ORDINANCE 333

BEER PERMIT BOARD

Sections:

1-010. Established
1-020. Membership - Terms
1-030. Election of officers - Term
1-040. Meetings - quorum required - Minutes and transcript
1-050. Powers and duties
1-060. Inspectors - Authority

1-010 Established.

A Beer Permit Board is created and designated the City of Lakewood Permit Board.

1-020 Membership - Terms

The City of Lakewood Permit Board shall consist of five members, to be appointed by the mayor and approved by the city commission. Members shall serve terms of three years each and must be citizens of the City of Lakewood at all times they are members of the Board. Any vacancy other than the expiration of a term shall be filled for the remainder of the term. Their terms shall expire in the order of their appointment to the Board, commencing _____ with one position expiring each year.

1-030 Election of Officers - Term

The City of Lakewood Permit Board shall organize by the election of a chairman and a vice-chairman, who shall serve for a period of one year or until a successor is chosen.

1-040 Meetings - Quorum Required - Minutes and Transcript

A. The City of Lakewood Permit Board shall convene when called by the chairman. All members and the local press shall receive at least 48 hours notice before a meeting.

B. The attendance of at least a majority of the members of the Board shall be required to constitute a quorum for the purpose of transacting business.

C. The Board shall keep minutes in permanent form and the Board shall keep a record of all of its actions with respect to every application for a permit. The concurring vote of a majority of the members of the Board shall be necessary to grant or revoke any permit.

D. Any person may bring a court reporter or video camera to transcribe the meeting providing the party supplies a copy of the transcript or tape to the Beer Permit Board.

1-050 Powers and Duties.

A. The City of Lakewood Beer Permit Board shall have jurisdiction of licensing, regulation and control of transportation, storage, sale, distribution, possession, receipt and manufacture of alcoholic beverages in the City of Lakewood.

B. The City of Lakewood Beer Permit Board may promulgate such bylaws, rules and regulations as it deems appropriate. Such rules and regulations shall be consistent with this and all other laws. Copies of such rules and other documents shall be filed with the City of Lakewood recorder and shall be available to the public.

1-060 Inspectors - Authority

The City of Lakewood Chief of Police, City Manager, or Codes Inspector or their designees are empowered to inspect the premises and operations of permittees.

BEER AND ALCOHOLIC BEVERAGES OF LESS THAN FIVE PERCENT

SECTION

2-010. Definitions
2-020 Permit Required
2-030 Permits
2-040 Application - Requirements and conditions
2-050 Application - Police record check
2-060 Application - renewal - change in on-premises management
2-070 Conditions of permits
2-080 Permit to state location where sale is authorized
2-090 Location restrictions
2-100 On-premise consumption beer permit - Issuance requirements
2-110 Expiration of permits
2-120 Permit nontransferable
2-130 Renewal of Permit
2-140 Suspension and revocation of permit - Authority
2-150 Prohibited acts - Generally
2-160 Draft beer defined - OFF premises consumption sales
2-170 Prohibited acts - By permit holders, agents or employees
2-180 Permitted activities
2-190 Restrictions on sales by wholesalers

Nov 02 04 04:24a p.2

2-200 Limitation on purchases
2-210 Retail sales and storage - Permit location only
2-220 Retailers may not deliver beer
2-230 Resale prohibited when
2-240 Revocation of permit for closed premises
2-250 Prohibited acts or conduct - Enforcement authority.

2-010 Definitions

For the purpose of this chapter, the following words and phrases shall have the meanings ascribed to them by this section.

"Beer" means any alcoholic beverage containing five percent or less alcohol by weight.

"Church" means a building or property where a congregation regularly meets at least one day per week for religious worship.

"Beer Board" or Board" means that administrative body organized and empowered under the authority of Tennessee Code Annotated, Section 57-5-108 and created by Section 2-2-010 of this code.

"Park" means a place or property either owned or maintained by The City of Lakewood or by a governmental entity where persons regularly gather for recreational purposes or as spectators.

"Permit" means any permit issued pursuant to this chapter.

"Permittee" means any person to whom any permit has been issued pursuant to this chapter.

"Premises" means a building, portion of a building, or property that is utilized for a particular business enterprise.

"Retailer permit" means a permit issued by the Beer Board to a vendor engaged in the sale of beer for consumption by the purchaser and guests and not for resale. The permit shall state whether the permit is for sale of beer which is not to be consumed upon the premises of the permittee, is to be consumed only upon the premises or is to be consumed both on and off the premises.

"School" means an institution, including kindergarten, where regular classes are conducted under the supervision of a teacher or instructor, including schools or colleges where specialized subjects are taught to students of all ages.

"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.

2-020 Permit Required.

No person shall sell, store for resale, distribute, or manufacture beer within the City of Lakewood, Tennessee, without a valid annual permit issued by the City of Lakewood Beer Permit Board.

2-030 Permits.

No Person shall sell, store for resale, distribute, or manufacture beer in the City of Lakewood, without a permit issued by the City of Lakewood Beer Board. The following types of permits may be issued by the City of Lakewood Beer Board:

A. Wholesaler's permits may be issued to distributors, manufacturers, brewers selling directly to retailers.

B. A retailer's "off-site-sale" permits may be issued to any person engaged in the sale of beer for consumption and not resale where the beer sold is not to be consumed by the purchaser upon or near the premises of the seller.

C. A retailer's "on-site-sale" permit may be issued to any person engaged in the sale of beer where the beer is to be consumed by the purchaser or his guests upon the premises of the seller. A retailer's on-site-sale permit may be issued to bona fide hotels, motels, clubs, golf courses and restaurants in which beer sales are subsidiary to the primary business conducted on the site.

D. A retailer's combined permit may be issued to any person engaged in the sale of beer where the beer is to be consumed by the purchaser or his guests upon or off of the premises of the seller. Holders of a combined permit shall comply with all rules and applicable to on-site and off-side permittees.

E. A retailer's special events permit may be issued to any person engaged in the sale of beer for consumption by the purchaser upon the premises of the seller for a specified period of time in conjunction with fairs, bazaars, golf tournaments and similar public or private social events provided adequate sanitation, security and crowd control is provided by the organizer.

2-040 Application - Requirements and Conditions.

A. Any person desiring a beer permit shall file in persona with the city recorder a written application under oath. The application shall include a scale drawing of the premises

Nov 02 04 04:24a p.5

showing all parking spaces and the lot dimensions and an interior drawing showing the seating. Drawings shall be done to scale in a professional manner. No permit shall issue until the Board has approved the written application and interviewed the applicant. The form of the application shall be prescribed by the Board and approved by the city attorney. The applicant shall establish the following:

1. Name of the applicant.

2. Name of the applicant's business and whether the applicant is a person, partnership, corporation, limited liability company or association.

3. Location of business by street address and map and parcel and telephone number at location.

4. If beer will be sold at two (2) or more restaurants or other businesses as provided by T.C.A. §57-5-103(a)(4), a description of all such businesses.

5. Persons, firms, corporations, joint-stock companies, syndicates, partnerships, limited liability companies or associations having at least five percent (5%) ownership in the applicant, together with addresses and telephone numbers and social security numbers and tax ID numbers.

6. Identity and address and telephone number of a representative to receive annual tax notices and other communication from the City of Lakewood.

7. That no person or entity owning at least five percent (5%) ownership interest in the applicant nor any person to be employed in the distribution or sale of beer has been convicted of any violations of the laws against possession, sale, manufacture, transportation or use of alcoholic beverages or any crime involving moral turpitude within the past ten (10) years.

8. Whether the applicant is seeking a permit which would allow the sale of beer for on premise consumption of beer or for off-premises consumption or both types of consumption.

9. The name, address and telephone number of the owner of the property.

10. The application shall authorize a police records check and shall waive any right the applicant may have to privacy concerning arrests reflecting on the moral character of the applicant.

p.6

Nov 02 04 04:24a

2-050 Application - Police Record Check.

The city recorder shall submit all applications to the City of Lakewood Police Department for a records check prior to time of the Beer Board meeting at which the application will be considered.

2-060 Application - Renewal - Change In On-Premises Management.

A. All applications for permits shall be accompanied by an application fee of $250.00 for use in offsetting the expense of investigating the applicant and processing the applicant. No portion of the fee shall be refunded to the applicant even if the application is denied. (See T.C.A.§ 57-5-104)

B. All beer permit holders shall pay an annual privilege tax and fee of $250.00.

C. All applications for the issuance of permits for the change in management of any establishment licensed by the City of Lakewood shall be accompanied by a change in management fee of $250.00.

2-070 Conditions of Permits.

Every person to whom a beer permit is issued shall agree to the following conditions:

A. The premises are declared to be a public place for the purpose of inspection by the designated beer inspectors, or by any other duly authorized law enforcement officer.

B. The permit holder shall keep invoices and all other memoranda fully descriptive relating in any way to storing, sale, distribution by sale or gift or manufacture of beer, and shall permit the recorder or his/her duly authorized agents to inspect, at any time during the business hours of the day, all such articles, containers, packages, invoices, books, papers and memoranda as deemed necessary by the recorder to audit tax payments.

C. The permit holder shall display all permits in a conspicuous place together with all permits and licenses required by law.

2-080 Permit to State Location Where Sale Is Authorized.

The specific address or description of the premises where beer is authorized to be sold shall be stated on the face of each permit issued by the City of Lakewood. No permit shall be valid unless such address or description of the premises is stated on the face of the permit.

Nov 02 04 04:24a p.7

2-090 Location Restrictions.

A. No beer permit shall be issued to an applicant whose location is less than one hundred (100) feet from a school, church, house of worship, or a school. Distances shall be measured from the center of the nearest permanent entrance of the school, church or house of worship and by the customary path of pedestrian travel to the center of the main entrance of the potential licensee.

B. No beer permit shall issue for a location which fails to comply with any health ordinances or statues or any which would violate the zoning ordinance.

C. Where a beer permit is revoked, no new permit shall be issued to permit the sale of beer on the same premises by the same business enterprise or its employees operating the premises until after the expiration of one year from the date the revocation becomes final and effective. No permit shall be issued to a partner, employee, associate or relative of the holder of a revoked permit if the relationship existed at the time of the offense. Other totally unrelated persons shall be eligible to apply for a permit for that location but issuance shall be at the sole discretion of the Beer Board.

D. No permit shall issue to an applicant who had revoked, within ten (10) years, a permit for the sale of alcoholic beverages.

2-100 On Premise Consumption Beer Permit- Issuance Requirements.

It is the intent of this ordinance to only issue permits for "on-premise" consumption of beer to establishments that sell food. Establishments primarily selling beer for on-premise consumption and **not** food are **prohibited** from maintaining a permit for on-premise consumption.

A. Retailer on premises consumption beer permits shall not be issued except to establishments with seating capacities for twenty-five (25) or more persons.

B. Such businesses shall have complete and sanitary kitchen facilities. Such businesses shall be equipped with adequate toilet facilities and hand washing facilities, including hot and cold running water, for use by customers.

C. Beer permits for on premise consumption shall only be renewed to businesses maintaining an annual ratio of four dollars ($4.00) of gross sales for sales tax purposes for each dollar of wholesale beer purchases. The calendar year, or the part thereof ending on 31 December, shall be used for calculation of sales ratios. Each owner shall supply a sworn statement from his beer wholesaler for the previous year's sales and a copy of all sales tax returns for the previous calendar

year at the time of application for beer permit renewal.

D. All establishments selling beer for on premise consumption shall be connected to the public sanitary sewer and have adequate sanitary restrooms and kitchen facilities.

2-110 Expiration of Permits.

No permit, issued by the City of Lakewood Beer Permit Board shall be valid for more than one year from the date it is issued.

2-120 Permit Nontransferable.

Permits issued by the City of Lakewood Beer Permit Board shall not be transferred from one person to another. Where the holder of a permit desires to move his place of business from one location to another, he shall apply for a new permit for the new location and he shall surrender the permit for the location which he has abandoned.

2-130 Renewal of Permit.

Permits shall be renewable annually on the anniversary of the permit. Holders of valid annual permits shall apply in person for the renewal of the permit. The renewal fee shall be $250.00 per year.

2-140 Suspension and Revocation of Permit - Authority.

The City of Lakewood Beer Permit Board shall have the power to revoke or suspend, and shall be charged with the duty of revoking or suspending, any permits issued by it, upon notice to the permittee and a hearing thereon, for any violation of any provision of state law regulating the sale, storage and transportation of alcoholic beverages or for any violation of any provision of this code or any other ordinance of the City of Lakewood, or when the permittee:

A. Operates a disorderly place;

B. Permits gambling on the premises;

C. Permits boisterous or disorderly conduct on the premises;

D. Has been convicted by final judgment of a court of competent jurisdiction of a crime involving moral turpitude;

E. Permits minors to congregate about the premises;

Nov 02 04 04:25a p.9

F. Sells or transfers the equipment or assets of the business authorized by his permit to another for the purpose of conducting the business on the same premises, unless he shall notify the Board in writing immediately upon such sale or transfer, and shall surrender his license within thirty (30) days after the sale or transfer;

G. Has made a false statement of a material fact in any application or notice to the Board;

H. Sells or allows to be sold on the premises of the permittee any beer to any person under the age of twenty-one (21) years; or

I. Sells or allows to be sold on the premises of the permittee beer to any person using food stamps issued pursuant to state or federal law for the purchase of such beer.

2-150 Prohibited Acts - Generally.

It is unlawful for any person:

A. To bring, to cause, or to allow to be brought onto the premises of any permittee under the provisions of this chapter any prohibited drugs within the meaning of Tennessee Code Annotated, Sections 53-10-101, et seq., and 39-17-401, et seq., and any intoxicating beverage, the alcoholic content of which is in excess of five percent (13%) by weight, unless such permittee is the holder of a valid license issued under the authority of Tennessee Code Annotated, Title 57, Chapter 4;

B. Being under the age of twenty-one (21) years, to have in his/her possession beer for any purpose, except that any person eighteen (18) years of age or older may transport, possess, sell, or dispense alcoholic beverages in the course of employment.

2-160 Draft Beer Defined - Off Premises Consumption Sales.

A. Draft beer may be sold for off-premises consumption only by the holder of an off-premises beer permit.

B. Draft beer means beer which is poured from a pressurized container or keg into a container approved by the State of Tennessee, which is then commercially sealed. The process of pouring the beer into the container and commercially sealing it shall take place on the premises of the retailer in an area separate from the area which the public may use.

Nov 02 04 04:25a p.10

2-170 Prohibited Acts - By Permit Holders, Agents or Employees

It is unlawful for any beer permit holder or his agent or employee;

A. To employ any person convicted for the possession, sale, manufacturing or transportation of intoxicating liquor or any crime involving moral turpitude within the past ten years.

B. To make or permit to be made any sale of beer to a person under twenty-one (21) years of age or to allow such persons to loiter or stay around the premises without their parent;

C. To sell, give away, or allow beer to be consumed on any premises granted a permit under this chapter from 2:00am to 12:00 o'clock noon on Sundays or between 2:00am to 6:00am on other days.

D. To make false statement of a material fact in the application for any beer permit;

E. To operate a disorderly place;

F. To permit gambling or gaming devices on the premises;

G. To permit boisterous or disorderly conduct on the premises;

H. To sell or transfer the equipment or assets of the business authorized by the permit to another for the purpose of continuing the business on the same premises, unless he/she shall notify the Board in writing immediately upon such sale or transfer, and unless he/she shall give the name and address of the purchaser within the notice. A beer permit holder shall surrender his/her license to the Board within thirty (30) days after the sale to transfer is consummated;

I. Make or allow any sale to any intoxicated person or to any feeble minded, insane or otherwise mentally incapacitated person;

J. Allow any intoxicated person to loiter on or about the premises;

K. For a retailer or wholesaler to store beer in any place other than the address listed on their permit;

L. To sell or allow to be sold on the premises of the permittee beer to any person using food stamps issued pursuant to state and federal law for the purchase of such beer;

p.11

Nov 02 04 04:25a

M. To sell beer through any drive-through or delivery window or by curb service or to deliver beer off premises to the consumer.

N. To fail to post their beer license and a copy of the beer laws in a conspicuous location.

2-180 Permitted Activities.

It is lawful to transport, store, sell, distribute, possess, receive and manufacture beer with the City of Lakewood, subject to all regulations, limitations and restrictions provided in this title and the Rules adopted by the City of Lakewood Beer Permit Board.

2-190 Restrictions on Sales by Wholesalers.

It is unlawful for any wholesaler to sell beer to anyone other than a person, corporation, association or partnership holding a license for resale by the City of Lakewood Beer Permit Board and possessing a sales tax number.

2-200 Limitation on Purchases.

No person, except an authorized wholesaler, may sell or store beer within the City of Lakewood area unless such beer has been purchased from an authorized wholesaler.

2-210 Retail Sales and Storage - Permit Location Only.

Retailers holding permits to sell beer are authorized to sell and store beer at only the location authorized by the Beer Permit Board and specifically designated on their permit as the place for which the permit is issued. The sale or storage of beer by a retailer at any place other than the location authorized by the Board and specifically named on the face of the permit is prohibited.

2-220 Retailers May Not Deliver Beer.

A. Retailers holding permits from the Beer Permit Board are only authorized to deliver beer on the premises for which the permit is issued. The delivery of beer by a retail permit holder to any place other than the premises for which his/her permit is issued is prohibited. No retail permit holder shall enter into any agreement or conspire with any person to cause beer to be delivered off of the premises for which the permit is issued or at any location other than the one authorized by the permit for the sale of beer.

B. It shall be unlawful for any holder of a retail beer permit to knowingly permit the

P.12

NOV 02 04 04:25a

purchase of beer at the place of business by anyone for resale and delivery to another. Holders of retail beer permits issued by the Board are prohibited form selling beer to any person when the retail permit holder knows or should have reason to know that such beer is purchased for resale and delivery off of the premises for which the permit is issued.

2-230 Resale Prohibited When:

It is unlawful for any retailer holding a permit issued by the Beer Permit Board to purchase, accept as a gift or loan, or to receive, swap or exchange beer for the purpose of resale, from any person who is not the holder of a valid wholesale permit issued by the Board.

2-240 Revocation of Permit for Closed Premises.

Any person who has been issued a beer permit from the Beer Permit Board shall remain in business in order to maintain a license. If, for any reason, the licensed premises shall be closed for a period of at least six (6) months, the Beer Permit Board shall automatically revoke the beer permit.

2-250 Prohibited Acts or Conduct - Enforcement Authority.

(a) The Beer Permit Board shall revoke or suspend the beer permit of any permit holder, upon notice and hearing , for violation of the provisions of T.C.A. §57-4-204 or any other state statute or ordinance regulating alcoholic beverages or conduct at places selling alcoholic beverages.

(b) The Board is vested with the power to hear all charges against any permit holder.

(c) Complaints filed against any permit holder for the purpose of suspending or revoking the permit shall be made in writing and filed with the City Recorder.

(d) The City of Lakewood Police Department shall serve notice of any complaint upon the permit holder by personal service.

(e) Any finding of the Board shall be subject to review by a statutory Writ of Certiorari with a trail de novo as a substitute for an appeal. Unless the Circuit Judge or Chancellor orders otherwise the action of the Board shall remain in effect until modified by the Chancery or Circuit Court.

(f) Pursuant to T.C.A. §57-5-108, the Board may, at the time it imposes a revocation or suspension, offer a permit or license holder the alternative of paying a civil penalty in lieu of such revocation or suspension. In the event of the offense of selling beer to a minor, the civil penalty shall be determined on the following

Nov 02 04 04:26a p.13

basis:

First offense: $1,500.00 fine
Second offense $5,000.00 fine
Third offense: $10,000.00 fine

On all other offenses, a civil penalty not to exceed One Thousand Dollars ($1,000) may be imposed. If a civil penalty is offered as an alternative to revocation or suspension, the owner shall have seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn. In the event of a suspension of the holder's license, the Board may also require the holder's beer coolers to remain chained shut and appropriate signs posted for the duration of the suspension. The holder's payment of a civil penalty shall not affect the holder's ability to seek review of the civil penalty.

p.14
Nov 02 04 04:26a

First Reading: November 11, 2004

Second Reading: December 9, 2004

Virginia Moss
CITY RECORDER

Charles K. Donoho
MAYOR