

## 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.
- 8-103. Privilege tax on retail sale of alcoholic beverages for consumption on the premises.
- 8-104. Annual privilege tax to be paid to the city clerk, representing the City of McKenzie and any fees or taxes
- 8-105. Concurrent sales of liquor by the drink and beer.
- 8-106. Advertisement of alcoholic beverages.

**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 contains an alcoholic content of eight percent (8%) by weight, or less. (1995 Code, § 8-101, as replaced by Ord. #506, June 2019 *Ch1\_02-11-21*)

**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 the said code when such sales are conducted within the corporate limits of McKenzie, Tennessee. It is the intent of the Board of Mayor and Councilmen that the said Tennessee Code Annotated, title 57, chapter 4, inclusive, shall be effective in McKenzie, Tennessee, the same as if said sections were copied herein verbatim. (as added by Ord. #506, June 2019 *Ch1\_02-11-21*)

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<sup>1</sup>State law reference

Tennessee Code Annotated, title 57.

**8-103. Privilege tax on retail sale of alcoholic beverages for consumption on the premises.** Pursuant to the authority contained in Tennessee Code Annotated, 57-4-301, 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 McKenzie General Fund to be paid annually as provided in this chapter) upon any person, firm corporation, joint stock company, syndicate, or association engaging in the business of selling at retail in the City of McKenzie on alcoholic beverages for consumption on the premises where sold. (as added by Ord. #506, June 2019 *Ch1\_02-11-21*)

**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 McKenzie 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 an 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. Other than this privilege tax, no other fees or taxes can be levied on such businesses. A gross receipts tax is levied by the State of Tennessee on all alcoholic beverages sold for consumption on the premises. This fee is collected by the State Department of Revenue on a monthly basis and is distributed as follows:

- (1) Fifty percent (50%) for education and
- (2) Fifty percent (50%) to the local municipal jurisdiction.

The local amount is further allocated with fifty percent (50%) to education and fifty percent (50%) to the city's general fund. The ABC takes their applications, performs background checks and issues licenses. The city's beer board will not regulate the provisions and requirements of the license. (as added by Ord. #506, June 2019 *Ch1\_02-11-21*)

**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 McKenzie, pursuant to Tennessee Code Annotated, title 57, chapter 4, shall, notwithstanding the provisions of § 8-212(3) of the ordinances of the City of McKenzie, qualify to receive a beer permit from the city. (as added by Ord. #506, June 2019 *Ch1\_02-11-21*)

**8-106. Advertisement of alcoholic beverages.** All advertisements 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. #506, June 2019 *Ch1\_02-11-21*)

## CHAPTER 2

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

#### SECTION

- 8-201. Beer board established.
- 8-202. Meetings of the beer board.
- 8-203. Record of beer board proceedings to be kept.
- 8-204. Requirements for beer board quorum and action.
- 8-205. Powers and duties of the beer board.
- 8-206. "Beer" defined.
- 8-207. Permit required for engaging in beer business.
- 8-208. Privilege tax.
- 8-209. Beer permits shall be restrictive.
- 8-210. Limitation on number of permits.
- 8-211. Interference with public health and safety prohibited.
- 8-212. Issuance of permits to persons convicted of certain crimes prohibited.
- 8-213. Prohibited conduct or activities by beer permit holders, employees and  
                    persons engaged in the sale of beer.
- 8-214. Revocation or suspension of beer permits.
- 8-215. Compliance with Responsible Vendor Act.
- 8-216. Civil penalty in lieu of revocation or suspension.
- 8-217. Loss of clerk's certification for sale to minor.
- 8-218. Violations.
- 8-219. Posting of beer permit required.
- 8-220. Advertising signs restricted.
- 8-221. Open containers in public prohibited.
- 8-222. Improper disposal of containers prohibited.

**8-201. Beer board established.** There is hereby established a beer board to be composed of all the members of the governing body. A chairman shall be elected annually by the board from among its members. All members of the beer board shall serve without compensation. (Ord. #420, Aug. 2007)

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<sup>1</sup>Municipal code references

Minors in beer places, etc.: title 11, chapter 1.

Tax provisions: title 5.

State law reference

For a leading case on a municipality's authority to regulate beer, see Watkins v. Naifah, 635 S.W. 2nd 104 (Tenn. 1982).

**8-202. Meetings of the beer board.** All meetings of the beer board shall be open to the public. When there is business to come before the beer board, a special meeting may be called by the chairman provided he gives a reasonable notice thereof to each member. The board may adjourn a meeting at any time to another time and place. (Ord. #420, Aug. 2007)

**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. (Ord. #420, Aug. 2007)

**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. (Ord. #420, Aug. 2007)

**8-205. Powers and duties of the beer board.**<sup>1</sup> The beer board shall have the power and it is hereby directed to regulate the selling, storing for sale, distributing for sale, and manufacturing of beer within this municipality in accordance with the provisions of this chapter. (Ord. #420, Aug. 2007)

**8-206. "Beer" defined.** The term "beer" as used in this chapter shall be the same definition appearing in Tennessee Code Annotated, § 57-5-101. (Ord. #420, Aug. 2007, as replaced by Ord. #507, March 2017 *Ch1\_02-11-21*)

**8-207. Permit required for engaging in beer business.**<sup>2</sup> It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the beer board. The application shall be made on such form as the board shall prescribe and/or furnish, and pursuant to Tennessee Code Annotated, § 57-5-104(a), shall be accompanied by a non-refundable application fee of two hundred and fifty dollars (\$250.00). Said fee shall be in the form of a cashier's check payable to the

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<sup>1</sup>State law reference

Tennessee Code Annotated, § 57-5-106.

<sup>2</sup>State law reference

Tennessee Code Annotated, § 57-5-103.

City of McKenzie. Each applicant must certify that he has read and is familiar with the provisions of this chapter. (Ord. #420, Aug. 2007)

**8-208. Privilege tax.**<sup>1</sup> There is hereby imposed on the business of selling, distributing, storing or manufacturing beer a privilege tax of one hundred dollars (\$100.00). Any person, firm, corporation, joint stock company, syndicate or association engaged in the sale, distribution, storage or manufacture of beer shall remit the tax each successive January 1 to the City of McKenzie, 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. (Ord. #420, Aug. 2007)

**8-209. Beer permits shall be restrictive.** All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, distributing, and manufacturing. Beer permits for retail sale of beer may be further restricted by the beer board so as to authorize sales only for off premises consumption. A single permit may be issued for on premise and off premise consumption. It shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by his permit. It shall likewise be unlawful for him not to comply with any and all express restrictions or conditions which may be written into his permit by the beer board. Beer permits are not transferable. (Ord. #420, Aug. 2007)

**8-210. Limitation on number of permits.** The number of licenses for the sale of beer shall not be limited. Provided that all requirements of this chapter are complied with, all existing permits for the sale of beer within the corporate limits of the city at the date of the adoption of this code shall continue to be renewed. A new permit may be issued to a qualified purchaser of an existing establishment in which a permit is now held for the sale of beer, and the permit used only within the establishment or building purchased. (Ord. #420, Aug. 2007)

**8-211. Interference with public health and safety prohibited.** No permit authorizing the sale of beer will be issued when such business would cause congestion of traffic or would interfere with schools or churches or would otherwise interfere with the public health and safety. In no event will a permit be issued authorizing the manufacture or storage of beer, or the sale of beer within two hundred feet (200') of any school or church. The distances shall be

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<sup>1</sup>State law reference

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

measured in a straight line from the nearest point on the property line upon which sits the building from which the beer will be manufactured, stored or sold to the nearest point on the property line of the school or church. No permit shall be suspended, revoked or denied on the basis of proximity of the establishment to a school or church if a valid permit had been issued to any business on that same location as of January 1, 1993, unless beer is not sold, distributed or manufactured at that location during any continuous six (6) month period after January 1, 1993.

The provisions of § 8-211 prohibiting the issuance of a permit authorizing the manufacture or storage of beer, or the sale of beer within two hundred feet (200') of any school or church shall not apply to locations within the present boundaries of the Central Business District or the Highway Business District as defined on the City of McKenzie zoning map. (Ord. #420, Aug. 2007, as replaced by Ord. #467, May 2013 *Ch1\_02-11-21*, and Ord. #526, Dec. 2018 *Ch1\_02-11-21*)

**8-212. 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 beer or other alcoholic beverage or any crime within the past ten (10) years. No person, firm, corporation, joint-stock company, syndicate, or association having at least a five percent (5%) ownership interest in the applicant shall have been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime within the past ten (10) years. (Ord. #420, Aug. 2007)

**8-213. Prohibited conduct or activities by beer permit holders, employees and persons engaged in the sale of beer.** It shall be unlawful for any beer permit holder, employee or person engaged in the sale of beer to:

- (1) Employ any person convicted for the possession, sale, manufacture, or transportation of intoxicating liquor within the past ten (10) years.
- (2) Employ any person less than eighteen (18) years of age in the sale, serving, storage, distribution or manufacture of beer.
- (3) 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 between the hours of 12:00 midnight and 12:00 noon on Sunday; or at any time prohibited by state law.
- (4) Make or allow any sale of beer to a person less than twenty-one (21) years of age.
- (5) Make or allow any sale of beer to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person.
- (6) Allow drunken persons to loiter about his premises. (Ord. #420, Aug. 2007, as amended by Ord. #487, March 2015 *Ch1\_02-11-21*, Ord. #492, July 2015 *Ch1\_02-11-21*, and Ord. #512, Aug. 2017 *Ch1\_02-11-21*)

**8-214. Revocation or suspension of beer permits.**<sup>1</sup> The beer board shall have the power to revoke or suspend any beer permit issued under the provisions of this chapter when the holder thereof is guilty of making a false statement or misrepresentation in his application or of violating any of the provisions of this chapter. However, no beer permit shall be revoked or suspended until a public hearing is held by the board after reasonable notice to all the known parties in interest. Revocation or suspension proceedings may be initiated by the police chief or by any member of the beer board. (Ord. #420, Aug. 2007)

**8-215. Compliance with Responsible Vendor Act.** 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-premise 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. (Ord. #420, Aug. 2007)

**8-216. Civil penalty in lieu of revocation or suspension.**

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

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

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<sup>1</sup>State law reference

Tennessee Code Annotated, § 57-5-108(a)(1).



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 beer sales to minors or 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 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. (Ord. #420, Aug. 2007)

**8-217. Loss of clerk's certification for sale to minor.** If the beer board determines that a clerk of an off-premise 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 invalidated and the clerk may not reapply for a new certification for a period of one (1) year from the date of the beer board's determination. (Ord. #420, Aug. 2007)

**8-218. Violations.** Except as provided in § 8-217, any violation of this chapter shall constitute a civil offense and shall, upon conviction, be punishable by a penalty under the general penalty clause of this code. Each day a violation shall be allowed to continue shall constitute a separate offense. (Ord. #420, Aug. 2007)

**8-219. Posting of beer permit required.** The permit required by this chapter shall be posted in a conspicuous place on the premises of the permit holder. There shall be two (2) classes of permits issued by the beer board:

(1) **Class A. Off site permit.** This permit will be issued to any applicant engaged in the sale of alcoholic beverages where they are not to be consumed by the purchaser upon or near the premises of such seller. No permit will be issued to an establishment for drive through beer sales. All sales must be inside sales only.

(2) **Class B. On site permit.** This permit will be issued to any restaurant engaged in the sale of alcoholic beverages where they are consumed by the purchaser upon the premises of such seller. The following restrictions apply:

- (a) Restaurants selling alcoholic beverages must be able to seat seventy-five (75) patrons;
- (b) No containers of beer may leave the premises and signs posted stating this fact shall be posted at each exit;
- (c) No drive through sales of beer; and
- (d) Beer must be sold with meals only. (Ord. #420, Aug. 2007)

**8-220. Advertising signs restricted.** No person authorized to sell beer or other beverages of like alcoholic content at retail may erect or maintain any outside signs, advertising or displays located upon or attached to such buildings or premises for the purpose of advertising beer, or beverages of like alcoholic content; provided, however, that each retail permittee is hereby allowed and permitted to erect and maintain one neon sign inside one (1) window of such building or premises; the maximum size of such sign to be thirty six inches (36") by eight inches (8").

It shall be unlawful for any person, firm, or corporation to place or maintain any outdoor advertisement of beer or any other alcoholic beverages upon any sign, billboard, post, building or other place with the corporate limits of the City of McKenzie. (Ord. #420, Aug. 2007)

**8-221. Open containers in public prohibited.** It shall be declared unlawful and a misdemeanor for any person to possess an open container of alcoholic beverage in an automobile or in any other conveyance upon the streets and alleys of the City of McKenzie. (Ord. #420, Aug. 2007)

**8-222. Improper disposal of containers prohibited.** It shall be unlawful for any person to place or abandon, upon the public streets, parks or ways within the City of McKenzie, or upon private properties any carton, can, bottle, cup or other container used for dispensing beverages regulated hereby. (Ord. #420, Aug. 2007)