

TITLE 8

ALCOHOLIC BEVERAGES¹

CHAPTER

1. INTOXICATING LIQUORS.
2. BEER.

CHAPTER 1

INTOXICATING LIQUORS

SECTION

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¹Municipal code references

Drinking beer, etc. on streets: § 11-201.

Minors in beer places: § 11-202.

State law reference

Tennessee Code Annotated, title 57.

8-101. Manufacture, sale, etc., legalized; compliance with state law and chapter. It shall be lawful to engage in the business of manufacturing, selling, storing, transporting, and distributing alcoholic beverages within the corporate limits of the town. The manufacture, sale, receipt, possession, storage, transportation, distribution, or in any manner dealing in alcoholic beverages within the corporate limits of the town shall be regulated in accordance with the provisions of Tennessee Code Annotated, chapter 3, title 57, the rules and regulations adopted by the Commissioner of Finance and Taxation of the State, and in accordance with the provisions of this chapter. (1994 Code, § 2-101)

8-102. "Alcoholic beverage" defined. "Alcoholic beverage" or "beverage" as used in this chapter means and includes alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, or wine capable of being consumed by a human being, other than patented medicine, beer, or wine where the latter two contain an alcoholic content of five percent (5%) by weight or less. (1994 Code, § 2-102)

8-103. Interpretation of chapter. Nothing in this chapter is intended to relate to the manufacture, transportation, storage, sale, distribution, possession, receipt of, or tax upon, any beverage of an alcoholic content of five percent (5%) by weight or less, and no ordinance relating thereto shall be considered or construed as a modifier by this chapter. (1994 Code, § 2-103)

8-104. Applicants for certain licenses to be citizens. All applicants for manufacturers', distillers', or rectifiers' licenses for winery licenses shall be citizens of the United States. If the applicant is a corporation, no license shall be issued unless all its stockholders are citizens of the United States. All applicants for retailers' licenses shall be a resident of the State of Tennessee and shall have been such for a minimum of two (2) years prior to submission of application. (1994 Code, § 2-104)

8-105. Duration of license; renewal; issuance. The license shall be for the period of one year, commencing January first of each year and expiring on December 31st of each year. Licenses may be renewed each year by compliance with Tennessee Code Annotated, chapter 3, title 57. The recorder shall not be authorized to issue such license until the applicant has qualified, as required by Tennessee Code Annotated, chapter 3, title 57, to engage in such business and has exhibited to the recorder the license issued to the applicant by the Commissioner of Finance and Taxation of the State of Tennessee. (1994 Code, § 2-105)

8-106. Display of license. Persons granted licenses to carry on any of the businesses or undertakings contemplated by this chapter shall, before being

qualified to do business, display and post and keep displayed and posted such license in a conspicuous place on the premises of such licensee. (1994 Code, § 2-106)

8-107. Issuance of duplicate license. When a license shall be lost or destroyed without fault of the licensee, a duplicate in lieu thereof shall be issued by the recorder only after the recorder has been furnished with satisfactory evidence of such loss without fault of the licensee; provided, however, that upon the issuance of such duplicate license the licensee shall be required to pay a registration fee of fifty cents (50¢). (1994 Code, § 2-107)

8-108. Certificates of good moral character. All applicants for certificates of good moral character as provided by Tennessee Code Annotated, chapter 3, title 57, shall be required to make application to the board of mayor and aldermen on forms to be prepared by the board. (1994 Code, § 2-108)

8-109. Form. The board of mayor and aldermen shall have authority to prepare and have printed a form of certificate to be issued by the board of mayor and aldermen in certifying to the Commissioner of Finance and Taxation of the State of Tennessee the good moral character of applicants for such certificate. (1994 Code, § 2-109)

8-110. Manufacture, sale, etc., near churches, schools, or other public institutions. No alcoholic beverage shall be manufactured, distilled, rectified, sold, or stored on any premises that shall be located in close proximity to any church, school, or other public institution, whenever in the discretion of the board of mayor and aldermen such location would be inimical to the public welfare. (1994 Code, § 2-110)

8-111. Number of licenses to be issued and outstanding. The number of retail licenses issued and outstanding in the town at any time shall be restricted to one for each fifteen thousand (15,000) resident citizens of the Town of Arlington according to the last official census. In considering applicants for certificates of wholesale licenses, preference shall be given to bona fide residents of Shelby County. (1994 Code, § 2-111, as amended by Ord. #2005-08, March 2005)

8-112. Where establishments may be located. It shall be unlawful for any person to operate or maintain any wholesale or retail establishment for the sale, storage, or distribution of alcoholic beverages in the town except at locations with the "general commercial" zoning classification of the zoning ordinances of the Town of Arlington. (1994 Code, § 2-112)

8-113. Cocktail bars prohibited. It shall be unlawful for any person to maintain a cocktail bar in the town or to sell or serve ice, soda, or other mixtures for the purpose of mixing cocktails or highballs or any other intoxicating drinks to be consumed where ice, soda, or other mixtures are sold or served. The term "cocktail bar" as used in this section shall mean any public place where ice, soda, or other ingredients are sold or served by the owner or operator for the mixing of alcoholic beverage drinks. (1994 Code, § 2-113)

8-114. Sales in unsealed bottles for consumption on the premises. No alcoholic beverages shall be sold for consumption on the premises of the seller. No wholesaler or retailer shall keep or permit to be kept upon his premises any alcoholic beverages in unsealed bottles or other containers. (1994 Code, § 2-114)

8-115. Sales to minors, drunkards, etc. It shall be unlawful for any licensee to sell, furnish, or give away any beverages to any person visibly intoxicated, to any insane person, to any minor, or to any habitual drunkard or persons of known intemperate habits. (1994 Code, § 2-115)

8-116. Restrictions as to hours and days of sale. Retailers may remain open for business between the hours of 9:00 A.M. and 10:00 P.M., central time, each day; provided, however, that no retailer shall sell, give away, or otherwise dispose of any alcoholic beverages between 10:00 P.M. on Saturday and 9:00 A.M., central time, on the following Monday; provided, further, that no retailer shall sell, give away, or otherwise dispose of any alcoholic beverages on a general or primary election day. (1994 Code, § 2-116)

8-117. Inspection of business establishments. The duly authorized representatives of the town shall have the right to inspect the premises of any business licensed under this chapter during the hours when such establishments are open for conduct of business. (1994 Code, § 2-117)

8-118. Use of premiums, tokens, etc., as inducements to purchase alcoholic beverages. No licensee shall give away, sell, or in any manner whatsoever deal in premiums, tokens, or other articles by means of which inducements are held out to trade to purchase any alcoholic beverages. (1994 Code, § 2-118)

8-119. Gambling devices, music machines, etc., prohibited on premises. No gambling devices, pinball machines, music machines, or similar devices shall be permitted to operate upon any premises from which alcoholic beverages are sold. (1994 Code, § 2-119)

8-120. Inspection fee. There is hereby imposed an inspection fee of five percent (5%) on all gross purchases of alcoholic beverages made by licensees under this chapter. The payment of said fee shall be accompanied by copies of all billings made to licensees by all wholesalers or distributors for said calendar month on a form prescribed by the board of mayor and aldermen. Failure to pay said fee and make said report accurately within the time prescribed may cause for suspension for as many as thirty (30) days, or for the revocation of said license. (1994 Code, § 2-120)

CHAPTER 2

BEER¹

SECTION

- 8-201. Beer board established.
- 8-202. Meetings of the beer board.
- 8-203. Record of beer board proceedings to be kept.
- 8-204. Requirements for beer board quorum and action.
- 8-205. Powers and duties of the beer board.
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¹Municipal code references

Drinking beer, etc. on streets: § 11-201.

Minors in beer places: § 11-202.

Wholesale beer tax: § title 11, chapter 2.

State law reference

For a leading case on a municipality's authority to regulate beer, see the Tennessee Supreme Court decision in Watkins v. Naifeh, 635 S.W.2d 104 (1982).

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- 8-234. Bond required.
- 8-235. Prohibition of "brown bagging."

8-201. Beer board established. There is hereby established a beer board to be composed of the board of mayor and aldermen. The mayor shall be the chairman of the beer board. (1994 Code, § 2-201)

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 town 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. (1994 Code, § 2-202)

8-203. Record of beer board proceedings to be kept. The recorder shall make a record of the proceedings of all meetings of the beer board. The record shall be a public record and shall contain at least the following: The date of each meeting; the names of the board members present and absent; the names of the members introducing and seconding motions and resolutions, etc., before the board; a copy of each such motion or resolution presented; the vote of each member thereon; and the provisions of each beer permit issued by the board. (1994 Code, § 2-203)

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. (1994 Code, § 2-204)

8-205. Powers and duties of the beer board. (1) 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 town in accordance with the provisions of this chapter.

(2) The chairperson of the beer board may call a special session of the beer board upon notification of a violation of this chapter. The permit holder in violation shall be summoned to appear at a designated time and place. The summons shall be issued by the charging officer.

(3) The beer board may restrict beer permits to off-premises consumption only or on-premises consumption only.

(4) For on-premises permits, the applicant must serve at least one hot meal a day at tables provided for that purpose with a menu available during the regular hours. It is further required that a minimum of seventy percent (70%) of the gross revenues of the establishment be from food sales. Reporting procedures for establishments holding on-premises permits are herewith established. Reporting forms shall be provided to establishments holding class 1 permits and shall detail food sale and alcoholic beverage sale percentages on the annual basis and shall be due on or before January 31. The licensee will submit copies of all sales tax returns related to that period, including, but not inclusive of sales and use tax return and liquor-by-the-drink return, with appropriate documentation. These returns will be subject to audit by the town. Reporting year shall be January 1 through December 31. The finance department shall send the town clerk an annual list of businesses which have complied with this requirement, and the town clerk will keep a record of such compliance. (Ord. #2005-06, April 2005)

8-206. Hearings before the beer board. (1) All matters brought before the beer board will be heard in the following order:

- (a) Requests for continuances;
- (b) Rehearings and decisions where no protests have been received;
- (c) Special hearings;
- (d) Violations in which permit holders are represented by counsel and/or at the request of the police;
- (e) Applications for issuance of beer permits;
- (f) Rehearings and decisions where protests have been received.

(2) Those permit holders charged with violations will be given written notice not less than five days in advance to appear before the beer board to answer charges.

(3) All alleged permit violators at the hearing have the right to plead not guilty to any or all of the charges, to have assistance of counsel, to cross-examine witnesses and to testify and present witness(es) and evidence on his or her behalf.

(4) All witnesses in a contested matter before the beer board shall first be sworn in by the town clerk, a representative from that office authorized to administer an oath or by a certified court reporter prior to any testimony or evidence being given.

(5) Heresay evidence is admissible in hearings before the beer board.

(6) The beer board has no power to subpoena or require the presence of any witness.

(7) A transcript recording shall be made of all contested beer board hearings. The town clerk shall be advised by the permit holder, prior to the

hearing, that a transcribed recording is required. The cost of such a recording shall be divided equally between the permit holder and the town. All other matters before the beer board shall be tape-recorded.

(8) After hearing all the testimony in a given case, the beer board may take the following action:

(a) Dismiss any and all charges;

(b) Place on probation for up to one (1) year, pursuant to the limitations and restrictions imposed by Tennessee Code Annotated, §§ 57-5-608 and 57-5-108;

(c) Suspend the beer permit for any number of days or indefinitely, pursuant to the limitations and restrictions imposed by Tennessee Code Annotated, §§ 57-5-608 and 57-5-108;

(d) Revoke the beer permit, pursuant to the limitations and restrictions imposed by Tennessee Code Annotated, §§ 57-5-608 and 57-5-108;

(e) Offer a civil monetary penalty as an alternative to suspension or revocation, 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, to a responsible vendor if the permit or license holder and the clerk making the sale have complied with the requirements of Tennessee Code Annotated, § 57-5-601 et seq. (Tennessee Responsible Vendor Act of 2006.)

(f) Offer a civil monetary penalty as an alternative to suspension or revocation, 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, to a vendor who is not a responsible vendor in accordance with the requirements of Tennessee Code Annotated, § 57-5-601 et seq. (Tennessee Responsible Vendor Act of 2006), or to a responsible vendor under the same act if the vendor or clerk making the sale to a minor fails to comply with the requirements of Tennessee Code Annotated, § 57-5-606.

(g) If a civil penalty is offered as an alternative to revocation or suspension, the holder shall have seven (7) days from the date of the hearing within which to pay the civil penalty to the town clerk 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. The permit holders payment of the civil penalty shall not affect the options provided by subsection (10) of this section.

(9) In assessing a penalty, the beer board may consider the past record of the permit holder and location.

(10) Upon receiving an adverse ruling by the beer board, an applicant or permit holder:

(a) Accept the decision and penalty;

(b) File a writ of certiorari in the Shelby County Circuit or Chancery Courts.

(11) The penalty assessed by the beer board will take effect on the fifteenth (15th) day after the beer board decision at 12:01 A.M. and will be continuously enforced throughout the period of suspension or revocation. In the event a permit holder requests a re-hearing or files a Writ of Certiorari, the enforcement period will become effective upon completion of the re-hearing or the disposition of the Writ of Certiorari. (Ord. #2005-06, April 2005, as amended by Ord. #2007-08, July 2007)

8-207. Permit required. It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the beer board. The application shall be made on such form as the board shall prescribe and/or furnish, and, pursuant to Tennessee Code Annotated, § 57-5-101(b), shall be accompanied with a non-refundable application fee of two hundred fifty dollars (\$250.00).¹ Said fee shall be in the form of a cashier's check payable to the Town of Arlington, Tennessee. Each applicant must be a person of good moral character and certify that he has read and is familiar with the provisions of this chapter and Tennessee Code Annotated, §§ 57-5-101 through 57-5-416. (1994 Code, § 2-207, as amended by Ord. #2005-06, April 2005)

8-208. Privilege tax. Effective January 1, 1994 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, 1994, and each successive January 1 to the Town of Arlington, 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. (1994 Code, § 2-208)

8-209. 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. Permits may be issued by the board to retail stores for the sale of beer exclusively for carry-out, off premises consumption.

(2) 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

¹State law reference

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

restrictions or conditions which may be written into his permit by the beer board. (1994 Code, § 2-209)

8-210. 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 hospitals, schools, churches, or other places of public gathering, or would otherwise 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 one thousand (1,000) feet of any hospital, school, church or other place of public gathering. The distances shall be measured in a straight line from the nearest point upon the property line from which the beer will be sold, manufactured or stored to the nearest point on the property line of the hospital, school, church or other place of public gathering. (1994 Code, § 2-210, as amended by Ord. #2000-20, Aug. 2000)

8-211. 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. (1994 Code, § 2-211)

8-212. Prohibited conduct or activities by beer permit holders.

(1) It shall be unlawful for any beer permit holder to allow any of the following activities in a licensed establishment:

(a) Employ any person convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years;

(b) Make or allow any sale, give away or otherwise dispose of beer between the hours of 1:00 A.M. and 7:00 A.M. during any night of the week; and between 1:00 A.M. and noon on Sunday;

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

(d) Allow any person under twenty-one (21) years of age to loiter in or about his place of business;

(e) Allow the owner or any employee to consume alcoholic beverages while on duty. An owner is always assumed to be on duty while in his or her establishment and in the public part of the business;

(f) Make or allow any sale of beer to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person.

(g) Allow drunk persons to loiter about his premises.

(h) Allow consumption of beer in an establishment restricted to off-premises consumption.

(i) Serve or sell or allow to be served or sold beer to any person in or on any motor vehicle or allow any person to consume beer while in a motor vehicle parked on this premises.

(j) Allow assaults, fighting, damaging of property and breaches of the peace occurring on or in the premises where beer is sold.

(k) Allow consumption of beer at any point closer than two hundred (200) feet from the point of sale, when an off-premises permit only is held by licensee.

(l) Fail to prominently display a current beer permit.

(m) Fail to provide at least one working telephone for incoming and outgoing calls at all times.

(n) Allow the sale or consumption of beer from any location under suspension by the beer board.

(o) Sell, serve or allow to be sold on his or her premises any alcoholic beverage with an alcoholic content of more than five percent (5%) weight, unless such location holds a valid, current mixed drink license issued by the Tennessee Alcoholic Beverage Commission.

(p) Not to comply with the laws of the State of Tennessee and the Town of Arlington regarding beer.

(q) Fail to comply with the restrictions; it shall be unlawful for any permit holder of an on-premises license to:

(i) Employ any minor under the age of eighteen (18) in the sale or serving of beer;

(ii) Allow any minor under the age of twenty-one (21) to frequent his or her place of business, except where the business is a restaurant and in that case said minor shall only be allowed in the business for the sole purpose of eating of prepared food from the menu;

(iii) Allow dancing on his or her premises by employees or agents of the business;

(iv) Allow pool or billiard playing in the same room where beer is consumed;

(v) Fail to provide sufficient lighting for customers to adequately read a menu and for employees to properly inspect the age and identification cards of its customers;

(vi) Permit customers or employees to be nude, topless or bottomless at any time;

(vii) No permit shall be issued to a business location with pinball or video game machines exceeding four (4) in number.

(r) Make or allow any sale of beer for off-premise consumption to any person who does present to the permit holder or any employee thereof a valid, government issued document, such as a driver's license, or other form of identification which includes the photograph and birth date of the adult consumer attempting to purchase the beer. Those

persons exempt under state law from the requirement of having photo identification shall present identification that is acceptable to the permit holder.

(2) All above violations observed openly shall be considered prima facie evidence that the violation is allowed by the permit holder and the burden of proof to prove otherwise shall be shifted to the permit holder. (Ord. #2005-06, April 2005, as amended by Ord. #2007-09, July 2007)

8-213. Suspension and revocation of beer permits. The beer board shall have the power to suspend or 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 suspended or revoked until a public hearing is held by the board after reasonable notice to all the known parties in interest. Suspension or revocation proceedings may be initiated by the police chief or by any member of the beer board. (1994 Code, § 2-213)

8-214. Civil penalty in lieu of suspension or revocation. Pursuant to Tennessee Code Annotated, § 57-5-108(a)(2), the board may assess a civil penalty against a permit holder in lieu of suspension or revocation of said permit. Such penalty may be up to one thousand five hundred dollars (\$1,500.00) for each offense of making or allowing sales to minors and up to one thousand dollars (\$1,000.00) for any other violation. The permit holder will have seven (7) days to pay the aforementioned penalty before the suspension or revocation takes effect. Payment of the penalty does not effect the permit holder's right to seek judicial review of the suspension or revocation pursuant to the general laws of the State of Tennessee. (1994 Code, § 2-214)

8-215. Sales legalized; conditions generally. It shall be lawful to transport, store, sell, distribute, possess, receive or manufacture beer of alcoholic content of not more than five percent (5%) by weight or any other beverage of like alcoholic content within the corporate limits of the town, subject to all the 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 hereinafter provided or hereafter promulgated. (Ord. #2005-06, April 2005)

8-216. Definitions. (1) "Beer" means and includes beers, ales, malt liquors and every other liquid containing alcohol and capable of being consumed by a human being, other than patent medicine, wine as defined in Tennessee Code Annotated, § 57-3-101, alcoholic beverage where the latter contains an alcoholic content of five percent (5%) or more by weight or more or products or

beverages containing less than one half of one percent (0.5%) of alcohol by volume;

(2) "Church" means a building where persons regularly assemble for religious worship, which building is maintained, controlled and owned by a religious body or institution organized to sustain public worship;

(3) "Clerk" means any person working in a capacity to sell beer directly to consumers for off premise consumption;

(4) "License" means the license issued pursuant to this chapter;

(5) "Licensee" means any person to whom such license has been issued pursuant to this chapter;

(6) "Moral turpitude" means premeditated murder, all sex-related crimes, the illegal possession or sale of schedule I and II controlled substances, as defined by Tennessee Code Annotated, §§ 39-17-405 to 39-17-408, and embezzlement;

(7) "Responsible vendor" means a vendor that has received certification from the Alcoholic Beverage Commission pursuant to Tennessee Code Annotated, § 57-5-601 *et seq.* (Tennessee Responsible Vendor Act of 2006);

(8) "Retailer" means any person who sells at retail any beverage for sale of which a license is required under the provisions of this chapter;

(9) "Retail sale" or "Sale at retail" means a sale to a consumer or to any person for any purpose other than for resale;

(10) "School" means an institution of learning including but not limited to parochial, private, public school as defined by the town's zoning ordinance and child care facilities as defined by the town's zoning ordinance;

(11) "Tennessee Code Annotated" means the Tennessee Code Annotated. Words importing the masculine gender include the feminine and the neuter, and the singular includes the plural.

(12) "Town" means the Town of Arlington, Tennessee.

(13) "Vendor" means a person, corporation or other entity that has been issued a permit to sell beer for off premise consumption. (Ord. #2005-06, April 2005, as amended by Ord. #2007-09, July 2007)

8-217. Permit required for engaging in beer business. (1) Permits shall be issued by class as follows:

(a) Class I - "Across-the-counter" licenses for on the premises consumption only;

(b) Class II - "Package sales" licenses for off-premises consumption only;

(2) Applications for a beer permit. (a) The application for the beer permit shall state the class or classes of permits requested. The number of businesses for which permits may be issued is unlimited; provided, however, an owner who operates two or more restaurants or other businesses within the same building may, in his or her sole discretion, operate all or some of the businesses pursuant to the same permit. Such

multiple use permits must be issued for the classes applicable to the conduct of the businesses.

(b) All classes of permits shall be issued to the owner of the business, whether a person, firm, corporation, joint stock company, syndicate or association. A permit shall be valid:

(i) 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 in ownership shall occur when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner;

(ii) 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; and

(iii) Only for a business operating under the name identified in the permit application.

(c) A permit holder must return a permit to the beer board within fifteen (15) days of termination of the business, change in ownership, relocation of the business or change of the business name; provided, however, 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 name. This provision shall have no application to the temporary closing of a business for the purpose of constructing improvements, provided the business reopens under the same name and ownership.

(d) Each applicant shall disclose the following information on the application for a beer permit:

(i) Name of applicant;

(ii) Name of applicant's business;

(iii) Location of the business by street address or other geographical description to permit an accurate determination of conformity with the requirements of state law and this subchapter;

(iv) If beer will be sold at two or more restaurants or businesses in the same building pursuant to the same permit, a description of all such businesses;

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

(vi) Identity and address of a representative to receive annual tax notices and any other communication from the beer board;

(vii) An acknowledgment that no person, firm, joint stock company, syndicate or association having at least a five percent

(5%) ownership interest in 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 other crime involving moral turpitude within the past ten (10) years;

(viii) The class of permit being requested and an acknowledgment that if the applicant desires to change the method of sale or operation in the future that a new application will be submitted to the beer board requesting a new permit;

(ix) Such other relevant information as may be required from time to time by the beer board.

(x) Affirmative acknowledgment that the applicant or permit holder shall amend or supplement the application promptly if a change in circumstances affects any information submitted on or with the application; and

(xi) The applicant's certification that the owner of the business or its representative has read and is familiar with all provisions of this chapter.

(e) Any applicant making a false statement in the application shall forfeit the permit and shall not be eligible for any type beer permit for a period of ten (10) years.

(f) In no event shall a permit be issued without a full and proper hearing before the beer board and a majority vote therefore in favor of such issuance.

(3) Beer permits to 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, distribution and manufacturing. 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 or her permit. It shall likewise be unlawful for him or her not to comply with any and all express conditions or restrictions which may be written into his or her beer permit by the beer board.

(4) Procedures for obtaining a beer permit. The following procedures must be followed by all applicants in seeking a hearing for a beer permit before the Town of Arlington Beer Board:

(a) Applicant will complete an official application form and return the form to the town clerk at least thirty (30) days prior to the next regularly scheduled meeting of the beer board.

(b) Applicants must secure the signatures of at least ten (10) citizens who reside in the Town of Arlington. This shall certify that they know the applicant and will testify as to the character and moral standing of the applicant.

(i) If the applicant is unable to obtain the above, signatures of business owners within Arlington or Shelby County will be accepted, provided they have known the applicant at least

five (5) years and provided a letter from the applicant is also submitted as to why signatures of Arlington residents were not obtained.

(ii) Applicants who are unable to meet either of the above requirements shall appear before the town recorder so he or she may solicit sufficient information to conduct a complete background investigation.

(c) Applicant must secure a telephone for the proposed business location.

(d) The town shall place, at the applicant's expense, a public notice in the newspaper of general circulation within the community prior to the consideration of the application by the beer board. The notice shall be published at least seven (7) days prior to the meeting of the beer board and shall notify the public of the intent to sell beer at a particular location.

(e) If the application is for a place of business where beer has not been sold in the last twelve (12) months, all property owners within one thousand (1,000) feet of the proposed location shall be notified by the United States mail at least one (1) week before consideration by the beer board, giving the name of the applicant, type of permit requested, and the time and date of the hearing.

(f) Applicant shall place a conspicuous window sign on the proposed location at least two (2) feet by three (3) feet with the letters at least four inches (4") in size notifying the public of the intent to sell beer at that location.

(g) Any applicant denied issuance of a beer permit may file a Writ of Certiorari in Shelby County Circuit or Chancery Courts.

(5) Restrictions on the issuance of beer permits. The beer board shall be guided by the following restrictions and limitations in the deliberation and issuance of beer permits within the corporate limits of the Town of Arlington:

(a) Owners must be a citizen or resident alien lawfully admitted into the United States, or if a syndicate or association, all members thereof must be citizens or resident aliens lawfully admitted to the United States. If a club or lodge, it must be incorporated and operating pursuant to a charter or bylaws of the State of Tennessee and exist other than for the sale of alcoholic beverages.

(b) No permit to engage in the beer business shall be granted by the beer board to any person who is under twenty-one (21) years of age.

(c) Any individual may be employed where beer is sold, whether such individual is a citizen or alien resident of the United States, provided other requirements regulating the sale of beer are met. A minimum age of eighteen (18) years is required for all employees involved in the sale or serving of beer.

(d) The applicant will certify on his or her application the names and addresses of all other persons or firms who have any financial interests whatsoever in the business proposed to be established.

(e) Applicant will certify on his or her application that he or she has read and is familiar with all provisions of this chapter.

(f) The beer board may restrict beer permits to off-premises consumption only or on-premises consumption only.

(g) (i) For on-premises permits, the applicant must serve at least one hot meal a day at tables provided for that purpose with a menu available during the regular hours. It is further required that a minimum of seventy percent (70%) of the gross revenues of the establishment be from food sales. Reporting procedures for establishments holding on-premises and combination permits are herewith established. Reporting forms shall be provided to establishments holding class I permits and shall detail food sale and alcoholic beverage sale percentages on the annual basis and shall be due on or before January 31. The licensee will submit copies of all sales tax returns related to that period, including, but not inclusive of sales and use tax return and liquor-by-the-drink return, with appropriate documentation. These returns will be subject to audit by the town. Reporting year shall be January 1 through December 31. The finance department shall send the town clerk an annual list of businesses which have complied with this requirement, and the town clerk will keep a record of such compliance.

(ii) For business establishments meeting meal regulations, it is recognized that individuals less than twenty one (21) years of age may frequent the business for meal purposes.

(h) For off-premises consumption permits, the applicant will not allow any consumption on the premises or on the sidewalks, streets or property within the immediate premises to be not less than two hundred feet (200'), including the building and parking lot, and no such beverages will be kept for sale in such premises except in the original containers or packages.

(i) No permit shall be issued in violation of any state law or the Zoning Code of the Town of Arlington.

(j) The beer board, at its discretion, may refuse to issue a permit for any place of business which in the period immediately preceding the application for a permit was operated in such a manner as to create a public nuisance or which was operated in such a manner as to materially contribute with places of like character in its vicinity in the creation or maintaining of a public nuisance. In determining whether a permit shall be issued, the beer board shall consider the character of the neighborhood, the space available for the building, the space available for

the building, the space available for off-street parking and the effect of the business on neighboring users.

(k) Each applicant for a beer permit shall pay to the town clerk a minimum business license fee and gross receipts tax annually in order to renew the beer permit. The town clerk will notify businesses which fail to pay the annual renewal tax by certified mail not later than February 28 and such failure to file and pay the tax shall result in presentation to the beer board for possible revocation.

(l) No permit will be issued to a spouse, child, relative, employee, or other person having interest in the business of a licensee whose permit has been revoked in the past twelve (12) months.

(m) No permit to engage in the beer business shall be granted by the beer board to any applicant, if the applicant, any person, firm, joint stock company, syndicate or association having at least a five percent (5%) ownership in the applicant, or 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 other crime involving moral turpitude within the past ten (10) years.

(n) Distance requirements described in §§ 2-224 and 2-225.

(6) Notice given of permit suspension or revocation. The board shall cause the town attorney or town administrator to give written notice to the Shelby County Sheriff of the suspension or revocation of any permit.

(7) The owner or applicant of an establishment with a beer permit must notify the beer board of any change in home address within ten (10) days.

(8) The owner and/or lessee of a business licensed for beer sales, in any class, shall be required to complete and sign an affidavit that he, she or they have read the ordinance governing the sale and consumption of beer and acknowledge responsibility to strictly enforce the beer ordinance in their establishment. Such affidavits shall be signed annually and kept on file in the town clerk's office with the beer permit. Failure to complete the required affidavit shall be considered basis for license revocation. (Ord. #2005-06, April 2005)

8-218. Proof of payment required. It shall be unlawful for any person to sell, store, distribute or manufacture beer without having first exhibited a receipt for the taxes provided for in the state's "business tax act." (Ord. #2005-06, April 2005)

8-219. Display of licenses required. Persons granted licenses to carry on any of the businesses or undertakings contemplated by this article shall, before being qualified to do business, display and post and keep displayed and posted such license in a conspicuous place on the premises of such licensee. (Ord. #2005-06, April 2005)

8-220. Right to inspect premises of licensee. The duly authorized representatives of the town shall have the right to inspect the premises of any business licensed under this article during the hours when such establishments are open for the conducting of business. (Ord. #2005-06, April 2005)

8-221. Consumption of alcohol on municipal parks prohibited. It shall be a violation of this ordinance for any person to consume and/or possess alcoholic beverage, beer or wine on municipal parks and playgrounds. (Ord. #2005-06, April 2005)

8-222. Penalty. Violation of this chapter shall subject the violator to a penalty not to exceed a fine of fifty dollars (\$50.00) for each violation. (Ord. #2005-06, April 2005)

8-223. Display of permit. The permit shall be posted in a conspicuous place on the premises of the permit holder, together with all other permits, licenses and stamps as required by law. (Ord. #2005-06, April 2005)

8-224. Interference with public health, safety and morals prohibited: on premises permit–distance. No permit authorizing the sale of beer for on-premises consumption will be issued when such business would cause congestion or traffic or would interfere with school or churches, or would otherwise interfere with the public health, safety and morals of the citizens of the Town of Arlington. In no event will a beer permit be issued authorizing the on premises storage for sale or sale of beer at places within two-hundred twenty-five feet (225') of any school or church. (Ord. #2005-06, April 2005)

8-225. Interference with public health, safety and morals prohibited: off-premises permit–distance. No permit authorizing the sale of beer for off-premises consumption will be issued when such business would cause congestion or traffic or would interfere with schools or churches, or would otherwise interfere with the public health, safety and morals of the citizens of the Town of Arlington. In no event will a beer permit be issued authorizing the manufacture, storage or sale of beer for off-premises consumption at places within two-hundred twenty-five feet (225') of any school or church. (Ord. #2005-06, April 2005)

8-226. Method of measuring location distance; prohibitions. Whenever in this chapter a distance is specified within which beer for on-premises or off-premises consumption is prohibited, that distance shall be measured in a straight line from the closest point on the building of the school or church, to the closest point on the building of the permit applicant. (Ord. #2005-06, April 2005)

8-227. Separate sanitary toilets required. It shall be unlawful for a permit holder to fail to provide and maintain separate sanitary toilet facilities for men and women. (Ord. #2005-06, April 2005)

8-228. Beer tax assessed. In accordance with Tennessee Code Annotated, title 57, chapter 6, there shall be imposed upon the sale of beer at wholesale within the Town of Arlington a seven percent (7%) tax upon wholesale price of beer sold in the Town of Arlington pursuant to section 4, chapter 76 of Public Acts of Tennessee of 1953. (Ord. #2005-06, April 2005)

8-229. Penalty imposed for non-payment of beer tax. In the event that a person, firm or corporation responsible for payment of wholesale beer tax under chapter 76 of the Public Acts of Tennessee for 1953 fails to make said payment by the twentieth (20th) of the following month following their collection, there shall be assessed a penalty of ten percent (10%) of the amount due per month for each month or portion of the month of non-payment (Ord. #2005-06, April 2005)

8-230. License revocation for failure to pay beer tax. In the event that the wholesale beer tax, pursuant to chapter 46 of the Public Acts of Tennessee of 1953 remains unpaid for a period of ninety (90) days, said non-payment shall be reported to the Beer Board of the Town of Arlington and to the board of mayor and aldermen, and there shall be scheduled a hearing before the beer board for revocation. After the expiration of ninety (90) days of non-payment, said revocation proceedings shall be mandatory and payment thereafter, but prior to the beer board hearing, shall be accepted, yet the revocation will remain on the agenda for a hearing. (Ord. #2005-06, April 2005)

8-231. Trade-in inducements prohibited. No licensee shall give away, sell, or in any manner whatsoever deal in premiums, tokens or other articles by means of which inducements are held out of trade to purchase any alcoholic beverages. (Ord. # 2005-06, April 2005)

8-232. Zoning restriction of alcoholic beverage retailers established. No person, firm or corporation shall locate an establishment for the retail warehousing, sale or manufacture of beer for on-premises consumption in any zone except those designated B3 and BE, upon the official zoning map and ordinance of the Town of Arlington. (Ord. # 2005-06, April 2005)

8-233. Affidavit of permit holder. The owner and/or lessee of a business license for beer sales, in any class, shall be required to complete and sign an affidavit that he, she or they have read the ordinance governing the sale and consumption of beer and acknowledge responsibility to strictly enforce the beer ordinance in their establishment. Such affidavits shall be signed annually

and kept on file in the town clerk's office with the beer permit. Failure to complete the required affidavit shall be considered basis for license revocation. (Ord. # 2005-06, April 2005)

8-234. Bond required. Every person to whom a permit is issued shall, before selling at retail any beverage permitted to be sold under this subchapter, execute and file with the Town of Arlington, a bond in the sum of one thousand five hundred dollars (\$1,500.00). The bond shall be conditioned that the principal thereof will pay any fine arising from any violation of this subchapter which may be assessed against such principal or any agent or employee thereof by the beer board, town court or any court of competent jurisdiction to which any suit from the town court is appealed. The bond shall be executed by some solvent surety company authorized to do business in the State of Tennessee or by solvent personal sureties approved by the town attorney. (Ord. # 2005-06, April 2005)

8-235. Prohibition of "brown bagging." No owner, operator or employee of any restaurant, club or other business of every kind and description, shall permit or allow any person to open, or to have open, or to consume inside or on the premises a bottle, can, flask or container of any kind or description, of beer unless the business has a current license or permit under this section for the sale of beer on premises, and the beer consumed was purchased at said business. (Ord. #2005-20, Oct. 2005)