

**TITLE 8**

**ALCOHOLIC BEVERAGES<sup>1</sup>**

**CHAPTER**

1. INTOXICATING LIQUORS.
2. BEER.

**CHAPTER 1**

**INTOXICATING LIQUORS**

**SECTION**

- 8-101. Definition of alcoholic beverages.
- 8-102. Consumption of alcoholic beverages on premises.
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- 8-105. Concurrent sales of liquor by the drink and beer.
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**8-101. Definition of alcoholic beverages.** As used in this chapter, unless the context indicates otherwise: "alcoholic beverages" means and includes alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, other than patented medicine or beer, where the latter contain an alcoholic content of five (5%) percent by weight, or less. (1982 Code, § 2-101, as replaced by Ord. #41-4, April 2005)

**8-102. Consumption of alcoholic beverages on premises.** Tennessee Code Annotated, title 57, chapter 4, inclusive, is hereby adopted so as to be applicable to all sales of alcoholic beverages for on premises consumption which are regulated by said code when such sales are conducted within the corporate limits of Elizabethton, Tennessee. It is the intent of the mayor and council that the said Tennessee Code Annotated, title 57, chapter 4, inclusive, shall be effective in Elizabethton, Tennessee, the same as if said code sections were copied herein verbatim. (as added by Ord. #41-4, April 2005)

**8-103. Privilege tax on retail sale of alcoholic beverages for consumption on the premises.** Pursuant to the authority contained in

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<sup>1</sup>State law reference

Tennessee Code Annotated, title 57.

Tennessee Code Annotated, § 57-4-103, there is hereby levied a privilege tax (in the same amounts levied by Tennessee Code Annotated, title 57, chapter 4, section 301, for the City of Elizabethton General Fund to be paid annually as provided in this chapter) upon any person, firm, corporation, joint stock company, syndicate, or an association engaging in the business of selling at retail in the City of Elizabethton any alcoholic beverages for consumption on the premises where sold. (as added by Ord. #41-4, April 2005)

**8-104. Annual privilege tax to be paid to the city clerk.** Any person, firm, corporation, joint stock company, syndicate or association exercising the privilege of selling alcoholic beverages for consumption on the premises in the City of Elizabethton shall remit annually to the city clerk the appropriate tax described in 8-103. Such payments shall be remitted not less than thirty (30) days following the end of each twelve (12) month period from the original date of the license. Upon the transfer of ownership of such business or the discontinuance of such business, said tax shall be filed within thirty (30) days following such event. Any person, firm, corporation, joint stock company, syndicate or association failing to make payment of the appropriate tax when due shall be subject to the penalty provided by law. (as added by Ord. #41-4, April 2005)

**8-105. Concurrent sales of liquor by the drink and beer.** Any person, firm, corporation, joint stock company, syndicate or association which has received a license to sell alcoholic beverages in the City of Elizabethton, pursuant to Tennessee Code Annotated, title 57, chapter 4, shall qualify to receive a beer permit from the city. Note: Although an applicant may qualify, the beer board shall regulate the issuance of all beer licenses. (as added by Ord. #41-4, April 2005)

**8-106. Advertisement of alcoholic beverages.** All advertisement of the availability of liquor for sale by those licensed pursuant to Tennessee Code Annotated, title 57, chapter 4, shall be in accordance with the Rules and Regulations of the Tennessee Alcoholic Beverage Commission. (as added by Ord. #41-4, April 2005)

## CHAPTER 2

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

#### SECTION

- 8-201. Beverage board; creation; membership; authority to issue, revoke, and suspend beer permits; organization and procedures.
- 8-202. Permit required to sell, store, distribute, or manufacture beer; application for permit to be sworn to, etc.
- 8-203. Contents and filing requirements of application for permit.
- 8-204. No permits to be issued to anyone who has been convicted of any violation of intoxicating beverage laws within the last ten (10) years.
- 8-205. City clerk to issue permit upon approval of board only to applicants of an existing business and payment of required fees.
- 8-206. Payment of fees; display of permits; sales by distributors, etc.; permits not transferable; permit required for each location; limitation on number of permits for each person.
- 8-207. Types of retail permits.
- 8-208. Constraints on issuance of permits.
- 8-209. Days and hours of sale regulated.
- 8-210. Distributors, etc. to be licensed by state, to comply with zoning laws, and to sell only to valid permit holders.
- 8-211. Sign restrictions.
- 8-212. Sales to persons under the legal age to purchase beer as set by state statute is prohibited.
- 8-213. Permit holders not to allow loitering or sales to intoxicated persons.
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- 8-216. Retailers or public conveyances not to deliver beer.
- 8-217. Privilege tax.
- 8-218. Premises constituting non-conforming uses not to be licensed.
- 8-219. Police inspections.
- 8-220. Credit sales to retailers prohibited.
- 8-221. No adjustments for shortages, etc., to be made by wholesalers except at time of delivery.
- 8-222. No gifts or price reductions by wholesalers.

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<sup>1</sup>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).

8-223. All sales to be within licensed premises.

8-224. Violations.

**8-201. Beverage board; creation; membership; authority to issue, revoke, and suspend beer permits; organization and procedures.** There is hereby created a board, which shall be known and designated as the "Beverage Board of the City of Elizabethton," hereinafter referred to in this chapter as the "board." Such board shall be composed of the seven (7) members of the city council.

It shall be the duty of the board to regulate and supervise the issuance of permits to manufacture, store more than two cases, distribute, and sell beer and other beverages of an alcoholic content of not in excess of five per centum by weight, hereinafter referred to as beer, to the persons and in the manner provided in this chapter.

It is hereby declared that the sale, storage, manufacture, and distribution of beer in the city is a privilege, and such board is hereby empowered with complete discretion to issue, revoke, and suspend all permits or licenses to sell, store, manufacture, or distribute beer in the city, including the sole right to determine the suitability and approve the general appearance of the proposed structure.

The board is empowered to elect its own chairman and other officers, to make its own regulations with respect to meetings or hearings, and may deny the issuance of any permit or license whenever it determines that such issuance would be detrimental to public health, safety, or morals. The board may likewise suspend or revoke the permit and license of any licensee who violates any of the laws of the United States, the State of Tennessee, or the City of Elizabethton, or whenever it shall satisfactorily appear that the premises or business of any permittee or licensee is being maintained and operated in such manner as to be detrimental to public health, safety, or morals.

Where a permit or license is revoked, no new license or permit shall be issued to such permittee nor issued to any other applicant to permit the sale, storage, manufacture, or distribution of beer on the same premises until after the expiration of one year from the date said revocation becomes final and effective. (1982 Code, § 2-201)

**8-202. Permit required to sell, store, distribute, or manufacture beer; application for permit to be sworn to, etc.**

(1) It shall be unlawful for any person to sell, store more than two cases, distribute, or manufacture beer within the city without having first obtained a permit and license as provided in this chapter.

(2) Before any person shall be authorized to sell, store more than two cases, distribute, or manufacture beer, he shall make application to the board, upon a form prescribed by it, for a permit to do so.

(3) Permits shall be issued to the owner of the business, whether a person, firm, corporation, joint-stock company, syndicate, or association.

(4) The permit shall be valid only for the owner to whom the permit is issued and cannot be transferred to another owner and if the owner is a corporation, a change in ownership shall occur when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner.

(5) The applicant must agree in his application to comply with all the laws of the United States, and of the State of Tennessee, and all ordinances of the City of Elizabethton, and said application shall be supported by an affidavit or oath that the facts therein stated are true. (Ord. #29-22, Sept. 1993)

**8-203. Contents and filing requirements of application for permit.**

The application shall contain the following:

(1) The name and address of the applicant.

(2) The name of the applicant's business;

(3) The location of applicant's business by street or other geographical description to permit an accurate determination of conformity with the requirements of this chapter;

(4) Whether or not the applicant is seeking a permit which would allow the sale of beer either for on-premises consumption, or for off-premises consumption, or both of the foregoing, any change in the type of permit shall require approval of the beverage board;

(5) A statement that the applicant will not engage in the sale, storage, manufacture, or distribution of beer except at the place or places for which the license or permit was issued to such applicant;

(6) That no sale will be made to any person under the legal age to purchase beer as set forth by state statute; that the applicant will not permit minors or disorderly or disreputable persons, or persons heretofore connected with the violation of the liquor laws to loiter around the place of business; that no minor shall be employed in the direct sale, storage, manufacture, or distribution of beer;

(7) That the applicant has not had a license for the sale, storage, manufacture, or distribution of legalized beer revoked;

(8) That neither the applicant nor any person employed or to be employed by him in the distribution, storage, manufacture, or sale of beer has been convicted of any violation of the law against prohibition, sale, manufacture, storage, distribution, usage, or transportation of intoxicating liquor or any crime involving moral turpitude within the past ten years preceding the filing of such application;

(9) Persons, firms, corporations, joint-stock companies, syndicates, or associations having at least five percent (5%) ownership interest in the applicant;

(10) Identity and address of a representative to receive annual tax notices and any other communication from the beverage board or its representative;

(11) That no brewer, manufacturer, distributor, or warehouseman of legalized beer has any interest in the business, financial or otherwise, or in the premises upon or in which the business to be licensed to sell beer at retail is to be carried on;

(12) A statement that the applicant is willing to be fingerprinted by the police department of the City of Elizabethton and is willing to be investigated by municipal, county, state, and federal law enforcement agencies concerning the applicant's background and record;

(13) An oath or affidavit by the applicant that the facts set forth in the application are true;

(14) Any applicant making false statements in the application shall forfeit his permit and shall not be eligible to receive any permit for a period of ten (10) years;

(15) The application shall be submitted to the secretary of the beverage board not less than fifteen (15) days prior to the next meeting of the city council in order to allow a meeting of the beverage board and provide proper notice as required by law of such meeting. The applicant shall appear in person before the beverage board. (Ord. #29-22, Sept. 1993)

**8-204. No permits to be issued to anyone who has been convicted of any violation of intoxicating beverage laws within the last ten (10) years.** No permit shall be issued except persons of good moral character who have not been convicted of any violations of the laws against manufacturing, selling, transporting, storing, distributing, illegally using or possessing intoxicating liquors or of selling or possessing beer illegally or of any crime involving moral turpitude, within (10) years of the date of application; nor shall any permit be issued to any firm, corporation, syndicate, joint stock company, or association, who have officers, stockholders, or employees who have had such convictions.

A permit holder must return a permit to the beverage board within fifteen (15) days of termination of the business, change in ownership, relocation of the business or change of the business's name; provided, however, that notwithstanding the failure to return a beer permit, a permit shall expire on the termination of the business, change in ownership, relocation of the business or change of the business's name. Failure to notify the city clerk of any of these changes shall be grounds to cite permit holder to the beverage board to show cause why the permit should not be suspended or revoked. (Ord. #29-22, Sept. 1993)

**8-205. City clerk to issue permit upon approval of board only to applicants of an existing business and payment of required fees.**

Permits shall be approved or disapproved by the board only to applicants operating an existing business and if approved, a license shall be issued by the city clerk for the City of Elizabethton, upon proof by the applicant that all permits have been obtained and that all required fees and privilege taxes have been paid and that the applicant has met the requirements of this chapter and the laws of the State of Tennessee and the United States of America. (Ord. #29-22, Sept. 1993)

**8-206. Payment of fees; display of permits; sales by distributors, etc.; permits not transferable; permit required for each location; limitation on number of permits for each person.**

All permit fees shall be paid annually in advance and shall not be subject to refund in whole or in part. All permit holders shall display and keep displayed their beer permits and beer licenses in a conspicuous place on the premises where they are licensed to conduct such business.

(1) No manufacturer, distributor, or warehouseman shall sell to anyone except a holder of a valid beer permit.

(2) Permits shall not be transferable.

(3) A separate permit shall be obtained for each location at which and from which any applicant is to manufacture, store, distribute, or sell beer, except where a permit holder operates two (2) or more restaurants or other businesses within the same building, the permit holder may in his discretion operate some or all such businesses pursuant to the same permit.

(4) Upon submission of an application there shall be collected an application fee of two hundred fifty dollars (\$250.00). (Ord. #29-22, Sept. 1993)

**8-207. Types of retail permits.** Permits for the retail sale of beer issued by the board shall be of two types:

(1) On-premises permits shall be issued for the consumption of beer on the premises.

(2) Off-premises permits shall be issued for the sale of beer to be consumed off the premises. (1982 Code, § 2-207)

**8-208. Constraints on issuance of permits.** (1) All beer permits for the sale of beer in the City of Elizabethton, shall be issued in the discretion of the beverage board and the board shall issue permits to applicants for the sale of beer for on-premise consumption, off-premise consumption, or for both at the same location pursuant to one permit.

(2) Without regard to the number of permits issued, however, "on-premise" permits shall be issued only to restaurants, clubs and hotels. A restaurant shall be required to have a genuine capacity of and for not less than seventy-five (75) persons and shall be required that the primary purpose of the

business is the sale of food prepared and consumed on site. A club will mean any club as defined in Tennessee Code Annotated § 57-4-102 and by the alcoholic beverage commission. A hotel will mean any hotel as defined by Tennessee Code Annotated § 57-4-102.

(3) Off-premise permits shall be issued only to establishments operating as a grocery or convenience store. A grocery shall be defined, for the purpose of this chapter, to mean a business establishment whose primary business is the sale of food merchandise, household items, and health and beauty aids. A grocery shall derive the majority (more than fifty percent [50%]) of its gross sales from the retail sale of the items set forth in the preceding sentence. A convenience store shall be defined, for the purpose of this chapter, to mean a business establishment where food stuffs and food merchandises are sold and may also be participating in the retail sale of gasoline or other petroleum products, but shall have an area for the sale of food stuffs and food merchandise of at least one thousand (1,000) square feet. A convenience store shall derive the majority (more than fifty percent [50%]) of its gross sales from the retail sale of the items set forth in the preceding sentence.

(4) No permit for the sale of beer for either "on-premise" consumption or "off-premise" consumption shall be issued to any person or establishment whose place of business is within two hundred and twenty feet (220') of any established church or school building. For the purpose of determining the two hundred twenty foot (220') requirement as set forth herein, the distance shall be measured by straight line distance from the closest point of the main structure of the proposed site of the applicant's business to the closest point of the church or school building. The applicant, if subject to this subsection, shall be required to submit a survey prepared by a Tennessee registered land surveyor, showing the distance to the nearest church or school. The survey as submitted shall become a part of the application and shall be subject to the provisions of chapters 1 through 2 of Title 8 of the Elizabethton Municipal Code.

Restaurants that are issued a license by the State of Tennessee permitting the legal sale of alcoholic beverages for consumption on premises as provided by law shall be exempt from the provisions of this paragraph.

(5) A temporary permit may be issued by the city clerk to allow the continued sale of alcoholic beverages at a location which presently has a valid permit. A temporary permit may be issued in order to allow a new application to be administratively processed and considered by the beverage board. The applicant for a temporary permit shall meet all requirements set forth in these ordinances, and the temporary permit shall not be issued for more than sixty (60) days.

(6) Shopping center districts which have heretofore met or hereafter meet the requirements of the zoning ordinance of the Elizabethton Municipal Code shall be exempt from the provisions of paragraph (4) of this section. (Ord. #29-22, Sept. 1993, as amended by Ord. #31-4, May 1995; Ord. #34-1, Feb. 1998; Ord. #37-8, April 2001; and Ord. #41-4, April, 2005)

**8-209. Days and hours of sales regulated.** It shall be unlawful for any person to sell beer between the hours of 3:00 A.M. until 8:00 A.M. Monday through Saturday, or between the hours of 3:00 A.M. until 10:00 A.M. on Sunday. (1982 Code, § 2-209, as replaced by Ord. #41-4, April 2005)

**8-210. Distributors, etc. to be licensed by state, to comply with zoning laws, and to sell only to valid permit holders.** (1) In addition to other requirements set out in this chapter, all distributors, wholesalers, warehousemen, and manufacturers shall be duly licensed under the law to do business in the State of Tennessee.

All distributors, wholesalers, warehousemen, and manufacturers of beer having a place of business within the corporate limits of the City of Elizabethton shall locate same in areas designated and zoned for manufacturing under the laws and ordinances of the City of Elizabethton.

(2) It shall be unlawful within the corporate limits of the City of Elizabethton for any distributors, wholesalers, warehousemen, and manufacturers of beer or for any of their salesmen or representatives to sell or deliver beer en route to or from delivery vehicles to any person or place other than holders of valid retail beer permits; and it shall be the duty of such all distributors, wholesalers, warehousemen, and manufacturers, their salesmen or representatives, to ascertain whether or not such person or place has been issued a valid beer permit by the City of Elizabethton. (Ord. #29-22, Sept. 1993)

**8-211. Sign restrictions.** It shall be unlawful for any person authorized to sell beer, for either on the premises consumption or off the premises use, to erect or maintain more than one advertising or display sign upon the outside of the building or in a window. Said sign may use the word "beer" or the name of any brand of beer. Said advertising or display sign shall not exceed four (4) inches in height and eighteen (18) inches in length, and the sign shall be placed parallel with and on the building or in a window. (1982 Code, § 2-211)

**8-212. Sales to persons under the legal age to purchase beer as set by state statute is prohibited.** It shall be unlawful for any person engaged in either "on premise" or "off premise" sale of beer to make or permit to be made any sales of beer to persons under the legal age to purchase beer as set by state statute. It shall be unlawful for any person to purchase beer for the purpose of selling or giving same to anyone not entitled to purchase beer as set by state statute, and any such purchase of beer is subject to fine and community service as set by state statute. (1982 Code, § 2-212)

**8-213. Permit holders not to allow loitering or sales to intoxicated persons.** It shall be unlawful for any permit holder to allow persons to loiter around the place of business, and it shall be unlawful for any permit holder to

make, permit, or allow to be made any sale of beer to any person who is intoxicated. (Ord. #29-22, Sept. 1993)

**8-214. Deleted.** (1982 Code, § 2-214, as deleted by Ord. #41-4, April 2005)

**8-215. Certain non-conforming permissess allowed to continue.** Notwithstanding any provision to the contrary, any place, premises or location which has previously been issued a valid and lawful permit for the sale of beer for either on or off premises consumption, but which place, premises or location cannot meet the current provisions and requirements of chapters 1 through 2 of title 8 of the Elizabethton Municipal Code, a new owner, proprietor or licensee who is an immediate successor in interest to said place, premises or location shall be issued a new permit for the sale of beer although said place premises or location does not conform to the current provisions of chapters 1 through 2 of title 8 of this code, provided the issuance of said permit is not detrimental to the public health, safety or morals and the applicant meets the individual requirements set forth in chapters 1 through 2 of title 8 of the Municipal Code of Elizabethton, Tennessee. (1982 Code, § 2-215)

**8-216. Retailers or public conveyances not to deliver beer.** It shall be unlawful for any holder of a retail permit or license to sell beer, to deliver beer away from the premises designated and described in the license. It shall further be unlawful for any owner or operator of a public conveyance to purchase or deliver beer for or to any person not presently therein. (1982 Code, § 2-216)

**8-217. Privilege tax.** There is hereby imposed on the business of selling, distributing, storing, or manufacturing beer a privilege tax of one hundred dollars (\$100.00). The permit holder shall remit the privilege tax to the city clerk on January 1, 1994, and each successive January 1 thereafter. The city clerk shall mail notice of the tax to each permit holder of the payment date of the annual tax at least thirty (30) days prior to January 1. Notice shall be mailed to each permit holder at the address specified in the permit application. If a permit holder does not pay the tax by January 31, or within thirty (30) days after written notice of the tax was mailed, whichever is later, then the city shall notify the permit holder by certified mail that the tax payment is past due. If a permit holder does not pay the tax within ten (10) days after receiving notice of its delinquency by certified mail, then the permit shall be void. 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. #29-22, Sept. 1993)

**8-218. Premises constituting non-conforming uses not to be licensed.** No retail permit or license shall be issued to any person to sell beer from or any place, premises or location which constitutes non-conforming use under the zoning laws and ordinances of the City of Elizabethton in effect at the time of application for such permit or license. However any place, premises or location originally lawfully licensed to sell beer prior to the enactment of the provisions of the zoning ordinance but which place, premises or location presently does not conform with the current provisions of the zoning ordinance may be issued a new permit or license to sell beer and such non-conforming use allowed to continue provided it meets the requirements of Elizabethton Zoning Ordinance governing the continuance of non-conforming uses and the individual applicant meets the requirements set forth in chapters 1 through 2 of title 8 of the Municipal Code of Elizabethton, Tennessee. (1982 Code, § 2-218)

**8-219. Police inspections.** It shall be the duty of the police department of the City of Elizabethton or of any special police officers appointed by the city manager to inspect the place of business and premises of the holders of permits and licenses under this chapter, and it shall be unlawful for any permittee or licensee to refuse to permit any such inspection during any time that such place is open for business. (1982 Code, § 2-219)

**8-220. Credit sales to retailers prohibited.** In order to collect the wholesale beer tax efficiently, all sales of beer by wholesalers to retailers or any other person, except sales to duly licensed wholesalers, shall be for cash only. The intent of this section and provision is that wholesale sale of beer and delivery and payment therefor shall be a simultaneous transaction, and any maneuver, device, or method of extending credit is expressly prohibited. (1982 Code, § 2-220)

**8-221. No adjustments for shortages, etc., to be made by wholesalers except at time of delivery.** In order accurately to determine the tax to be paid, no wholesaler shall make any reduction or adjustment for shortages or broken bottles, including chips and flats, except at the time of sale and delivery. All beer shall be inspected and accepted by the retailer or any other person at the time of delivery and no adjustment or refund for merchandise damage, breakage, or shortage shall be made by any wholesaler subsequent to the time of delivery. (1982 Code, § 2-221)

**8-222. No gifts or price reductions by wholesalers.** In order to determine the exact amount of tax and to facilitate the collection thereof, no wholesaler shall make any gift of beer or any other type of gift to any retailer, nor shall any deal be made with the retailer or any person whereby the wholesale price of beer shall be reduced below the list price as an inducement to said retailer or any other person to make larger purchases. (1982 Code, § 2-222)

**8-223. All sales to be within licensed premises.** It shall be unlawful for any on-premise permittee to sell beer anywhere except within the confines of the property boundary used for the sale or purchase of beer. It shall be unlawful for any off-premise permittee to sell beer anywhere except within the confines of the building used for the sale or purchase of beer. Drive-in windows are expressly prohibited. (Ord. #31-4, May 1995)

**8-224. Violations.** (1) Responsible vendor. A permit holder who is a responsible vendor in good standing with the Tennessee Alcoholic Beverage Commission shall only be subject to a civil penalty not to exceed one thousand dollars (\$1,000.00) for each offense of making or permitting to be made any sale of beer to a minor, who is defined as anyone less than twenty-one (21) years of age, or for any other violation of this chapter.

Permanent revocation of a beer permit may only be applied when the permit holder has at least two (2) violations within a twelve (12) month period.

(2) All other vendors. A permit holder violating any provisions of this chapter shall be cited to the beverage board for a suspension or revocation of the permit. The beverage board may, at the time in imposes a revocation or suspension, offer a permit holder the alternative of paying a civil penalty not to exceed two thousand five hundred dollars (2,500.00) for each offense of permitting any sale to an individual under the legal age to purchase intoxicating beverages; or a civil penalty not to exceed one thousand dollars (1,000.00) for any other offense. If a civil penalty is offered as an alternative to revocation or suspension, the permit 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. The payment of a civil penalty shall not be deemed as a waiver of the permit holder's right to seek review by statutory writ of certiorari. (Ord. #29-22, Sept. 1993, as amended by Ord. #43-13, Sept. 2007)