

TITLE 8
ALCOHOLIC BEVERAGES

CHAPTER 2
BEER

SECTION

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8-213. Beer permits shall be restrictive. (1) All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, distributing, and manufacturing. Beer permits for the retail sale of beer may be further restricted by the beer board so as to authorize sales only for off-premises 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 such holder's permit. It shall likewise be unlawful for any such beer permit holder not to comply with any and all express restrictions or conditions which may be written into such holder's permit by the beer board.

(2) Any person or entity holding a permit for both on-premises consumption and off-premises consumption, as well as any person or entity holding a permit effective for more than one restaurant or business within the same building, shall be notified of the change in the ordinance by the town clerk within ten (10) days after the effective date of the ordinance comprising this section and affected permittees must obtain new permits in accordance with the revised beer ordinance within one hundred twenty (120) days. (Ord. #03-03, Feb. 2003, modified)

(3) Special event permits.

(a) The beer board is authorized to issue special event permits to bona fide charitable, nonprofit or political organizations for special events.

(b) The special event permit shall not be issued for longer than one 48-hour period unless otherwise specified, subject to the limitations on the hours of sale imposed by law. The application for the special event permit shall state whether the applicant is a charitable, nonprofit or political organization, include documents showing evidence of the type of organization, and state the location of the premises upon which alcoholic beverages shall be served and the purpose for the request of the license.

(c) For purposes of this section:

(1) Bona fide charitable or nonprofit organization means any corporation which has been recognized as exempt from federal taxes under section 501(c) of the Internal Revenue Code.

(2) Bona fide political organization means any political campaign committee as defined in T.C.A. § 2-10-101(a) or any political party as defined in T.C.A. § 2-13-101.

(d) No charitable, nonprofit or political organization possessing a special event permit shall purchase, for sale or distribution, beer from any source other than a licensee as provided pursuant to state law.

(e) Failure of the special event permittee to abide by the conditions of the permit and all laws of the State of Tennessee and the Town of Smyrna will result in a denial of a special event beer permit for the sale of beer for a period of one year.

(4) Retailer special events permit.

(a) A retailer's special events permit shall be issued to any person engaged in the sale of beer for consumption by the purchaser upon the premises of the seller for a specified period of time, and in conjunction with certain types of activities, including but not limited to festivals, fairs, and similar public or private social events.

(b) No retailer special event permit may be issued under the provisions of ordinance codified in this section which does not comply with the minimum distances and other requirements as otherwise required. (Ord. No. 15-08, June, 2015)

8-214. Permits for certain premises prohibited. (1) No permit shall be issued to sell beer or other beverage coming within the provisions of this chapter in violation of any provision of state law, or where such sale will cause congestion of traffic or will interfere with schools, churches, or other places of public gathering, or will otherwise interfere with the public health, safety, or morals. In no event will an off-premises permit be issued authorizing the manufacture, storage or sale of beer within two hundred and fifty (250) feet of any school, church, funeral home, hospital, licensed day care facility, or other place of public gathering. In no event will an on-premises permit be issued authorizing the manufacture, storage or sale of beer within five hundred (500) feet of any school, church, funeral home, hospital, licensed day care facility, or other place of public gathering. For purposes of this section, distances shall be measured in a straight line from the closest point of the applicant's building to the closest point of the building of the school, church, funeral home, hospital, licensed day care facility, or other place of public gathering; provided, however, that if the applicant leases space in a shopping center or strip mall, the distance shall be measured in a straight line from the closest point of the nearest interior wall of the applicant's leased space to the closest point of the building of the school, church, funeral home, hospital, licensed day care facility, or other place of public gathering. The judgment of the beer board on such matters shall be

final except as same is subject to court review. (Amd. Ord.# 15- 20, October 2015)

(2) 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 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-month period after January 1, 1993.

(3) No permit shall be issued to sell any beverage coming within the provisions of this chapter for consumption on the premises where the primary or principal business carried on is the sale of groceries, drugs, candies, soda, fountain drinks, merchandise, or commodities, other than the serving of meals and lunches; provided, nothing in this section shall prevent sale or consumption in dining rooms and lunch rooms of stores where such rooms are separate and distinct from other departments.

(4) Notwithstanding anything herein to the contrary, the five hundred (500) foot minimum distance requirement contained in subsection (1) of this section shall not apply with respect to any school, church, funeral home, hospital, licensed day care facility, or other place of public gathering that is located in a shopping center or strip mall.

(5) Notwithstanding anything herein to the contrary, the five hundred (500) foot minimum distance requirement for on-premises permits contained in subsection (1) of this section shall not apply when the facility or permit applicant is located in the Historic District of the Town's Zoning Ordinance. Within the Historic District, in no event will an on-premises or an off-premises permit be issued authorizing the manufacture, storage or sale of beer within 100 feet of any school, church, funeral home, hospital, licensed day care facility, or other place of public gathering.

(6) Any permit holder possessing a valid permit to sell beer on the effective date of the ordinance comprising this chapter, may continue to possess such permit and after the effective date of this chapter notwithstanding the fact that such permit holder's location does not comply with the distance regulations set forth in this section, provided, that such permit remains in compliance with the other provisions of this chapter. In accordance with § 8-217 of this chapter, any such permit shall expire on termination of the business, change in ownership, relocation of the business or change of the business's name. Any new applicant for permit related to the same location must comply with the distance regulations set forth in this section. ((Amd. Ord.# 15- 20, October 2015; Amd. Ord. #12-15, Nov. 2012; Amd. Ord. #09-20, June 2009; Ord. #04-40, Nov. 2004, modified;)

8-215. Application for and issuance or refusal of permit. Before any permit is issued by the beer board, the applicant therefor shall file with the secretary a sworn application in writing establishing the following facts which

are hereby made conditions of any permit issued and any misstatement of fact shall be sufficient for cause for the revocation of such permit:

(1) The applicant shall be a citizen of the United States or a legal resident alien, or if a firm, syndicate, association or other business entity, the members thereof holding an interest greater than forty nine percent (49%) shall be citizens or legal resident aliens of the United States, and no applicant shall be less than twenty-one (21) years of age. The applicant shall designate the location of the premises where the business will be conducted and shall name the owner or owners (including members, shareholders, officers and/or managers) of the premises.

(2) No person shall be employed in the storage, sale, or manufacture of such beverage except citizens of the United States or legal resident aliens.

(3) The applicant shall not engage in the sale of such beverages except at the place or places for which the beer board has issued a permit or permits to said applicant.

(4) No sale of such beverage shall be made except in accordance with the following conditions:

(a) If the application is for a permit to sell for consumption on the premises, said applicant will make no sale except where meals or lunches are regularly served at tables or counters under a regular permit.

(b) If the application is for a permit to sell at hotels, sales for consumption on the premises will be made only at tables and to persons in guest rooms.

(c) If the application is for a permit in a club or lodge, such applicant must be a regularly incorporated club or lodge operating under a charter and bylaws in which the officers are elected by the regular membership. Members of said organization must pay a substantial membership or initiation fee. The purpose of organization and existence of said club shall be for purposes other than the sale of beverages covered by this chapter.

(d) If the application is for a permit to sell not for consumption on the premises, no sale will be made for consumption on the premises. Furthermore, no consumption shall be allowed on the premises. No such beverage will be kept for sale on said premises except in the original packages or containers.

(5) No sale shall be made to persons under twenty one (21) years of age.

(6) Neither the applicant, nor any person employed by him in the sale, storage, or distribution of beer, nor any person, firm, corporation, joint-stock company, syndicate, or association having at least five percent (5%) ownership interest in the applicant, (a) has been convicted of any violation of the laws against possession, sale, manufacture or transportation of beer or other alcoholic beverages; (b) any crime involving moral turpitude; (c) any conviction for a crime violating a drug or alcohol law or a crime involving physical violence,

within the last five (5) years; or (d) having more than one conviction for a crime violating a drug or alcohol law or a crime involving physical violence, within the last ten (10) years. If an applicant has a disqualifying criminal cause pending against him at the time of application for a beer permit, then the board may require that the applicant report to the town clerk within thirty (30) days of resolution of the pending criminal matter, the final outcome of the matter, which outcome or resolution may cause the applicant's beer permit to be placed on the beer board agenda for consideration of suspension or revocation in accordance with § 8-223. Failure to timely report in accordance with this provision shall be considered by the board in its deliberations.

(7) The applicant shall conduct the business in person for himself. If the applicant is acting as agent, the application shall state the person for whom the applicant intends to act.

(8) The applicant shall comply with the by-laws and rules of procedure of the Smyrna Beer Board.

The applicant shall not purchase beer except from manufacturers or distributors licensed to manufacture or distribute such beverage in this state. No manufacturer or distributor shall sell beer for resale except to those who have been licensed by the beer board.

The beer board shall consider each application filed and grant or refuse the permit according to its best judgment of the facts and circumstances. Revocation of a beer permit at one location shall not be the sole disqualifying factor in considering the issuance of beer permits at other locations. The action of the beer board in granting or refusing a permit shall be final except as same is subject to court review.

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. (Amd. Ord. #09-20, June 2009; Ord. #03-03, Feb. 2003, modified)

8-222. Prohibited conduct or activities by beer permit holders. It shall be unlawful for any beer permit holder to:

(1) Be convicted of any violation of the laws against possession, sale, manufacture or transportation of beer or other alcoholic beverages, any crime involving moral turpitude or any conviction for a crime violating a drug or alcohol law or a crime involving physical violence, within the last five (5) years; or having more than one conviction for a crime violating a drug or alcohol law or a crime involving physical violence, within the last ten (10) years. If a permit holder shall become convicted of an aforementioned crime, then he shall have the duty to report said conviction to the town clerk within ten (10) days of such conviction, which conviction may cause the permit holder's beer permit to be placed on the beer board agenda for consideration of suspension or revocation in accordance with § 8-223. Failure to timely report in accordance with this provision shall be considered by the board in its deliberations;

(2) Employ any person convicted of any violation of the laws against possession, sale, manufacture or transportation of beer or other alcoholic beverages, any crime involving moral turpitude, or any conviction for a crime violating a drug or alcohol law or a crime involving physical violence, within the last five (5) years; or having more than one conviction for a crime violating a drug or alcohol law or a crime involving physical violence, within the last ten (10) years. If a permit holder shall employ any person who becomes convicted of an aforementioned crime, then he shall have the duty to report said conviction to the town clerk within ten (10) days of such conviction, which conviction may cause the permit holder's beer permit to be placed on the beer board agenda for consideration of suspension or revocation in accordance with § 8-223. Failure to timely report in accordance with this provision shall be considered by the board in its deliberations.

(3) Employ any minor under eighteen (18) years of age in the sale, storage, distribution or manufacture of beer, except as permitted under state law;

(4) Make or allow any sale of beer to a person under twenty-one (21) years of age;

(5) Allow gambling or gambling devices of any kind or description on the premises (other than as authorized by state law);

(6) Allow any person under twenty-one (21) years of age to loiter in or about such permit holder's place of business.

(7) Make or allow any sale of beer to any intoxicated person.

(8) Allow any intoxicated, disorderly or disreputable person or any person previously convicted for violation of the laws relating to beer or other alcoholic beverages to loiter in or about such permit holder's place of business;

(9) Allow any beverages of alcoholic content greater than five (5) percent by weight to be brought into such permit holder's premises for consumption therein unless such permit holder also has a license to sell liquor by the drink;

(10) Distribute or sell beverages in bottles or other containers unless such containers shall bear a label or cap showing the name of the manufacturer thereof;

(11) Allow any loud, unusual or obnoxious noises to emanate from such permit holder's premises;

(12) Allow such permit holder's place of business to become a public nuisance or a nuisance to law enforcing agencies of the Town of Smyrna or Rutherford County, or create a nuisance or materially contribute to creating or maintaining a public nuisance;

(13) Operate a disorderly place of business or permit or allow fighting or boisterous or disorderly conduct on the premises;

(14) Allow or engage in any criminal activity on the premises; or

(15) Take any steps or measures to obstruct full, free and clear vision to and from the street and public highway to the interior of the store by way of

blocking or covering large windows in the front and to the extent practical to the sides of the building. There shall be no signage permitted on store glass windows or doors or hanging from any object which would cause any obstruction of vision into the store from more than three feet from walking level to the ceiling of the store. (Amd. Ord. #09-20, June 2009; Ord. #04-40, Nov. 2004, modified)

8-224. Sales to minors prohibited; employment of ex-convicts prohibited. A permit holder engaging in the business regulated hereunder or any employee thereof shall not make or permit to be made any sales to minors. Neither the person engaging in such business nor persons employed by that person shall be a person who has been convicted of any violation of the laws against possession, sale, manufacture and transportation of beer or any other alcoholic beverages or any crime involving moral turpitude or any conviction for a crime violating a drug or alcohol law or a crime involving physical violence, within the last five (5) years; or having more than one conviction for a crime violating a drug or alcohol law or a crime involving physical violence, within the last ten (10) years.] (Amd. Ord. #09-20, June 2009; Ord. #03-03, Feb. 2003, modified)

8-226. Penalties; violation. Except as provided in § 8-223, any violation of this chapter shall constitute a misdemeanor 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, and each sale which violates the provisions of this chapter, shall constitute a separate offense. (Amd. Ord. #09-20, June 2009; Ord. #03-03, Feb. 2003)