

TITLE 8

ALCOHOLIC BEVERAGES¹

CHAPTER

1. INTOXICATING LIQUORS.
2. BEER.

CHAPTER 1

INTOXICATING LIQUORS

SECTION

- 8-101. Prohibited generally.
- 8-102. Construction and/or operation of alcohol/whiskey distilleries restricted.
- 8-103. Municipal inspection fee.

8-101. Prohibited generally. Except as authorized by applicable laws² and/or ordinances it shall be unlawful for any person to manufacture, receive, possess, store, transport, sell, furnish, or solicit orders for, any intoxicating liquor within the city. "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. (1979 Code, § 2-101)

8-102. Construction and/or operation of alcohol/whiskey distilleries restricted. No person, company or legal entity shall construct or operate any licensed manufacturing facility referred to in Tennessee Code Annotated, § 57-3-201 within four hundred feet (400') of the state right-of-way of US Highway 441 within the corporate limits of the city. Notwithstanding the foregoing, this section shall not affect any licensed manufacturer in operation and open to the public before the effective date of this section. (as added by Ord. #1016, April 2016)

8-103. Municipal inspection fee. There is hereby created pursuant to Tennessee Code Annotated, § 57-3-501 an inspection fee in the amount of eight percent (8%) upon the wholesale price of alcoholic beverages supplied by a

¹State law reference

Tennessee Code Annotated, title 57.

²State law reference

Tennessee Code Annotated, title 39, chapter 17.

wholesaler to retail locations and retail food store wine licensees in the municipality. There is further hereby created an inspection fee of fifteen percent (15%) upon the wholesale price of high alcohol content beer for such products which are manufactured on the manufacturer's premise and sold at the manufacturer's retail store within the corporate limits of the city. (as added by Ord. #1017, June 2016)

CHAPTER 2

BEER¹

SECTION

- 8-201. Definitions.
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- 8-217. Existing venues holding a specifically named on-premises consumption permit.
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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).

8-201. Definitions. (1) "Applicant" shall mean the person on whose behalf an application for beer permit is filed.

(2) "Barrel" shall mean thirty-one (31) gallons.

(3) "Beer" means beer, ale or other malt beverages, or any other beverages having an alcoholic content as defined in Tennessee Code Annotated, § 57-5-101(b), and any future amendments thereto.

(4) "Beer board" or "board" means that administrative body organized and empowered under the authority of Tennessee Code Annotated, § 57-5-106.

(5) "Certified clerk" shall mean a clerk who has successfully satisfied the training requirements contained in this part, or who has received certification from a responsible vendor training program.

(6) "Clerk" shall mean any person working in a capacity to sell beer directly to consumers for off-premises consumption.

(7) "Commission" shall mean the Tennessee Alcoholic Beverage Commission.

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

(9) "Crowler" shall mean a large aluminum can used for packaging craft beer, holding approximately two (2) U.S. pints of beer, which are filled for off-premises consumption, which are used at times as a more sustainable option than growlers.

(10) "Entity" shall mean a firm, partnership, limited liability company, corporation, joint stock company, syndicate, association or any other legal entity whatsoever.

(11) "Growler" shall mean 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.

(12) "Hotel/motel" shall mean any establishment which meets any definition found in Tennessee Code Annotated, § 57-4-102(21).

(13) "Manufacture" shall mean producing beer at a rate of at least two hundred (200) barrels each calendar year on the licensed premises.

(14) "Meals" shall be defined as any of the following:

(a) Food sold in a heated state or heated by the seller;

(b) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item;

(c) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws. A plate does not include a container or packaging used to transport the food; or

(d) "Non-alcoholic beverages, except for beverages sold in unopened containers to be consumed off-premises.

(15) "Outdoor venue" shall mean an outdoor location which does not meet the definition of premises as defined in § 8-201(18). It may or may not be

on a separate non-adjacent parcel. It must be appropriately zoned for commercial activity.

(16) "Package retail sales" shall mean the sale of beer bottled or packaged at the manufacturer's or wholesaler's location and transported to the retail establishment.

(17) "Permit" shall mean any permit issued pursuant to this article.

(18) "Permittee" shall mean any person to whom any permit has been issued pursuant to this article.

(19) "Person" shall mean any private individual, partnership, joint venture, corporation, and any other business entity or association.

(20) "Premises" shall mean contiguous property owned, leased, or controlled by the permittee and so connected with the beer business in which the permittee is engaged as to form a component or integral part of it, including, but not limited to, the building and the parking areas surrounding it. Premises includes all decks, patios and other well-defined outdoor serving and consuming areas that are contiguous to the exterior of the building in which the business is located and that are operated by the business identified in the permit. A permit shall be valid for all decks, patios and other well-defined outdoor serving areas that are contiguous to the exterior of the building in which the business is located, and that are operated by the business and only for a business operating under the name identified in the permit.

(21) "Responsible vendor" shall mean a person, corporation or other entity that has been issued a permit to sell beer 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.

(22) "Responsible vendor training program" shall mean a training program related to the responsible sale of beer which has met all the statutory and regulatory requirements set forth in Tennessee Code Annotated, § 57-5-601 et seq.

(23) "Restaurant" shall mean a business establishment whose primary business is the sale of prepared food to be consumed on the premises.

(24) "Storage" shall mean the storing or possessing of beer for the purpose of resale by the permit holder.

(25) "TABC" shall mean the Tennessee Alcoholic Beverage Commission.

(26) The pronouns he, him and his shall refer to persons of the female, as well as the male, gender, as applicable. (1979 Code, § 2-201, as replaced by Ord. #1080, Sept. 2019)

8-202. Authority to grant and revoke beer permits. The city manager shall recommend, and the city commission shall designate and appoint seven (7) persons, one (1) of whom is a member of the city commission, to act as a beer board for the purpose of granting, refusing, rescinding, suspending or revoking permits for the sale, storage and warehousing of beer, for off-premises

consumption, and on-premises consumption as set forth in this chapter, within the corporate limits of Pigeon Forge, Tennessee.

Each new member of the board shall serve an initial three (3) year term. In order to ensure appropriate continuity, those board members who are serving on the date this chapter is passed and wish to continue their service shall be assigned an initial term of either one (1), two (2) , or three (3) years. Two (2) of the seven (7) members shall be assigned three (3) year terms; three (3) shall be assigned two (2) year terms; and two (2) shall be assigned a one (1) year term. In the event that members cannot agree among themselves regarding the term of their continued service, the length of the initial terms shall be determined by drawing lots.

Members of the beer board may serve two (2) consecutive, three (3) year terms, but must then rotate off of the board for no less than one (1) year before being eligible for further service. For members serving on the board as of the date this chapter is passed, they shall be entitled to serve the initial term assigned to them and a second three (3) year term before rotating off of the board. (1979 Code, § 2-202, as replaced by Ord. #1080, Sept. 2019)

8-203. Issuance of permits by beer board. The beer board is vested with full and complete authority to issue permits, which permits shall be issued only for locations which are within a commercially zoned area as indicated on the then current and applicable zoning map at the time the application is made, for the sale, storage, and warehousing of beer for on-premises consumption and off-premises consumption. (1979 Code, § 2-203, as replaced by Ord. #707, July 2003, and amended by Ord. #718, Oct. 2003, Ord. #932, Aug. 2011, Ord. #933, Aug. 2011, Ord. #958, May 2013, Ord. #966, Aug. 2013, 975, Dec. 2013, and replaced by Ord. #1080, Sept. 2019)

8-204. Permits for the manufacture of beer. Permits for the manufacture of craft beer shall be issued in accordance with the general requirements of this chapter. A manufacturer of beer can further apply for permits for retail sale for on-premises and/or off-premises consumption. Documentation by the manufacturer of the number of barrels produced each calendar year may be required. (1979 Code, § 2-204, as amended by Ord. #1051, Feb. 2018, and replaced by Ord. #1080, Sept. 2019)

8-205. Permits for the sale of beer. There are two (2) types of permits and each type has classes of permits within the type. The two (2) types of permits the beer board may issue are:

(1) A retailer's "off-premises" permit, which shall be issued for the sale of beer only for consumption off the business premises in accordance with the provisions of this chapter; and

(2) A retailer's "on-premises" permit, which shall be issued to any business engaged in the sale of beer where the beer is to be consumed by the

purchaser or his guests upon the premises of the seller. A retailer's "on-premises" permit may be issued only for use in connection with the establishments defined in § 8-210 through § 8-218 below.

A business can sell beer for both on-premises and off-premises consumption at the same location if otherwise permitted by law and this chapter. Each type and class of permit is deemed to be a separate permit and requires a separate application processing fee.

If the character of the establishment changes from the classification under which a permit was originally issued, the permittee will be required to obtain a new permit to conform to the type of establishment being operated by the permittee. (1979 Code, § 2-205, as replaced by Ord. #1080, Sept. 2019)

8-206. Permit required for engaging in beer business. It shall be unlawful for any person or entity to sell, store for sale, distribute for sale or manufacture beer without first making application to and obtaining a permit from the beer board pursuant to Tennessee Code Annotated, § 57-5-103. The application shall be made on such forms as the board shall prescribe and/or furnish, and shall be accompanied by a non-refundable application fee of two hundred fifty dollars (\$250.00). Said fee shall be in the form of cash, cashier's check, or company check made payable to the city. Each person signing an application must be a person of good moral character and certify that he has read, is familiar with, and fully understands the provisions of this chapter. (1979 Code, § 2-206, as replaced by Ord. #1080, Sept. 2019)

8-207. Qualifications for permit. In order to qualify for a permit to sell beer, an applicant must fully satisfy, comply with and adhere to the following qualifications and criteria for the applicant and location for the sale of beer:

(1) No sale of such beverages shall be made except in accordance with the permit granted.

(2) The applicant (including all of those with a five percent (5%) or more ownership interest in the entity for whom a permit is being sought) shall not have been convicted of any violation of law regarding the prohibition, sale, possession, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years. Additionally, all persons employed or to be employed by the applicant in the distribution or sale of such beverages must meet all TABC requirements for such distribution or sale, and it is the applicant's responsibility to ensure that all persons employed by them for these purposes meet the requirements.

(3) The applicant (including all of those with a five percent (5%) or more ownership interest in the entity for whom a permit is being sought) shall not have had a license for the sale of alcoholic beverages of any kind or nature revoked by any city, county, or state.

(4) The property upon which the business is operating is located in a zoning district approved for such use.

(5) The applicant shall execute an authorization enabling the city to receive from each and every wholesale supplier to the permittee, the dollar value and amounts of beer sold by the wholesaler or distributor to the permittee, at such time or times as the city may request such information. This authorization shall be in full force and effect during the entire term of the permit.

(6) The applicant shall not make a false statement in his/her application for any beer permit. Such a statement shall be cause for denial of an application or for immediate revocation of any permit issued, and shall disqualify the applicant from receiving a permit thereafter for a period of ten (10) years. (1979 Code, § 2-207, as replaced by Ord. #1080, Sept. 2019)

8-208. Requirements to maintain any permit issued under this section. The following requirements shall be met at all times to maintain a permit issued by the city beer board:

(1) A permit holder shall not:

(a) Operate a disorderly place.

(b) Permit boisterous or disorderly conduct on the premises.

(c) Sell or allow to be sold on the premises of the permittee, beer to any person using food stamps issued pursuant to state or federal law for the purchase of such beer.

(d) Permit any person under the age of twenty-one (21) to loiter about the premises, and the burden of ascertaining the age of customers under the age of twenty-one (21) shall be upon the owner or operator of such place of business.

(2) Hours and days of operations. It shall be unlawful to offer for sale or sell beer within the corporate limits of the city at any time and on any day when the sale of liquor, wine, and mixed drinks are prohibited by the then prevailing rules of the TABC, i.e., at such times as the TABC prohibits the sale of liquor by the drink for on-premises consumption.

(3) Sales to minors or intoxicated persons. It shall be unlawful to sell or offer to sell beer to a person under the age of twenty-one (21) years or to a person who is visibly intoxicated.

(4) Sexually oriented establishments prohibited. Alcoholic beverages shall not be sold or consumed on the premises of any sexually-oriented business as defined in the municipal code, or on the premises of any "adult-oriented establishment" as defined in Tennessee Code Annotated, § 7-51-1102(6).

(5) Condition of premises generally. No retailer's permit shall be granted to any person whose premises are not neat, clean and in good repair, both inside and outside. The premises shall at all times be free from litter, weeds, trash and other forms of debris. Any tires, old appliances, motor vehicle parts, tools, equipment or other similar materials shall not be displayed openly on the premises but must be stored inside an opaque enclosure.

(6) Inspection of beer businesses. At any and all times, officials from the city shall have the right to inspect the entire premises and property where

or upon or in which the beverages regulated by this chapter are sold, stored, transported or otherwise dispensed, distributed or handled, whether at retail or wholesale, in the city to determine whether permittee is in compliance with the provisions of this chapter and other applicable laws.

(7) Continually operate the business. Any person who holds a permit shall continuously operate the business, and if any permit holder either voluntarily or involuntarily fails or refuses to carry on the business for a period of sixty (60) days, or does not meet the established minimums of non-alcoholic sales for two (2) consecutive months or for any three (3) months in a calendar year, there shall be a rebuttable presumption that their permit should be revoked.

(8) Properly pay all taxes, fees, and charges. All property and other taxes, license fees or other charges owed by the permittee, or by the owners of the permittee, to the city, Sevier County, and the State of Tennessee, must be kept current throughout the term of the license. This requirement shall not apply to the owners of a permittee that is a publicly held company.

(9) Maintain property in compliance with all state, county, and city regulatory requirements. The premises upon which the permit is granted shall at all times be maintained in compliance with city zoning ordinances, and with all fire, health, safety and building codes of the city, county and State of Tennessee.

(10) Inventory requirements for non-restaurant/dining establishments. Unless an applicant seeks an on-premises permit and qualifies as a restaurant/eating establishment or qualifies for a special event permit, the permittee must maintain fifty thousand (\$50,000.00) dollars in inventory (not limited to alcoholic beverages), measured by wholesale invoices. These invoices must be made available to the city recorder at all times during the permit holder's customary hours of operation upon five (5) days written notice. (1979 Code, § 2-208, as amended by Ord. #707, July 2003, replaced by Ord. #954, Dec. 2012, and Ord. #966, Aug. 2013, amended by Ord. #975, Dec. 2013, and replaced by Ord. #1080, Sept. 2019)

8-209. Failure to maintain requirements. Failure on the part of any permittee to observe the requirements of this chapter after issuance of a permit shall constitute grounds for suspension or revocation of the permit. (1979 Code, § 2-209, as replaced by Ord. #1080, Sept. 2019)

8-210. On-premises consumption permits defined. The following classes of permits for on-premises consumption are established.

- (1) Restaurant.
- (2) Craft beer establishment.
- (3) Hotel/motel.
- (4) Caterer.
- (5) Special venue.

(6) Events center.

Definitions for each of the classes are established in the section dedicated to the requirements and restrictions of each class. (1979 Code, § 2-210, as replaced by Ord. #1080, Sept. 2019)

8-211. Classification of existing permits. All beer permits now issued and outstanding will be classified and placed in its appropriate category upon renewal, and the holders of said beer permits shall be so notified. Certain current permit holders will be required to obtain additional permits upon renewal to comply with the provisions of this chapter, and shall be notified of same at the time they renew their current permit. (1979 Code, § 2-211, as replaced by Ord. #1080, Sept. 2019)

8-212. Restaurant classification requirement and restrictions.

(1) An establishment must meet the restaurant requirements of Tennessee Code Annotated, § 57-4-102(30)(A).

(2) In the event that a restaurant contains a bar or bar area, food service shall be available to the bar and bar area to the same extent it is in other areas of the restaurant.

(3) An establishment shall be eligible for a permit as a restaurant only if no more than twenty-five percent (25%) of the gross revenue of the restaurant is generated from the serving of beer. A permittee must provide the city recorder with a written report on a monthly basis (by the 20th day of the following month) to demonstrate that the permittee has met this percentage limitation. The city may use the permittee's failure to submit said report as conclusive evidence that the percentage was exceeded for any month that a report is not submitted.

(4) Have seventy-five (75) 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 (5) below, shall not count toward meeting the requirement of seventy-five (75) interior seats required for this category of permit.

(5) 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, as well as in adjoining and contiguous meeting rooms. 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 or the height required by the TABC, whichever is greater, 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 at 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 in the Pigeon Forge Fire Protection Ordinance.

(6) Within thirty (30) minutes from the time that sale of beer has ceased as required by § 8-208(2), 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. (1979 Code, § 2-212, as replaced by Ord. #1080, Sept. 2019)

8-213. Hotel/motel classification requirements and restrictions.

(1) It shall be lawful for the beer board to issue a permit for the sale of beer to hotels, motels, or inns, subject to the limitations and restrictions contained in the state law and the rules and regulations and restrictions contained in the permit required by this chapter.

(2) Permits may be issued under this section to hotels, motels, or inns for sale and consumption on the premises in rooms where meals or lunches are served and in guests' rooms.

(3) Beer also may be sold and dispensed to adult guests only through locked, in-room units.

(4) Beer sold from a "convenience store" located within the confines of the sight and oversight of a paid employee may only be sold for consumption on the premises and to a bona fide guest of the hotel. If a hotel wishes to sell beer from a "convenience store," the hotel/motel must have a restaurant onsite, and the beer sales from the convenience store shall be considered a part of the restaurant sales and reported to the city.

(5) The permittee is responsible for verifying the age and guest status of the purchaser.

(6) In the case of locked in-room units, a key separate from that used to enter the room shall be supplied and no person under the age of twenty-one (21) shall be issued or supplied with such a key. (as added by Ord. #966, Aug. 2013, and replaced by replaced by Ord. #1080, Sept. 2019)

8-214. Caterer classification requirements and restrictions.

(1) Meet the requirements of Tennessee Code Annotated, § 57-4-102(6) as a "caterer."

(2) Beer may be sold for consumption only at the permanent catering hall of the caterer or at a site for which the caterer has given advance notice to the city recorder.

(3) Only employees of a licensed caterer may serve beer at any event, whether at the caterer's designated premises or a remote venue.

(4) No caterer may provide only alcohol without meals present and available for consumption at any catered event.

(5) All city beer permit holders shall be authorized to sell beer at a catered event within the city without obtaining an additional permit at a location that shall have a capacity for seventy-five (75) seats in the interior of a building affixed to a permanent foundation under a permanent roof and enclosed on all sides along with any adjoining and contiguous patio. Said catering shall take place only at a location which is the proper distance from a church or school and in a zone permitting such sales, takes place during the same time restrictions set forth for beer sales citywide, and meets the percentage of food sales required, all as set forth elsewhere in this chapter. (as added by Ord. #1080, Sept. 2019)

8-215. Special venue classification and permit. The special venue classification is a conditional permit issued by the beer board, which has requirements and restrictions based on the unique issues created by the location and type of use of the applicant.

A special venue is defined as:

(1) A single-premises in a permanent location affixed to the earth whose area is defined by a foundation, permanent fencing, and permanent surfacing. Permanent surfacing does not include parking lots.

(2) The primary purpose of the premises cannot be for the sale of goods at either retail or wholesale.

(3) The serving of food is a requirement, and the venue must have seating for no less than seventy-five (75) people.

(4) The establishment does not qualify for any other classification of permit.

(5) The premises is defined as eligible to receive a permit to serve alcoholic beverages under Tennessee Code Annotated, § 57-4-101, or is property currently owned in whole or in part by the city, and it is deemed appropriate that it have the right to sell beer.

(6) No more than twenty-five percent (25%) of the venue's gross revenue may be derived from the sale of beer.

In order to obtain a special venue permit, the following process must be followed:

(a) An establishment wishing to receive a special venue permit shall make application to the city's beer board through its assigned representative on a special venue application provided by the city. The application shall provide all information required of any other application for an on-premises permit. Additionally, the applicant shall state why a special venue permit is required, as opposed to a more generally classified permit, as well as the specifics of how, where, and when the beer will be served.

(b) The beer board will meet to consider the application and cause a finding to be made as to whether the applicant is entitled such a permit. They may at that time also include such conditions, requirements

and restrictions as they deem necessary for the safe and prudent sale of beer in the location identified as a "special venue." (as added by Ord. #1080, Sept. 2019)

8-216. Events center permit. To qualify for an on-premises permit to be utilized at the city's LeConte Center, an applicant must meet all other provisions, regulations and requirements in this chapter for obtaining an on-premises permit except that the applicant shall not be required to be a restaurant or eating establishment. Said applicant must also be either the city's duly contracted concessionaire for the LeConte Center or an approved caterer for the center.

Beer shall only be sold and consumed within the interior of the center or on the patio, and during hours when a center function is in operation, but at no time outside the days and hours of operation defined for the city as a whole contained in this chapter. The sales must also take place in conjunction with the sale of other concessions and/or other food by the duly qualified concessionaire and/or caterer. An events center permit shall only be valid for so long as a concessionaire is under contract with the city or as to caterers for the center, so long as the caterer is on the approved list for the LeConte Center. A permittee whose contract ends or a caterer who is removed from the approved list shall surrender their permit to the city recorder within fifteen (15) days from the end of their contract term or removal from the approved vendor list but their permit shall be revoked as of the happening of the event described regardless of whether the permit is surrendered. Failure to submit the permit to the city recorder shall prevent the holder from being eligible for a beer permit for a period of six (6) months from the date that the permit terminated. (as added by Ord. #1080, Sept. 2019)

8-217. Existing venues holding a specifically named on-premises consumption permit. Any venue holding an on-premises consumption permit at the time of the adoption of this chapter, but not fitting into one (1) of the other permit classes, shall receive a special venue permit with such conditions that were imposed under the previously codified chapter as of the date of the adoption of this chapter. (as added by Ord. #1080, Sept. 2019)

8-218. Outdoor venue approval. Beer may be sold on a temporary basis at an outdoor venue by businesses holding an on-premises permit, or on a one-time basis for other special events by those not holding permits under the following conditions:

- (1) The location meets the TABC's requirements for alcoholic service.
- (2) An application has been submitted to the city recorder for the location and dates where the beer will be sold or provided.
- (3) The review fee of one hundred dollars (\$100.00) per application has been paid.

(4) The event has been approved by the city's planning commission, pursuant to the policies adopted by said commission and in accordance with this chapter and applicable law.

(5) A minimum of seventy-five (75) seats shall be required at the venue, food must be made available for the duration of the time that beer is available, and no more than twenty-five percent (25%) of the gross event revenue can be generated from the sale of beer.

(6) Nothing in this provision shall permit the sale of beer on any city-owned property.

(7) The city recorder shall have the authority to approve these types of permits (and no other) administratively for those already holding on-premises permits as they have already been vetted by the beer board, but the beer board must review any outdoor venue permit request for those not already holding an on-premises permit. As to requests from those holding on-premises permits, if the city recorder has any doubt as to whether the outdoor venue permit should be issued under the circumstances, that request shall be submitted to the beer board for consideration. (as added by Ord. #1080, Sept. 2019)

8-219. Off-premises consumption sales. The following classes of permits for off-premises consumption are established.

(1) Package retail sales.

(2) Growler sales. (as added by Ord. #1080, Sept. 2019)

8-220. Package retail classification requirements and restrictions. (1) The monthly off-premises package retail beer sales of any establishment that holds an off-premises permit shall not exceed twenty-five percent (25%) of the gross sales of the establishment.

(2) The permittee shall not allow the sale of beer by way of a drive-in and/or a drive through window. (as added by Ord. #1080, Sept. 2019)

8-221. Growler/crowler classification requirements and restrictions. (1) A growler/crowler permit may be held by the holder of any other on-premises or off-premises permit. A growler/crowler permit may not be the only permit held by a permittee.

(2) Holders of the growler/crowler permit may fill or refill growlers and fill crowlers on demand with beer for off-premises consumption provided they affix the label required by this section to the growler/crowler.

(3) Each growler must be securely sealed and removed from the premises in its original sealed condition. Each growler shall bear a twist-type closure, cork, stopper, or plug, and each crowler must be machine sealed. At the time of the sale and/or refilling, a paper or plastic adhesive band, strip, or sleeve shall be applied to the container or bottle and extend over the top of the twist-type closure, cork, stopper, or plug forming a seal that must be broken upon opening of the container or bottle. The adhesive band, strip, or sleeve shall

bear the name and address of the business filling the growler/crowler. The containers or bottles shall be labeled as a craft beer, contain the name of the beer, and bear the name, address and telephone number of the business selling the beer. Any known allergens shall also be included on any label.

(4) Growlers/crowlers must be filled in a manner that is sanitary and meets all applicable food and alcohol handling laws and standards.

(5) Consumption of the contents of any growler/crowler on the premises where it was filled is strictly prohibited. However, the licensee may provide samples of any beer on tap. Each such sample shall not exceed one (1) fluid ounce.

(6) Sales of growlers/crowlers shall be limited to the legal hours during which the licensee may sell such alcoholic beverages and must be removed from the premises before the applicable closing time. (as added by Ord. #1080, Sept. 2019)

8-222. Personal conduct of individuals. (1) Unlawful for underage person to misrepresent age. It shall be unlawful and a misdemeanor for any person under twenty-one (21) years of age to knowingly misrepresent his age in order to obtain, purchase or attempt to obtain beer within the corporate limits of the city, or to remain in a location where beer is legally being sold under the provisions of this chapter where minors are not allowed.

(2) Unlawful for underage person to possess beer. It shall be unlawful and a misdemeanor for any person under twenty-one (21) years of age to possess beer for any purpose except in the course and scope of his employment. Any person found guilty of a violation of these provisions by the city court shall be subject to a fifty (\$50.00) dollar fine, and within five (5) days of the conviction, the court shall prepare and send to the Tennessee Department of Safety an order denying driving privileges to the person convicted. Any person charged with, but not convicted of, a violation of this provision is entitled to have the records thereof destroyed six (6) months from the date of the charge at no cost, upon proper motion by the accused to the court where the violation was heard.

(3) Public consumption of beer prohibited. None of the beverages regulated by this chapter shall be consumed on any public street, alley, boulevard, bridge, nor upon the grounds of any cemetery or public school, nor upon any park or public grounds nor upon any vacant lot within two hundred feet (200') of any public street, highway, avenue, or other public place. Despite the provisions of this section, possession and consumption of beer is permitted during certain city-sponsored or co-sponsored special events within the physical parameters of the special event zone during the time of the special event if otherwise provided by resolution of the city and/or planning commission. (as added by Ord. #1080, Sept. 2019)

8-223. Application for permit authorizing the sale of beer.

(1) Before any permit is issued by the beer board, the applicant shall

make payment of a non-refundable application fee in the sum of two hundred fifty dollars (\$250.00) to the city and file with the board a written application, under oath, containing the following information:

(a) The name of the applicant.

(b) The residential and business addresses of the applicant, and a telephone number where the applicant can be reached both during and after business hours. If the person applying for the permit is acting as agent for another person or entity, the name, address, and telephone number of such other person or entity shall be listed.

(c) The owner or owners of the place of business must provide a copy of the deed for the property evidencing ownership of the premises upon which the sale of beer will be conducted, which copy must reflect that it is on file with the Sevier County Register of Deeds Office. If the premises are subject to a lease or rental agreement, a copy of all executed documents evidencing the right to use the premises must be submitted with the application. A copy of the current lease or rental agreement must be kept on file with the board at all times. If a lease or rental agreement is renewed, a copy of the renewed lease or rental agreement must be provided to the board.

(d) A valid copy of the applicant's Tennessee Department of Revenue sales and use tax certificate of registration, along with a statement that all city and county property taxes, license fees or other charges by the city, Sevier County, and State of Tennessee are current and that those taxes and fees which come due in the future to them shall be paid on or before the due date.

(e) The name, address, telephone number and copy of the driver's license or other official state-issued identification for all those having at least a five percent (5%) ownership interest in the entity for whom applicant is applying.

(f) A document reflecting that the Tennessee Bureau of Investigations has conducted a background investigation for all those having at least a five percent (5%) ownership interest in the entity for whom applicant is applying, and which further evidences that all meet the requirements of this chapter to hold a permit. This requirement shall be for new permit applicants only. Those who are renewing permits, even if they are required to obtain one (1) or more additional permits for their present location(s) as a result of the adoption of this chapter, are exempted.

(g) A site plan of the business premises certified by a registered land surveyor or engineer licensed to practice in the State of Tennessee.

(h) A statement that the applicant and entity for which a permit is sought meet the qualifications for said permit and that applicant and the entity for which the permit is sought will at all times in the future comply with the requirements of this chapter.

(i) A statement that the applicant's business premises is not located within one hundred fifty feet (150') of any church or school, measured from the closest point of each of the respective buildings.

(j) A statement providing the zone in which the property is located. Only those with property located in zones C-1, C-2, C-3, C-4, C-5, C-6 or C-7 are eligible for a permit under this chapter.

(k) A statement that the applicant shall not advertise the sale of beer off the premises by any means, including by billboard, television, exterior signage, radio or other communication. Only two (2) interior signs visible from the exterior of the business premises which advertise the availability of beer shall be allowed, and such signs shall not exceed two feet by two feet (2'x2') each. Only one (1) outdoor sign, advertisement, or display that advertises beer may be erected or maintained on the property on which a retail beer establishment is located, but it cannot have brand names, pictures, numbers, prices or diagrams relating to beer located thereon.

(l) A statement that the premises for which a permit is sought meet all city fire safety standards relative to occupancy by the public and that the premises have been inspected by the city's fire and building inspection offices in conjunction with this application.

(m) Such other relevant information as the city may require to determine whether applicant meets the requirements for issuance of a permit. The city may also require applicant to provide relevant information from time to time after issuance of the permit to determine whether a permit holder continues to comply with the requirements of this chapter for holding a beer permit.

(2) An application shall become null and void if it is not presented to the board at a public meeting within three (3) months after the application is filed, or if another application for a permit for the same location is approved before the application is presented to the board at a public meeting. (as added by Ord. #1080, Sept. 2019)

8-224. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer an annual privilege tax of one hundred dollars (\$100.00). Any person or entity engaged in the sale, distribution, storage or manufacture of beer shall remit the tax to the city on or before January 1 of each year. At the time each new permit is issued to any business subject to this tax, the permittee 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.

The annual privilege tax notice of payment due shall be mailed to permittee no later than thirty (30) days prior to January 1 of each year. Notice shall be mailed to the address specified by the permittee on the permit application or any updated address provided in writing after issuance of the

permit. It is the obligation of the permittee to update its address with the city and failure to do so and/or failure to receive such notice shall be no defense to failing to pay the tax. The annual privilege tax shall be considered paid on time if paid by January 31 of each year, as the city provides a thirty (30) day grace period. If a permittee does not pay the tax by January 31 of each year, then the city shall notify the permittee in writing, either by certified mail or by hand delivery by a member of the city police department, that the privilege tax is past due. If a permittee does not pay the tax within ten (10) days after receiving notice of its delinquency, then the permit shall automatically become suspended, with a rebuttable presumption that it should be revoked upon a hearing before the beer board. Any further sales of the licensed beverage after suspension and until a hearing is held by the beer board for final determination shall be illegal and in violation of the city beer ordinance. (as added by Ord. #1080, Sept. 2019)

8-225. Permits not transferable--cessation of business--relocation--name change--change of ownership. (1) Except as set forth in subsections (2) and (3) below, a permittee must return a permit to sell beer to the city recorder within fifteen (15) days of termination of the business, change in ownership, relocation of the business, or change of the business name. The provisions of this section regarding change in ownership shall not apply to a permittee that is a publicly held company. If the permittee is an entity other than a publicly held company, a change in ownership shall occur, for purposes of this chapter, when control of at least a fifty percent (50%) interest, whether it be stock or otherwise, in the entity is transferred to a new owner.

Notwithstanding the failure to return a beer permit, as provided herein, a permit shall expire on the date of termination of business, change of ownership, relocation of the business, or change of the business name.

(2) In the event that there is a change of ownership, as defined above, the new owner shall be allowed to make beer sales under the permit of the prior owner until the next scheduled beer board meeting, provided that the new owner has filed with the beer board a completed application for a permit and the prior permittee has not surrendered its permit and states in writing to the city recorder that the new owner shall be allowed to operate under the prior permit until the beer board acts on the new owner's application. Immediately upon the beer board's acting on the new owner's application, the prior permit shall terminate and the prior permittee shall immediately surrender that permit to the city recorder. Should the prior permittee fail to immediately surrender the permit to the city recorder, the prior permittee shall not be eligible to apply for a beer permit within the city for a period of six (6) months thereafter. Any violation of any part or provision of this chapter by the new owner/applicant while the application is pending shall automatically result in the application being denied and the applicant shall not be eligible to apply for a beer permit within the city for a period of six (6) months thereafter.

(3) In the event that there is a change of the business name, the owner shall be allowed to make beer sales under the existing permit until the next scheduled beer board meeting, provided that owner has filed with the beer board a completed application for a new permit. Any violation of any part or provision of the city's beer ordinance by the owner/applicant during the period the application is pending shall automatically result in the application being denied and the applicant shall not be eligible to apply for a beer permit within the city for a period of six (6) months thereafter. (as added by Ord. #1080, Sept. 2019)

8-226. Permit forfeited if permittee is convicted of certain offenses. Any permittee (including any person holding a five percent (5%) or more interest in the entity for which the permit is sought) who, after obtaining a permit, is convicted by any court of competent jurisdiction of violating any of the laws regarding possession, sale, manufacture, and/or transportation of intoxicating liquor or other alcoholic beverages, or of any crime involving moral turpitude, shall forfeit the permit without further action by the beer board upon entry of the conviction upon the record of the court. (as added by Ord. #1080, Sept. 2019)

8-227. Suspension or revocation. The beer board is vested with the full and complete power and authority to suspend, cancel, or revoke permits to sell beer upon the following grounds:

- (1) Any violation of the provisions of this chapter.
- (2) Any violation of any law of the State of Tennessee, now in existence or hereinafter adopted, regulating the sale, manufacture or distribution of beer.
- (3) Any violation of the provisions of Tennessee Code Annotated, title 57, chapter 4, regarding the consumption of alcoholic beverages on-premises, to the extent permitted by the provisions of said title 57. (as added by Ord. #1080, Sept. 2019)

8-228. Procedure. (1) When the beer board has reason to believe that any permittee has violated any of the provisions of this chapter or any provision of state law regarding regulating the sale, manufacture or distribution of beer, the board is authorized in its discretion to notify the permittee of the violation in writing and to give notice that the permittee must appear and show cause why the permit should not be suspended or revoked for the alleged violations. The notice to appear and show cause shall state the nature of the violation and shall be served upon the permittee either by certified mail or by a member of the city police department. The notice shall be served on or mailed to the permittee at least ten (10) days before the date scheduled for the hearing. The beer board shall, at the public hearing, allow evidence to be presented on behalf of the holder of the permit and thereafter, in its discretion, either dismiss the charges or complaint, or suspend or revoke the permit. When a permit is revoked, no new permit for the sale of beer shall be issued hereunder to the permittee, or to

any person or entity having any ownership interest in the permittee, until the expiration of one (1) year from the date the revocation becomes final. If any permittee has its beer permit revoked for a second time for the violation of the provisions of this chapter or state law, then the permittee shall not be eligible to apply for a new permit for a period of no less than (1) year, but up to three (3) years, from the date the revocation becomes final, at the discretion of the beer board. In determining the length of time that a permittee will be ineligible to apply, the beer board shall take into account permittee's history of violations, including the seriousness of the violations.

(2) If the TABC suspends or revokes a license to sell alcoholic beverages on the premises at any establishment for any violation or violations as provided in Tennessee Code Annotated, title 57, chapter 4, and the commission notifies the beer board by certified mail, return receipt requested, of the action taken by the commission, and includes with such notice the record of evidence and the determination made by the commission in suspending or revoking the license of the establishment, then upon receipt of such notice, the beer board may temporarily suspend the beer permit of the establishment and shall:

(a) Schedule a hearing for the next regularly scheduled meeting of the beer board to be held at least fourteen (14) days following the date the beer board receives the certified letter to provide an opportunity for the permit holder to appear and show cause why the permit to sell beer on the premises should not be suspended or revoked for a violation or violations as provided in title 57, chapter 4, based on actions taken by the commission; and

(b) Notify the individual or business entity, which is listed as the permit holder at the same location where the alcoholic beverage license had been suspended or revoked, of the date and time of the hearing.

(3) If the beer board finds at a hearing that a sufficient violation or violations have occurred as provided in title 57, chapter 4, at such location, then the beer board may suspend or revoke the permit to the same extent and at least for the same period of time as the commission has suspended or revoked the license of the establishment.

(4) If the permit holder fails to appear or decides to surrender the permit to the beer board in lieu of appearing at the hearing, the permit may be suspended or revoked by the beer board; provided that, if the permit is suspended or revoked, no permit to sell beer on the premises shall be issued by the beer board to any person for the location where the commission had suspended or revoked the license for the period of time included in the decision of the commission.

(5) 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 or is within sixty-one (61) days of the date of hire at the time of the violation, unless the vendor's status as a certified responsible vendor has been revoked by the 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 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.

(6) The decision of the beer board is final, and any party aggrieved thereby may appeal the decision of the beer board in accordance with Tennessee Code Annotated, § 57-5-108 via a writ of certiorari. (as added by Ord. #1080, Sept. 2019)

8-229. Civil penalty in lieu of 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, 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 a civil penalty on a responsible vendor 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. If the penalty is not timely paid, then the revocation or suspension shall automatically become effective without further action of the beer board. (as added by Ord. #1080, Sept. 2019)

8-230. 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 TABC within fifteen (15) days of determination of the sale. The certification of the clerk, but not the clerk's right to actually sell beer, shall be deemed revoked 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. #1080, Sept. 2019)

8-231. Severability/conflict. If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof. Likewise, should any provision of this chapter directly conflict with the rules then in effect by the TABC for the sale of liquor, wine and mixed drinks, the prevailing commission rules shall apply; however, this provision shall not prevent the city's ordinance from being more restrictive than what would be required by the commission. (as added by Ord. #1080, Sept. 2019)