

TITLE 8

ALCOHOLIC BEVERAGES¹

CHAPTER

1. INTOXICATING LIQUORS.
2. BEER.

CHAPTER 1

INTOXICATING LIQUORS

SECTION

- 8-101. Alcoholic beverages subject to regulation.
- 8-102. Manufacturing and wholesaling businesses prohibited.
- 8-103. Application for certificate of good moral character.
- 8-104. Applicant to agree to comply with laws.
- 8-105. Applicant to appear before board of mayor and aldermen; duty to give information.
- 8-106. Action on application.
- 8-107. Applicants for certificate who have criminal record.
- 8-108. Only one establishment to be operated by retailer.
- 8-109. Where establishments may be located.
- 8-110. Retail stores to be on ground floor; entrances.
- 8-111. Radios, amusement devices and seating facilities prohibited in retail establishments.
- 8-112. Inspection fee.
- 8-113. Violations and penalty.

8-101. Alcoholic beverages subject to regulation. It shall be unlawful to engage in the business of selling, storing, transporting, distributing, or to purchase or possess alcoholic beverages within the corporate limits of this town except as provided by *Tennessee Code Annotated*, title 57.² (1990 Code, § 8-101)

¹Municipal code references

Driving under the influence: § 15-104.

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

State law reference

Tennessee Code Annotated, title 57.

²State law reference

Tennessee Code Annotated, title 39, chapter 6.

8-102. Manufacturing and wholesaling businesses prohibited. No person shall engage in the business of manufacturing, or in the business of selling at wholesale alcoholic beverages within the corporate limits. (1990 Code, § 8-102)

8-103. Application for certificate of good moral character¹. Before any character certificate, as required by *Tennessee Code Annotated*, § 57-3-208, or a renewal, as required by § 57-3-213, shall be signed by the mayor, or by any aldermen,² an application in writing shall be filed with the town recorder on a form to be provided by the town, giving the following information:

- (1) Name, age and address of the applicant;
- (2) Number of years residence in the town;
- (3) Occupation or business and length of time engaged in such occupation or business;
- (4) Whether or not the applicant has been convicted of a violation of any state or federal law or of the violation of this code or any town ordinance, and the details of any such conviction;
- (5) If employed, the name and address of employer;
- (6) If in business, the kind of business and location thereof;
- (7) The location of the proposed store for the sale of alcoholic beverages;
- (8) The name and address of the owner of the store; and
- (9) If the applicant is a partnership, the name, age and address of each partner, and his occupation, business or employer. If the applicant is a corporation, the name, age and address of the stockholders and their degrees of ownership of stock in the corporation.

The information in the application shall be verified by the oath of the applicant. If the applicant is a partnership or a corporation, the application shall be verified by the oath of each partner, or by the president of the corporation.

Each application shall be accompanied by a non-refundable investigation fee of two hundred and fifty (\$250.00) dollars. (1990 Code, § 8-103)

8-104. Applicant to agree to comply with laws. The applicant for a certificate of good moral character shall agree in writing to comply with the state and federal laws and ordinances of the town and rules and regulations of

¹State law reference

Tennessee Code Annotated, § 57-3-208.

²State law reference

Tennessee Code Annotated, § 57-3-208 requires the certificate of good moral character to be signed by the mayor or a majority of the governing body.

the alcoholic beverage commission of the state for sale of alcoholic beverages. (1990 Code, § 8-104)

8-105. Applicant to appear before board of mayor and aldermen; duty to give information. An applicant for a certificate of good moral character may be required to appear in person before the board of mayor and aldermen for such reasonable examination as may be desired by the board. (1990 Code, § 8-105)

8-106. Action on application. Every application for a certificate of good moral character shall be referred to the chief of police for investigation and to the town attorney for review, each of whom shall submit his findings to the board of mayor and aldermen within thirty (30) days of the date each application was filed.

The board of mayor and aldermen may issue a certificate of good moral character to any applicant, which shall be approved by a majority of the board of mayor and aldermen. (1990 Code, § 8-106)

8-107. Applicants for certificate who have criminal record. No certificate of good moral character for the manufacture or sale at wholesale or retail of alcoholic beverages, or for the manufacture or vinting of wine, shall be issued to any person, (or if the applicant is a partnership, any partner, or if the applicant is a corporation, any stockholder), who, within ten (10) years preceding the application for such certificate of good moral character, has been convicted of any felony or of any offense under the laws of the state or of the United States prohibiting the sale, possession, transportation, storage or otherwise handling of intoxicating liquors, or who has during such period been engaged in business, alone or with others, in violation of such laws. (1990 Code, § 8-108)

8-108. Only one establishment to be operated by retailer. No retailer shall operate, directly or indirectly, more than one (1) place of business for the sale of alcoholic beverages in the town. The word "indirectly," as used in this section, shall include and mean any kind of interest in another place of business by way of stock, ownership, loan, partner's interest or otherwise. (1990 Code, § 8-109)

8-109. Where establishments may be located. It shall be unlawful for any person to operate or maintain any retail establishment for the sale, storage, or distribution of alcoholic beverages in the town except at locations zoned for that purpose and where the carrying on of such a business at the premises covered by the application would be in too close proximity of a church, school, or public institution, or is otherwise inimical to the public interest. But in no event shall any establishment be located within five hundred feet (500') of

a hospital, church or school, or any other place of public gathering, measured in a straight line¹ between the nearest point on the property line upon which sits the building from which the alcoholic beverages will be sold, stored or distributed, and the nearest point on the property line of the hospital, school, church, or other place of public gathering. (1990 Code, § 8-110)

8-110. Retail stores to be on ground floor; entrances.² No retail store shall be located anywhere on premises in the town except on the ground floor thereof. Each such store shall have only one (1) main entrance; provided, that when a store is located on the corner of two (2) streets, such store may maintain a door opening on each such street; and provided further, that any salesroom adjoining the lobby of a hotel may maintain an additional door into such lobby as long as the lobby is open to the public. (1990 Code, § 8-111)

8-111. Radios, amusement devices and seating facilities prohibited in retail establishments. No radios, pinball machines, slot machines or other devices which tend to cause persons to congregate in such place shall be permitted in any retail establishment. No seating facilities shall be provided for persons other than employees. (1990 Code, § 8-114)

8-112. Inspection fee. The Town of Tracy City hereby imposes a nonrefundable inspection fee in the maximum amount allowed by *Tennessee Code Annotated*, § 57-3-501 on all licensed retailers of alcoholic beverages located within the corporate limits of the town. (1990 Code, § 8-115, modified)

8-113. Violations and penalty. Any violation of this chapter shall constitute a misdemeanor and shall, upon conviction, be punishable by a fine under the general penalty clause of this code. Upon conviction of any person under this chapter, it shall be mandatory for the town judge to immediately certify the conviction, whether on appeal or not, to the Tennessee Alcoholic Beverage Commission. (1990 Code, § 8-116, modified)

¹State law reference

See *Watkins v. Naifeh*, 625 S.W.2d 104 (1982) and other cases cited therein which establish the straight line method of measurement.

²State law reference

Tennessee Code Annotated, § 57-3-708(b).

CHAPTER 2

BEER¹

SECTION

- 8-201. Beer board established.
- 8-202. Meetings of the beer board.
- 8-203. Record of beer board proceedings to be kept.
- 8-204. Requirements for beer board quorum and action.
- 8-205. Powers and duties of the beer board.
- 8-206. "Beer" defined.
- 8-207. Beer permits shall be restrictive.
- 8-208. Classes of consumption permits.
- 8-209. Interference with public health, safety, and morals prohibited.
- 8-210. Issuance of permits to persons convicted of certain crimes prohibited.
- 8-211. Prohibited conduct or activities by beer permit holders.
- 8-212. Revocation or suspension of beer permits.
- 8-213. Permit required for engaging in beer business.
- 8-214. Privilege tax.
- 8-215. Civil penalty in lieu of suspension.
- 8-216. Violations and penalty.

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, § 8-201)

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, § 8-202)

¹Municipal code references

Public drunkenness, minors in beer places, etc.: title 11, chapter 2.
Tax provisions: title 5.

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, § 8-203)

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. Any member present but not voting shall be deemed to have cast a "nay" vote. (1990 Code, § 8-204)

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, § 8-205)

8-206. "Beer" defined. The term "beer" as used in this chapter shall be the same definition appearing in *Tennessee Code Annotated*, § 57-5-101.

8-207. 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, § 8-208)

8-208. Classes of consumption permits. Permits issued by the beer board shall consist of three (3) classes:

(1) 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 must, in addition to meeting the other regulations and restrictions in this chapter:

- (a) Be primarily a restaurant or an eating place;
- (b) Be able to seat a minimum of thirty (30) people, including children, in booths and at tables, in addition to any other seating it may have;

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

(d) Have been in continual operation for a period of six (6) months.

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

(2) Class 2 On Premises Permit. Other establishments making application for a permit to sell beer for consumption on the premises, which do not qualify, or do not wish to apply for, a Class 1 On Premises Permit, but which otherwise meet all other regulations and restrictions in this chapter, shall apply for a Class 2 On Premises Permit.

(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 must, in addition to meeting the other regulations and restrictions in this chapter:

(a) Be a grocery store or a convenience type market;

(b) In either case, be primarily engaged in the sale of grocery, personal, and home care and cleaning articles, but may also sell gasoline; and

(c) Have been in continuous operation for a period of six (6) months.

In addition, the monthly beer sales of any establishment which holds an off premises permit shall not exceed twenty-five percent (25%) of the gross sales of the establishment. Any establishment which for two (2) consecutive months or for three (3) months in any calendar year has beer sales exceeding twenty-five percent (25%) of its gross sales, shall have its beer permit revoked. (1990 Code, § 8-209)

8-209. Interference with public health, safety, and morals prohibited. No permit authorizing the sale of beer will be issued when such business would cause congestion of traffic or would interfere with hospitals, schools, churches, or other places of public gathering, or would otherwise interfere with the public health, safety, and morals. In no event will a permit be issued authorizing the manufacture or storage of beer, or the sale of beer by a Class 2 On Premises Permit holder, within five hundred feet (500') of any hospital, school, church or other place of public gathering; or authorizing the sale of beer by Class 1 On Premises Permit holders or Off Premises Permit holders within two hundred fifty feet (250') of any hospital, school, church or other place of public gathering. The distances shall be measured in a straight

line¹ from the nearest point on the property line upon which sits the building from which the beer will be sold, manufactured or stored to the nearest point on the property line of the hospital, school, church or other place of public gathering. (1990 Code, § 8-211)

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 controlled substance, or any crime involving moral turpitude within the past ten (10) years. (1990 Code, § 8-212)

8-211. 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 controlled substance, or any crime involving moral turpitude within the past ten (10) years;

(2) Make or allow the sale of beer between the hours of 12:00 midnight and 6:00 A.M. on weekdays and between the hours of 12:00 midnight Saturday and 12:00 noon on Sunday.²

(3) Allow any loud, unusual, or obnoxious noises to emanate from his premises;

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

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

(6) Make or allow any sale of beer to any intoxicated person;

(7) Allow drunk persons to loiter about his premises;

(8) Serve, sell, or allow the consumption on his premises of any alcoholic beverage with an alcoholic content higher than beer.

(9) Allow gambling on his premises;

(10) Allow dancing on his premises;

(11) Allow pool or billiard playing in the same room where beer is sold and/or consumed; or

¹State law reference

See *Watkins v. Naifeh*, 625 S. W. 2d 104 (1982) and other cases cited therein which establish the straight line method of measurement.

²State law reference

Tennessee Code Annotated, § 57-5-106(a), for cities with liquor by the drink, the Alcoholic Beverage Commission sets the hours of operation, which may only be modified by ordinance to reduce hours on Sundays under *Tennessee Compilation Rules and Regulations* § 0100-01-.03(2).

(12) Fail to provide and maintain separate sanitary toilet facilities for men and women.

In addition, it shall be unlawful for any Class 2 On Premises Permit holder to employ any person under the age of eighteen (18) on the premises in any capacity whatsoever. (1990 Code, § 8-213, modified)

8-212. Revocation or suspension of beer permits. The beer board shall have the power to revoke or suspend any beer permit issued under the provisions of this chapter when the holder thereof is guilty of making a false statement or misrepresentation in his application or of violating any of the provisions of this chapter. However, no beer permit shall be revoked or suspended until a public hearing is held by the board after reasonable notice to all the known parties in interest. Revocation or suspension proceedings may be initiated by the police chief or by any member of the beer board.

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

8-213. Permit required for engaging in beer business. It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the beer board. The application shall be made on such form as the board shall prescribe and/or furnish, and pursuant to *Tennessee Code Annotated*, § 57-5-101(b), and 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 Tracy City. Each applicant must be a person of good moral character and certify that he has read and is familiar with the provisions of this chapter. (1990 Code, § 8-215)

8-214. 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, 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, and each successive January 1, to the Town of Tracy City, 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. (1990 Code, § 8-216)

8-215. 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.¹ 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.

8-216. Violations and penalty. Except as provided in § 8-215, any violation of this chapter shall constitute a civil offense and shall, upon conviction, be punishable by a penalty under the general penalty provision of this code. Each day a violation shall be allowed to continue shall constitute a separate offense.

¹State law reference

Tennessee Code Annotated, § 57-5-108(2).