

TITLE 8

ALCOHOLIC BEVERAGES¹

CHAPTER

1. INTOXICATING LIQUORS.
2. BEER.

CHAPTER 1

INTOXICATING LIQUORS

SECTION

8-101. Prohibited generally.

8-102. Prohibited at any business or establishment.

8-101. Prohibited generally. Except as authorized by applicable laws² and/or ordinances, it shall be unlawful for any person to manufacture, receive, possess, store, transport, sell, furnish, or solicit orders for, any intoxicating liquor within the Town of Selmer, Tennessee. "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. (Code of 1977, § 2-101, modified, as amended by ord. #411, May 1992)

8-102. Prohibited at any business or establishment. It shall be unlawful and a misdemeanor for any person, firm or corporation to operate a business or establishment which allows customers or any person to receive, possess, transport or consume any intoxicating liquor on the premises within the corporate limits of the Town of Selmer, Tennessee. This section shall not apply to any private residence nor to any private club which operates on a permit from another governmental agency. (as added by ord. #411, May 1992)

¹Municipal code references

Drinking beer on streets, etc.: see title 11, section 11-228.

Minors in beer places, etc.: see title 11, section 11-222.

²State law reference

See Tennessee Code Annotated, title 39, chapter 6.

CHAPTER 2

BEER¹

SECTION

- 8-201. Beer board; duties and powers.
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- 8-211. Prohibited conduct or activities by beer permit holders.
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- 8-214. [Deleted.]
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- 8-216. Permit for retail sale of beer and consumption of beer on the premises.
- 8-217. Enforcement.

8-201. Beer board; duties and powers. The board of mayor and aldermen shall serve as the city beer board to regulate the selling, storing for sale, distributing for sale, and manufacturing of beer within the Town of Selmer, Tennessee in accordance with the provisions of the state law and this chapter. The mayor should act as chairman unless he appoints a member of the board to serve as chairman. (Code of 1977, § 2-201, as replaced by ord. #411, May 1992)

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

¹Municipal code references

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

Tax provisions: see 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).

reasonable notice thereof to each member. The board may adjourn a meeting at any time to another time and place. (Code of 1977, § 2-202, modified, as replaced by ord. #411, May 1992)

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. (Code of 1977, § 2-203, modified, as replaced by ord. #411, May 1992)

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. (Code of 1977, § 2-204, modified, as replaced by ord. #411, May 1992)

8-205. Definitions. 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.

As used herein, when the context permits, the word person or persons shall be deemed to include natural persons as well as firms, corporations, joint stock companies, syndicates, associations, and any other type of business organization, as well as clubs, societies, and fraternities. (Code of 1977, § 2-206, as replaced by ord. #411, May 1992)

8-206. Permit required for engaging in beer business; privilege tax.

(1) 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 T.C.A. 57-5-101(b), and shall be accompanied by a non-refundable application fee of two hundred and fifty dollars (\$250). Said fee shall be in the form of a cashier's check payable to the Town of Selmer. 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.

(2) 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). 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, 1994, and each successive January 1, to the Town of Selmer, 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. (Code of 1977, § 2-207, as replaced by ord. #411, May 1992 and ord. #425, June 1994)

8-207. Beer permits shall be restrictive. (1) 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.

(2) Subject to all the other provisions of this chapter, beer permits for the retail sale of beer shall be divided into two (2) types:

(a) permits may be issued by the board to authorize the sale of beer for on premises consumption.

(b) permits may be issued by the board to retail stores for the sale of beer exclusively for carry-out, off premises consumption.

(3) 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 board. (Code of 1977, § 2-208, modified, as replaced by ord. #411, May 1992)

8-208. Issuance of permits to aliens prohibited. No permit to engage in the beer business shall be granted to any person not a citizen of the United States or a resident alien who has legal status in the United States. (Code of 1977, § 2-208, modified, as replaced by ord. #411, May 1992, and Ord. #552, April 2007)

8-209. Interference with public health, safety, and morals prohibited.

(1) No permit authorizing the sale of beer will be issued except with regard to places or locations where such sales will not cause congestion of traffic or interference with school, church, park, hospital or nursing home. In no event will a permit be issued authorizing the storage, sale or manufacture of beer for consumption on the premises within one thousand (1,000) feet of any school, church, park, hospital or nursing home or any other place operated by the municipality for public recreation measured along street rights of way from building to building.

(2) Notwithstanding the distance restriction contained in paragraph (1) above, any business premises wherein any person or other legal entity held a valid beer license as issued by the Town of Selmer, Tennessee, as of the date of the adoption of this Section, (May 19, 1992), shall be exempted from the distance restriction imposed in paragraph (1) above. The business premises affected hereby and specifically exempted from the distance restriction

contained in paragraph (1) above are specifically identified as follows: M&M LOUNGE, FALCON RD. TEXACO FOOD MART COURT AVE., TWIN OAKS II HWY 45 SOUTH, CITGO COURT AVE, ANITAS QICK STOP HWY 45 NORTH, BOTTOM INN HWY 45 SOUTH, Q MART POPLAR AVE, MIKE'S RACEWAY 45 SOUTH, RITE AID SOUTH MULBERRY, JIM'S HWY 45 SOUTH, GET-N-GO (NORTH Y Mini Mart) P.J.'S GROCERY (LAWRENCE SCHULTZ), MURRYS PLACE HWY 45 NORTH, SELMER AMCO PAUL FISHER, P.F. OIL CO SOUTH Y, J.J.'S TAVERN (TWIN OAKS II) Hwy 45 SOUTH. (16). (Code of 1977, § 2-210, as replaced by ord. #411, May 1992 and further replaced by ord. #421, June 1993)

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 any crime involving moral turpitude within the past ten (10) years. (Code of 1977, § 2-211, as replaced by ord. #411, May 1992)

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 any crime involving moral turpitude within the past ten (10) years.

(2) 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; at any time on Sunday; or on election days before and while the polls are lawfully open.

(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 or to any feeble-minded, insane, or otherwise mentally incapacitated 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 of more than five percent (5%) by weight.

(9) Allow gambling on his premises.

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

(11) Employ any minor under nineteen (19) years of age in the sale, storage, distribution, or manufacture of beer.

(12) Fail to have his place of business cleared of all customers by 12:15 A.M. This part is applicable only to beer permit holders who have a permit for on-premises consumption in accordance with § 8-216.

(13) Allow himself or anyone working for him to consume any intoxicating beverage while on duty at the establishment.

(14) Serve or sell or allow to be served or sold any beer to any person in or on any motor vehicle or allow any person to consume beer while in a motor vehicle parked on his premises.

(15) Allow assaults, fighting, damaging property and breaches of the peace occurring on or in the premises where beer is sold.

(16) Allow the sale or possession of beer on the premises on which the state beer barreage tax and the city and county wholesale beer tax have not been paid.

(17) Allow the sale of beer to any person at any establishment licensed for the sale of beer without said person having proof of age on that person available to be shown on request of the holder of the beer permit or his agents and employees or upon request of law enforcement personnel of the Town of Selmer, Tennessee.

(18) To organize or promote, or allow the customers of the beer permit holder to organize or promote, for profit, advertisement or for the entertainment of its customers at any business location licensed for the sale of beer any intentional display of the unclothed, naked body or any part thereof or any intentional display of the naked body or any part thereof through opaque clothing.

(19) Allow his permit to be used by another. A beer permit is not transferrable and is null and void if used by anyone other than the permit holder. (Code of 1977, § 2-212, modified, as replaced by Ord. #411, May 1992, and amended by Ord. #554, May 2007)

8-212. Suspension and revocation of beer permits; civil penalty in lieu of suspension. (1) Suspension and revocation 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, failing to pay any applicable taxes or license fee, or of violating any of the provisions of this chapter, or whenever it satisfactorily appears that the premises of any permit holder are being maintained and operated in a manner detrimental to public health, safety, or morals.

The beer board will suspend any beer permit for a period from ten (10) days to six (6) months for the first violation of this chapter and will revoke any beer permit on the second violation except for the sale of beer to minors which may cause the permit to be either suspended or revoked on the first offense. If the beer board determines that a suspension of a beer permit is the appropriate penalty for the first offense for sale of beer to minors, then such period of

suspension shall be not less than thirty (30) days, it being the specific intent that a thirty (30) day suspension of a beer permit shall be the mandatory minimum penalty for such an offense. However, and notwithstanding this stated mandatory minimum, this shall not affect the right and authority of the beer board to impose a civil penalty in lieu of suspension as stated in § 8-212(2). However, no beer permit shall be revoked until a public hearing is held by the board with reasonable notice to all the known parties in interest. Revocation proceedings may be initiated by the chief of police, city judge or by any member of the beer board. The beer board shall have the power to adopt and prescribe the rules and regulations to be followed in such hearings. Where a permit or license is revoked, no new license or permit shall be issued to permit the sale of alcoholic beverages on the same premises until after the expiration of one (1) year from the date of the revocation becomes final and effective.

(2) 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. (Code of 1977, § 2-213, as replaced by Ord. #411, May 1992 and amended by Ord. #425, June 1993, and Ord. #555, May 2007)

8-213. Drive-in windows prohibited. It shall be unlawful for anyone holding a permit for the sale of beer as provided herein, to sell, and/or dispense beverages to anyone unless the purchaser enters the building to purchase the beverage. No beverage may be sold through a drive-in window. (as added by ord. #411, May 1992)

8-214. [Deleted.] (as added by Ord. #411, May 1992, and replaced by Ord. #532, May 2006, and Ord. #571, Feb. 2008, and deleted by Ord. #609, Dec. 2011)

8-215. Surrender of beer license. Anyone who is issued a beer license by the beer board agrees that he will voluntarily return it to the city recorder in the event the permit is revoked or if his use of the permit is either voluntarily or involuntarily terminated. (as added by ord. #411, May 1992)

8-216. Permit for retail sale of beer and consumption of beer on the premises. (1) No permit for the retail sale of beer and the consumption of beer on the premises shall be issued except to restaurants and clubs. For the purposes of this section the following definitions shall apply:

(a) A restaurant is defined as a public place which is kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, and which is provided and equipped with adequate and sanitary facilities and a seating capacity indoors of at least twenty-five (25) people at tables, and having a sufficient number of employees to prepare, cook and suitably serve food for the guests.

Restaurants that hold beer permits must show that seventy-five percent (75%) of their gross sales of the business are from food and shall submit annually a certified statement that they are in full compliance of this section and that seventy-five percent (75%) of the gross sales are from food. The statement should be submitted to Town of Selmer Recorder no later than January 15th of each year.

(b) "Club" means a nonprofit association organized and existing under the laws of the state of Tennessee, which has been in existence and operating as a nonprofit association at least two (2) years prior to the application for a license hereunder, having at least one hundred (100) members regularly paying dues, organized and operated exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any shareholder or member.

(2) All persons, partnerships or corporations who have a valid permit (license) for on premises sale and consumption of beer as of the date of the third (3rd)¹ reading of this ordinance shall be exempt from the provisions of this section. The permits currently held by on premises consumption permit holders shall immediately and automatically expire upon the happening of any one of the following events:

(a) The permit holder dies, sells, gives away, or in any way whatsoever alienates all or a part of his interest in the business.

(b) The permit holder for any reason whatsoever, including the suspension of his license, ceases for more than thirty (30) days in one calendar year to operate a business for which the on premises consumption permit was issued.

(c) The permit holder's license is revoked for any violation of the beer ordinance of the Town of Selmer, Tennessee. (as added by ord. #422, Sept. 1993, and amended by Ord. #438, § 1, April 1995)

8-217. Enforcement. It shall be the duty of the Selmer Police Department to enforce all provisions of this chapter, state laws, and other rules or regulations set forth for permit holders. Officers may enter upon the premises

¹Ord. #422 from which these provisions were taken passed third reading Sept. 14, 1993.

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of a permit holder any time during the normal operating hours for the purpose of enforcement. (as added by Ord. #553, April 2007)