

EX-107 COPY
FILE COPY

ORDINANCE NO. 108-97

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF
THE CITY OF TOWNSEND, TENNESSEE RELATIVE TO
TITLE 2, CHAPTER 2

WHEREAS, the Townsend Beer Board has adopted a resolution recommending to the Board of Commissioners of the City of Townsend, Tennessee that the Board of Commissioners amend the Municipal Code to increase the beer permit application fee to \$250.00, to impose a beer privilege tax of \$100.00 per year for permit holders and payable at the beginning of each calendar year, to amend the distance requirement for beer sales from a school, church, or residence from two hundred (200) feet to four hundred (400) feet, and to amend the operating hours of beer businesses to allow for Sunday sales of beer between the hours of 12:00 o'clock noon and 12:00 o'clock midnight; and

WHEREAS, the Board of Commissioners of the City of Townsend, Tennessee consider it to be in the best interest of the municipality to so amend the Municipal Code;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF TOWNSEND, TENNESSEE as follows:

SECTION 1. Section 2-207(10) shall be deleted in its entirety and replaced by the following:

(10) No original permit shall be issued pursuant to this Ordinance unless the applicant shall pay to the secretary of the Board an application fee in the amount of Two

Hundred Fifty Dollars (\$250.00), which application fee shall be non-refundable. There shall be no application fee required for renewal applications.

SECTION 2. Section 2-207 shall further be amended by adopting the following new subsection (11):

(11) There is hereby imposed on the business of selling, distributing, storing or manufacturing beer an annual privilege tax in the amount 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 of each successive year after the adoption of this ordinance to the City of Townsend, 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 pro-rated basis for each month or portion thereof remaining until the next tax payment date.

SECTION 3. Section 2-203, as amended by Ordinance No. 66-87, shall be deleted in its entirety and replaced by the following:

2-203. Locations of Beer Businesses. The beverages regulated by this Ordinance shall not be sold, given away, stored, manufactured, or otherwise dispensed or distributed within the City of Townsend within four hundred (400) feet of any school (public or private) or church or residence as measured on a straight line from the nearest property line of said school or church or residence to the nearest point of the building or structure where such beverages are stored, sold, manufactured, dispensed or distributed.

SECTION 4. Section 2-204 shall be deleted in its entirety and replaced by the following:

2-204. Operating Hours of Beer Businesses. None of the beverages regulated by this Ordinance shall be sold, given away, stored, manufactured, or otherwise dispensed or distributed except between the hours of 6:00 o'clock a.m. and 12:00 o'clock midnight on Mondays, Tuesdays, Wednesdays, Thursdays, Fridays and Saturdays; and between the hours of 12:00 o'clock noon and 12:00 o'clock midnight on Sundays.

SECTION 5. Section 2-207(3) shall be deleted in its entirety and replaced by the following:

(3) Restaurants with a seating capacity of forty (40) or more, all within the interior of the building, and holding a valid beer permit may serve beer only with meals ordered and only during the hours when meals from the menu are regularly served, between the hours of 11:00 o'clock a.m. and 12:00 o'clock midnight Monday through Saturday, and 12:00 o'clock noon until 12:00 o'clock midnight on Sunday. No open container of beer shall be taken from the restaurant.

One non-electric sign--no larger than twelve (12) inches by twenty-four inches--indicating that beer is available with meals may be posted on the wall outside the building or displayed in a window so as to be seen from outside the restaurant. Such a sign shall not include brand names, pictures, or prices.

Monthly beer sales must not exceed thirty percent (30%) of the restaurant's gross sales. Any restaurant which during three (3) consecutive months in a twelve-month period has beer sales exceeding thirty percent (30%) of its gross sale shall have its beer permit revoked.

An on-premise permit holder cannot also hold an off-premise permit at the same location.

Section 6. All resolutions, ordinances and orders, or parts thereof, in conflict with the provisions of this ordinance are, to the extent of such conflict, hereby repealed and this order shall be in immediate effect from and after its adoption, the

welfare of the municipality requiring it.

Approved and adopted this 19th day of March, 1997.

Benjamin E Haddox
MAYOR

ATTEST: Ames Jordan
CITY RECORDER

APPROVED AS TO FORM:
[Signature]
CITY ATTORNEY

PASSED ON FIRST READING: 17th DAY OF March, 1997
Ames Jordan
RECORDER

PASSED ON SECOND READING: 18th DAY OF March, 1997
Ames Jordan
RECORDER

PASSED ON THIRD READING: 19th DAY OF March, 1997
Ames Jordan
RECORDER

APPROVED:
Benjamin E Haddox
MAYOR

3-19-97
DATE

TITLE 2

B

ALCOHOLIC BEVERAGES

CHAPTER

1. INTOXICATING LIQUORS

2. BEER

CHAPTER 1
INTOXICATING LIQUORS

SECTION

2-101 Prohibited generally.

2-101. Prohibited generally. Except when he is lawfully acting pursuant to the authority of an applicable state law it shall be unlawful for any person to manufacture, receive, possess, store, transport, sell, furnish, or solicit orders for any intoxicating liquor within the City of Townsend. Intoxicating liquor shall be defined to include, whiskey, wine, home brew, moonshine, and all other intoxicating, spirituous, vinous or malt liquors and beers which contain more than five percent,(5%) of alcohol by weight.

The power, right and authority are hereby conferred upon said Board to arrange for and prescribe the details and form of the necessary application, permits and other matters incident to carrying out the provisions of this Ordinance.

The Board shall meet upon call by the chairman of the Board to transact such business as may properly come before it.

The Board shall perform such other duties and have such other power and authority provided by statute and this Ordinance.

2-202 Authorization of Beer Businesses.

Pursuant to §57-5-101, et seq., Tennessee Code Annotated, it shall be lawful in the City of Townsend to transport, store, sell, distribute, possess, receive, or manufacture beer of alcoholic content of not more than five percent (5%) by weight and/or any other beverage of like alcoholic content, subject to the provisions of this Ordinance and all other ordinances of the City of Townsend. However, no person, firm, co-partnership, corporation, joint stock company, syndicate, association, or other group operating as a unit shall sell, store, distribute, dispense and/or manufacture any of the said beverages regulated by this Ordinance within the City of Townsend without having first obtained a duly issued permit to do so in the manner described in this Ordinance.

2-203 Locations of Beer Businesses. The

beverages regulated by this Ordinance shall not be sold, given away, stored, manufactured, or otherwise dispensed or distributed within the City of Townsend within four hundred (400) feet of any school (public or private) or church as measured on a straight line from the nearest property line of said school or church to the nearest point of the building or structure where such beverages are stored, sold, manufactured dispensed or distributed.

2-204 Operating hours of Beer Businesses.

None of the beverages regulated by this Ordinance shall be sold, given away, stored, manufactured, or otherwise dispensed or distributed except between the hours of 6:00 o'clock a.m. and 12:00 o'clock midnight on Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, and Saturdays.

2-205 Playing of Pool or Billiards Prohibited

Where Beer is Sold or Otherwise Dispensed. None of the beverage regulated by this Ordinance shall be sold, given away, stored, manufactured, or otherwise dispensed, distributed or consumed within a room or place used to carry on the business of playing pool or billiards, nor in any room or place with a direct

entrance to any such rooms or places used for the playing of pool or billiards.

2-206 Public Consumption of Beer Prohibited.

None of the beverages regulated by this Ordinance shall be consumed on any public street, alley, boulevard, bridge, nor upon the grounds of any cemetery or school, whether public or private, nor upon any park or public grounds, nor upon the grounds belonging to any church, nor upon vacant lots within two hundred (200) feet of any public street, highway, avenue, or other public place.

2-207 Beer Permits.

(1) No permit or renewal thereof shall be issued except upon application in writing made to the Townsend Beer Board, which application shall be sworn to by the applicant and verified by the affidavits of two reputable citizens of the State of Tennessee who are acquainted with the applicant. All applications shall be made upon a regular form provided for that purpose, and shall be filed with the secretary of the Board. In no event shall a permit be issued without the written approval of the application therefor by a majority of the Board.

(2) No permit shall be issued for a longer period than one year. The Beer Board may issue a permit for a shorter or probationary period if, in its discretion, it deems proper.

(3) Only permits for off-premise consumption of the beverages regulated by this Ordinance shall be issued by the Beer Board. The beverages regulated by this Ordinance shall not be sold, given away, or otherwise dispensed or distributed for consumption on the premises of the permit holder.

(4) Initially, all permits issued by the City of Townsend shall expire on the 15th day of December, 1981, and on or before the 30th day of November, 1981, a renewal application shall be filed by the holder of each such permit; and thereafter such permits and those hereafter issued shall be renewed annually on or before the 15th day of December in each and every year.

(5) No permit hereafter issued shall be good or valid except at the location described in the application upon which it is based; nor shall any such permit be transferrable.

(6) The applicant shall be required to appear in person before the Board and subject himself to examination upon any and all questions appertaining to his qualifications under this Ordinance and amendments thereto.

(7) No permit shall be issued except to persons who are citizens of the United States, who are of good moral character, who have not been convicted within the past ten

(10) years of violation of any laws or ordinances against manufacturing, selling, transporting, storing, or possessing intoxicating liquor of alcoholic content in excess of five percent (5%) by weight, who have not been convicted of any felony within the past ten (10) years, and who have not had a beer permit revoked or suspended within the past ten (10) years. No person, firm, co-partnership, corporation, syndicate, joint stock company, association or other group operating as a unit, to whom a permit is issued under this Ordinance, shall employ or use or permit to be employed or used any person in the sale, storage, manufacture, dispensing, distribution, or other handling of any such beverages who is not a citizen of the United States and who does not possess all the said qualifications.

(8) Every permit issued pursuant to this Ordinance shall be displayed in a conspicuous place in the place of business named and described in the permit.

(9) No permit shall be issued pursuant to this Ordinance unless the applicant establishes to the satisfaction of the Board that he has obtained all permits and paid all required fees and privileges taxes, and has met all other requirements of the laws of the State of Tennessee and the United States. No permit shall be granted unless or until the party desiring the same shall have filed with the County Clerk the bond provided for in Sections 57-5-106 and 57-5-107, Tennessee Code Annotated.

(10) No original permit shall be issued pursuant to this Ordinance unless the applicant shall pay to the secretary of the Board an application fee in the amount of \$250.00, which application fee shall be nonrefundable. There shall be no application fee required for renewal applications.

2-208

Restrictions on Financial Interest of Beer Permit Holders. No brewer, wholesaler, or manufacturer of any of the beverages regulated by this Ordinance, nor any agent or agents of such brewer, wholesaler, or manufacturer, shall be permitted to make any loan of money or furnish any fixtures of any kind or have any interest, either directly or indirectly, in the business of any retailer of such beverages, or in the premises occupied by such retailer. No person holding and/or exercising an unexpired permit issued pursuant to this Ordinance shall while so doing, convey or grant or contract to convey or grant any interest in the business located at the place named in said permit, or any interest in the premises or any property therein to any brewer, wholesaler, or manufacturer of the beverages regulated by this Ordinance. No person holding and/or exercising an unexpired permit issued pursuant to this Ordinance shall incur or contract any indebtedness or financial obligation

to any brewer, wholesaler, or manufacturer of the beverages regulated by this Ordinance, except for the purchase of said beverages. No permit shall be granted under this Ordinance to any applicant who, at the time of making application, is indebted or financially obligated to any such brewer, wholesaler, or manufacturer, except for the purchase of said beverages in the case of applicants seeking renewal of permits.

2-209 Restrictions Pertaining to Minors. No sales, gifts, or distribution of the beverages regulated by this Ordinance shall be made or permitted to be made to minors, nor shall any minor be employed or used or permitted to be employed or used for or in the sale or distribution or other handling of such beverages.

2-210 Restrictions Pertaining to Intoxicated Persons. None of the beverages regulated by this Ordinance shall be sold, given away, or otherwise dispensed or distributed to any person in an intoxicated condition. No person holding a permit under and dealing in and handling the beverages regulated by this Ordinance shall permit or allow upon his premises or in his place of business any person who is under the influence of any intoxicant whatsoever. It shall be the duty of any person holding a permit under and dealing in and handling the beverages regulated by this Ordinance to promptly notify the police officers of the City of Townsend when any person under the influence of any intoxicant whatsoever enters the premises or place of business of the person holding such permit.

No owner, co-owner, operator, proprietor, employee or servant of a place of business holding and/or exercising a permit issued pursuant to this Ordinance shall drink or be under the influence of any of the beverages regulated by this Ordinance or any other intoxicant while in or working at such place of business or while upon any such premises.

2-211 Selling or Otherwise Dispensing Beer to Persons Without Valid Permits or to Persons Engaging in Unlawful Practices Prohibited. No person, firm, co-partnership, corporation, syndicate, joint stock company, association, or other group operating as a unit, who or which holds and/or exercises a distributor's or wholesaler's permit under this Ordinance, shall sell, give away, deliver, or distribute any of the beverages regulated by this Ordinance to any person, firm, co-partnership, corporation, syndicate, joint stock company, association, or other group operating as a unit, in the City of Townsend, who or which does not hold a valid retailer's permit issued pursuant to this Ordinance, or

permit or allow any agent or employee to do so. Nor shall such distributor or wholesaler knowingly sell, give away, deliver, or distribute such beverages to any such retailer who has violated or is violating any of the provisions of this Ordinance, or permit or allow any agent or employee to do so.

2-212

Revocation of Beer Permits. The

Townsend Beer Board is hereby empowered and directed, whenever from facts and evidence presented to it at a hearing herein-after provided for it is of the opinion that such action is justified in the public interest, to revoke any permit issued pursuant to this Ordinance to any person, firm, co-partnership, corporation, joint stock company, syndicate, association, or group operating as a unit, who:

(1) Makes any material misrepresentation or false statement in the application upon which the permit is based; or fails to keep and maintain as true any promise or fact set forth in said application, or

(2) Violates any of the provisions of this Ordinance or

(3) Is convicted of any violation of the laws of the United States or of the State of Tennessee or of the ordinances of any city prohibiting the manufacture, sale, possession, storage, or transportation, of intoxicating liquors of alcoholic content of more than five (5%) percent by weight, or

(4) Knowingly permits or allows, or negligently fails to prevent, the violation of any of the aforesaid laws or ordinances against said intoxicating liquors upon any premises occupied or owned by or under the control of the permit holder.

Upon any complaint being made to the said Board by one or more reputable citizens that any of the acts above mentioned in this section has been committed or any other provision of this Ordinance has been or is being violated by a person holding and/or exercising a permit issued pursuant to this Ordinance, or when said Board has knowledge of any such act or violation, the holder of said permit shall be notified in writing by the secretary of the Board and afforded an opportunity for a hearing before the Board. Said notice shall be mailed, at least five (5) days before the hearing, to the address shown upon the application for a permit, shall state the nature of the complaint or violation, and shall direct the holder of said permit to appear before the Board at a time and place specified and show cause, if any he has, why his permit should not be revoked. The hearing shall be broad in character, and evidence may be heard upon

any facts or circumstances pertinent to or applicable to the violation charged. The reputation or character of the place and of the holder of the permit complained of shall be material and competent evidence for the consideration of the Board at such hearing.

Whenever complaint is made charging that false statements or misrepresentations have been made in any application for a permit under this Ordinance, the burden of proof shall be upon the holder of the permit to establish the truth of the statement charged to be false. Provided, that no formal complaint shall be necessary or required whenever the falsity of such statement or representation, or the commission of any of the acts above mentioned in this Section, or the violation of any other provision of this Ordinance, may be made to appear by the records of any Court of competent jurisdiction; and in such case such records or duly certified copies thereof shall be conclusive evidence of the falsity or misrepresentation or of the commission of such act or of such violation.

No person, firm, co-partnership, corporation, joint stock company, syndicate, association, or other group operating as a unit, whose permit is revoked by the Board shall be eligible to make application for or be granted another permit under this Ordinance for a period of ten (10) years from the date said revocation becomes final.

When a permit is revoked by said Board pursuant to this Ordinance, no new permit shall be issued for the same premises until the expiration of one (1) year from the date said revocation becomes final.

2-213 Inspection of Beer Businesses. The police officers of the City of Townsend shall have the right to inspect at any and all times the entire premises and property where or upon or in which the beverages regulated by this Ordinance are sold, stored, manufactured, transported, or otherwise dispensed or distributed or handled, whether at retail or wholesale, in the City of Townsend.