

ORDINANCE NO. O-2015-003

**AN ORDINANCE TO AMEND TITLE 8, CHAPTER 2, ENTITLED
"BEER," OF THE SEVIERVILLE MUNICIPAL CODE**

WHEREAS, TITLE 57, CHAPTER 5, Section 106 of the Tennessee Code Annotated, (T.C.A 57-5-106) authorizes municipalities to pass ordinances governing the issuance of licenses and regulations regarding the storage, sale, manufacture and/or distribution of beer, and

WHEREAS, TITLE 8, CHAPTER 2, entitled "Beer" of the Sevierville Municipal Code currently exists to provide such regulations; and

WHEREAS, new establishments, not currently identified in the existing Chapter, wish to sell, manufacture and distribute beer, and new regulations are required to appropriately regulate these uses; and

WHEREAS, The Board of Mayor and Aldermen of the City of Sevierville find it desirable and necessary to the economic development of the City to permit these uses,

NOW, THEREFORE, BE IT ORDAINED, BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF SEVIERVILLE, TENNESSEE, THAT THE ENTIRETY OF TITLE 8, CHAPTER 2 BE REPLACED WITH THE LANGUAGE THAT FOLLOWS.

CHAPTER 2

BEER

8-201. Definitions:

1. *Applicant* shall mean the person on whose behalf an application for beer permit is filed.
2. *Barrel* shall mean thirty-one (31) gallons.
3. *Beer* means beer, ale or other malt beverages, or any other beverages having an alcoholic content as defined in Tennessee Code Annotated § 57-5-101(b), and any amendments thereto to become effective in the future; provided, however, that no more than forty-nine (49) percent of the overall alcoholic content of such beverage may be derived from the addition of flavors and other non-beverage ingredients containing alcohol.
4. *Beer board* or *board* means that administrative body organized and empowered under the authority of Tennessee Code Annotated § 57-5-106.
5. *Certified clerk* shall mean a clerk who has successfully satisfied the training requirements contained in this part, or who has received certification from a responsible vendor training program.
6. *Clerk* shall mean any person working in a capacity to sell beer directly to consumers for off-premise consumption.
7. *Commission* shall mean the Tennessee Alcoholic Beverage Commission.
8. *Craft Beer Enterprise* shall mean a craft beer business whose primary business is the retail sale of craft beer.
9. *Craft Beer* shall mean beer manufactured by breweries with an annual production of six million (6,000,000) barrels or less.

10. *Growler* shall mean a refillable rigid glass, plastic, aluminum or stainless steel container with a flip-top or screw-on lid that is no larger than 2 liters (0.5283 gallons) into which craft beer is prefilled, filled or refilled for off-premises consumption.
11. *Hotel/Motel* shall mean any establishment which meets any definition found in Tennessee Code Annotated § 57-4-102(20).
12. *Manufacture* shall mean producing beer at a rate of at least two hundred (200) barrels each calendar year on the licensed premises.
13. *Meals* shall be defined as any of the following:
 - a. Food sold in a heated state or heated by the seller;
 - b. Two (2) or more food ingredients mixed or combined by the seller for sale as a single item.
 - c. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws. A plate does not include a container or packaging used to transport the food; or
 - d. Non-alcoholic beverages, except for beverages sold in unopened containers to be consumed off-premises.
14. *Outdoor Venue* shall mean an outdoor location which does not meet the definition of premises as defined in § 8-201(19). It may or may not be on a separate non-adjacent parcel. It must be appropriately zoned for commercial activity.
15. *Package Retail Sales* shall mean the sale of beer bottled or packaged at the manufacturer's or wholesaler's location and transported to the retail establishment.
16. *Permit* shall mean any permit issued pursuant to this article.
17. *Permittee* shall mean any person to whom any permit has been issued pursuant to this article.
18. *Person* shall mean any private individual, partnership, joint venture, corporation, and any other business entity or association.
19. *Premises* shall mean contiguous property owned, leased, or controlled by the permittee and so connected with the beer business in which the permittee is engaged as to form a component or integral part of it, including, but not limited to, the building and the parking areas surrounding it. Premises includes all decks, patios and other well-defined outdoor serving and consuming areas that are contiguous to the exterior of the building in which the business is located and that are operated by the business identified in the permit. A permit shall be valid for all decks, patios and other well-defined outdoor serving areas that are contiguous to the exterior of the building in which the business is located; that are operated by the business and only for a business operating under the name identified in the permit.
20. *Responsible vendor* shall mean a person, corporation or other entity that has been issued a permit to sell beer 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.
21. *Responsible Vendor Training Program* shall mean a training program related to the responsible sale of beer which has met all the statutory and regulatory requirements set forth in Tennessee Code Annotated § 57-5-601 et seq.
22. *Restaurant* shall mean a business establishment whose primary business is the sale of prepared food to be consumed on the premise.

23. *Storage* shall mean the storing or possessing of beer for the purpose of resale by the permit holder.
24. *TABC* shall mean the Tennessee Alcoholic Beverage Commission.
25. The pronouns *he*, *him* and *his* shall refer to persons of the female, as well as the male, gender, as applicable.

8-202. Authority to grant and revoke beer permits.

The Mayor shall, with the approval of the Board of Aldermen, designate and appoint three (3) persons who are citizens and residents of the City of Sevierville, Tennessee, one (1) of whom is a member of the Board of Aldermen, to act as a Beer Board for the purpose of granting, refusing, rescinding, or revoking permits for the sale, storage and warehousing of beer, for off-premises consumption, and on-premises consumption as set forth in this chapter, within the corporate limits of Sevierville, Tennessee. For purposes of this chapter, “beer” means beer as defined in Tennessee Code Annotated § 57-5-101(b), and the “City” means the City of Sevierville, Tennessee.

8-203. Issuance of permits by Beer Board.

- (a) The Beer Board is vested with full and complete authority to issue permits, which permits shall be issued only for locations which are within a commercially zoned area as indicated on the then current and applicable zoning map at the time the application is made, for the sale, storage, and warehousing of beer for on-premises consumption and off-premises consumption.
- (b) The Beer Board may in its discretion issue a contingent permit to an applicant who has not yet met all of the requirements of this chapter for issuance of a permit. A contingent permit shall expire six (6) months from the date of issuance if all requirements of this chapter have not been satisfied, unless the Board in its discretion grants a further extension of time.

8-204. Permits for the manufacture of beer.

Permits for the manufacture of craft beer shall be issued in accordance with the general requirements of this chapter. A manufacturer of beer can further apply for permits for retail sale for on-premises and/or off-premises consumption. Documentation by the manufacturer of the number of barrels produced each calendar year may be required.

8-205. Permits for the sale of beer.

There are two (2) types of permits and each type has classes of permits within the type. The two (2) types of permits the Beer Board may issue are:

A retailer’s “off-premises” permit shall be issued for the sale of beer only for consumption off the business premises in accordance with the provisions of this chapter.

A retailer’s “on-premises” permit shall be issued to any business engaged in the sale of beer where the beer is to be consumed by the purchaser or his guests upon the premises of the seller. A retailer’s “on-premises” permit may be issued only for use in connection with these establishments defined in § 8-210 through § 8-218 below.

A business can sell beer for both on-premises and off-premises consumption at the same location if otherwise permitted by law and this ordinance. Each type and class of permit is deemed to be a separate permit and requires a separate application processing fee.

If the character of the establishment changes from the classification under which a permit was originally issued, the permittee will be required to obtain a new permit to conform to the type of establishment being operated by the permittee.

8-206. Permit required for engaging in beer business.

It shall be unlawful for any person or entity to sell, store for sale, distribute for sale or manufacture beer without first making application to and obtaining a permit from the Beer Board pursuant to Tennessee Code Annotated § 57-5-103. The application shall be made on such forms as the Board shall prescribe and/or furnish, and shall be accompanied by a non-refundable application fee of five hundred dollars (\$500.00). Said fee shall be in the form of cash, cashier's check, or company check made payable to the City. Each person signing an application must be a person of good moral character and certify that he has read and is familiar with the provisions of this chapter. For purposes of this chapter, "entity" means a firm, partnership, Limited Liability Company, corporation, Joint Stock Company, syndicate, association or any other legal entity whatsoever.

8-207. Qualifications for permit.

In order to qualify for a permit to sell beer, an applicant must fully satisfy, comply with and adhere to the following qualifications and criteria for the applicant and location for the sale of beer:

- (a) No sale of such beverages shall be made except in accordance with the permit granted.
- (b) Neither the applicant nor any persons employed or to be employed by the applicant in such distribution or sale of such beverages shall have ever been convicted of any violation of law regarding the prohibition, sale, possession, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years.
- (c) The applicant shall not have had a license for the sale of alcoholic beverages of any kind or nature revoked by any city, county, or state.
- (d) The property upon which the business is operating is located in a zoning district approved for such use.
- (e) The applicant shall execute an authorization enabling the City to receive from each and every wholesale supplier to the permittee, the dollar value and amounts of beer sold by the wholesaler or distributor to the permittee, at such time or times as the City may request such information. This authorization shall be in full force and effect during the entire term of the permit.
- (f) The applicant shall not make a false statement in his application for any beer permit. Such a statement shall be cause for immediate revocation of the permit.

8-208. Requirements to maintain any permit issued under this Section.

The following requirements shall be met at all times to maintain a permit issued by the City Beer Board:

- a. **A permit holder shall not**
 - i) Operate a disorderly place.
 - ii) Permit boisterous or disorderly conduct on the premises.
 - iii) Sell or allow to be sold on the premises of the permittee, beer to any person using food stamps issued pursuant to state or federal law for the purchase of such beer.
- b. **Hours and days of operations.** It shall be unlawful to offer for sale or sell beer within the corporate limits of the City between the hours of 3:00 A.M. and 10:00 A.M. on Sunday and between the hours of 3:00 A.M. and 6:00 A.M. Monday through Saturday.
- c. **Sales to minors or intoxicated persons.** It shall be unlawful to sell or offer to sell beer to a person under the age of twenty-one (21) years or to a person who is visibly intoxicated.
- d. **Sexually oriented establishments prohibited.** Alcoholic beverages shall not be sold or consumed on the premises of any sexually-oriented business as defined in the Sevierville Zoning Ordinance, or on the premises of any "adult-oriented establishment" as defined in Tennessee Code Annotated § 7-51-1102(6). (Ord. #2008-031, Jan. 2009, modified)
- e. **Condition of premises generally.** No retailer's permit shall be granted to any person whose premises are not neat, clean and in good repair, both inside and outside. The premises shall at all times be free from litter, weeds, trash and other forms of debris. Any tires, old appliances, motor vehicle parts, tools, equipment or other similar materials shall not be displayed openly on the premises but must be stored inside an opaque enclosure.
- f. **Inspection of beer businesses.** Appropriately assigned officials from the City shall have the right to inspect at any and all times the entire premises and property where or upon or in which the beverages regulated by this chapter are sold, stored, transported or otherwise dispensed or distributed or handled, whether at retail or wholesale, in the City for any law violations.
- g. **Continually operate the business.** Any person who holds a permit shall continuously operate the business, and if any permit holder either voluntarily or involuntarily fails or refuses to carry on the business for a period of sixty (60) days, then said permit shall be revoked.
Any such establishment for which two (2) consecutive months or for any three (3) months in any calendar year does not meet the established minimums of non-alcoholic sales shall have their permit revoked.
- h. **Properly pay all taxes, fees, and charges.** All property taxes, license fees or other charges owed by the permittee, or by the owners of the permittee, to the City or Sevier County, Tennessee, must be kept current throughout the term of the license. This requirement shall not apply to the owners of a permittee that is a publicly held company.
- i. **Maintain property in compliance with all State, County, and City regulatory requirements.** The premises upon which the permit is granted shall at all times be in compliance with City zoning ordinances, and with all fire, health, safety and building codes of the City and/or the State of Tennessee.

8-209. Failure to maintain requirements.

Failure on the part of any permittee to observe the requirements of this chapter after issuance of a permit shall constitute grounds for suspension or revocation of the permit.

8-210. On Premise Consumption Permits Defined.

The following classes of permits for on-premises consumption are established.

1. Restaurant
2. Craft Beer Establishment
3. Hotel/Motel
4. Caterer
5. Special Venue

Definitions for each of the classes are established in the section dedicated to the requirements and restrictions of each class.

8-211. Classification of existing permits.

All beer permits now issued and outstanding will be classified and placed in its appropriate category, and the holders of said beer permits shall be so notified, along with a copy of this ordinance.

8-212. Restaurant Classification Requirement and Restrictions.

- a. An establishment must meet the restaurant requirements of Tennessee Code Annotated § 57-4-102(29)A.
- b. In the event that a restaurant contains a bar or bar area, food service shall be equally available to the bar and bar area as it is in other areas of the restaurant.
- c. An establishment shall be eligible for a permit as a restaurant only if more than fifty percent (50%) of the gross revenue of the restaurant is generated from the serving of meals. Any such establishment for which two (2) consecutive months or for any three (3) months in any calendar year has fifty percent (50%) or less of its gross revenue from the serving of meals shall have its beer permit revoked.
- d. Have forty (40) seats in the interior of the building under a permanent roof and enclosed on all sides. Seats in an open air or patio area, as permitted by subsection (e) below, shall not count toward meeting the requirement of forty (40) interior seats required for this category of permit.
- e. A permittee having this category of license shall be allowed to sell and serve on a patio or open air area, for which access is provided only by going through the interior of the building. The patio or open air area shall be enclosed by a permanent fence, railing, or similar structure, a minimum of forty-two inches (42") in height, which obstructs normal walking access to the patio or open air area, except by entry through the interior of the building. The fence, railing, or other structure shall have at least one (1) emergency exit, to be opened only in the event of an emergency and so marked, which will emit an audible sound, such as a bell, siren or other like sound, when the emergency exit is opened. Additional such exits may be required depending on the size of the fenced in area, as specified in the Sevierville Fire Protection Ordinance.
- f. Within thirty (30) minutes from the time that sale of beer has ceased as required by § 8-208(b), all containers, glasses or other vessels of any type which have been used for serving and consumption of beer shall be removed by permittee from the area or areas where the beer had been consumed and shall be placed in areas not for access by patrons of the establishment.

8-213. Hotel/Motel Classification Requirements and Restrictions.

- a. It shall be lawful for the Beer Board to issue a permit for the sale of beer to hotels, motels, or inns, subject to the limitations and restrictions contained in the state law and the rules and regulations and restrictions contained in the permit required by this chapter.
- b. Permits may be issued under this section to hotels, motels, or inns for sale and consumption on the premises in rooms where meals or lunches are served and in guests' rooms.
- c. Beer also may be sold and dispensed to adult guests only through locked, in-room units.
- d. Beer sold from a "convenience store" located within the confines of the sight and oversight of a paid employee may only be sold for consumption on the premises and to a bona guest of the hotel.
- e. The permittee is responsible for verifying the age and guest status of the purchaser.
- f. In the case of locked in-room units, a key separate from that used to enter the room shall be supplied and no person under the age of twenty-one (21) shall be issued or supplied with such a key.

8-214. Craft Beer Enterprise Requirements and Restrictions.

- a. A craft beer enterprise shall meet the definition found in § 8-201.
- b. A craft beer enterprise may exist without a corresponding City manufacturing permit but craft beer enterprises which do not have a City manufacturing permit under the same business ownership are permitted only in the Tourist Development Zone of the City as defined in the City Zoning Ordinance.
- c. A craft beer enterprise shall be required to have no less than thirty-four percent (34%) of the gross revenue of the enterprise generated from the serving of meals.
- d. Have forty (40) seats in the interior of the building under a permanent roof and enclosed on all sides. Seats in an open air or patio area, as permitted by subsection (e) below, shall not count toward meeting the requirement of forty (40) interior seats required for this category of permit.
- e. A permittee having this category of license shall be allowed to sell and serve on a patio or open air area, for which access is provided only by going through the interior of the building. The patio or open air area shall be enclosed by a permanent fence, railing, or similar structure, a minimum of forty-two inches (42") in height, which obstructs normal walking access to the patio or open air area, except by entry through the interior of the building. The fence, railing, or other structure shall have at least one (1) emergency exit, to be opened only in the event of an emergency and so marked, which will emit an audible sound, such as a bell, siren or other like sound, when the emergency exit is opened. Additional such exits may be required depending on the size of the fenced in area, as specified in the Sevierville Fire Protection Ordinance.
- f. Within thirty (30) minutes from the time that sale of beer has ceased as required by § 8-208(b), all containers, glasses or other vessels of any type which have been used for serving and consumption of beer shall be removed by permittee from the area or areas where the beer had been consumed and shall be placed in areas not for access by patrons of the establishment.

8-215. Caterer Classification Requirements and Restrictions.

- a. Meet the requirements of Tennessee Code Annotated § 57-4-102(6) as a "Caterer".
- b. Beer may be sold for consumption only at the permanent catering hall of the caterer or at a site for which the caterer has given advance notice to the City Recorder.
- c. Only employees of a licensed caterer may serve beer at any event, whether at the caterer's designated premises or a remote venue.
- d. No caterer may provide only alcohol without meals present and available for consumption at any catered event.

8-216. Special Venue Classification.

The Special Venue Classification is a conditional permit issued by the Beer Board, which has requirements and restrictions based on the unique issues created by the location and type of use of the applicant.

A Special Venue is defined as:

- a. A single premises in a permanent location affixed to the earth whose area is defined by a foundation, permanent fencing, or permanent surfacing.
- b. The primary purpose of the premises cannot be for the sale of goods at either retail or wholesale.
- c. The serving of food is not a requirement.
- d. The establishment does not qualify for any other classification of permit.
- e. The premises is defined as eligible to receive a permit to serve alcoholic beverages, in Sevier County, under Tennessee Code Annotated Chapter § 57-4-101 or is property currently owned in whole or in part by the City, and it is deemed appropriate that it have the right to sell beer.

8-217. Special Venue Permit Process.

- a. An establishment wishing to receive a special venue permit shall make application to the City's Beer Board through its assigned representative on a Special venue application provided by the City. The application shall provide all information required of any other application for an on-premises permit. Additionally, the applicant shall state why a special venue permit is required, as opposed to a more generally classified permit, as well as the specifics of how, where, and when the beer will be served.
- b. The Beer Board will meet to consider the application and cause a finding to be made as to whether the applicant is entitled such a permit. They may at that time also include such conditions, requirements and restrictions as they deem necessary for the safe and prudent sale of beer in the location identified as a "special venue."

8-218. Existing Venues holding a specifically named On-Premises Consumption permit.

Any venue holding an On-Premises Consumption permit at the time of the adoption of this ordinance, but not fitting into one of the other permit classes shall receive a special venue permit with such conditions that were imposed under the previously codified ordinance as of the date of the adoption of this ordinance.

All beer permits now issued and outstanding will be classified and placed in an appropriate category under this ordinance, and the holders of said beer permits shall be so notified and shall be provided a copy of this ordinance.

8-219. Outdoor Venue Approval.

Beer may be sold on a temporary basis at an Outdoor Venue by businesses holding an On-Premises Permit under the following conditions:

- a. The location meets the Tennessee Alcoholic Beverage Commission's requirements for alcoholic service.
- b. An application has been submitted to the City Recorder for the location and dates where the beer will be sold or provided.
- c. The Review Fee of one hundred dollars (\$100.00) per application has been paid.
- d. The City has adopted Administrative Policies that govern the process, timing, rules, and review procedures for Outdoor Venues. Copies of said policies shall be made available to all holders of permits for on-premises consumption.

8-220. Off-premises Consumption Sales.

The following classes of permits for off-premises consumption are established.

1. Package Retail Sales
2. Growler Sales

8-221. Package Retail Classification Requirements and Restrictions.

- a. The monthly off-premises package retail beer sales of any establishment that holds an off-premises permit shall not exceed twenty-five percent (25%) of the gross sales of the establishment.
- b. The permittee shall not allow the sale of beer by way of a drive-in and/or a drive through window.

8-222. Growler Classification Requirements and Restrictions.

- a. A Growler permit may be held by the holder of any other on-premises or off-premises permit holder. A Growler permit may not be the only permit held by a permittee.
- b. Holders of the Growler permit may fill or refill growlers on demand with beer for off-premises consumption provided the label as required by this section is affixed to the growler.
- c. Each growler must be securely sealed and removed from the premises in its original sealed condition. Each growler shall bear a twist-type closure, cork, stopper, or plug. At the time of the sale and/or refilling, a paper or plastic adhesive band, strip, or sleeve shall be applied to the container or bottle and extend over the top of the twist-type closure, cork, stopper, or plug forming a seal that must be broken upon opening of the container or bottle. The adhesive band, strip, or sleeve shall bear the name and address of the business filling the growler. The containers or bottles shall be labeled as a craft beer, contain the name of the beer, and bear the name, address and telephone number of the business selling the beer. Any known allergens shall also be included on any label.

- d. Growlers must be filled in a manner that is sanitary and meets all applicable food and alcohol handling laws and standards.
- e. Consumption of the contents of any growler on the premises where it was filled is strictly prohibited. However, the licensee may provide samples of any beer on tap. Each such sample shall not exceed one (1) fluid ounce.
- f. Sales of growlers shall be limited to the legal hours during which the licensee may sell such alcoholic beverages and must be removed from the premises before the applicable closing time.

8-223. Personal Conduct of Individuals.

- a. Loitering. It shall be unlawful for a permittee to allow any minor to loiter about the permittee's place of business and the burden of ascertaining the age of a minor customer shall be upon the permittee.
- b. Unlawful for minor to misrepresent age. It shall be unlawful and a misdemeanor for any person under twenty-one (21) years of age to knowingly misrepresent his age in order to obtain or purchase beer within the corporate limits of the City, or to remain in a location where beer is legally being sold under the provisions of this chapter where minors are not allowed.
- c. Public consumption of beer prohibited. None of the beverages regulated by this chapter shall be consumed on any public street, alley, boulevard, bridge, nor upon the grounds of any cemetery or public school, nor upon any park or public grounds nor upon any vacant lot within two hundred (200) feet of any public street, highway, avenue, or other public place. Despite the provisions of this section, possession and consumption of beer is permitted during certain city sponsored or co-sponsored special events within the physical parameters of the special event zone during the time of the special event if otherwise provided by resolution of the city council.

8-224. Application for permit authorizing the sale of beer.

- 1. Before any permit is issued by the Beer Board, the applicant shall make payment of a non-refundable application fee in the sum of five hundred dollars (\$500.00) to the City and file with the Board a written application, under oath, containing the following information:
 - (a) The name of the applicant.
 - (b) The residential and business address of the applicant. If the person applying for the permit is acting as agent for another person or entity, the name and address of such other person or entity shall be listed.
 - (c) The owner or owners of the place of business must provide a copy as recorded in the Sevier County Register of Deeds office of the deed for the property evidencing ownership of the premises upon which the sale of beer will be conducted. If the premises are subject to a lease or rental agreement, a copy of all executed documents evidencing the right to use the premises must be submitted with the application. A copy of the current lease or rental agreement must be kept on file with the Board at all times. If a lease or rental agreement is renewed, a copy of the renewed lease or rental agreement must be provided to the Board.

- (d) A valid copy of the applicant's Tennessee Department of Revenue sales and use tax certificate of registration.
 - (e) An authorization for criminal history inquiry form must be provided for each person having at least five percent (5%) ownership interest in the business, along with a copy of each such person's driver's license.
2. An application shall become null and void if it is not presented to the Board at a public meeting within three (3) months after the application is filed, or if another application for a permit for the same location is approved before the application is presented to the Board at a public meeting.

8-225. 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 or entity 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 City. At the time each new permit is issued to any business subject to this tax, the permittee 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.

The annual privilege tax notice of payment due shall be mailed to permittee no later than thirty (30) days prior to January 1 of each year. Notice shall be mailed to the address specified by the permittee on the permit application. The annual privilege tax shall be payable and due no later than January 31 of each year. If a permittee does not pay the tax by January 31 of each year, then the City shall notify the permittee in writing, either by certified mail or by hand delivery by a member of the City Police Department, which the privilege tax is past due. If a permittee does not pay the tax within ten (10) days after receiving notice of its delinquency, then the permit shall automatically become revoked and void and any further sales of the licensed beverage after that time shall be illegal and in violation of the City Beer Ordinance.

8-226. Permits not transferable - cessation of business - relocation - name change - change of ownership.

- a. Except as set forth in subsection (b) below, a permittee must return a permit to sell beer to the City Recorder within fifteen (15) days of termination of the business, change in ownership, relocation of the business, or change of the business name. The provisions of this section regarding change in ownership shall not apply to a permittee that is a publicly held company. If the permittee is an entity other than a publicly held company, a change in ownership shall occur, for purposes of this chapter, when control of at least a fifty percent (50%) interest, whether it be stock or otherwise, in the entity is transferred to a new owner. Notwithstanding the failure to return a beer permit, as provided herein, a permit shall expire on the date of termination of business, change of ownership, relocation of the business, or change of the business name.
- b. In the event that there is a change of ownership, as defined above, the new owner shall be allowed to make beer sales under the permit of the prior owner until the next scheduled Beer Board meeting, provided that the new owner has filed with the Beer Board a completed application for a permit and the prior permittee has not surrendered its permit and states in writing to the City Recorder that the new owner

shall be allowed to operate under the prior permit until the Beer Board acts on the new owner's application. Immediately upon the Beer Board's acting on the new owner's application, the prior permit shall terminate and the prior permittee shall immediately surrender that permit to the City Recorder. Should the prior permittee fail to immediately surrender the permit to the City Recorder, the prior permittee shall not be eligible to apply for a beer permit within the City for a period of six (6) months thereafter. Any violation of any part or provision of this chapter by the new owner/applicant while the application is pending shall automatically result in the application being denied and the applicant shall not be eligible to apply for a beer permit within the City for a period of six (6) months thereafter. (Ord. #2009-004, March 2009)

- c. In the event that there is a change of the business name, the owner shall be allowed to make beer sales under the existing permit until the next scheduled Beer Board meeting, provided that owner has filed with the Beer Board a completed application for a new permit. Any violation of any part or provision of the City's beer ordinance by the owner/applicant during the period the application is pending shall automatically result in the application being denied and the applicant shall not be eligible to apply for a beer permit within the City for a period of six (6) months thereafter. (Ord. #2009-004, March 2009)

8-227. Permit forfeited if permittee is convicted of certain offenses.

Any permittee who, after obtaining a permit, is convicted by any court of competent jurisdiction of violating any of the laws regarding possession, sale, manufacture, and/or transportation of intoxicating liquor or other alcoholic beverages, or of any crime involving moral turpitude, shall immediately upon conviction forfeit the permit without further action by the Beer Board. (1996 Code, § 8-209)

8-228. Suspension or Revocation.

The Beer Board is vested with the full and complete power and authority to suspend, cancel, or revoke permits to sell beer upon the following grounds:

- (1) Any violation of the provisions of this chapter.
- (2) Any violation of any law of the State of Tennessee, now in existence or hereinafter adopted, regulating the sale, manufacture or distribution of beer.
- (3) Any violation of the provisions of title 57, chapter 4, Tennessee Code Annotated, regarding the consumption of alcoholic beverages on premises, to the extent permitted by the provisions of said title 57. (1996 Code, § 8-214)

8-229. Procedure.

- (1) When the Beer Board has reason to believe that any permittee has violated any of the provisions of this chapter or any provision of state law regarding regulating the sale, manufacture or distribution of beer, the Board is authorized in its discretion to notify the permittee of the violation in writing and to give notice that the permittee must appear and show cause why the permit should not be suspended or revoked for the alleged violations. The notice to appear and show cause shall state the nature of the violation and shall be served upon the permittee either by certified mail or by a member of the City Police Department. The notice shall be served on or mailed to the permittee at least ten (10) days before the date scheduled for the hearing. The Beer

Board shall, at the public hearing, allow evidence to be presented on behalf of the holder of the permit and thereafter, in its discretion, either dismiss the charges or complaint, or suspend or revoke the permit. The action of the Beer Board shall, in all such hearings, be final, subject only to review by a court of competent jurisdiction as provided by state law. When a permit is revoked, no new permit for the sale of beer shall be issued hereunder to the permittee, or to any person or entity having any ownership interest in the permittee, until the expiration of one (1) year from the date the revocation becomes final. If any permittee has its beer permit revoked for a second time for the violation of the provisions of this chapter or state law, then that permittee shall not be eligible to apply for a new permit for a period of three (3) years from the date the revocation becomes final. If any permittee has its beer permit revoked for a third violation of the provisions of this chapter or the provisions of state law, then that permittee shall not thereafter be granted a permit to sell beer within the corporate limits of the City.

(2) If the State Alcoholic Beverage Commission suspends or revokes a license to sell alcoholic beverages on the premises at any establishment for any violation or violations as provided in title 57, chapter 4, Tennessee Code Annotated, and the Commission notifies the Beer Board by certified mail, return receipt requested, of the action taken by the Commission, and includes with such notice the record of evidence and the determination made by the Commission in suspending or revoking the license of the establishment, then upon receipt of such notice, the Beer Board may temporarily suspend the beer permit of the establishment and shall:

(a) Schedule a hearing for the next regularly scheduled meeting of the Beer Board to be held at least fourteen (14) days following the date the Beer Board receives the certified letter to provide an opportunity for the permit holder to appear and show cause why the permit to sell beer on the premises should not be suspended or revoked for a violation or violations as provided in title 57, chapter 4, based on actions taken by the Commission; and

(b) Notify the individual or business entity, which is listed as the permit holder at the same location where the alcoholic beverage license had been suspended or revoked, of the date and time of the hearing.

(3) If the Beer Board finds at a hearing that a sufficient violation or violations have occurred as provided in title 57, chapter 4, at such location, then the Beer Board may suspend or revoke the permit to the same extent and at least for the same period of time as the Commission has suspended or revoked the license of the establishment.

(4) If the permit holder fails to appear or decides to surrender the permit to the Beer Board in lieu of appearing at the hearing, the permit may be suspended or revoked by the Beer Board; provided, that if the permit is suspended or revoked, no permit to sell beer on the premises shall be issued by the Beer Board to any person for the location where the Commission had suspended or revoked the license for the period of time included in the decision of the Commission.

(5) 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.

(6) The decision of the Beer Board is final, and any party aggrieved thereby may appeal the decision of the Beer Board in accordance with Tennessee Code Annotated § 57-5-108. (Ord. #2008-005, April 2008)

8-230. 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 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.

8-231. Loss of clerk's certification for sale to minor.

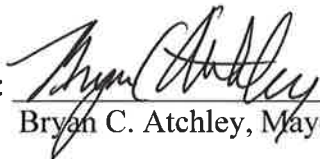
If the Beer Board determines that a clerk of an off-premises beer permit holder certified under Tennessee Code Annotated § 57-5-606 sold beer to a minor, the Beer Board shall report the name of the clerk to the alcoholic beverage commission within fifteen (15) days of determination of the sale. The certification 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.

8-232. Severability.

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be

deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

This ordinance shall take effect five (5) days from and after its final passage, the public welfare requiring it.

APPROVED: 
Bryan C. Atchley, Mayor

ATTEST:


Lynn K. McClurg, City Recorder

Passed on 1st reading: 03/09/15

Passed on 2nd reading: 04/06/15

Passed on 3rd reading: 04/20/15