

**TITLE 8****ALCOHOLIC BEVERAGES****CHAPTER**

1. CONSUMPTION OF ALCOHOLIC BEVERAGES ON PREMISES.
2. BEER.

**CHAPTER 1****CONSUMPTION OF ALCOHOLIC BEVERAGES ON PREMISES<sup>1</sup>****SECTION**

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**8-101. Subject to certain statutes and regulations.** (1) The general provisions of state law relating to alcoholic beverages as contained in Tennessee Code Annotated, title 57, as it may be amended from time to time, and hereby adopted as part of this title and are fully incorporated in this title by reference.

(2) The various rules and regulations promulgated from time to time by the Tennessee Alcoholic Beverage Commission and Department of Revenue regarding the sale of alcoholic beverages are hereby adopted as a part of this title and are fully incorporated herein by reference.

(3) It shall be unlawful to engage in the business of selling, storing, transporting or distributing or to purchase or possess alcoholic beverages within the corporate limits of the Town of Smyrna, except as provided by Tennessee Code Annotated, title 57, and by rules and regulations promulgated thereunder, and as provided in this title.

(4) Title 57, chapter 4, inclusive, of the Tennessee Code Annotated, as it may be amended from time to time, is hereby adopted so as to be applicable to all sales of alcoholic beverages for on-premises consumption which are regulated by said code when such sales are conducted within the corporate

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<sup>1</sup>Municipal code references  
Alcohol: title 11, chapter 2.

limits of the Town of Smyrna. It is the intent of the town council that Tennessee Code Annotated, title 57, chapter 4, shall be effective in the Town of Smyrna, the same as if said code sections were copied herein verbatim. (Ord. #02-53, Jan. 2003, modified)

**8-102. Terms defined.** The definitions set forth in Tennessee Code Annotated, § 57-4-102, as the same may be amended from time to time, are incorporated herein as if copied verbatim in their entirety. (Ord. #02-53, Jan. 2003)

**8-103. Regulations and prohibited practices.** It shall be unlawful for any person, firm or corporation holding a license to sell alcoholic beverages for consumption on the premises to violate the rules, regulations, and prohibited practices set forth in Tennessee Code Annotated, §§ 57-4-201 through 204, as such sections may be amended from time to time, which code sections are incorporated herein as if copied verbatim in their entirety. (Ord. #02-53, Jan. 2003)

**8-104. Revocation of beer permit reported to ABC.** When any person, firm, or corporation holds both a license to sell alcoholic beverages for consumption on the premises and a beer permit, should the beer permit be revoked or suspended, the beer board is hereby directed to send a notice of the suspension or revocation to the Alcoholic Beverage Commission pursuant to Tennessee Code Annotated, § 57-4-202(b). In addition, when the beer board is considering the suspension of any such licensee's beer permit, consideration shall also be given to suspending the licensee's license for the sale of alcoholic beverages for consumption on the premises as provided in Tennessee Code Annotated, § 57-4-202. The beer board shall have the authority to suspend the license for the sale of alcoholic beverages for consumption on the premises of any such person, firm, or corporation as authorized by Tennessee Code Annotated, § 57-4-202 for the same period of time as such licensee's beer permit may be suspended. Should the beer board suspend the license for the sale of alcoholic beverages for consumption on the premises of any such licensee, the beer board is hereby directed to send a notice of the suspension of said license to the Alcoholic Beverage Commission. (Ord. #02-53, Jan. 2003)

**8-105. Prohibited sexual or pornographic conduct.**<sup>1</sup> Tennessee Code Annotated, § 57-4-204, as the same may be amended from time to time, is incorporated herein as if copied verbatim in its entirety. The Smyrna Police Department is hereby authorized and directed to conduct investigations into

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<sup>1</sup>Municipal code references

Adult oriented establishments: title 9, chapter 6.

alleged violations of said code section. The Smyrna Police Department shall report any such violations to the Alcoholic Beverage Commission as authorized by Tennessee Code Annotated, § 57-4-204(e). (Ord. #02-53, Jan. 2003)

**8-106. Privilege taxes.** (1) Privilege taxes for the sales of alcoholic beverages for consumption on premises shall be in accordance with Tennessee Code Annotated, title 57, chapter 4, and as restated in the fee schedule adopted with the annual budget.

(2) The foregoing taxes shall be payable on the date the license is issued by the Alcoholic Beverage Commission and the foregoing taxes shall be prorated from said date of issuance until the next following October 1, at which time a full year's taxes shall then be due and immediately payable.

(3) Should the licensee also hold a beer permit issued by the town, a failure to pay taxes under this section shall constitute grounds for suspension or revocation of the beer permit. (Ord. #02-53, Jan. 2003, modified)

**8-107. Sales to minors prohibited.** No holder of a license for the sale of alcoholic beverages for consumption on the premises or any other person shall sell, furnish, dispose of, or give any alcoholic beverage to any person under the minimum age provided by state law, Tennessee Code Annotated, § 57-4-203, as the same may be amended from time to time. No such licensee or any employee thereof shall sell, furnish, dispose of or give any beer or malt beverage to any person under the minimum age provided by state law, Tennessee Code Annotated, § 57-4-203, as the same may be amended from time to time. (Ord. #02-53, Jan. 2003)

**8-108. Prohibited acts by state law.** It shall be unlawful for any person to violate Tennessee Code Annotated, § 57-4-203, as the same may be amended from time to time, which is incorporated herein as if copied verbatim in its entirety. (Ord. #02-53, Jan. 2003)

**8-109. Violations; penalty.** Any violation of the provisions of this chapter shall constitute a misdemeanor and shall, upon conviction, be punishable by a penalty under the general penalty clause of this code. Upon conviction of any person under this chapter, the town court clerk shall immediately certify said conviction directly to the Tennessee Alcoholic Beverage Commission. Each day a violation is allowed to continue shall constitute a separate offense. (Ord. #02-53, Jan. 2003, modified)

## CHAPTER 2

### BEER

#### SECTION

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**8-201. Beer board established.** There is hereby established a Beer Board for the Town of Smyrna, Tennessee. (Ord. #03-03, Feb. 2003)

**8-202. Powers.** The beer board shall have the power to and is hereby directed to regulate the selling, storing for sale, distributing for sale and manufacturing of beer within the corporate limits of the Town of Smyrna in accordance with the provisions of this chapter. The beer board is authorized to make and establish reasonable bylaws, rules, and regulations as may be necessary for their own government and for the full and complete execution of their powers and duties. The beer board is hereby vested with all authority to issue, deny, revoke and suspend permits for the sale of beer, as provided by the

laws of the State of Tennessee and in accordance with the rules and procedures set forth in this chapter. The beer board shall operate in accordance with the provisions of this chapter in accordance with such other rules and procedures as may be promulgated by said board. (Ord. #03-03, Feb. 2003, modified)

**8-203. Members.** The beer board shall be composed of five (5) members who shall be residents of the Town of Smyrna and who shall be appointed by a majority vote of the town council. All members of the beer board shall serve without compensation. Members may not serve more than eight (8) consecutive years on the board. (Ord. #03-03, Feb. 2003)

**8-204. Terms.** The terms of the members of the beer board shall be staggered to provide for continuity and experience on the board. The terms of the board shall be four (4) years each. Members of the board may be removed by the town council for neglect of duty, conflict of interest, malfeasance in office, violation of the ethics ordinance, or other just cause, or for unexcused absence from more than three (3) consecutive meetings or more than five (5) non-consecutive meetings during the member's term of appointment. It is the duty of the Town of Smyrna staff representative to advise the town manager when removal is recommended or necessary based on the provisions herein. The decision of the town council will be final with no appeal. Board members who are unable to attend regular meetings are expected to tender their resignation. Any vacancy shall be filled by the town council for the remainder of the unexpired term. (Ord. #03-03, Feb. 2003, modified)

**8-205. Administration.** To facilitate its deliberations, the beer board shall be assisted by the town manager, and/or employees designated by the town manager. (Ord. #03-03, Feb. 2003, modified)

**8-206. Officers.** The beer board shall annually elect a chairman from among its membership to preside over its deliberations. Likewise, the beer board shall annually elect a vice-chairman from among its membership to preside over the beer board's deliberations in the absence of the chairman. The town manager, or another employee designated by the town manager, shall be the ex-officio secretary of the beer board. (Ord. #03-03, Feb. 2003, modified)

**8-207. Meetings.** The beer board shall hold regular meetings at such place and time 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 reasonable notice to all members. The beer board may adjourn a meeting at any time to another time and place. All meetings shall be open to the public. (Ord. #03-03, Feb. 2003)

**8-208. Record of proceedings to be kept.** The secretary 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 before the board; a copy of each motion or resolution presented; the vote of each member thereon; and the provisions of each beer permit issued by the board. (Ord. #03-03, Feb. 2003)

**8-209. Requirements for beer board quorum and action.** The attendance of at least a majority of the members of the 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. #03-03, Feb. 2003, modified)

**8-210. "Beer" defined.** The term "beer" as used in this chapter shall be defined in accordance with Tennessee Code Annotated, § 57-5-101 as beer, ale or other malt beverages, or any other beverages having an alcoholic content of not more than five percent (5%) by weight, except wine as defined in Tennessee Code Annotated, § 57-3-101(a)(20); provided, however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol. (Ord. #03-03, Feb. 2003, modified)

**8-211. Beer business lawful but subject to regulation.** It shall hereafter be lawful to transport, store, sell, distribute, possess, receive, and/or manufacture beer within the corporate limits of the Town of Smyrna, subject to all regulations, limitations, and restrictions provided by Tennessee Code Annotated, title 57, chapter 5, or other laws of the state and subject to the rules, regulations, limitations, and restrictions subsequently provided herein. (Ord. #03-03, Feb. 2003)

**8-212. Permit required for engaging in beer business.** It shall be unlawful for any person, firm, corporation, including a municipal corporation or any subdivision thereof, joint-stock company, syndicate or association 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 shall be accompanied by a non-refundable application fee as set forth in Tennessee Code Annotated, § 57-5-104(a). Said fee shall be in the form of a cashier's check payable to the Town of Smyrna. Each applicant must be a person of good moral character and he must certify that he has read and is familiar with the provisions of this chapter. (Ord. #03-03, Feb. 2003, modified)

**8-213. 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 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.

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)

**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 a permit be issued authorizing the manufacture, storage or sale of beer within three hundred (300) 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.

(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 three hundred (300) foot minimum distance requirement contained in subsection (a) 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) 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. (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, 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 or any 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. (Ord. #03-03, Feb. 2003, modified)

**8-216. Filing, investigation of, and action on applications.** Applications for permits shall be filed with the secretary, who shall make an investigation. The police department and the codes enforcement and inspection division shall assist in the investigation. Upon completion of said investigation, the secretary shall submit the application to the beer board at its next meeting. The beer board shall consider the application and shall endorse its action thereon. If approved, the secretary shall issue a permit. (Ord. #03-03, Feb. 2003)

**8-217. Permits not transferable.** (1) A permit shall be valid only for the owner to whom the permit is issued and cannot be transferred to another owner. If the owner is a corporation, a change of ownership will occur when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner. In addition, a permit shall be valid only for a business operating under the name identified in the permit application.

(2) Except as provided in § 8-213, a permit is valid only for a single location and cannot be transferred to another location. A permit shall be valid for all decks, patios, and other outdoor serving areas that are contiguous to the exterior of the building in which the business is located and that are operated by the business; provided, however, that if a deck or patio is added subsequent to the initial permitting process, it must comply with all applicable distance requirements in this code.

(3) A permit holder must return such holder's permit to the Town of Smyrna within fifteen (15) days of termination of the business, change in ownership, relocation of the business or change of the business's name; provided, that notwithstanding the failure to return a beer permit, a permit shall expire on termination of the business, change in ownership, relocation of the business or change of the business's name. (Ord. #03-03, Feb. 2003)

**8-218. Permits may be issued to hotels, clubs, and lodges.** A permit may be issued for the sale of any beverage coming within the provisions of this chapter in hotels, clubs, or lodges, subject to all the limitations and restrictions contained in Tennessee Code Annotated, title 57, chapter 5, and subject to the limitations and restrictions provided by this chapter. (Ord. #03-03, Feb. 2003)

**8-219. Permit to be posted.** The permit required by this chapter shall be posted in a conspicuous place on the premises by the permit holder, together with all other permits, licenses and stamps as required by law. (Ord. #03-03, Feb. 2003)

**8-220. Privilege tax.** There is hereby imposed on the business of selling, distributing, storing or manufacturing beer an annual privilege tax as set forth in Tennessee Code Annotated, § 57-5-104(b)(1). 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 of each year to the Town of Smyrna, 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. The Town of Smyrna shall mail written notice to each permit holder of the payment date of the annual tax at least thirty (30) days prior to January 1. Notice shall be mailed to the address specified by the permit holder on its permit application. If a permit holder does not pay the tax by January 31 or within thirty (30) days after the written notice of the tax is mailed, whichever is later, then the Town of Smyrna shall notify the permit holder by certified mail that the tax payment is past due. If a permit holder does not pay the tax within ten (10) days after receiving notice of its delinquency by certified mail, then the beer board may suspend or revoke the permit or impose a civil penalty pursuant to § 8-223. (Ord. #03-03, Feb. 2003, modified)

**8-221. Sales and consumption prohibited during certain hours.** No sale, disposition, use or consumption of any beverage coming within the provisions of this chapter shall be made within the hours of 3:00 A.M. and 6:00 A.M. Nor shall any permit holder give away or otherwise dispense any beverage coming within the provisions of this chapter to any person during the hours prohibited in the immediately preceding sentence. (Ord. #03-03, Feb. 2003)

**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 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 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; or

(14) Allow or engage in any criminal activity on the premises. (Ord. #04-40, Nov. 2004, modified)

**8-223. Suspension or revocation of permit; civil penalty.** (1) The beer board shall have the power to revoke or suspend any permit for any violation of

any provision of this chapter. Whenever it shall be brought to the attention of the beer board that any declaration of fact contained in the application is false, or that there has been any violation of any provision or state or federal law regulating the sale, storage or transportation of alcoholic beverages or any statute of the State of Tennessee regulating beer or other alcoholic beverages, or that there has been any violation of any provision of this chapter, expressly including the prohibited acts herein, or that the limitations and conditions of the permit have been violated, or that the permit holder fails to file a report or pay any tax or license fee required, the beer board may revoke or suspend such permit. No permit shall be revoked or suspended until a public hearing is held by the beer board after reasonable notice is given to the public and to all known parties in interest. Revocation proceedings may be initiated by the chief of police or by any member of the beer board.

(2) Notwithstanding any other provision herein, pursuant to Tennessee Code Annotated, §57-5-608, the beer board shall not revoke or suspend the permit for off-premises sale of beer 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 and/or is otherwise in compliance with the Tennessee Responsible Vendor Act, unless the vendor's status as a certified responsible vendor has been revoked by the alcoholic beverage commission. The beer board may permanently revoke or suspend the beer permit of a responsible vendor when the permit holder has at least two (2) violations for the sale of beer to a minor within a twelve (12) month time period.

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.

"Responsible vendor" shall mean 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. "Clerk" shall mean any person working in a capacity to sell beer directly to consumers for off-premises consumption.

Pursuant to 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.

It is the duty of the permittee to advise the beer board of participation and provide proof thereof, in the responsible vendor program at the time of the hearing.

Upon determination that a sale to a minor has been made by the beer board, the beer board shall report the sale to the alcoholic beverage commission

within fifteen (15) days of the determination of the sale. Additionally, 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 year from the date of the beer board's determination.

(3) The beer board may, at the time it imposes a revocation or suspension, offer a permit holder that is not a responsible vendor, or a permit holder that is a responsible vendor but who is non-compliant with the provisions and requirements of the Tennessee Responsible Vendor Act, 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, as defined in subsection (2), 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 suspension or revocation 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 town may impose.

(4) Where a permit has been revoked, no new permit may be issued to permit the sale of beer on the same premises until after the expiration of one (1) year from the date the revocation becomes final and effective. The beer board, in its discretion, may determine that issuance of a license or permit before the expiration of one (1) year from the date of the revocation becomes final is appropriate, if the individual applying for such issuance is not the original holder of the license or any family member who could inherit from such individual under the statute of interstate succession. (Ord. #03-03, Feb. 2003, 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 ten (10) years. (Ord. #03-03, Feb. 2003, modified)

**8-225. Employees liable for violations of this chapter.** Any employee of any permit holder who violates the provisions of this chapter or any provision of Tennessee Code Annotated, title 57, chapter 5, while so employed by such permit holder shall be guilty of a misdemeanor which shall be punishable by a fine of not to exceed the state authorized maximum, in addition to any suspension, revocation or civil penalty in lieu thereof which may be imposed on the permit holder by the beer board pursuant to § 8-223. (Ord. #03-03, Feb. 2003, modified)

**8-226. Penalties; violation.** Except s 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. (Ord. #03-03, Feb. 2003)

**8-227. Continued existence.** Notwithstanding anything herein to the contrary, the members of the beer board, as the beer board exists on the effective date of this chapter, shall continue to serve for the remainder of their respective terms, or until their earlier resignation or removal. (Ord. #03-03, Feb. 2003)

**TITLE 8**  
**ALCOHOLIC BEVERAGES**

**CHAPTER 2**  
**BEER**

**SECTION**

- 8-214. Permits for certain premises prohibited.
- 8-215. Application for and issuance or refusal of permit.
- 8-222. Prohibited conduct or activities by beer permit holders.
- 8-224. Sales to minors prohibited; employment of ex-convicts prohibited.
- 8-226. Penalties; violation.

**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 a 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.

(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 (a) 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 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 a 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. 12-15, Nov. 2012; Amd. Ord. #09-20, June 2009; Ord. #04-40, Nov. 2004, modified; Amd.)

**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)

## TITLE 8

### ALCOHOLIC BEVERAGES

#### CHAPTER 2

##### BEER

**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)