

CHAPTER 6

BEER AND OTHER LIGHT BEVERAGES - GENERALLY

SECTION

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8-601. Definitions. For purposes of chapters 6, 7, and 8 of this title, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(1) "Beer" means beer, ale or other malt beverages, or any other beverage having an alcoholic content of not more than five percent (5%) by weight.

(2) "Board" means the Beer Permit Board for the City of Oak Ridge, Tennessee.

(3) "Bonafide charitable or non-profit organization" means any corporation which has been recognized as exempt from federal taxes under Section 501(c) of the Internal Revenue Code.

(4) "Bonafide political organization" means any political campaign committee as defined by Tennessee Code Annotated, § 2-10-102 or any political party as defined in Tennessee Code Annotated, § 2-13-101.

(5) "City" means the City of Oak Ridge, Tennessee.

(6) "City Manager" means the City Manager for the City of Oak Ridge or the City Manager's duly authorized designee.

(7) "Club" means an organization with membership having voting rights in the transaction of the business of the organization and paying dues, and having a purpose for being organized other than applying for a beer permit. For the purpose of determining if a club applying for a permit complies with this definition, the board shall have the right to inspect the charter, bylaws, books or other relevant documents of the club applying for a permit.

(8) "Manager" means the individual(s) responsible for the direct daily operations of the business.

(9) "Manager certificate" means any manager certificate issued pursuant to chapters 6, 7, and 8 of this title.

(10) "Minor" means any person who has not attained the age of twenty-one (21) years.

(11) "Permit" means any beer permit issued pursuant to chapters 6, 7, and 8 of this title.

(12) "Permittee" means any person to whom a permit has been issued pursuant to chapters 6, 7, and 8 of this title.

(13) "Premises" means a building, or a portion thereof, and property, including the parking and common areas, that is utilized for a particular business enterprise.

(14) "Person" means any individual, firm, partnership, corporation or other legal entity.

(15) "Sell" means and includes taking or receiving an order for, keeping or exposing for sale, delivering for value, keeping for intent to sell and trafficking in beer.

(16) "Show cause hearing" means any hearing scheduled by the board for the purpose of allowing the permittee or manager an opportunity to show cause as to why action should not be taken against his or her permit or manager certificate, respectively. (Ord. #3-01, June 2001)

8-602. Application of provisions. The provisions of chapters 6, 7, and 8 of this title shall apply to beer and shall not apply to any beverage with an alcoholic content exceeding five percent (5%) by weight. (Ord. #3-01, June 2001)

8-603. Beer permit board. (1) Creation of board. There is hereby created a beer permit board which shall consist of seven (7) citizens of at least twenty-two (22) years of age who have resided within the corporate limits of the city for a period of at least two (2) years immediately preceding their election by the city council, who shall hold office for a period of three (3) years each, and whose respective terms shall expire on the first Thursday of January of their respective terms. Members of the city council and city employees shall not be eligible to serve on the board. The board shall organize by the election of a chairperson and a secretary.

(2) Meetings. The board shall meet at such times as the members shall prescribe. All meetings shall be held in the municipal building at an hour fixed by the board. Minutes shall be kept of the meetings in a permanent form and a record shall be kept of the action of the board with respect to every application for a permit under chapters 6, 7, and 8 of this title. The presence of four (4) members of the board shall constitute a quorum and the concurring vote of a majority present at any meeting of the board shall be necessary for approval or revocation of any permit or any other action of the board. The minute book of the board shall be a public record, and shall become a part of the records of the city clerk.

(3) Powers. The board is hereby empowered, subject to the standards and procedures set forth in chapters 6, 7, and 8 of this title, to issue, revoke, suspend, and impose civil penalties on all permits for the sale of beer in the city as well as to issue and revoke manager certificates. The board is empowered to adopt such reasonable rules and regulations as it may deem necessary and proper for the operation and supervision of the businesses of persons holding

permits under chapters 6, 7, and 8 of this title, in conformity with the provisions of chapters 6, 7, and 8 of this title and with chapter 5 of title 57, Tennessee Code Annotated. A copy of the rules and regulations shall be filed with the city clerk.

(4) Subpoenas. (a) Issuance and procedure. The board is hereby empowered to issue subpoenas to compel attendance of witnesses and testimony of relevant facts for any duly scheduled show cause hearing. Upon request of the city and/or any party to a show cause hearing, the chairperson of the board, or secretary in the chairperson's absence, may issue subpoenas to compel attendance and testimony of witnesses possessing material and relevant information relating to any duly scheduled show cause hearing. Subpoenas shall be served by officers of the Oak Ridge Police Department or any other lawful officer.

(b) Disobedience. Willful disobedience to any subpoena issued and served in accordance with § 8-603(4) is hereby declared unlawful. Proceedings for violation of this section shall be heard in city court. (Ord. #3-01, June 2001)

8-604. Hours of sale and consumption. The legal hours for the sale of beer are hereby established for the following classes of permits issued under chapters 6, 7, and 8 of this title, and no permittee, manager or employee shall sell, give away, cause to be sold or given away or allow to be consumed or opened for consumption any such beverage on or about the premises beyond the hours herein prescribed:

(1) Class A permits. Hours of sale shall be from 7:00 A.M. until 3:00 A.M. every day except that beer shall not be sold on Sunday after 3:00 A.M.

(2) Class B permits. Hours of sale shall be from 6:00 A.M. until 3:00 A.M. on all days.

(3) Class C permits. Hours of sale shall be from 7:00 A.M. until 3:00 A.M. all days except on Sunday when hours of sale shall be from 10:00 A.M. until 3:00 A.M.

(4) Class D permits. Hours of sale shall be from 7:00 A.M. until 3:00 A.M. all days except on Sunday when hours of sale shall be from 10:00 A.M. until 3:00 A.M.

(5) Class E permits. Hours of sale shall be such hours set by the board between 7:00 A.M. until 3:00 A.M. all days except Sunday when hours of sale shall be between 10:00 A.M. and 3:00 A.M. (Ord. #3-01, June 2001, modified)

8-605. Enforcement. The city manager shall have full power to enforce the provisions of chapters 6, 7, and 8 of this title and to investigate reported violations thereof and, for this purpose, is hereby authorized to utilize the full facilities of the city's police department and such other inspection agencies of the city as the city manager may deem proper. A complete report shall be made of each investigation in writing, one copy to be furnished to the city's legal department and the legal department shall furnish a copy to the board. The city

manager shall have the right of entrance on any business premises covered by a permit issued under chapters 6, 7, and 8 of this title, during normal business hours, for the purpose of investigation and inspection for compliance with the provisions of chapters 6, 7, and 8 of this title. (Ord. #3-01, June 2001)

8-606. Permittees are responsible for premises. Permittees shall be responsible for compliance with the provisions of chapters 6, 7, and 8 of this title for all of the premises under the control of such permittee, both inside and outside, including parking lots, open areas, and such other common areas as the permitted premises is entitled to use. (Ord. #3-01, June 2001)

8-607. Distance requirement. (1) Effective May 13, 1999, section 3.14(d) of the zoning ordinance contains a distance requirement that is applicable to night clubs, dance clubs, taverns, clubs (private), lodges and similar uses, as those terms are defined in the zoning ordinance. This section requires that no pre-existing school; place of worship; other existing night club, dance club, tavern, club (private), lodge or similar establishment; or residential dwelling unit be located within two hundred fifty (250) feet of the proposed establishment.

(2) This distance requirement is applicable in the event an establishment is being reviewed by the board of zoning appeals, the planning commission, or city staff for a special exception, site review, or a certificate of occupancy. For establishments with existing beer permits, this distance requirement cannot be applied retroactively to revoke a valid beer permit. For establishments seeking a beer permit, this distance requirement must be applied in accordance with Tennessee Code Annotated, § 57-5-109 regarding proximity to schools, churches, and places of public gathering. (as added by Ord. #7-05, June 2005)

CHAPTER 7

BEER PERMITS AND MANAGER CERTIFICATES

SECTION

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- 8-711. Manager certificate.
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- 8-713. Revocation of manager certificates.

8-701. Permit required. (1) It is unlawful to operate any business engaged in the sale, distribution, manufacture or storage of beer within the city without obtaining a permit as provided in chapters 6, 7, and 8 of this title.

(2) Permits shall be issued by the city in the name of the owner of the business or establishment selling or distributing beer, whether a person, firm, corporation, joint-stock company, syndicate, association or other legal entity, but shall be issued for a particular premises. The manager responsible for the direct daily operations of the business shall be disclosed upon the application.

(3) No permit shall be required where beer is sold or distributed at and during such events as company, group or organizational picnics, parties, dinners, ceremonies or other such occasions where such sale or distribution is made in conjunction with such event and only to participants or members of such company, group or organization, and not to the general public; provided, further, that such sale or distribution is not made for profit other than the recovery of the cost or expense of such occasion or event, and provided further than such events do not exceed a twelve (12) hour period and do not exceed four (4) such events in a twelve (12) month period.

(4) A permit shall be valid:

(a) Only for the permittee to whom the permit is issued and cannot be transferred to another person or entity. If the permittee 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;

(b) Only for a single location, except as provided in § 8-701(5) 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, unless restricted by the board; and

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

(5) Where a permittee operates two (2) or more restaurants or other businesses within the same building, the permittee may in the permittee's discretion operate some or all such businesses pursuant to the same permit.

(6) A permittee must return his or her permit to the city within five (5) 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 permit, a permit shall expire on termination of the business, change in ownership, relocation of the business or change of the business's name.

(7) It is unlawful for any person to sell, distribute or manufacture beer without having a valid certificate indicating that purchases of beer by that person are "for resale" as that term is used in Tennessee Code Annotated, § 67-6-102(24). Within ten (10) days after being issued a permit to sell, distribute or manufacture beer, a person shall file with the city and with each person from whom the person buys beer a copy of a valid certificate indicating that the purchases of beer are "for resale" as that term is used in Tennessee Code Annotated, § 67-6-102(24), and shall subsequently maintain at all times a valid resale certificate on file with the city and with each person from whom the person buys beer. (Ord #3-01, June 2001)

8-702. Classes of permits. There shall be five (5) classes of permits issued under chapters 6, 7, and 8 of this title, as follows:

(1) Class A. A manufacturer's permit to a manufacturer of beer for the manufacture, possession, storage, sale, distribution and transportation of the product of such manufacturer, not to be consumed by the purchaser upon or near the premises of such manufacturer.

(2) Class B. An "off-sale" (off-premises consumption) permit to any person or legal organization engaged in the sale of beer where beer is not to be consumed by the purchaser upon or near the premises of such seller.

(3) Class C. An "on-sale" (on-premises consumption) permit to any person or legal organization engaged in the sale of beer where beer is consumed by the purchaser or guests upon or off the premises of the seller.

(4) Class D. A hotel or club "on-" and "off-" sale permit to any such person or legal organization engaged in the sale of beer where beer is to be consumed by the purchaser or guests upon or off the premises of the seller.

(5) Class E. A "special occasion permit" to bonafide charitable, non-profit or political organizations for special events, not to exceed four (4) events in any twelve (12) month period.

Such permit shall not be issued for longer than a seventy-two (72) hour period, subject to such restrictions and hours of sale imposed by the board. The application for such permit shall state whether the applicant is a charitable, nonprofit or political organization; the location of the premises for which beer is to be sold or served; the purpose of the request; the individual with such organization responsible for supervising the sale or distribution of beer; and the day(s) and hours during which sale is requested. (Ord. #3-01, June 2001)

8-703. Application generally. (1) All applications for a permit shall be made on a form prescribed by the board and approved by the city's legal department, and shall be accompanied by all such fees and charges as provided for in chapters 6, 7, and 8 of this title. Additionally, notice shall be placed in a newspaper of general circulation within the city at least ten (10) days prior to the date such application shall be acted upon and shall state the name of the applicant, the kind of classification of permit desired, and the address of the premises at which the permit is desired.

(2) Such application shall be verified by oath and affidavit and shall contain the following:

(a) A statement that the applicant is a person of good character and has sufficient legal interest in a suitable location as would entitle the applicant to conduct the sale of beer at such place of business.

(b) That neither the applicant nor any person employed by the applicant on the premises has been convicted of violating any law against possession, sale, manufacture or transportation of beer or intoxicating liquors, drugs, or narcotics or of a crime involving moral turpitude within the past ten (10) years.

(c) An authorization and release for the city to obtain all relevant information to investigate and determine the applicant's character, qualifications, and suitability for the issuance of a permit hereunder.

(d) That the permittee and all managers and employees have read and are familiar, or will read and become familiar with the provisions of chapters 6, 7, and 8 of this title of the code of ordinances upon the issuance of a permit or upon commencement of their employment.

(e) That neither the applicant nor any owner or manager has been convicted of driving under the influence within the past ten (10) years.

(3) The application shall state the name of the owner or all owners of such businesses; and, if a corporation, shall state the name of all stockholders holding at least ten percent (10%) or more of the stock.

(4) The application shall disclose the person to be the on-premise manager responsible for the direct daily operations of the business. Such manager shall be subject to the same qualifications as the applicant.

(5) The application shall provide a description of the entire premises, including outside open and parking areas available to and for the use of the business.

(6) If the applicant does not own the property on which the business is located, the applicant shall also submit proof that the property owner does not object to the issuance of a permit.

(7) The application for a permit shall be kept on file by the board and shall be open to inspection in accordance with state law. (Ord. #3-01, June 2001, as amended by Ord. #15-06, Aug. 2006)

8-704. Fees. All applications for the issuance of a new permit under chapters 6, 7, and 8 of this title, except for a Class E permit, shall be accompanied by a fee of two hundred fifty dollars (\$250.00) for each class of permit sought, which fee shall be non-transferable and non-refundable, notwithstanding whether an application is approved or denied. Applications for Class E permit shall be accompanied by a non-transferable, non-refundable fee of twenty-five dollars (\$25.00), notwithstanding whether an application is approved or denied. A permit, when issued, shall be good until surrendered by the permittee, until the business closes operation, until revoked by the board, or until otherwise specified herein. (Ord. #3-01, June 2001)

8-705. Grounds for denial. No application for a permit for the sale of beer shall be approved where, in the opinion of the board, such sale would cause congestion of traffic or interfere with schools, churches, or other places of public gathering, or where the applicant has once held a permit and it has been revoked less than one (1) year from the time of the applicant's present application, or where it would otherwise interfere with the public health, safety and morals. (Ord. #3-01, June 2001)

8-706. Issuance. Upon approval of an application by the board, the city manager shall issue a permit as directed; provided, however, no permit shall be issued unless the appropriate city business licenses have been obtained and any fees due thereon paid. (Ord. #3-01, June 2001)

8-707. Posting. A permit issued under chapters 6, 7, and 8 of this title shall be conspicuously posted in the house, building, room or place where the business authorized by the permit is conducted. (Ord. #3-01, June 2001)

8-708. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer in this state an annual privilege tax of one hundred dollars (\$100.00).

(1) Any person, firm, corporation, joint-stock company, syndicate or association engaged in selling, distributing, storing or manufacturing beer shall remit the tax by January 1 to the city.

(2) The city shall mail written notice to each permittee of the payment date of the annual privilege tax at least thirty (30) days prior to January 1. Notice shall be mailed to the address specified by the permittee on its permit application. If a permittee does not pay the tax by January 31, or within thirty (30) days after written notice of the tax was mailed, whichever is later, then the city shall notify the permittee by certified mail that the tax payment is past due. If a permittee does not pay the tax within ten (10) days after receiving notice of its delinquency by certified mail, then the board may suspend or revoke the permit or impose a civil penalty pursuant to § 8-712.

(3) At the time a new permit is issued to any business subject to this tax, the permittee 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.

(4) The city may utilize these tax funds for any public purpose. (Ord. #3-01, June 2001)

8-709. Training of employees. The permittee is responsible for explaining to and ensuring comprehension of the laws set forth in chapters 6, 7, and 8 of this title to all of their employees that participate in the sale or distribution of beer. (Ord. #3-01, June 2001)

8-710. Expiration when permittee ceases to operate businesses. Any permit issued under chapters 6, 7, and 8 of this title shall become invalid and void at 12:00 midnight of the date on which the permittee ceases to own the business for which such permit was issued. This provision shall not apply to temporary absences of the permittee, but shall apply when such permittee permanently ceases operations under the permit. Such permittee shall, within five (5) days from the date on which he or she ceases to do business under the permit, surrender such permit to the city's legal department. (Ord. #3-01, June 2001)

8-711. Manager certificate. (1) The person(s) responsible for the direct daily operations of a permitted business shall be subject to approval by the board upon application. All applications for a manager certificate shall be made on a form prescribed by the board and approved by the city's legal department. Additionally, notice shall be placed in a newspaper of general circulation within the city at least ten (10) days prior to the date such certification shall be acted upon and shall state the name of the applicant and the name and address of the business.

(2) Such application shall be verified by oath and affidavit and shall contain the following:

(a) A statement that the manager is a person of good character.

(b) That neither the manager nor any person employed by the manager on the premises has been convicted of violating any law against possession, sale, manufacture or transportation of beer or intoxicating

liquors, drugs or narcotics or of a crime involving moral turpitude within the past ten (10) years.

(c) An authorization and release for the city to obtain all relevant information to investigate and determine the manager's character, qualifications, and suitability for the issuance of a manager certificate hereunder.

(d) That the manager has read and is familiar, or will read and become familiar with the provisions of chapters 6, 7, and 8 of this title of the code of ordinances upon the issuance of a manager certificate.

(e) That the manager has not been convicted of driving under the influence within the past ten (10) years.

(3) Upon approval of the application for a manager certificate by the board, the city manager shall issue a manager certificate as directed and the certificate shall be conspicuously posted in the house, building, room or place where the business authorized by the permit is conducted.

(4) In the event the person designated on the manager certificate ceases to act in such capacity, or there is a change for any reason, the permittee shall file or cause to be filed a new manager application for the board's consideration within fifteen (15) days of the manager ceasing to act in such capacity. (Ord. #3-01, June 2001, as amended by Ord. #15-06, Aug. 2006)

8-712. Suspension, revocation and civil penalty; actions against permits.

(1) **Sales to minors.** (a) The board is hereby granted the power to revoke or suspend any permit issued pursuant to the provisions of chapters 6, 7, and 8 of this title or to offer the imposition of a civil penalty in lieu of suspension not to exceed two thousand five hundred dollars (\$2,500.00) for each offense of making or permitting to be made any beer sales to minors. The burden of ascertaining age shall be upon the permittee, the on-premises manager, and their employees.

(b) No permit shall be revoked on the grounds the permittee or any person working for the permittee sold beer to a minor over the age of eighteen (18) years if such minor exhibited an identification, false or otherwise, indicating the minor's age to be twenty-one (21) or over, if the minor's appearance as to maturity is such that the minor might reasonably be presumed to be of such age and is unknown to such person making the sale. The permit may be suspended for a period not to exceed ten (10) days or a civil penalty up to two thousand five hundred dollars (\$2,500.00) may be imposed pursuant to subsection (1)(a). However, this shall not be construed in any way to relieve the minor from liability for making such illegal purchase.

(c) Actions against permits for sales to minors that occur at establishments where the permit holder is a responsible vendor under the

Tennessee Responsible Vendor Act of 2006¹ are governed by city code, § 8-904

(2) All violations other than sales of beer to minors. The board is hereby granted the power to revoke or suspend any permit issued pursuant to the provisions of chapters 6, 7, and 8 of this title or to offer the imposition of a civil penalty in lieu of suspension not to exceed one thousand dollars (\$1,000.00) for any other violation of the provisions of this chapter, or where:

(a) The business is operated in a disorderly manner. It shall be prima facie evidence that a permittee's establishment is being operated in a disorderly manner if disorderly conduct frequently occurs, if there are frequent breaches of the peace or disturbances on the premises, or if there are frequent instances of public intoxication at the establishment.

(b) (i) The permittee or the on-premises manager has been convicted of a crime of moral turpitude or of violating any law governing the possession, sale, manufacture, or transportation of intoxicating liquor, drugs or narcotics or has been convicted of driving under the influence (DUI). Provided, however, that if the on-premises manager also possesses a valid server permit issued by the Alcoholic Beverage Commission pursuant to Tennessee Code Annotated, §§ 57-3-701, et seq., a DUI conviction will not be grounds for negative action against the permit.

(ii) An employee of a permitted premises has been convicted of a crime of moral turpitude or of violating any law governing the possession, sale, manufacture, or transportation of intoxicating liquor, drugs or narcotics and after knowledge of such conviction by the permittee or manager, continues in his or her employment at the permitted premises.

(iii) Drugs or narcotics are used, possessed, sold, or manufactured on the premises for which a permit has been issued and the permittee, manager or employees know or should know such activity is occurring.

(c) The sale or consumption of beverages governed by chapters 6, 7, and 8 of this title occurs on the premises after hours defined in chapters 6, 7, and 8 of this title.

(d) Minors are allowed to congregate or loiter on the premises.

(e) Gambling in any form is conducted on the premises.

(f) Persons who are intoxicated are served or permitted to consume beer on the premises.

¹State law reference

Tennessee Code Annotated, § 57-5-108.

(g) Failure to maintain or possess the proper health or sanitation permits or upon certification that the premises are so unsafe or unsanitary as to constitute a danger to the public health or safety.

(h) Violation(s) of city housing, zoning, building, electrical, plumbing or fire codes sufficient to constitute a danger to the safety and welfare of patrons and employees of the premises or of the general public.

(i) Failure of the permittee to pay business tax, annual privilege tax or other taxes due to the city.

(j) Gambling devices, as defined by state law, are located on the premises.

(k) The premises are maintained and operated in such manner as to be detrimental to public health, safety or morals.

(l) The permittee fails to submit or cause to be submitted a change of manager application to the city within fifteen (15) days of the previous manager ceasing to act in such capacity.

(m) The permittee fails to pay the state beer barrelage tax imposed by Tennessee Code Annotated, § 57-5-201 or fails to pay the city and county wholesale beer tax imposed by Tennessee Code Annotated, § 57-6-103. The burden of proof shall be on the retail permittee to show that the taxes on beer in the permittee's possession have been paid by showing that the beer was purchased from a Tennessee beer wholesaler, which fact shall be shown by the permittee providing a bill of sale or invoice for the beer which shall include the name and address of the wholesaler, the name and address of the permittee, the number of containers of each brand of beer purchased by the permittee, and which shall be signed by the permittee.

(3) If a civil penalty is imposed as an alternative to suspension, the permittee shall have seven (7) days within which to pay the civil penalty before the suspension shall be imposed. If the civil penalty is paid within seven (7) days, the suspension shall be deemed withdrawn. However, the payment of the civil penalty shall not affect a permittee's ability to seek review of the civil penalty pursuant to state law.

(4) The board may at any time accept the payment of a civil penalty, not to exceed the amounts set forth in subsections (1)(a) or (2), by a permittee charged with a violation of chapters 6, 7, or 8 of this title, which payment shall be an admission by the permittee of the violation so charged and shall be paid to the exclusion of any other penalty that the city or board may impose.

(5) A permittee shall be responsible for all violations of the provisions chapters 6, 7, and 8 of this title, whether such violations were committed by permittee, the permittee's agents, managers and employees, or other persons on the premises.

(6) No permittee who has had his or her permit revoked by the board may be granted a permit in the city for a period of one (1) year after such revocation.

(7) No permittee shall employ a person who has had a permit or manager certificate issued by the board which has been revoked within the last year if said employment involves the sale or distribution of beer.

(8) Where a permit is revoked, no new permit shall 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 board, in its discretion, may determine that issuance of a permit before the expiration of one (1) year from the date of revocation becomes final is appropriate, if the individual applying for such issuance is not the original holder of the permit or any family member who could inherit from such individual under the statute of intestate succession.

(9) Previous suspensions and other disciplinary actions taken by the board against a permittee may be considered by the board for determination of disciplinary action in any show cause hearing.

(10) In the event of a suspension or revocation, all beer remaining on the premises must be either confined in a locked area, shielded from public view or removed entirely from the premises.

(11) The decision of the board to either suspend or revoke must be posted at the main entrance to the establishment whose permit was suspended or revoked. The decision must remain posted during the entire length of the suspension or revocation.

(12) Should Tennessee Code Annotated, § 57-5-108 (a)(2)(A), as may be amended from time to time by the state legislature, authorize a municipal beer permit board to charge civil penalties in excess of those amounts stated in subsections (1) and (2) above, the civil penalties listed in subsections (1) and (2) shall automatically be raised to the higher amount permitted by state law. (Ord. # 3-01, June 2001, as amended by Ord. #15-06, Aug. 2006, and Ord. #15-07, Aug. 2007)

8-713. Revocation of manager certificates. The board is hereby granted the power to revoke any manager certificate issued pursuant to the provisions chapters 6, 7, and 8 of this title for the following reasons:

(1) Making or permitting to be made any beer sales to minors.

(2) The business is operated in a disorderly manner. It shall be prima facie evidence that an establishment is being operated in a disorderly manner if disorderly conduct frequently occurs, if there are frequent breaches of the peace or disturbances on the premises, or if there are frequent instances of public intoxication at the establishment.

(3) The manager has been convicted of a crime of moral turpitude or of violating any law governing the possession, sale, manufacture, or transportation of intoxicating liquor, drugs or narcotics or has been convicted of driving under the influence (DUI). Provided, however, that if the on-premises manager also possesses a valid server permit issued by the Alcoholic Beverage

Commission pursuant to Tennessee Code Annotated, §§ 57-3-701, et seq., a DUI conviction will not be grounds for revocation of the manager certificate.

(4) An employee of a permitted premises has been convicted of a crime of moral turpitude or of violating any law governing the possession, sale, manufacture, or transportation of intoxicating liquor, drugs or narcotics and after knowledge of such conviction by the manager, continues in his or her employment at the permitted premises.

(5) Drugs or narcotics are use, possessed, sold, or manufactured on the permitted premises and the manager or employees know or should know such activity is occurring.

(6) The sale or consumption of beverages governed by chapters 6, 7, and 8 of this title occurs on the premises after hours defined in chapters 6, 7, and 8 of this title.

(7) Minors are allowed to congregate or loiter on the premises.

(8) Gambling in any form is conducted on the premises.

(9) Persons who are intoxicated are served or permitted to consume beer on the premises.

(10) Gambling devices, as defined by state law, are located on the premises.

(11) The premises are maintained and operated in such manner as to be detrimental to public health, safety or morals.

(12) For any other violation of the provisions of chapters 6, 7, and 8 of this title. (Ord. #3-01, June 2001, as amended by Ord. #15-06, Aug. 2006)

CHAPTER 8

BEER AND OTHER LIGHT BEVERAGES - PROHIBITIONS

SECTION

- 8-801. Selling to minors; employing or permitting minors to loiter on premises.
- 8-802. Required documentation for prosecution of sale to minor.
- 8-803. Identification required for off-premises consumption purchases; sign to be posted.
- 8-804. Selling to intoxicated persons.
- 8-805. Drugs or liquor on premises.
- 8-806. Curb service prohibited.
- 8-807. Outdoor advertisement.
- 8-808. Sanitary facilities.
- 8-809. Open containers prohibited; exceptions.
- 8-810. Issuance of permits to or employment of persons on premises convicted of certain crimes prohibited.

8-801. Selling to minors; employing or permitting minors to loiter on premises. (1) It shall be unlawful for any permittee, or any person employed by any permittee, to make, permit or allow to be made any sales or distribution of beer to a minor.

(2) No person under the age of eighteen (18) may be employed in the sale or distribution of beer; provided, however, nothing herein shall prohibit the stocking, bagging, or carrying of beer to customers' automobiles by such persons, nor the receipt of money for payment of beer by persons under eighteen (18) years of age where the beer is served or the sale is approved by a person over the age of eighteen (18) who is employed by the permittee.

(3) No permittee or any other person employed by permittee shall allow any minor to loiter about such place of business where beer is sold, and the burden of ascertaining the age of minor customers shall be upon the permittee of such place of business. (Ord. #3-01, June 2001)

8-802. Required documentation for prosecution of sale to minor. No prosecution for the violation of any statute prohibiting the sale of beer for off-premises consumption to a person under twenty-one (21) years of age shall be commenced, if the prosecution is based upon the use of a person under twenty-one (21) years of age, as authorized by Tennessee Code Annotated, § 39-15-413, unless the person or the law enforcement officer supervising the person obtains the name of the permit holder and the employee of the permit holder from whom the beer was purchased or attempted to be purchased. All "stings" shall be conducted in accordance with state law in order to be valid. In addition, within ten (10) days of the date the action occurred, the

law enforcement officer shall notify the permit holder in writing, either by mail or hand delivery, indicating:

- (a) That an action recently occurred in which a person under twenty-one (21) years of age was used to purchase or attempt to purchase beer for off-premises consumption;
 - (b) The date and location of the action;
 - (c) The name of the permit holder and the employee from whom the beer was purchased or attempted to be purchased; and
 - (d) Whether the person was successful in making the purchase.
- (Ord. #3-01, June 2001, as deleted by Ord. #17-06, Sept. 2006, as added by Ord. #15-07, Aug. 2007)

8-803. Identification required for off-premises consumption purchases; sign to be posted. Prior to making a sale of beer for off-premise consumption, the adult consumer must present to the permit holder, or any employee of the permit holder, a valid, government-issued document, such as a driver's license, or other form of identification deemed acceptable to the permit holder, that includes the photograph and birth date of the adult consumer attempting to make a beer purchase. Persons exempt under state law from the requirement of having a photo identification shall present identification that is acceptable to the permit holder. The permit holder or employee shall make a determination from the information presented whether the purchaser is an adult. In addition to the prohibition of making a sale to a minor, no sale of beer for off-premises consumption shall be made to a person who does not present such a document or other form of identification to the permit holder or any employee of the permit holder. Responsible vendors, as that term is defined by city code § 8-901(6), shall post signs on the vendor's premises informing customers of the vendor's policy against selling beer to underage persons. The signs shall be not less than eight and one-half inches by eleven inches (8 1/2" x 11"), and shall contain the following language:

STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER

This section shall sunset on July 1, 2008, unless extended by state law.¹
(Ord. #3-01, June 2001, as deleted by Ord. #17-06, Sept. 2006, as added by Ord. #15-07, Aug. 2007)

8-804. Selling to intoxicated persons. It shall be unlawful for any person to sell or distribute beer to persons who are intoxicated. (Ord. #3-01, June 2001)

¹State law reference

Tennessee Code Annotated, § 57-5-301.

8-805. ~~Drugs or liquor on premises.~~ It is unlawful for any person to bring, to cause or to allow to be brought onto any permitted premises under chapters 6, 7, and 8 of this title any prohibited drugs within the meaning of Tennessee Code Annotated, §§ 53-10-101, et seq., and 39-17-401, et seq. ~~It is also unlawful for any person to bring, to cause or to allow to be brought onto any permitted premises under chapters 6, 7, and 8 of this title any intoxicating beverage, the alcoholic content of which is in excess of five percent (5%) by weight, unless such permittee is also the holder of a valid liquor license issued under the authority of Tennessee Code Annotated, title 57, chapter 4. (Ord. #3-01, June 2001)~~

*Deleted
by Ordinance
23-2018.*

8-806. Curb service prohibited. (4) It shall be unlawful for any person holding a permit under chapters 6, 7, and 8 of this title to sell, distribute, or permit to be sold or distributed beer to any person while such person is occupying any motor vehicle. This section prohibits sales or distribution of beer where the actual transaction occurs at the vehicle and does not prohibit an employee from transporting beer to a person's vehicle when the sale occurred inside the establishment.

(5) This section does not prohibit the sale of beer at or within a golf cart while a golf cart is being operated on a golf course when such golf course is the holder of a valid beer permit under chapters 6, 7, and 8 of this title unless the board has restricted the sale of beer on the course itself under § 8-701(4)(b). (Ord. #3-01, June 2001, as replaced by Ord. #15-06, Aug. 2006)

8-807. Outdoor advertisement. Not more than one (1) sign, advertisement or display, either painted, printed, or of a design and construction utilizing a combination of gaseous matter and electricity for illumination of its lettering, shall be used, erected or maintained outside the building in which the establishment is located to advertise or make reference to the fact that beer is sold on the premises; and no such sign shall be used for such purpose, the area of which is more than nine (9) square feet, and the thickness of which is more than twelve (12) inches. For the purpose of this section, the use of the words "tavern," "bar," or any other words which normally designate a place where beer is sold shall be construed to mean advertising the premises for the sale of beer, and any sign using such words shall come within the prohibition described above. Nothing in this provision shall affect in any way any other provision controlling the erection or maintenance of signs. (Ord. #3-01, June 2001)

8-808. Sanitary facilities. (6) It shall be unlawful for any permittee to fail to keep the premises in a clean and sanitary manner and in good repair both inside and outside. Said premises shall at all times be free from litter, weeds, trash, and other debris. Failure to comply with the requirements of this provision shall be grounds for suspension or revocation of the permit.

(7) All places at which beer is sold for consumption on premises shall be equipped with adequate toilet facilities and hand washing facilities for customers, and shall comply with all applicable state and local health and sanitation requirements.

(8) Where food is sold in connection with the sale of beer, no permit shall be issued until the applicant has complied with applicable state and local health and sanitation requirements, and possesses the necessary health permits; provided, however, where the health officials allow the continued service or sale of food pending corrective action for violations of the health code, a permit may be issued subject to revocation or suspension if corrective action is not taken within the time periods established by the health officials. The requirements of this subsection shall not be applicable for the sale of packaged goods. (Ord. #3-01, June 2001)

8-809. Open containers prohibited; exceptions. (1) For purposes of this section only, the term "alcoholic beverage" means and includes every liquid, other than patented medicine, capable of being consumed by a human being that contains alcohol including but not limited to beer, wine, spirits, alcohol, liquor and any beverage that has been mixed with alcoholic beverages.

(2) It shall be unlawful for any person to consume an alcoholic beverage or possess an open container containing an alcoholic beverage, within a motor vehicle or otherwise, upon the public roads or streets of the city, except as permitted by the city manager as provided for hereafter. This section shall not apply to the possession of open container(s) of alcoholic beverages within the trunk of a motor vehicle, or within another locked container, or within a compartment of a motor vehicle not readily accessible to persons within the passenger compartment.

(3) There shall be a rebuttable presumption that open containers of alcoholic beverages found in a motor vehicle, not within the physical possession of any individual, are in the possession of the driver of the vehicle.

(4) The city manager is authorized to permit the possession and consumption of alcoholic beverages upon public roads and streets or any other city property upon which the consumption of alcoholic beverages has been prohibited for special occasions. In such instance, the city manager shall file with the city clerk a notice of such roads and streets and the date(s) and time(s) such shall be permitted, and it shall be a defense to a charge under this section that an open container of alcoholic beverage was possessed or the contents consumed upon any such permitted street during the date and time of such permit.

(5) It is unlawful to consume or possess open containers of alcoholic beverages upon any city-owned property where such consumption or possession has been prohibited by city council, and the city clerk shall maintain a current list of all city-owned properties, except roads or streets, upon which the city council has placed such a prohibition. Provided, however, that for special

occasions the city manager is authorized to permit the consumption or possession of open containers of alcoholic beverages upon city-owned property where such has been prohibited. For those occasions, the city manager shall file with the city clerk a notice containing a description of the property and the dates(s) and time(s) such consumption or possession shall be permitted thereon. It shall be a defense to a charge under this section that an open container of alcoholic beverage was possessed or the contents consumed upon the described property during the permitted date(s) and time(s). (Ord. #3-01, June 2001)

8-810. Issuance of permits to or employment of persons on premises convicted of certain crimes prohibited. No permit shall be issued to any person, nor shall any person be employed upon the premises, who has been convicted of any violation of state or federal law prohibiting the possession, sale, transportation or manufacture of beer, wine, intoxicating liquor, drugs or narcotics, or of any crime involving moral turpitude within the past ten (10) years. Further, no owner or manager may be convicted of driving under the influence (DUI) within the past ten (10) years. Provided, however, that a manager with a DUI conviction may continue such employment if that person is also the holder of a valid server permit issued by the Alcoholic Beverage Commission. In the event the person's ten (10) year history includes juvenile offenses, only the person's history since the age of eighteen (18) shall be considered. (Ord. #3-01, June 2001, as replaced by Ord. #15-06, Aug. 2006)

CHAPTER 9

RESPONSIBLE VENDOR PROGRAM

SECTION

- 8-901. Definitions.
- 8-902. Responsible vendor training programs.
- 8-903. Vendor certification.
- 8-904. Suspension, revocation, and civil penalty, actions against permits held by responsible vendors.
- 8-905. Action against clerks for sales to minors.

8-901. Definitions. As used in this chapter, unless the context otherwise requires:¹ (1) "Beer" has the same meaning as defined in § 8-601(1).

(2) "Board" has the same meaning as defined in § 8-601(2).

(3) "Certified clerk" means a clerk who has successfully satisfied the training requirements contained in the Tennessee Responsible Vendor Act of 2006 and who has received certification from a responsible vendor training program.

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

(5) "Commission" means the State of Tennessee's Alcoholic Beverage Commission.

(6) "Responsible vendor" means a vendor that has received certification from the commission in accordance with the Tennessee Responsible Vendor Act of 2006.

(7) "Responsible vendor training program" means a training program related to the responsible sale of beer for off-premise consumption that has met all the statutory and regulatory requirements set forth in the Tennessee Responsible Vendor Act of 2006, and in commission rules and regulations.

(8) "Vendor" means a person, corporation or other entity that has been issued a permit to sell beer for off-premise consumption. (as added by Ord. #15-07, Aug. 2007)

8-902. Responsible vendor training programs.² Pursuant to the Tennessee Responsible Vendor Act of 2006, the commission has the authority to approve all responsible vendor training programs and is required to establish

¹State law reference
Tennessee Code Annotated, § 57-5-603

²State law reference
Tennessee Code Annotated, § 57-5-604

requirements and guidelines for responsible vendor training programs and vendor and clerk certifications. It is the commission's responsibility to establish and keep a master list of certified clerks and clerks not eligible for certification. (as added by Ord. #15-07, Aug. 2007)

8-903. Vendor certification.¹ A vendor who seeks certification as a responsible vendor must comply with the Tennessee Responsible Vendor Act of 2006 and the procedures, rules and regulations adopted by the commission. Determination of compliance with the responsible vendor program is the sole province of the commission. (as added by Ord. #15-07, Aug. 2007)

8-904. Suspension, revocation, and civil penalty; actions against permits held by responsible vendors.² (1) The board may not revoke or suspend the permit of a responsible vendor for a clerk's illegal sale of beer to a minor if the clerk making the illegal sale is a certified clerk and has attended annual meetings since the original certification, or is within sixty-one (61) days of the date of hire at the time of the violation. In such event, the board may impose on the responsible vendor a civil penalty not to exceed one thousand dollars (\$1,000.00) for each offense of making or permitting to be made any sales to minors or for any other offense. In event a responsible vendor has at least two (2) violations within a twelve-month period, the board may issue a permanent revocation of the permit.

(2) If the commission revokes a vendor's certification pursuant to Tennessee Code Annotated, § 57-5-608(b), the board may take action against the permit as if the vendor were not certified as a responsible vendor. (as added by Ord. #15-07, Aug. 2007)

8-905. Action against clerks for sales to minors.³ If the board determines that a sale to a minor occurred by an off-premise beer permit holder, then the certification of the clerk making the sale shall be invalid and the clerk may not reapply for a new certificate for a period of one (1) year from the date of the beer board's determination. The board shall report the name(s) of such clerk(s) to the commission within fifteen (15) days of finding that a sale to a minor occurred. The commission then notifies the responsible vendor of their

¹State law reference
Tennessee Code Annotated, § 57-5-605

²State law reference
Tennessee Code Annotated, § 57-5-108 and § 57-5-608

³State law reference
Tennessee Code Annotated, § 57-5-607

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certified clerks who have lost their certification within fifteen (15) days of notification by the board. (as added by Ord. #15-07, Aug. 2007)

TITLE

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF OAK RIDGE, TENNESSEE, BY DELETING SECTION 8-805, TITLED "DRUGS OR LIQUOR ON PREMISES," AND SETTING FORTH A NEW SECTION 8-805, TITLED "DRUGS ON PREMISES," AND TO DESIGNATE CITY CODE SECTION 11-201, CURRENTLY UNTITLED, TO BE TITLED "CUSTOMERS' ABILITY TO BRING ALCOHOLIC BEVERAGES INTO A PLACE OF BUSINESS FOR PERSONAL CONSUMPTION," ALL FOR THE PURPOSE OF SETTING FORTH REGULATIONS CONCERNING THE PRACTICE COMMONLY REFERRED TO AS "BROWN BAGGING."

WHEREAS, by City Code §8-805, the City of Oak Ridge prohibits the practice of brown bagging alcoholic beverages exceeding five percent (5%) alcoholic content by weight in establishments with a beer permit; and

WHEREAS, the City desires to expand the prohibition on brown bagging with one exception.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OAK RIDGE, TENNESSEE:

Section 1. Title 8, titled, "Alcoholic Beverages," Chapter 8, titled "Beer and Other Light Beverages – Prohibitions," of the Code of Ordinances, City of Oak Ridge, Tennessee, is hereby amended by deleting Section 8-805, titled "Drugs or Liquor on Premises," in its entirety and substituting therefor a new Section 8-805, titled "Drugs on Premises," which new section shall read as follows:

Sec. 8-805. Drugs on premises.

It is unlawful for any person to bring, to cause or to allow to be brought onto any permitted premises under chapters 6, 7, and 8 of this title any prohibited drugs within the meaning of Tennessee Code Annotated §§53-10-101, et seq., and 39-17-401, et seq.

Section 2. Title 11, titled, "Municipal Offenses," of the Code of Ordinances, City of Oak Ridge, Tennessee, is hereby amended by designating City Code §11-201, currently untitled, to be titled "Customers' Ability to Bring Alcoholic Beverages into a Place of Business for Personal Consumption," which new section shall read as follows:

Sec. 11-201. Customers' Ability to Bring Alcoholic Beverages into a Place of Business for Personal Consumption.

Customers may bring alcoholic beverages into a place of business for their personal consumption only as specified herein. With the consent of the business owner, customers may bring beer or wine for consumption by themselves and their personal guests into a food service establishment that possesses a valid permanent on premises beer permit or whose management possesses a valid server permit from the Tennessee Alcoholic Beverage Commission. This section shall not be interpreted to provide additional allowances or restrictions on establishments with a Tennessee license for liquor by the drink.

For the purposes of this section, the term "food service establishment" means any public place kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, such place being provided with adequate and sanitary kitchen and dining room equipment and tables, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its patrons and customers; and providing that more than fifty percent (50%) of the gross revenue of the establishment is generated from the serving of food/meals.

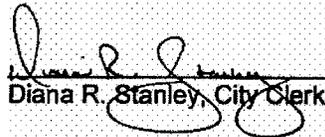
Section 3. Enforcement of this ordinance shall begin January 1, 2013.

Section 4. This ordinance shall become effective ten (10) days after adoption on second reading, the welfare of the City of Oak Ridge requiring it.

APPROVED AS TO FORM AND LEGALITY:


Kenneth R. Krushenski, City Attorney


Thomas L. Beehan, Mayor


Diana R. Stanley, City Clerk

First Reading: 10/08/2012
Publication Date: 10/15/2012
Second Reading: 11/05/2012
Publication Date: 11/12/2012
Effective Date: 11/15/2012