

CHAPTER 2

BEER¹

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8-201. "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 eight percent (8%) by weight except wine as defined in Tennessee Code Annotated, § 57-3-101; provided however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may

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).

be derived from the addition of flavors and other non-beverage ingredients containing alcohol. (1979 Code, § 2-201, as replaced by Ord. #1-2006, May 2006, and Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-202. 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. (1979 Code, § 2-202, as replaced by Ord. #1-2006, May 2006, amended by Ord. #1-2007, Feb. 2007, and replaced by Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-203. 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. (1979 Code, § 2-203, as replaced by Ord. #1-2006, May 2006, and Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-204. 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. (1979 Code, § 2-204, as replaced by Ord. #1-2006, May 2006, amended by Ord. #7-2008, Oct. 2008, and replaced by Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-205. 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. (1979 Code, § 2-205, as replaced by Ord. #1-2006, May 2006, and Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-206. Powers and duties of the beer board.¹ The beer board shall have the power and it is hereby directed to regulate the selling, storing for sale,

¹State law reference

Tennessee Code Annotated, § 57-5-106.

distributing for sale, and manufacturing of beer within this municipality in accordance with the provisions of this chapter. (1979 Code, § 2-206, as replaced by Ord. #1-2006, May 2006, amended by Ord. #1-2007, Feb. 2007 and Ord. #7-2008, Oct. 2008, and replaced by Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-207. Permit required for engaging in beer business.¹ It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the beer board. The application shall be made on such form as the board shall prescribe and/or furnish, 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 Cumberland Gap. A special event/temporary beer permit request made by a business that already has a permit shall be exempt from an additional permit fee. 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 and the beer laws. (1979 Code, § 2-207, as replaced by Ord. #1-2006, May 2006, amended by Ord. #1-2007, Feb. 2007, and replaced by Ord. #7-2008, Oct. 2008, and Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-208. Privilege tax.² There is hereby imposed on the business of selling, distributing, storing or manufacturing beer a 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 each successive January 1 to the Town of Cumberland Gap, 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. (1979 Code, § 2-208, as amended by Ord. #____, Jan. 1994, replaced by Ord. #1-2006, May 2006, amended by Ord. #1-2007, Feb. 2007, and Ord. #7-2008, Oct. 2008, and replaced by Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-209. 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 retail sale of beer may be further restricted so

¹State law reference

Tennessee Code Annotated, § 57-5-103.

²State law reference

Tennessee Code Annotated, § 57-5-104(b).

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. It shall likewise be unlawful for him not to comply with any and all express restrictions or conditions in his permit.¹ (1979 Code, § 2-209, as replaced by Ord. #1-2006, May 2006, Ord. #7-2008, Oct. 2008, and Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-210. Limitation on granting of permits. No permit shall be issued to sell any beverage coming within the provisions of this chapter:

(1) In violation of any provisions of this chapter, or any provisions of state law.

(2) Where such sales will cause traffic congestion or interference with schools, churches or other places of public gathering or otherwise interfere with the public health, safety and morals. The judgment of the town's beer board on such matters shall be final except as the same is subject to review in law.

(3) Where the businesses are within two hundred feet (200') of a church, places of public gathering, or a school. Such measurement shall be in a straight line at ninety degree (90°) angles at turns.

(4) Any area of the town that is not zoned C-1, C-2, C-3, or C-4 commercial by the town zoning ordinances.

(5) To any business that does not have other sales than beer, that will provided at least fifty one percent (51%) of the gross sales of the business receipts, (beer not to exceed forty nine percent (49%)). Permit holders are required to submit by the 20th of each month proof that beer sales does not exceed forty nine percent (49%).

(6) To any drive-in restaurants or restaurants offering curb service.

(7) To any restaurant for consumption on premises unless restaurant has a Class 1 rating from the State of Tennessee and has the capacity to seat and serve a minimum of forty (40) people at tables.

¹State law reference

Tennessee Code Annotated, § 57-5-301(a) provides that neither beer permit holders nor persons employed by them may have been "convicted of any violation of the laws against possession, sale, manufacture and transportation of intoxicating liquor or any crime involving moral turpitude" within the previous ten years. Under Tennessee Code Annotated, § 57-5-301(b), violations are punishable under state law as a Class A misdemeanor. Under Tennessee Code Annotated, § 16-18-302, city courts may only enforce local ordinances that mirror, substantially duplicate or incorporate by reference Class C misdemeanors. City courts are thus prohibited from enforcing ordinances making violations of Tennessee Code Annotated, § 57-5-301(a) a local offense.

(8) To any premises unless said premises shall pass specifications in regard to the structure as prescribed in the building codes of the town.

(9) To any hotel or motel with less than twenty (20) rooms for rent, with the following additional requirements:

(a) The twenty (20) or more rooms are used for the sleeping of guests.

(b) Having one (1) or more public dining rooms with adequate and sanitary kitchen.

(c) Seating capacity of at least fifty (50) tables.

(d) Where meals are regularly served to guests.

(10) Where outside seating is provided, the outside seating area must be enclosed by a fence.

(a) Definition of "fence." For the purposes of this section, a fence shall be defined as a rigid or self-standing structure or partition, all of which shall contain a continuous wall to enclose the outside seating area of an establishment that holds an on-premises consumption permit.

(b) Permitted fence materials. Fence wall surfaces shall be constructed of redwood cedar, pressure treated lumber, wood and vinyl plank or lattice, wrought iron, concrete, stone, or masonry material.

(c) Prohibited fence. Fences made of plywood, plastic sheeting, cloth or similar nondurable materials. (1979 Code, § 2-210, as replaced by Ord. #1-2006, May 2006, and Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-211. Prohibited conduct or activities by beer permit holders, employees and persons engaged in the sale of beer. It shall be unlawful for any beer permit holder, employee or person engaged in the sale of beer to:

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

(2) Make or allow the sale of beer between the hours outside of those established § 8-219 regarding the days and hours of sale.

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

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

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

(6) Serve, sell, or allow the consumption on the premises of any alcoholic beverage with an alcoholic content of more than eight percent (8%) by weight, with the exception of the permit holder possessing a liquor by the drink or wine permit also. (1979 Code, § 2-211, as replaced by Ord. #1-2006, May 2006, and Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-212. Signage. No outdoor sign, advertisement or display that advertises beer may be erected or maintained on the property on which a retail beer establishment is located other than one (1) sign, advertisement or display

which makes reference to the fact that the establishment sells beer but does not use brand names, pictures, numbers, prices or diagrams relating to beer. The sign cannot be any larger than three feet by five feet (3' x 5').

Additional signage is required for off-premises permit holders that states "No Consumption on These Premises." This additional signage must be printed on a sign at least eighteen inches by twenty-four inches (18" x 24") and must be posted on the walls adjacent to all entrances and above all exits.

Additional signage is required for on-premises permit holders to be posted at exit locations of exterior seating areas that state "No alcoholic beverages allowed beyond this point."

Responsible vendors (as defined in § 8-215) shall post signs on the vendor's premises informing customers of the vendor's policy against selling beer to underage persons. The signs shall be not less than eight and one-half inches by eleven inches (8 1/2" x 11"), and contain the following language: STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER.

Furthermore, vendors shall post signs on the vendor's premises informing customers of the vendor's policy against selling beer to underage persons. The signs shall be not less than eight and one-half inches by five and one-half (8 1/2" x 5 1/2"), and shall contain the following language: IF YOU AREN'T AGE TWENTY-ONE (21) OR OLDER AND ARE IN POSSESSION OF BEER, YOU COULD LOSE YOUR DRIVER LICENSE. (1979 Code, § 2-212, as amended by Ord. #____, March 1988; Ord. #____, March 1992; and Ord. #____, July 1993; replaced by Ord. #1-2006, May 2006, amended by Ord. #7-2008, Oct. 2008, and replaced by Ord. #6-2016, April 2017 *Ch 7_01-07-19*)

8-213. Duration of permit. All permits issued by the beer board shall be perpetual or until revoked by the beer board for just cause. (1979 Code, § 2-213, as amended by Ord. #____, Dec. 1993, and replaced by Ord. #1-2006, May 2006, and Ord. #6-2016, April 2017 *Ch 7_01-07-19*)

8-214. Revocation or suspension of 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, or any provisions of the state beer laws. However, no beer permit shall be revoked or suspended until a public hearing is held by the board after reasonable notice to all the know parties in interest. 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 revoked for any violation of the provisions of this chapter or the provisions of the state beer laws.

Any complaint filed against a permit holder for the purpose of suspending or revoking his 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

any of the provisions of this ordinance, or any of the provisions of the state beer laws, the board is authorized, in its discretion, to notify the permittee in writing, of said alleged violations and to cite said permittee, by such 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 a designated member of any law enforcement agency. The notice shall be served upon the permittee at least ten (10) 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 only to review by the courts as provided in the state beer laws.

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. (1979 Code, § 2-215, as replaced by Ord. #1-2006, May 2006, Ord. #7-2008, Oct. 2008, and Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-215. Civil penalty in lieu of suspension. (1) Definition. "Responsible vendor" means a person, corporation or other entity that has been issued a permit to sell beer for off-premises consumption and has received certification by the Tennessee Alcoholic Beverage Commission under the "Tennessee Responsible Vendor Act of 2006," Tennessee Code Annotated, § 57-5-601, et seq.

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

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

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

Payment of the civil penalty in lieu of revocation or suspension by a permit holder shall be an admission by the holder of the violation so charged and shall be paid to the exclusion of any other penalty that the city may impose. (1979 Code, § 2-216, as replaced by Ord. #1-2006, May 2006, and Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-216. Loss of clerk's certification for sale to minor. If the beer board determines that a clerk of an off-premises beer permit holder certified under Tennessee Code Annotated, § 57-5-606, sold beer to a minor, the beer board shall report the name of the clerk to the alcoholic beverage commission within fifteen (15) days of determination of the sale. The certification of the clerk shall be invalid and the clerk may not reapply for a new certificate for a period of one (1) year from the date of the beer board's determination. (1979 Code, § 2-217, as amended by Ord. #_____, Dec. 1988, and replaced by Ord. #1-2006, May 2006, and Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-217. Permits not transferable. Permits issued under the provisions of this ordinance are not transferable, either as to location or to successor by purchase, or otherwise, of the business for which the permit was issued, and in either case, a new permit is required in the manner provided herein. (1979 Code, § 2-218, as replaced by Ord. #1-2006, May 2006, and Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-218. Wholesalers, etc., to deliver only to holders of retail beer permits. It shall be unlawful for any wholesaler, distributor, or manufacturer of beer, or any of their salesmen or representatives to sell or deliver beer enroute, or from delivery vehicles, to any person other than to holders of valid retail beer permits, and it shall be the duty of such wholesaler, distributor, or manufacturer, their salesmen or representatives, to ascertain whether each purchaser is a holder of a valid retail beer permit. It shall be unlawful for any wholesaler, distributor, or manufacturer of beer to have any interest in any retail sale of beer other than the interest as a wholesaler, distributor, or manufacturer. (as added by Ord. #1-2006, May 2006, and replaced by Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-219. Days and hours of sales. It shall hereafter be unlawful and it is hereby declared to be a misdemeanor for any permit holder of the town to sell,

distribute or allow consumption on the premises any of such beverages regulated by permit, within the limits of the Town of Cumberland Gap, Tennessee during the hereafter listed hours.

Off-the premises establishments are prohibited from selling beer between the hours of 12:00 midnight and 6:00 A.M, or anytime on Sunday after 12:00 midnight and before 1:00 P.M., or after 9:00 P.M. On the premise establishments shall not sell beer between the hours of 12:00 midnight and 6:00 A.M. The premises must be vacated by 12:30 A.M. (with the exception of the permit holder possessing liquor by the drink or wine permit also. In such case the establishment may not sell, or give away, beer, alcoholic beverages and/or malt beverages and/or wine between the hours of three o'clock A.M. (3:00 A.M.) and eight o'clock A.M. (8:00 A.M.) on weekdays, or between the hours of three o'clock A.M. (3:00 A.M.) and twelve o'clock (12:00) noon on Sundays. (as added by Ord. #1-2006, May 2006, and replaced by Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-220. Permit holder requirements. (1) Permit holders must begin the sale of beer in the establishment for which the permit has been issued, within thirty (30) days following the issuance of the permit. The establishment for which the permit is issued shall continuously remain open during the time and hours prescribed by this chapter, and shall sell beer in such establishment during the entire life of the beer permit.

(2) Off-premise permit holders are required to submit to the beer board by the 20th of each month proof of beer purchases of five hundred dollars (\$500.00) or greater from a beer distributor or beer distributors.

If for any reason the permit holder does not comply with the provisions of this section for more than thirty (30) (days/months) with respect to subsection (1), or one (1) months with respect to subsection (2), the permit shall be subject to revocation, unless the permit holder can show good cause to the beer board for the violation of this section, and can offer to the beer board a plan satisfactory for coming into compliance with this section within a reasonable time.

This provision shall apply to both present and future beer permit holders. (as added by Ord. #1-2006, May 2006, as deleted and renumbered by Ord. #7-2008, Oct. 2008, and replaced by Ord. #6-2016, April 2017 *Ch7_01-07-19*)

8-221. Permit holder and wholesaler restriction. No retailer or permit holder shall purchase any alcoholic beverages from anyone other than a licensed wholesaler, nor shall any wholesaler sell alcoholic beverages to anyone other than a licensed retailer, or a licensed wholesaler. (as added by Ord. #1-2006, May 2006, renumbered by Ord. #7-2008, Oct. 2008, and replaced by Ord. #6-2016, April 2017 *Ch7_01-07-19*)

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