interfere with hospitals, schools, licensed daycare facilities, churches, or other places of public gathering, or would otherwise interfere with the public health, safety and morals.

(2) No permit shall be issued authorizing the sale of beer by Class 1 on premises permit holders or Class 3 off premises permit holders within three hundred feet (300') of any hospital, school, licensed daycare facility, church or other place of public gathering. The distances shall be measured in a straight line from the front door of the establishment from which beer will be sold, stored, distributed and/or manufactured to the front door of the hospital, school, licensed daycare facility, church or other place of public gathering.

(3) A permit may not be issued authorizing the sale of beer within three hundred feet (300') of any residential dwelling, if the owner of the dwelling appears in person before the beer board and objects to the issuance of a beer permit. The distances shall be measured in a straight line from the front door of the establishment from which beer will be sold, stored, distributed and/or manufactured to the front door of the residential dwelling. This provision shall not apply to locations where beer permits have been issued prior to the effective date of the ordinance comprising this section, nor shall it apply to an application for a change in the permittee at such location. (1990 Code, § 2-211, as amended by Ord. #1993-4, Sept. 1993, and replaced by Ord. #2005-25, Feb. 2005)

**8-210. 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. (1990 Code, § 2-212)

**8-211. Prohibited conduct or activities by beer permit holders.**

(1) It shall be unlawful for any beer permit holder to:

(a) Make or allow any sale of beer between the hours of 12:00 midnight and 6:00 A.M.;

(b) Allow any loud, unusual, or obnoxious noises to emanate from the holder's premises;

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

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

- (e) Make or allow any sale of beer to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person;
- (f) Allow drunken person(s) to loiter about his premises;
- (g) 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;
- (h) Allow gambling on the holder's premises.

(2) In addition to the restrictions set forth in subsection (1) herein, it shall be unlawful for any Class 1 and/or Class 2 permit holder to fail to provide and maintain separate sanitary toilet facilities for men and women. (1990 Code, § 2-213, modified, as replaced by Ord. #2005-25, Feb. 2005, and amended by Ord. #2007-51, Aug. 2007)

**8-212. Suspension and revocation of beer permits.** (1) The beer board shall have the power to suspend and/or revoke any beer permit issued under the provisions of this chapter when the holder thereof is found guilty of making a false statement or misrepresentation in making an application for a permit or of violating any of the provisions of this chapter. However, no beer permit shall be suspended or revoked until a public hearing is conducted by the beer board after reasonable notice to all the known parties in interest. Suspension and/or revocation proceedings may be initiated by any law enforcement official designated by the beer board or by any member of the beer board.

(2) 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.

(3) 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 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. (1990 Code, § 2-214, as replaced by Ord. #2005-25, Feb. 2005, and amended by Ord. #2007-51, Aug. 2007)

**8-213. Types of consumption permits.** (1) Permits issued by the beer board shall consist of three (3) types:

(a) Class 1 on premises permit. A Class 1 on premises permit shall be issued for the consumption of beer only on the premises. To qualify for a Class 1 on premises permit, an establishment, in addition to meeting the other regulations and restrictions in this chapter, must:

(i) Be primarily a restaurant or an eating establishment; and

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

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

(iv) Provide and maintain at least one (1) toilet facility for men and at least one (1) separate toilet facility for women.

(b) Class 2 on premises permit. Any establishment which does not qualify as a Class 1 on premises permit, but which otherwise meets all other regulations and restrictions in this chapter and was issued before January 27, 2005, shall be classified as a Class 2 on premises permit. Class 2 on premises permits applied for after January 27, 2005 shall not be issued.

(c) Class 3 off premises permit. An off premises permit shall be issued for the consumption of beer only off the premises. To qualify for an off premises permit, an establishment, in addition to meeting all other regulations in this chapter, must:

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

(ii) Be primarily engaged in the sale of grocery and/or personal and home care and cleaning articles, but also may sell gasoline.

(2) In addition, the monthly beer sales of any establishment operating under a Class 1 on premises permit shall not exceed fifty percent (50%) of the gross sales of the establishment. Any such establishment which has beer sales exceeding fifty percent (50%) of its gross sales for two (2) consecutive months or for any three (3) months in any calendar year shall have its beer permit revoked.

(3) In addition, the monthly beer sales of any establishment operating under a Class 3 off premises permit shall not exceed twenty-five percent (25%) of the gross sales of the establishment. Any establishment which has beer sales exceeding twenty-five percent (25%) of its gross sales for two (2) consecutive months or for any three (3) months in any calendar year shall have its beer

permit revoked. (1990 Code, § 2-209, modified, as replaced by Ord. #2005-25, Feb. 2012)

**8-214. Limitation on number of permits.** There shall be no limit on the number of Class 1 on premises permits and Class 3 off premises permits; however, after January 27, 2005, no Class 2 on premises permits shall be issued. (1990 Code, § 2-210, as replaced by Ord. #2005-25, Feb. 2005)

**8-215. Return of permit upon termination, etc., of business.** A permit holder must return a permit to the county or city that issued it within fifteen (15) days of termination of the business, change in ownership, relocation of the business or change of the business name. A change in ownership occurs for a corporate owner when at least fifty percent (50%) of the stock of the corporation is transferred to a new owner.

**8-216. Privilege tax.**<sup>1</sup> (1) Each business engaged in selling, distributing, storing or manufacturing beer shall remit to the town's recorder a privilege tax, by cash or cashier's check, payable to the Town of Pegram, Tennessee, in the amount of one hundred dollars (\$100.00), in accordance with Tennessee Code Annotated, § 57-5-104, which shall be used by the town for any public purpose.

(2) The said tax shall be paid on January 1 each year. 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.

(3) The town recorder shall mail written notice to each permit holder of the payment date of the annual tax at least thirty (30) days prior to 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 written notice of the tax was mailed, whichever is later, then the town 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 town may suspend or revoke the permit or impose a civil penalty pursuant to § 8-212. (Ord. #1993-4, Sept. 1993, modified, as replaced by Ord. #2005-25, Feb. 2012)

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<sup>1</sup>Municipal code reference

Wholesale beer tax: title 5, chapter 3.

**8-217. Civil penalty in lieu of revocation or suspension.**

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

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

The beer board may impose on a responsible vendor a civil penalty not to exceed one thousand dollars (\$1,000.00) for each offense of making or permitting to be made any sales to minors or for any other offense.

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

Payment of the civil penalty in lieu of revocation or suspension by a permit holder shall be an admission by the holder of the violation so charged and shall be paid to the exclusion of any other penalty that the town may impose. (Ord. #1993-4, Sept. 1993, as replaced by Ord. #2005-25, Feb. 2005, and Ord. #2007-51, Aug. 2007)

**8-218. Revocation of clerk's certification.** 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. #2007-51, Aug. 2007)