

ORDINANCE NO. 17-03-13
CITY OF CLARKSBURG, TENNESSEE

AN ORDINANCE ADOPTING TITLE TWO, CHAPTER TWO
OF THE CLARKSBURG MUNICIPAL CODE
RELATIVE TO BEER

SECTION I. BE IT ORDAINED BY THE MAYOR AND THE BOARD OF ALDERMEN of the City of Clarksburg, Tennessee, that:

A public hearing was held by the Mayor and Board of Aldermen on April 17, 2017, at 5:30 p.m. relative to this Ordinance and upon proper notice having been given by publication in the Carroll County News Leader.

Title 2, Chapter 2, of the Clarksburg Municipal Code is adopted as follows:

CHAPTER 2

BEER

SECTION

- 2-201 Selling, etc., of beer a privilege
- 2-202 Beer board established.
- 2-203 Appointment and compensation of beer inspectors.
- 2-204 Permit required for engaging in beer business.
- 2-205 Permit issued for consumption of beer off the premises.
- 2-206 Written application and application fee required for permits.
- 2-207 Prohibited conduct or activities by beer permit holders, employees and persons engaged in the sale of beer.
- 2-208 Board may investigate charges and revoke permit; waiting period after revocation.
- 2-209 Permit to be posted.
- 2-210 Permits and licenses not transferable.
- 2-211 Distributors may sell only to permit holders.
- 2-212 Sales, etc., to minors prohibited; no person convicted of violating certain laws to be employed.
- 2-213 Buying beer for minors prohibited.
- 2-214 Unlawful for minors to purchase beer.
- 2-215 Business hours for beer establishments.

- 2-216 Sale of beer prohibited from location where sleeping quarter connected.
- 2-217 Policemen and firemen may not be employed in beer business.
- 2-218 Outdoor advertising of beer prohibited.
- 2-219 Beer business to be open for inspection.
- 2-220 Applicant to agree to comply with laws.
- 2-221 Applicant to agree to suspension of license.
- 2-222 Location of business regulated by zoning ordinance.
- 2-223 Issuance and term of beer permit.
- 2-224 Separate beer permits and business license for each location.
- 2-225 Power of recorder and board to subpoena, etc.
- 2-226 Sales off-premises permitted.
- 2-227 Revocation or suspension of beer permits.
- 2-228 Penalty.
- 2-229 Loss of clerk's certification for sale to minors.
- 2-230 Civil penalty in lieu of suspension.

2-201 Selling, etc., of beer a privilege. It shall hereafter be lawful and is hereby declared to be a privilege to sell, store for resale, or distribute beer of alcoholic content of not more than eight (8%) percent by weight, or other beverages of like alcoholic content, within the corporate limits of the City of Clarksburg, Tennessee, subject to all the regulations, limitations, and restrictions provided.

There is hereby imposed on the business of selling, distributing, storing or manufacturing beer an annual privilege tax of one hundred dollars (\$100.00). Any person, firm, corporation, joint stock company, syndicate of association engaged in the sale, distribution, storage or manufacture of beer shall remit the tax on January 1st, 2018, and each successive January 1st, to the City Recorder of the City of Clarksburg. 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 remaining until the next tax payment date. A partial month shall be considered a full month for purposes of this tax payment. (§57-5-103 (b) (1)TCA).

If a permit holder does not pay the annual privilege tax by January 31st, or within thirty (30) days after written notice of the tax was named, whichever is later, then the city must notify the permit holder by certified mail, or by hand-delivery by an official of the city, that the tax payment is past due. If the permit holder does not pay the tax within ten (10) days after receiving notice of its delinquency by certified mail or hand-delivery, then the permit is void. (§57-5-103 (b) (3)TCA).

2-202 Beer board established, There is hereby created a board, which shall be known and designated as the beer board of Clarksburg; hereinafter referred to in this chapter as the "board". Such board shall be composed of all the members of the city council.

It shall be the duty of the board to regulate and supervise the issuance of permits to store more than one case, distribute, and sell beer and other beverages of

an alcoholic content of not in excess of eight (8%) percent by weight to the persons and in the manner provided herein.

It is hereby declared that the sale of beer in the city is a privilege, and such board is hereby empowered, with complete discretion, to issue, revoke, and suspend all licenses to sell beer in the city, and to perform such other duties and to have such other powers and authority as provided in this chapter.

2-203 Appointment and compensation of beer inspectors. The beer board, acting for the city, may fix the compensation of inspectors for the purpose of enforcing this chapter and other laws, ordinances, and rules regulating the distribution, possession, storage, and sale of beer, or other beverages of like alcoholic content at wholesale or retail. Such inspector, if appointed, shall hold office by and in the discretion of the board. Members of the police department are fully authorized to enforce all provisions of this chapter at the option of the board in lieu of inspectors as hereinabove provided.

2-204 Permit required for engaging in beer business. No person shall engage in the selling, storing for resale, possessing more than one (1) case, or distributing beer of alcoholic content of not more than eight (8%) percent by weight or other beverages of like alcoholic content within the corporate limits of the City of Clarksburg, Tennessee, until he shall receive a permit to do so from the beer board of the City of Clarksburg, Tennessee, which permit shall at all times be subject to all of the limitations and restrictions herein provided.

- (1) Permits shall be issued to the owner of the business, whether a person, firm, corporation, joint-stock company, syndicate, or association and cannot be transferred to another owner. (§57-5-104 (a) (3) (A) TCA).
- (2) A permit is only for a single location. (§57-5-104 (a) (3) (B) TCA).
- (3) A permit is valid only for the business of the owner named in the permit. (§57-5-104 (a) (3) (C) TCA).
- (4) A permit holder must return a permit to the City Recorder within fifteen (15) days of termination of the business, change of ownership, relocation of the business or a change in 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. A change in ownership occurs for a corporate owner when at least fifty percent (50%) of the stock of the corporation is transferred to a new owner. (§57-5-104 (a) (6) TCA).

2-205. Permit issued for consumption of beer off the premises. Permits issued for retail sale of beverages coming within the provisions of this chapter shall be for off-premise consumption. No permit for on-premises consumption is authorized by this ordinance.

2-206. Written application and application fee required for permits. Before any permit is issued by the beer board, the applicant or applicants, therefore shall file with the beer board a sworn application in writing on the form proscribed by

said board and provided by the department of finance and administration. The application shall be submitted to the city recorder, as the recording secretary to the board. Each application so submitted shall be accompanied by a non-refundable application fee in the amount of two hundred fifty dollars (\$250.00), payable to the General Fund, City of Clarksburg, which shall be used to offset the expense of investigation and processing of the application.

Upon receipt of a properly executed application for a beer permit, the beer board shall be called into session within thirty (30) days of the date of receipt of same. The called session shall be publicly advertised at least one (1) time in a local newspaper of general circulation. The public notice shall also contain a statement that a public hearing shall also be held in conjunction with the consideration of the application by the board. At least five (5) days shall lapse between the public notice of a called session and the meeting thereof.

Normally, the beer board will be called into special session following the regular meeting of the Mayor and City Council of the City of Clarksburg which meets at 6:00 p.m., on the 3rd Monday of each month in the council room of the Clarksburg City Hall. This does not preclude the beer board being called into session at other times, dates and/or places.

The application, which shall be in the form of a sworn statement, shall contain the following information:

- (1) The name and address of the applicant.
- (2) A statement that the applicant is a citizen of the United States.
- (3) The location of the premises at which the business shall be conducted.
- (4) The owner or owners of such premises.
- (5) That the applicant shall not engage in the sale of such beverages except at the place or places for which the beer board has issued a permit or permits to such applicant.
- (6) That no sale of such beverages will be made except in accordance with the permit granted.
- (7) That the applicant will not knowingly sell, give away, or allow to be sold or given away on such premises legalized beer or other beverages of like alcoholic content on Sunday, or to minors at any time, or allow a minor to drink legalized beer or other beverages of alcoholic content on such premises.
- (8) That neither the applicant nor any persons employed or to be employed by him in such distribution or sale of such beverage has ever been convicted of any violation of the law against prohibition, sale, manufacture, or transportation of intoxicating liquor, or of any crime involving moral turpitude within the past ten (10) years.
- (9) That the applicant has not had a license for the sale of legalized beer or other beverages of like alcoholic content revoked.
- (10) Whether the person applying will conduct the business in person, or whether he is acting as agent for any other person.
- (11) That no brewer of beer or any other beverages of like alcoholic content has any interest, financial or otherwise, in the business which is licensed or requested to be licensed.

- (12) That the applicant will not thereafter convey or grant to any brewer of beer or any other beverage of like alcoholic content any interest in either the business which is licensed to be carried on or in any other property at which such business may thereafter be carried on.
- (13) That the applicant, has at the time of making such application, no indebtedness or other financial obligation to any brewer of beer or other beverage of like alcoholic content, and will not, during the period such license shall be in force, contract any financial obligation to any brewer of beer or other beverage of like alcoholic content other than for the purchase of such beer or other beverage of like alcoholic content.

2-207. Prohibited conduct or activities by beer permit holders, employees and persons engaged in the sale of beer. It shall be unlawful for any beer permit holder, employee or person engaged in the sale of beer to:

- (1) Employ any minor under eighteen (18) years of age in the sale, storage, distribution or manufacture of beer.
- (2) Make or allow the sale of beer between the hours of 12:00 Midnight and 6:00 A.M. on weekdays and between the hours of 12:00 Midnight Saturday and 6:00 A.M. on Monday.
- (3) Allow any person under twenty-one (21) years of age to loiter in or about his place of business.
- (4) Make or allow any sale of beer to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person.
- (5) Allow drunk persons to loiter about his premises.
- (6) Serve, sell, or allow the consumption on his premises of any alcoholic beverage with an alcoholic content higher than beer.
- (7) Allow pool or billiard playing in the same room where beer is being sold and/or consumed.
- (8) Fail to provide and maintain separate sanitary toilet facilities for men and women.

2-208. Board may investigate charges and revoke permit; waiting period after revocation. All permits issued by the beer board under the provisions of this chapter shall be subject to the suspension or revocation by said board for the violation of any of the provisions of the state beer act or any of the provisions of this chapter.

The board created by this chapter is vested with full and complete power to investigate charges against any permit holder and order him to appear and show cause why his permit should not be suspended or revoked for the violation of the provisions of this chapter or the provisions of the state beer act.

Complaints filed against any permit holder for the purposes of suspending or revoking such permits shall be made in writing and filed with the board. When the board shall have no reason to believe that the permit holder shall have violated any of the provisions of this chapter or any of the provisions of the state beer act, the board is authorized, in its discretion, to notify the permittee of said violations and to cite said permittee by written notice to appear and show cause why his permit should not be suspended or revoked for such violations. Said notice to appear and show cause shall state

the alleged violations charged and shall be served upon permittee either by registered mail or by a member of the police department of the City of Clarksburg. The notice shall be served upon the permittee at least ten (10) days before the date of the hearing. At the hearing the board shall publicly hear the evidence both in support of the charges and on evidence, the board may, in its discretion, suspend or revoke said permit. The action of the board in all such hearings shall be final, subject only to review by the court as provided by law. When a permit is revoked, no new permit shall be issued hereunder for the sale of beer at the same location, until the expiration of one (1) year from the date said revocation becomes final.

2-209. Permit to be posted. The permit required by this chapter shall be posted in a conspicuous place on the premises of the permit holder.

2-210. Permit and licenses not transferable. Permits and licenses issued under the provisions of this chapter are not transferable either as to location or to successor by purchase or otherwise of the business for which the permit was issued, and in either case, a new permit is required in the manner provided herein.

2-211. Distributors may sell only to permit holders. No manufacturer or distributor of beer or other beverages of like alcoholic content shall sell to anyone except a licensed dealer holding a currently valid permit issued by the board.

2-212. Sales, etc. to minors prohibited; no person convicted of violating certain laws to be employed. No person engaging in the business regulated under this chapter shall make or permit to be made any sales or gifts to minors. Neither the person engaging in such business nor any person employed by him shall be a person who has been convicted of any violation of the laws against possession, sale, manufacture, and transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years.

2-213. Buying beer for minors prohibited. It is hereby declared to be a misdemeanor, punishable as any other misdemeanor, for any adult person to buy or procure beer or other alcoholic beverage for or on behalf of any minor, and to deliver the same to said minor or any other minor.

2-214. Unlawful for minors to purchase beer. It shall be unlawful and a misdemeanor for any person under twenty-one (21) years of age knowingly to misrepresent his age in order to obtain or purchase beer or remain in a location where minors are not allowed.

2-215. Business hours for beer establishments. Retail sales will be limited to the hours of 6:00 A.M. until 11:59 P.M. on Mondays through Saturdays, with no sales taking place from 12:00 Midnight Saturday until 6:00 A.M. Monday.

2-216. Sale of beer prohibited from location where sleeping quarter connected. Except as hereinafter provided, no beer or other beverages of like alcoholic content shall be sold on premises in direct connection with which sleeping quarters are provided. Within the meaning of this section, sleeping quarters shall be considered as being in direct connection

with the premises upon which the sale is made when the sleeping quarters are in the same room, or when any interior passageway, door, hall, stairway, or other interior connection or a combination thereof is available and is used in going to or from the place where such sale is made to such sleeping quarters.

2-217. Policemen and firemen may not be employed in beer business. It is hereby declared to be unlawful for any members of the police or fire departments of the City of Clarksburg, or any other city employee, without a special permit from the board, to work at any place where beer is sold or dispensed under this chapter, or for any such town employee to have any interest, direct or indirect, in such business.

2-218. Outdoor advertising of beer prohibited. It shall be unlawful for any person, firm, or corporation to place or maintain any outdoor advertisement of beer or any other alcoholic beverages upon any sign, billboard, post, building, or other place within the corporation limits of the City of Clarksburg.

2-219. Beer business to be open for inspection. The place of business and premises of the holder of any license for the distribution or sale of beverages regulated in this chapter shall be open to inspection and investigation by inspectors or police officers designated under §2-203 hereof at any time such place is open for business, and any refusal of the holder of such license, or by his agents, servants, or employees to permit any such officer to enter upon, inspect, and investigate any house, building, or room wherein business authorized for any permit issued by the board created in §2-202 is conducted, within the hours that such house, building, or room is open for business shall be unlawful and a misdemeanor.

The conviction of such holder, or of any agent, servant, or employee of such holder of a violation of the provisions of this section shall also be a sufficient cause for the revocation of the permit and license of such holder.

2-220. Applicant to agree to comply with laws. Every applicant for a beer permit and license must agree in his application to comply with all laws of the State of Tennessee, the United States, and all ordinances of the City of Clarksburg regulating and handling of beer.

2-221. Applicant to agree to suspension of license. All applications for a beer permit and license shall contain an agreement that the beer board may revoke or suspend the permit and license issued under the provisions of this chapter, and shall also contain the information required in §2-206.

2-222. Location of business regulated by zoning ordinance. No beer permit or license shall be issued for the conduct of business at any point or place in the corporation limits of the City of Clarksburg unless such place is zoned for, or authorized to be used for, commercial or other purposes corresponding to the character of the business contemplated herein.

2-223. Issuance and term of beer permit. Applications for beer permits shall be approved or disapproved by the beer board created in §2-202 hereinabove, and, if approved, the city recorder shall issue a "beer permit" on the form as approved by the beer board and

provided by the department of finance and administration. Said permits shall be issued for an indefinite period of time, subject only to suspension, revocation or cancellation by the beer board as herein provided.

Within ten (10) days after being issued a permit to sell beverages as regulated by this chapter, the permit holder shall file with the city recorder, and with the source from whom he or she buys beer, a copy of a valid certificate indicating that the purchases of beer are "for resale" (State Sales Tax Registration Certificate), and shall maintain at all times a copy of a valid certificate with the city recorder.

2-224. Separate beer permits and business license for each location. A separate beer permit and a town business license shall be obtained for each location at which any applicant is to distribute or sell legalized beer or other beverage of like alcoholic content; however, in those instances where the applicant has already obtained a current and valid business license from the city recorder for the location at which such beverages are to be sold, such as a market, a second business license for the sale or distribution of subject beverages shall not be required so long as said sales are in conjunction with the normal business activity licensed thereat.

2-225. Power of recorder and board to subpoena, etc. The recorder and the beer board are hereby authorized to subpoena persons and records, and to administer oaths and hear testimony in the enforcement of this chapter.

2-226. Sales off-premises permitted.

- (1) On-premises sales. The sale of alcoholic beverages for on-premises consumption is not permitted.
- (2) Off-premises sales. Those individuals, groups, firms, etc., granted permits for the sale of beer and like alcoholic beverages as hereby regulated for off-premise consumption shall limit their sales of such beverages to containers of such beverages which are sealed, capped, or otherwise closed in a manner in which they are produced by the brewer or manufacturer, and which are to be removed from the premises prior to consumption. Nothing in this section shall be construed to prohibit the sale of chilled (refrigerated, iced, or otherwise cooled) beer or like alcoholic beverages for off-premises consumption.
- (3) No permit shall be issued for the sale of beer or beverages of like alcoholic content for off-premise consumption as are herein regulated if:
 - (a) Said situs of such sales of OFF-PREMISE CONSUMPTION is located within TWO HUNDRED (200) FEET of a school, church, or other public gathering place as measured in a straight line from the nearest public entrance on the school, church, or other public assembly building and the nearest public entrance of the building, wherein such sales shall take place, or, in the case of a public playground (including school playgrounds), from the nearest public entry to the building, or portion of a multi-user building, wherein such sales shall take place to the nearest public entrance of such public playground.
 - (b) No permit shall be granted to any place of business to sell such beverages as are herein regulated when such sales will cause congestion of traffic, or

interfere with schools, churches, or other places of public gathering, or will otherwise interfere with public health, safety, and morals.

- (4) Notwithstanding any other provisions of this chapter, any permit issued pursuant to the authority contained therein may be revoked if the business location causes traffic congestion or interferes with schools, churches or other places of public gathering, or otherwise interferes with public health, safety and welfare.

2-227. Revocation or suspension of beer permits. The beer board shall have the power to revoke or suspend 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 revoked or suspended until a public hearing is held by the board after a reasonable notice to all the know parties of interest. Revocation or suspension proceedings may be initiated by the police chief or by any member of the beer board.

Pursuant to Tennessee Code Annotated §57-5-608, the beer board shall not revoke or suspend the permit of a "responsible vendor" qualified under the requirements of Tennessee Code Annotated §57-5-606 for a clerk's illegal sale of beer to a minor if the clerk is properly certified and has attended annual meetings since the clerk's original certification, unless the vendor's status as a certified responsible vendor has been revoked by the alcoholic beverage commission. If the responsible vendor's certification has been revoked, the vendor shall be punished by the beer board as if the vender were not certified as a responsible vendor. "Clerk" means any person working in a capacity to sell beer directly to consumers for off-premises consumption. Under Tennessee Code Annotated §57-5-608, the alcoholic beverage commission shall revoke a vendor's status as a responsible vendor upon notification by the beer board that the board has made a final determination that the vendor has sold beer to a minor for the second time in a consecutive twelve-month period. The revocation shall be for three (3) years.

2-228. Penalty. In addition to other penalties provided in this chapter, any person violating its provisions shall be guilty of a misdemeanor, and may be tried in municipal court and cited to the beer board and may have his permit suspended or revoked as provided in §2-227. Upon conviction of a misdemeanor any violator shall be subject to a fine as provided for in the general penalty clause for this code. Each day a violation shall be allowed to continue shall constitute a separate offense.

2-229. Loss of clerk's certification for sale to minor. If the beer board determines that a clerk of an off-premises beer permit holder certified under Tennessee Code Annotated §57-5-606, sold beer to a minor, the beer board shall report the name of the clerk to the alcoholic beverage commission within fifteen (15) days of determination of the sale. The certification of the clerk shall be invalid, and the clerk may not reapply for a new certificate for a period of one (1) year from the date of the beer board's determination.

2-230. Civil penalty in lieu of revocation or suspension.

(1) Definition. "Responsible vendor" means a person, corporation or other entity that has been issued a permit to sell beer for off-premises consumption and has received certification by the Tennessee Alcoholic Beverage Commission under the "Tennessee Responsible Vendor Act of 2006," Tennessee Code Annotated §57-5-601, et seq.

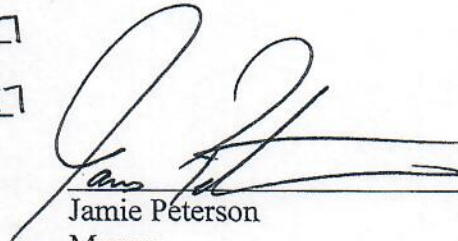
(2) Penalty, revocation or suspension. The beer board may, at the time it imposes a revocation or suspension, offer a permit holder that is not a responsible vendor the alternative of paying a civil penalty not to exceed two thousand, five hundred dollars (\$2,500.00) for each offense of making or permitting to be made any sales to minors, or a civil penalty not to exceed one thousand dollars (\$1,000.00) for any other offense. The beer board may impose on a reasonable 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.

If a civil penalty is offered as an alternative to revocation or suspension, the holder shall have seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is not paid within that time, the revocation or suspension shall be deemed withdrawn.

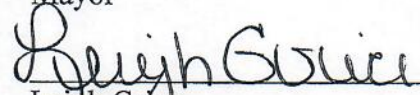
Payment of the civil penalty in lieu of revocation or suspension by a permit holder shall be an admission by the holder of the violation so charged and shall be paid to the exclusion of any other penalty that the city may impose.

Passed on First Reading: March 13, 2017

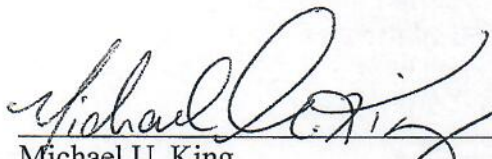
Passed on Second Reading: April 17, 2017



Jamie Peterson
Mayor



Leigh Grace
City Recorder



Michael U. King
Town Attorney (approved as to form)