

TITLE 8**ALCOHOLIC BEVERAGES¹****CHAPTER**

1. INTOXICATING LIQUORS.
2. BEER.

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

8-101. Prohibited generally.

8-101. Prohibited generally. Except when he is lawfully acting pursuant to 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 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. (1986 Code, § 2-101)

¹State law reference
Tennessee Code Annotated, title 57.

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

CHAPTER 2**BEER¹****SECTION**

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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. Business lawful but subject to regulation. It shall hereafter be lawful to transport, store, sell, distribute, possess, receive or manufacture beer of an alcoholic content of not more than such weight, volume, or alcoholic content as is allowed by the statutory laws of the State of Tennessee, or any other beverages of like alcoholic content, within the corporate limits of the Town of South Carthage subject to all of the regulations, limitations and restrictions hereinafter provided, and subject to the rules and regulations promulgated by authorized public officials or boards. (1986 Code, § 2-201)

8-202. "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. (1986 Code, § 2-202)

8-203. Beer board established. There is hereby established a beer board to be composed of all the members of the governing body. The mayor shall be its chairman and shall preside at its meetings. Its members shall serve without compensation. (1986 Code, § 2-203)

8-204. Meetings of the beer board. All meetings of the beer board shall be open to the public. The board shall hold regular meetings following each regular meeting of the governing body at the city hall 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. (1986 Code, § 2-204)

8-205. 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. The recorder shall also maintain an up-to-date list of the names and addresses of all beer permit holders. (1986 Code, § 2-205)

8-206. 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. (1986 Code, § 2-206)

8-207. 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. (1986 Code, § 2-207)

8-208. Permit required for engaging in beer business. No person shall engage in the storing, selling, distributing or manufacturing of beer of alcoholic content of not more than five percent (5%) by weight, or other beverages of like alcoholic content within the corporate limits of the Town of South Carthage, until he shall receive a permit to do so from the beer board of the Town of South Carthage, which permit shall at all times be subject to all the limitations and restrictions herein provided, and provided further that the applicant shall certify that he has read and is familiar with the provisions of this chapter. (1986 Code, § 2-208)

8-209. Restrictions upon granting permits. (1) No permit shall be issued to sell any beverage coming within the provisions of this chapter:

- (a) In violation of any provisions of the state law.
- (b) In violation of the Zoning Ordinance of the Town of South Carthage.
- (c) Within five hundred (500) feet of a church or school, front door to front door measured on a straight line, unless the permittee was there before the church or school.

(2) The judgment of the beer board on such matters shall be final except as same is subject to review at law under Tennessee Code Annotated § 57-5-105. (1986 Code, § 2-209, as amended by Ord. #159, _____; and Ord. #169, Aug. 1993)

8-210. Application for retail permit; requirements as to applicants; regulations to be followed. (1) Each application for a beer permit shall reflect:

(a) That the applicant is a citizen of the United States, or if a syndicate or association, that all the members thereof are citizens of the United States.

(b) That the applicant has been a resident citizen of Smith County for at least the twelve (12) month period immediately preceding the date of his application. Provided, however, that this residence restriction shall not apply to honorably discharged veterans of the Armed Forces of the United States who were residents of Smith County prior to their entry into the armed forces.

- (c) Name of the applicant.
- (d) Name of the applicant's business.

(e) The location of the premises at which the business shall be conducted.

(f) The owner or owners of such premises.

(g) The names and addresses of all other persons or firms who have any financial interests whatsoever in the beer business proposed to be established.

(h) Whether the applicant will operate the business in person or by agent and, if by agent, the name and address of such agent.

(2) No person will be employed in the storage, sale, or manufacture of such beverages except those who are citizens of the United States.

(3) The applicant will not engage in the sale of such beverages except at the place or places for which the beer board has issued a permit or permits to such applicant.

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

(5) If the application is for a permit to sell, not for consumption on the premises, that no sale of beer will be made for consumption on the premises and no consumption will be allowed on the premises.

(6) No sale will be made to minors, and the applicant will not permit minors or disreputable persons to loiter around the place of business.

(7) The applicant will not allow any liquor with an alcoholic content greater than five percent (5%) to be consumed on the premises.

(8) The applicant must secure a certificate or a statement from the health department or health officer that the premises which the application covers meets the requirements of § 8-219.

(9) The applicant shall be submitted to the city recorder at least fifteen (15) days prior to the beer board meeting at which it is to be considered. The recorder shall, within five (5) days after receipt of an application, notify each member of the beer board of such application.

(10) No permit shall be issued by the beer board until the application therefor shall have been subscribed to and approved in writing by the city attorney. However, the city attorney is only authorized to disapprove applications when there is a failure to comply with a city ordinance or state law governing the issuance of permits. (1986 Code, § 2-210, as amended by Ord. #168, Aug. 1993)

8-211. 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. Beer permits for the retail sale of beer may be further restricted by the beer board so as to authorize sales only for off premises consumption. It

shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by his permit. (1986 Code, § 2-211)

8-212. Permits not transferable. Beer permits shall not be transferable from one person to another or from one location to another. A new permit is required in the manner provided herein. (1986 Code, § 8-212)

8-213. Display of permit. The permit required by this chapter shall be posted in a conspicuous place on the premises of the permit holder, together with all other permits, licenses, and stamps as required by law. (1986 Code, § 2-213)

8-214. Issuance of permits to aliens prohibited. No permit to engage in the beer business shall be granted by the beer board to any person not a citizen of the United States nor to any syndicate or association unless all of the members thereof are citizens of the United States. (1986 Code, § 2-214)

8-215. Interference with public health, safety, and morals prohibited. No permit authorizing the sale of beer will be issued when such business would cause congestion of traffic or would interfere with schools, churches, or other places of public gathering, or would otherwise interfere with the public health, safety, and morals. (1986 Code, § 2-215)

8-216. 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. (1986 Code, § 2-216)

8-217. Issuance of permits to hotels, clubs, etc. It shall be lawful for the beer board to issue a permit for the sale of any beverage coming within the provisions of this chapter to hotels, motels, clubs, or lodges, subject to the limitations and restrictions contained in the state law, and the rules and regulations promulgated thereunder, and subject to all the limitations and restrictions contained in the permit provided by this chapter. (1986 Code, § 2-217)

8-218. Retail premises restrictions re frontage, curtains, blinds, etc.; exceptions. No permit to sell beer at retail shall be issued for the operation of any place except one with enough of the front enclosed in glass and of such design that the interior can be easily seen from the sidewalk or street in front of such place. No curtains, drapes, shades, blinds, screens or other thing

shall be used in the front of any place that hinders a clear and unobstructed view of the interior of such place from the sidewalk or street in front of such place. (1986 Code, § 2-218)

8-219. Sanitation for premises covered by on premises permit.

Any person holding a permit under this chapter for sale for consumption on the premises shall keep and maintain the premises in a clean and sanitary condition. The city health officer or any properly authorized person is hereby authorized to enter the premises at all reasonable hours, for the making of such inspections as may be necessary. The determination of the sanitary conditions is solely a question for the Town of South Carthage. (1986 Code, § 2-219)

8-220. Minor, fraudulent evidence of age, etc., misdemeanor.

Except as authorized by the state law, it shall be unlawful for any person under age twenty-one (21) to purchase, attempt to purchase or to possess any such beverage covered under this chapter or for anyone to purchase such beverage for such a person. It shall be unlawful for any person under age twenty-one (21) to present or offer to permittee, his agent or employee, any written evidence of his age which is false, fraudulent, or not actually his own, for the purpose of purchasing or attempting to purchase such beverages. Any person who acts in violation of any one or more of the provisions of this section shall be deemed guilty of a misdemeanor and if eighteen (18) years of age, or more, shall, upon conviction, be subject to a fine under the general penalty clause for this municipal code; if seventeen (17) years of age, or less, he shall be taken before the juvenile judge for appropriate disposition. (1986 Code, § 2-220)

8-221. Prohibited conduct or activities by beer permit holders.

It shall be unlawful for any beer permit holder to:

(1) Employ any person convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years.

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

(3) Make or allow any sale of beer between the hours of 12:00 midnight and 6:00 A.M. during any night of the week days; or Sundays between the hours of 12 midnight and 12 noon; from 6:00 P.M. Sunday until 12 midnight; from 12 midnight until 7:00 P.M. on National Election Day, County Election Day, and City Election Day and at any time on Christmas Day.

All coolers, display cases, dispensers or other fixtures containing beer for sale shall either be locked or covered in such manner that the customer cannot serve himself to beer on Sunday between 12 midnight and 12 noon. However,

nothing contained in this paragraph shall relieve the holder of the permit from responsibility hereunder.

(4) Allow any loud, unusual, or obnoxious noises to emanate from his premises.

(5) Make or allow any sale of beer to a minor under twenty-one (21) years of age, except as authorized by state law.

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

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

(8) Allow drunk or disreputable persons to loiter about his premises.

(9) 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.

(10) Allow dancing on his premises specified in the license application unless he pays a \$100.00 annual inspection fee and provides at least 750 square feet of floor space for such dancing.

(11) Allow pool or billiard playing in the same room where beer is sold and/or consumed. Beer may be sold in a pool room only if a partition or wall separates the place of sale from the pool room.

(12) Fail to provide and maintain separate sanitary toilet facilities for men and women, provided, however, that establishments which hold a permit for off premises consumption only shall be required to provide only one sanitary toilet facility. (1986 Code, § 2-221)

8-222. Suspension and revocation of beer permits. All permits issued by the beer board under the provisions of this chapter shall be subject to suspension or revocation by said board for the violation of any of the provisions of this chapter.

Suspension or revocation proceedings may be initiated by the police chief or by any member of the beer board, and the board is vested with full and complete power to investigate charges against any permit holder and to cite any permit holder to appear and show cause why his permit should not be suspended or revoked.

Complaints filed against any permit holder for the purpose of suspending or revoking such permit shall be made in writing and filed with the board. When the board shall have reason to believe that any permit holder shall have violated the provisions of the state beer act or any of the provisions of this chapter, the board is authorized to notify the permittee of said violations, and to cite said permittee by written notice to appear and show cause why his permit should not be suspended or revoked for such violations. Said notice to appear and show cause shall state the alleged violations charged and shall be served

upon the permittee either by registered letter or by a member of the police department of the city. The notice shall be served upon the permittee at least five (5) days before the date of the hearing. At the hearing the board shall publicly hear the evidence both in support of the charges and on behalf of the permittee. After such hearing, if the charges are sustained by the evidence, the board may, in its discretion, suspend or revoke said permit.

The action of the board in all such hearings shall be final, subject to review by the court as provided in the state beer act. When a permit is revoked, no new permit shall be issued hereunder for the sale of beer at the same location, until the expiration of one (1) year from the date said revocation becomes final. (1986 Code, § 2-222)

8-223. Applicant fee. 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 and fifty dollars (\$250.00). Said fee shall be in the form of a cashier's check payable to the Town of South Carthage. 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. (Ord. #170, Oct. 1993)

8-224. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer a privilege tax of one hundred dollars (\$100). 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 January 1, to the Town of South Carthage, Tennessee. 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. (Ord. #170, Oct. 1993, modified)

8-225. Bond required. Every person, firm, corporation or association, before being issued a license to sell at retail within the corporate limits of the City of South Carthage, any such beverage permitted to be sold hereunder, shall make and deliver to the county court clerk, who shall be entitled to demand and receive for the county a two dollar (\$2.00) fee therefor, a joint and several bond in the penalty of five hundred dollars (\$500.00) payable to the State of Tennessee, said bond to be signed by some solvent surety company authorized to carry on a general surety business within the State of Tennessee, or by solvent personal surety not in any way engaged in the beer business, and

conditioned that the principal thereof will pay any fine which may be assessed against such principal by any court of competent jurisdiction for any violation of the provisions of this chapter. (1986 Code, § 2-224)

8-226. Penalty for violations. Each day's violation of each or any provision of this chapter by any permit holder, or each sale made in violation of any provision of this chapter shall constitute a separate offense which shall be punishable under the general penalty clause for this municipal code or by suspension or revocation of the permit issued hereunder, or by such fine and suspension or revocation. (1986 Code, § 2-225)

8-227. Employees liable for violations. Any employee of the permittee who violates any provision of this chapter or any provision of the state beer act while so employed by such permittee shall be punishable under the general penalty clause for this code. (1986 Code, § 2-226)

8-228. Civil penalty in lieu of suspension. The beer board may, at the time it imposes a revocation or suspension, offer a permit holder the alternative of paying a civil penalty not to exceed \$1,500 for each offense of making or permitting to be made any sales to minors or, a civil penalty not to exceed \$1,000 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 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. #170, Oct. 1993, modified)