

**TITLE 8**

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

**CHAPTER**

1. INTOXICATING LIQUORS.
2. BEER.

**CHAPTER 1**

**INTOXICATING LIQUORS**

**SECTION**

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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 contains an alcoholic content of five percent (5%) by weight, or less. (as replaced by Ord. #778, Nov. 2004)

**8-102. Consumption of alcoholic beverages on premises.** Tennessee Code Annotated, title 57, chapter 4, inclusive, is hereby adopted by reference 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 East Ridge, Tennessee. It is the intent of the city council that the said Tennessee Code Annotated, title 57, chapter 4, inclusive, shall be effective in East Ridge, Tennessee, the same as if said code sections were copied herein verbatim. (as added by Ord. #778, Nov. 2004)

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<sup>1</sup>Municipal code reference

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

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 East Ridge 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 East Ridge on alcoholic beverages for consumption on the premises where sold. (as added by Ord. #778, Nov. 2004)

**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 East Ridge 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. #778, Nov. 2004)

**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 East Ridge, pursuant to Tennessee Code Annotated, title 57, chapter 4, shall notwithstanding the provisions of § 8-212(3) of the ordinances of the City of East Ridge, qualify to receive a beer permit from the city. (as added by Ord. #778, Nov. 2004)

**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. #778, Nov. 2004)

**8-107. Penalty for late payment of liquor by the drink privilege tax.** A five percent (5%) monthly penalty is established for non-payment or late payment of the liquor by the drink privilege tax. (as added by Ord. #1022, Nov. 2016)

## CHAPTER 2

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

#### SECTION

- 8-201. Beer board.
- 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. Classes of consumption permits.
- 8-211. Limitation on number of permits.
- 8-212. Interference with public health, safety, and morals prohibited.
- 8-213. Issuance of permits to persons convicted of certain crimes prohibited.
- 8-214. Prohibited conduct or activities by beer permit holders, employees and persons engaged in the sale of beer.
- 8-215. Revocation of beer permits.
- 8-216. Civil penalty in lieu of revocation or suspension.
- 8-217. Violations.
- 8-218. Loss of clerk's certification for sale to minor.
- 8-219. Temporary permits.

**8-201. Beer board.** There is hereby created and established a board to consist of five (5) residents of the city, to be appointed by the city council with each councilmember having one (1) appointment to said board. The initial members of the board shall have staggered terms with two (2) having terms expiring in November 1986, two (2) having a term expiring in November 1987 and one (1) having a term expiring in November of 1988. The board members shall draw lots to determine their terms at the first meeting of the newly appointed board. Thereafter, as their terms expire, new members of the boards shall be appointed for three (3) year terms. The mayor has the prerogative of naming the chairman of the beer board each November. The board shall select

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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. Naifeh, 635 S.W.2d 104 (Tenn. 1982).

its own secretary, and shall serve without pay except that any necessary expenses incurred in performing their duties, shall be paid by the city. (Ord. #555, Aug. 1993, as replaced by Ord. #858, March 2009)

**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 city hall at such times as it shall prescribe. When there is business to come before the beer board, a special meeting may be called by the chairman provided he gives a reasonable notice thereof to each member. The board may adjourn a meeting at any time to another time and place. The chief building official for the city shall submit to the beer board certification of all measurements and all maps for all pending applications at least one (1) week prior to any regular or special called meeting. (1993 Code, § 2-202, as amended by Ord. #555, Aug, 1993, modified, and replaced by Ord. #858, March 2009)

**8-203. Record of beer board proceedings to be kept.** The secretary of the beer board shall provide the 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. (as replaced by Ord. #858, Feb. 2009)

**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. Any member present but not voting shall be deemed to have cast a "nay" vote. (as replaced by Ord. #858, Feb. 2009)

**8-205. Powers and duties of the beer board.** 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. (as replaced by Ord. #858, Feb. 2009)

**8-206. "Beer" defined.** The term "beer" as used in this chapter shall mean and include all beers, ales, and other malt liquors having an alcoholic content of not more than five percent (5%) by weight. (Ord. #555, Aug. 1993, modified, as replaced by Ord. #858, Feb. 2009)

**8-207. 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 an annual 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 fifty dollars (\$250.00) for regular beer permits, an additional fifty dollars (\$50.00) for temporary beer permits issued under § 8-207(4) and three hundred dollars (\$300.00) for all temporary special events permits under § 8-219. All applications whether for regular beer permits or temporary permits shall be fully completed and submitted at least two (2) weeks prior to any regularly scheduled or special called meeting of the beer board. Said fee shall be in the form of a cashier's check payable to the City of East Ridge. Applicants must be persons of good moral character and must certify that they have read and are familiar with the provisions of this chapter.

(1) In order to receive a permit, an applicant must establish that:

(a) No beer will be sold except at places where such sale will not cause congestion of traffic or interference with schools, churches, or other places of public gathering, or otherwise interfere with public health, safety and morals;

(b) No sale shall be made to minors;

(c) No person, firm, corporation, joint-stock company, syndicate, or association having at least five percent (5%) ownership interest in the business of 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 the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance, or any crime involving moral turpitude within the past ten (10) years;

(d) No person employed by the applicant in such distribution or sale has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance that is listed in Schedules I through V in title 39, chapter 17, part 4, or any crime involving moral turpitude within the past ten (10) years; and

(e) No sale shall be made for on-premise consumption unless the application so states.

(2) An applicant shall disclose and/or include the following information in the application:

(a) Name of the applicant;

(b) Name of applicant's business;

(c) Location of business by street address or other geographical description to permit an accurate determination of conformity with the requirements of this section;

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

(e) Identity and address of a representative to receive annual tax notices and any other communication from the city and/or county legislative body or its committee;

(f) That no person, firm, joint-stock company, syndicate, or association having at least a five percent (5%) ownership interest in the business of the applicant nor any person to be employed in the distribution or sale of beer has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years;

(g) Whether or not the applicant is seeking a permit which would allow the sale of either for on-premises consumption or for off-premises consumption, or both of the foregoing. If a holder of a beer permit for either off-premises consumption or on-premises consumption desires to change the permit holder's method of sale, the permit holder shall apply to the beer board for a new permit;

(h) An affidavit signed by the applicant acknowledging receipt of a copy of all applicable ordinances and providing a scaled drawing of the property for which the permit is requested; and

(i) Such other relevant information as may be required by the beer board. An applicant or permit holder shall be required to amend or supplement its application promptly if a change in circumstances affects the responses provided in its application.

(3) Any applicant making a false statement in the application shall forfeit such applicant's permit and shall not be eligible to receive any permit for a period of ten (10) years.

(4) Temporary beer licenses or permits not to exceed thirty (30) days' duration may be issued at the request of the applicant upon the same conditions governing permanent permits. Such a temporary license or permit shall only be issued if based upon the application the applicant compiles with the conditions of this chapter and code as determined by the chairman of the beer board. In no event shall the issuance of a temporary permit be construed to grant unto any applicant the right or expectation that the beer board is obligated or otherwise bound to grant a permanent permit. (as replaced by Ord. #806, Dec. 2005, and Ord. #858, Feb. 2009)

**8-208. 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). 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, to the City of East Ridge,

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. #555, Aug. 1993, modified, as replaced by Ord. #858, Feb. 2009)

**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. (as replaced by Ord. #858, Feb. 2009)

**8-210. Classes of consumption permits.** Permits issued by the beer board shall consist of three (3) classes:

(1) Class 1 On-Premises Permit. A Class 1 On-Premises Permit shall be issued for the consumption of beer only on the premises. To qualify for a Class 1 On-Premises Permit, an establishment must, in addition to meeting the other regulations and restrictions in this chapter:

- (a) Be primarily a restaurant or an eating place; and
- (b) Be able to seat a minimum of thirty (30) people, including children, in booths and at tables, in addition to any other seating it may have; and
- (c) Have all seating in the interior of the building under a permanent roof; and

In addition, the monthly beer sales of any establishment which holds a Class 1 On-Premises Permit shall not exceed fifty percent (50%) of the gross sales of the establishment. Any such establishment which for two (2) consecutive months or for any three (3) months in any calendar year has beer sales exceeding fifty percent (50%) of its gross sales, shall have its beer permit revoked. Beginning July 1, 2009, all holders of a Class 1 Beer Permit shall report its monthly beer sales, including the percentage of beer sales to its gross sales to the city not later than the fifteenth (15th) of the month next following on such forms as shall from time to time be required by the city to assure that the Class 1 permit holder is in compliance with this section. The city will keep these forms in the permit holder's individual business tax file so that the confidentiality required by Tennessee Code Annotated, § 67-4-722 may be maintained. If the monthly sales for any Class 1 Beer Permit holder exceeds fifty percent (50%) of the monthly gross sales of the permit holder for either three (3) consecutive months during one (1) calendar year or for any four (4)

months in one (1) calendar year, the Class 1 Beer Permit of such permit holder may be suspended or revoked by the beer board. In the alternative, and in lieu of suspension or revocation of the permit, the beer board has the discretion to impose a civil penalty in lieu of suspension in accordance with the terms of § 8-216 herein. Any such permit holder that fails to provide such reports timely for two (2) consecutive or more months in any calendar year shall have its beer permit revoked.

(2) Class 2 On-Premises Permit. Other establishments making application for a permit to sell beer for consumption on the premises, which do not qualify, or do not wish to apply for, a Class 1 On-Premises Permit, but which otherwise meet all other regulations and restrictions in this chapter, shall apply for a Class 2 On-Premises Permit.

(3) Class 3 Off-Premises Permit. An off-premises permit shall be issued for the consumption of beer only off the premises. To qualify for an Off-Premises permit, an establishment must, in addition to meeting the other regulations in this chapter:

- (a) Be a grocery store or a convenience type market; and
- (b) In either case, be primarily engaged in the sale of grocery and personal and home care and cleaning articles, but may also sell gasoline. (as replaced by Ord. #858, Feb. 2009)

**8-211. Limitation on number of permits.** The number of Class 2 licenses for the sale of beer shall be limited to eight (8). 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 passage of the ordinance comprising this chapter 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. (as replaced by Ord. #858, Feb. 2009)

**8-212. Interference with public health, safety, and morals prohibited.** No permit authorizing the sale of beer will be issued when such business would cause congestion of traffic or would interfere with the public health, safety, and morals. In no event will a permit be issued authorizing the manufacture or storage of beer, or the sale of beer within two hundred fifty feet (250') of any school, church or other place of public gathering. The East Ridge City Council may, on a case by case basis, grant variances to the distance requirements set forth in this section for off-premises sales only. The distances shall be measured in a straight line<sup>1</sup> from the nearest point on a building on the

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<sup>1</sup>State law reference

See Watkins v. Naifeh, 635 S.W. 2d 104 (Tenn. 1982) and other cases cited therein which establish the straight line method of measurement.



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, church or other place of public gathering. No permit shall be suspended, revoked or denied on the basis of proximity of the establishment to a school, church, or other place of public gathering if a valid permit has 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. (as replaced by Ord. #858, Feb. 2009, Ord. #905, Oct. 2011, and Ord. #1000, Dec. 2015)

**8-213. 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. 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 involving moral turpitude within the past ten (10) years. (as amended by Ord. #823, June 2007, and replaced by Ord. #858, Feb. 2009)

**8-214. 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) [Deleted.]
- (2) Employ any minor under eighteen (18) years of age in the sale, storage, distribution or manufacture of beer.
- (3) Make or allow any sale of beer between the hours of 3:00 A.M. and 8:00 A.M. during any night of the week; or between the hours of 3:00 A.M. and 12:00 noon on Sundays.
- (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 pool or billiard playing in the same room where beer is sold and/or consumed.

(10) Allow the sale of beer in any establishment where adult entertainment occurs or adult materials, novelty or other adult items are sold or stored.

(11) Fail to provide and maintain separate sanitary toilet facilities for men and women. (Ord. #555, Aug. 1993, modified, as replaced by Ord. #858, Feb. 2009)

**8-215. Revocation of beer permits.** The beer board shall have the power to revoke 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 until a public hearing is held by the board after reasonable notice to all the known parties in interest. Revocation proceedings may be initiated by the police chief or by any member of the beer board.

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. 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-month period. The revocation shall be for three (3) years.

The city manager in the case of an emergency shall have the power to revoke or suspend any beer permit issued under the provisions of this chapter or issue a fine for any violations under this chapter such revocation suspension or fine only until the next beer board meeting. (Ord. #555, Aug. 1993, as amended by Ord. #586, Feb. 1995, modified, amended by Ord. #823, June 2007, and replaced by Ord. #858, Feb. 2009)

**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-premises consumption and has received certification by the Tennessee Alcoholic Beverage Commission under the "Tennessee Responsible Vendor Act of 2006," Tennessee Code Annotated, § 57-5-601, et seq.

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

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

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

Payment of the civil penalty in lieu of revocation or suspension by a permit holder shall be an admission by the holder of the violation so charged and shall be paid to the exclusion of any other penalty that the city may impose. (as replaced by Ord. #823, June 2007, and Ord. #858, Feb. 2009)

**8-217. Violations.** Each sale of beer to a minor shall constitute a separate offense. Except as provided in § 8-216, 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. (as replaced by Ord. #858, Feb. 2009)

**8-218. 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. (as added by Ord. #823, June 2007, and replaced by Ord. #858, Feb. 2009)

**8-219. Temporary special events permits.** The city manager or the city manager's designee shall have the authority, where in the city manager's opinion the beer board is not able to act in a timely manner, to issue a one-time temporary permit for sale of beer in the City of East Ridge for a period not to exceed three (3) days from the date issued for non-city sponsored group activities providing that such permit shall not be for any activity on city owned or controlled property. (as added by Ord. #858, Feb. 2009, and amended by Ord. #860, Aug. 2009)