

ORDINANCE NO. 238

AN ORDINANCE AMENDING MOUNT CARMEL MUNICIPAL CODE TITLE 8, "ALCOHOLIC BEVERAGES."

WHEREAS, the Town of Mount Carmel, Tennessee Economic Development Committee recommended liberalization of the provisions of the Town Code concerning the sale of alcoholic beverages to enhance recruitment of and retain old businesses; and

WHEREAS, the Town of Mount Carmel, Tennessee has lost both new and old businesses because they are and were unable to sell beer under prior Code provisions; and

WHEREAS, the moral issue previously objected to by citizens concerned the consumption and not the sale of alcoholic beverages; and

WHEREAS, the sale of alcoholic beverages takes place in Church Hill, Kingsport, and Hawkins County all within a few hundred feet of the existing corporate boundaries of the town; and

WHEREAS, the public health and welfare of the citizens of the Town of Mount Carmel, Tennessee, will not be materially affected by it;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR
AND ALDERMEN of the Town of Mount Carmel, Tennessee, as follows:**

SECTION I. That the Mount Carmel, Tennessee, Municipal Code Title 8 "Alcoholic Beverages" shall be deleted in its entirety and in its place the following section substituted:

TITLE 8

ALCOHOLIC BEVERAGES

CHAPTER

- 1. INTOXICATING LIQUORS.**
- 2. BEER.**

CHAPTER 1

INTOXICATING LIQUORS

SECTION

8-101. Prohibited generally.

8-102. Open containers.

8-103. (RESERVED).

8-104. Alcoholic Beverage Restrictions on Persons under Twenty-One.

8-101. Prohibited generally. Except as authorized by applicable laws and/or ordinances 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. "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.

8-102. Possession of open containers in motor vehicles and public places, etc., prohibited. It shall be unlawful for any person to possess open cans, bottles or containers of beer or intoxicating liquors in motor vehicles in the City or upon the public streets, sidewalks or other public places not otherwise permitted by this chapter.

8-103. (RESERVED).

8-104. Alcoholic Beverage Restrictions on Persons under Twenty-one. It shall be unlawful for any person under twenty-one (21) years of age to purchase, possess, transport, or consume alcoholic beverages, wine, or beer, with the following exceptions:

(1) Any person eighteen (18) years of age or older may transport, possess, sell, or dispense alcoholic beverages, wine, or beer in the course of his employment in accordance with provisions of this Code.

CHAPTER 2

BEER

SECTION

- 8-201. Beer Board established.
- 8-202. Meetings of the Beer Board.
- 8-203. Record of Beer Board proceedings to be kept.
- 8-204. Requirements for Beer Board quorum and action.
- 8-205. Powers and duties of the Beer Board.
- 8-206. "Beer" defined.
- 8-207. Sales, storage, manufacture, & distribution, as privilege.
- 8-208. Permit required.
- 8-209. Beer permits shall be restrictive.
- 8-210. Permits for retail sale; types designated, multiple types prohibited.
- 8-111. Permit application.
- 8-212. Interference with public health, safety, and morals prohibited
- 8-213. Application fee.
- 8-214. Compliance with zoning as permit prerequisite.
- 8-215. Separate permit required for each location.
- 8-216. Display of permit.
- 8-217. Transferability of permits.
- 8-218. Restrictions upon distributors, wholesalers, warehousemen, manufacturers.
- 8-219. Restrictions on issuance of retail permits.
- 8-220. Hours of sale restricted.
- 8-221. Disposition of application.
- 8-222. Number of retail permits limited.
- 8-223. Advertising signs.
- 8-224. Dealing with persons less than twenty-one years of age.
- 8-225. Sales to intoxicated persons.
- 8-226. Inspection of premises permitted.
- 8-227. Violations.
- 8-228. Effect of suspension or revocation of permit.

8-201. Beer Board established. There is hereby established a Beer Board to be composed of the Mayor, or in his absence, the Vice-Mayor, one Aldermen to be appointed by the Mayor, three citizens from the municipality, also to be appointed by the Mayor, the Chief of Police, and the City Recorder. All members' terms shall run concurrently with the term of the Mayor. The Mayor or Vice-Mayor shall be its Chairman and shall preside at its meetings. The members shall serve without compensation.

8-202. Meetings of the Beer Board. All meetings of the Beer Board shall be open to the public. The Beer Board shall hold regular meetings following each regular meeting of the governing body at Town Hall whenever there is business to come before the Beer Board. A special meeting of

the Beer Board may be called by its chairman provided he gives a reasonable notice thereof to each Board member, and the Board may adjourn a meeting at any time to another time and place.

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

8-204. Requirements for beer board quorum and action. The attendance of at least a majority of the members of the Beer Board shall be required to constitute a quorum for the purpose of transacting business. Matters before the board shall be decided by a majority of the members present if a quorum is constituted. Any member present but not voting shall be deemed to have cast a "nay" vote.

8-205. Powers and duties of the Beer Board. The Beer Board shall have the power and it is hereby directed to regulate the selling, storing for sale, distributing for sale, and manufacturing of beer within the town in accordance with the provisions of this chapter.

8-206. "Beer" defined. The term "beer", as used in this chapter, shall mean and include all beer, ales, and other malt liquors having an alcoholic content of not more than five percent (5%) by weight.

8-207. Sales, storage, manufacture, distribution as privilege. The sale, storage, manufacture, and distribution of beer in the town is a privilege, and the Beer Board shall have complete discretion to issue, revoke, and suspend all permits or licenses to sell, store, manufacture or distribute beer in the town.

8-208. Permit required. It shall be unlawful for any person to have beer for the purpose of sale, possess beer for the purpose of sale, receive beer for the purpose of sale, store or possess in any warehouse, place of business, residence, or other place, beer intended for the purpose of present or future sale, either wholesale or retail, and whether intended to be sold for delivery at the place of sale or to be shipped or otherwise transported for delivery at another place, without a permit issued by the Beer Board. It shall also be unlawful for any person or corporation to conduct promotional or gratuitous distribution of beer or intoxicating beverages to the public at their place of business and during the course and scope of the business without a permit issued by the beer board.

8-209. Beer permit shall be restrictive. All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, distributing, and manufacturing. Beer permits for the retail sale of beer may be further restricted by the Beer Board so as to authorize sales only for off-premise consumption. It shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by such permit. It shall likewise be unlawful to fail to comply with any and all expressed restrictions or conditions which may be written into such permit by the Beer Board.

8-210. Permits for retail sale; types designated, multiple type prohibited. (a) Permits for the retail sale of beer shall be of two types:

- (1) On-premise permits. "On-premise permits" shall be issued for the consumption of beer on the premises. (See also MCC 8-219).
- (2) Off-premise permits. "Off-premise permits" shall be issued for the sale of both refrigerated and unrefrigerated beer to be consumed off the premises.

(b) No person shall be issued both types of permits for the same location.

(c) Only natural persons shall apply for, and, when, appropriate, be granted permits for retail sale of beer. If a corporation owns and operates a merchandising business, a corporate officer shall make application for the permit. If a partnership or syndicate operates a merchandising establishment, the general partner in charge of the day-to-day business operations of the business shall make application for the beer permit.

8-211. Permit application. A person desiring a beer permit required by the provisions of this Chapter shall apply in writing to the Beer Board upon a form approved and prescribed by it. Such application shall contain at a minimum the following:

- (a) The name and residence of the applicant and the length of time the applicant has resided there;
- (b) The particular place for which the permit is desired, designating the same by street and number, if practicable, and if not, by such other apt description and the current zoning designation of the tract of property;
- (c) The type of permit desired;
- (d) The name of the owner of the business premises;
- (e) A statement that the applicant is a citizen of the United States, or if a syndicate or association, that all members thereof are citizens of the United States;
- (f) A statement that no person will be employed in the storage, sale, manufacture or distribution of such beverages except those who are citizens of the United States or aliens lawfully residing in the United States;
- (g) A statement that the applicant will not engage in the sale, storage, manufacture or distribution of beer except at the place or places for which the license or permit is issued to such applicant, and that no sale, storage, manufacturing or distribution of such beverage will be made except in accordance with the permit or license granted;

- (h) A statement that no sale will be made to persons under the age required by state law, that the applicant will not permit minor persons or disorderly or disreputable persons, or individuals heretofore connected with the violation of the liquor laws, to loiter around the place of business, and that no minors shall be employed in the direct sale, storage, manufacture or distribution of beer;
- (i) A statement that the applicant has not had revoked any license or permit for the sale, storage, manufacture or distribution of alcoholic beverages;
- (j) A statement that neither the applicant nor any person employed or to be employed by him in the distribution, storage, manufacture or sale of beer has ever been convicted of any violation of alcoholic beverage laws or of any crime involving moral turpitude;
- (k) A statement that the applicant will be conducting the daily business in person;
- (l) A statement that no brewer, manufacturer, distributor or warehouseman of legalized beer has any interests in the business, or business premises;
- (m) A statement that the applicant is willing to be fingerprinted by the police department of the Town of Mount Carmel and to be investigated by municipal, county, state and federal law enforcement agencies;
- (n) A statement by the applicant that he agrees to comply with all of the law of the United States, the State of Tennessee and the Ordinances of the Town of Mount Carmel;
- (o) An oath or affidavit by the applicant that the facts represented in the application is true;
- (p) Any application, which does not contain affirmative responses to all representations requested therein, shall not be considered by the Beer Board.

8-212. Interference with public health, safety, and morals prohibited, Zoning Restrictions, and Distance Requirements. No permit authorizing the sale of beer will be issued when such business would cause traffic congestion or would interfere with schools, churches, or other places of public gatherings, or would otherwise interfere with the public health, safety, and morals. Permits may be issued only to otherwise qualifying applicants with businesses in Zones B-1, B-2 or B-3. Other than on Main Street, in no event will a permit be issued authorizing the storage, sale, or manufacture of beer at places within four hundred (400) feet of any school, church, or other place of public gathering which has preexisted the application date of the permit sought by six (6) continuous months, measured along street rights of-way and from nearest boundary line to nearest boundary line.

8-213. Fees and Taxes. The following fees and taxes shall apply:

(a) Each applicant for a permit shall be required to pay an application fee of Two Hundred Fifty dollars (\$250.00). No portion of the fee shall be refunded to the applicant notwithstanding whether an application is approved or denied.

(b) There is hereby imposed on the business of selling, distributing, storing or manufacturing beer, 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 on January 1, 2003, and each successive January 1. The tax shall be remitted to the City Recorder.

2. The City Recorder shall mail written notice to each permit holder of the payment date of the annual tax at least thirty (30) days prior to January 1. Notice shall be mailed to the address specified by the permit holder on its permit application. If a permit holder 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 Recorder shall notify the permit holder by certified mail that the tax payment is past due. If a permit holder does not pay the tax within ten (10) days after receiving notice of its delinquency by certified mail, then the permit shall become void.

3. These tax funds may be used for any public purpose.

4. At the time a new permit is issued to any business subject to this tax, the permit holder shall be required to pay the privilege tax on a prorated basis for each month or portion thereof remaining until the next tax payment date.

8-214. Compliance with zoning as permit prerequisite. No retail permit shall be issued to any person to sell beer from or at any place, premises or location which constitutes a non-conforming use under the zoning laws and ordinances of the town in effect at the time of application for such permit of license.

8-215. Separate permit required for each location. A separate permit shall be obtained for each location at which and from which any applicant is to manufacture, store, distribute or sell beer.

8-216. Display of permit. All permittees hereunder shall display and keep displayed such beer permit in a conspicuous place on the premises where licensed to conduct such business.

8-217. Transferability of permits. Permits for the sale, storage, manufacture or distribution of beer hereunder shall not be transferable.

8-218. Restrictions upon distributors, wholesalers, warehousemen, manufacturers.

- (a) All distributors, wholesalers, warehousemen and manufacturers of beer shall be duly licensed under law to do business in the state.
- (b) All distributors, wholesalers, manufacturers and warehousemen of beer having a place of business within the town shall locate it in areas designated and zoned for manufacturing under the ordinances of the Town.
- (c) It shall be unlawful for any wholesaler, distributor, warehousemen or manufacturer of beer, or for any of their salesmen or representatives, to sell or deliver beer en route, or from delivery vehicles, to any person or place other than holders of valid retail beer permits.
- (d) It shall be the duty of such wholesaler, distributor, warehouseman or manufacturer, their salesmen or representatives, to ascertain whether or not such person or place has been issued a valid retail beer permit by the Town.

8-219. Restrictions on issuance of retail permits.

- (a) Permits issued for the retail sale of beer for on-premises consumption of beer shall be limited to sale for consumption in and to be served to and consumed by members and guests in the rooms of a building designated and occupied by a regularly incorporated non-profit lodge or patriotic organization or to customers in an operating restaurant as defined in subsection (a)(2) below.

(1) Prior to applying for an on-premises beer permit, any lodge or patriotic organization requesting a permit shall have been in existence for at least one (1) year prior to its applying for the permit and shall have been granted a charter by the Secretary of State or by authority of an Act of Congress of the United States. The building used by said lodge or patriotic organization must be owned or leased for a term of years by the organization.

(2) The owner or manager of any restaurant doing business, or intending to do business, within the corporate limits or the Town, may apply for a permit for the on-premises retail sale and consumption of beer if the restaurant meets the following criteria:

"Restaurant" 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, without sleeping accommodations, such place being provided with an adequate and sanitary kitchen, with a separate dining room with suitable equipment and a seating capacity of at least fifty (50) people at tables or booths, and having employed therein a sufficient number and kind of employees to prepare, cook, and serve suitable food for its customers. At least two (2) meals per day shall be served on at least six days

a week, with the exception of holidays, vacation, and periods of redecorating. The serving of such meals shall be the principal business conducted on the restaurant's premises. No signs advertising the sale of beer for on-premises consumption shall be erected or allowed on the restaurant premises.

(b) Off-premises permits may be issued only to bona fide merchants in the retail grocery business on and from property zoned for business purposes in the Town of Mount Carmel. "Bona-fide merchants" shall mean persons regularly operating and conducting a grocery merchandising business that is stocked with grocery items and merchandise and have been for at least one (1) year on-going concerns operating to serve the public on a regular basis, with regular established business hours of operation at some location within the State of Tennessee. Successor owners and operators of a grocery merchandising business may apply for a beer permit so long as the business has been operating for more than one (1) year at the same location under prior owners. The structure from which said merchants operate must be of a permanent nature.

(c) Each merchant applicant for a beer permit must exhibit to the Beer Board his proposed plans showing where beer will be stored and displayed. Area devoted to the sale of beer must not exceed twenty-five percent (25%) of the floor space and storage area used in the business.

8-220. Hours of sale restricted. No beer shall be sold at retail or consumed at an establishment with a permit inside the corporate limits of the Town of Mount Carmel except between the hours of 8 A.M. and 11:59 P.M. Monday through Saturday, and between the hours of 1 P.M. and 11:59 P.M. on Sunday. It shall be grounds for revocation of permit for any permit holder to sell beer or allow it to be sold except as authorized in this Chapter.

8-221. Disposition of application. Each application for a beer permit under this chapter shall be filed with the City Recorder, and final action shall be taken by the Beer Board within sixty (60) days after the filing of said application.

8-222. Number of retail permits limited. The number of retail beer establishments for the Town of Mount Carmel, Tennessee, shall be no more than four (4) off-premises and two (2) on-premises establishments. There shall be no more than six (6) permits issued and outstanding for the sale of beer at retail at any time.

8-223. Advertising signs. It shall be unlawful for any person authorized to sell beer, either for on-premises consumption or off-premises use, to erect or maintain more than one advertising or display sign to be placed either inside or upon the outside of the building. Said sign may use the word "beer" or the name of any brand of beer. Said advertising or display sign shall not exceed four (4) inches in height and eighteen (18) inches in length. If on the outside of the building, the sign shall be placed parallel with the building. Furthermore, all signs so allowed must also comply with all other sign regulations contained in this code.

8-224. Dealing with persons less than twenty-one years of age.

(a) It shall be unlawful for any person to make or permit to be made any sales of beer to any person known to be under twenty-one (21) years of age except as allowed by the laws of the State of Tennessee. It shall also be unlawful to permit any minor to loiter about the place of business, and the burden of ascertaining the age of such minor shall be upon the permittee or licensee of such place of business.

(b) It shall be unlawful for any person to purchase beer for the purpose of selling or giving the same to any person under twenty-one (21) except as allowed by the laws of the State of Tennessee.

(c) The provisions of this section shall not prohibit persons eighteen (18) years of age or older from selling or dispensing beer in the usual course and scope of their employment.

8-225. Sales to intoxicated persons. It shall be unlawful for any person holding a beer permit to make, permit or allow to be made any sale of beer to any person who is visibly or obviously intoxicated.

8-226. Inspection of premises permitted. It shall be the duty of designated police officers of the Town of Mount Carmel to inspect the place of business and premises of the holders of permits and licenses under this Chapter. It shall be unlawful for any permittee to refuse to permit any such inspection during any such time that such place is open for business and refusal of inspection shall be grounds for revocation of permit.

8-227. Violations. Any person violating any provisions of this chapter shall be guilty of an offense, and in addition to being subject to the financial penalties imposed for the violation of the City code, shall suffer suspension or revocation of his beer permit.

8-228. Effect of suspension or revocation of permit. When a beer permit is suspended, no permit shall be issued to the offending permittee nor issued to any other applicant to permit the sale, storage, manufacture or distribution of beer on any premises until after the expiration of the period of suspension. In the event of a permit revocation, the offending permittee and anyone in business with him shall be ineligible from future consideration as a permit applicant. No permit shall be issued to anyone for the sale of beer at the same premises until after the expiration of one (1) year from the date of final revocation.

SECTION II. LEGAL STATUS PROVISIONS.

A. **Conflict With Other Ordinances.** In case of conflict between this ordinance or any part thereof, and the whole or part of any existing or future ordinance of the Town of Mount Carmel, the most restrictive shall in all cases apply.

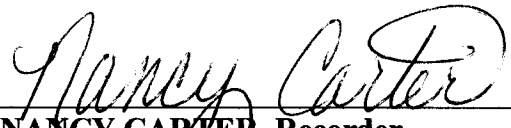
B. **Validity.** If any section, clause, provision or portion of this ordinance shall be held to be in doubt or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause, provision, or portion of this ordinance which is not of itself invalid or unconstitutional.

C. Effective Date. This ordinance shall become effective upon passage, the public welfare requiring it.



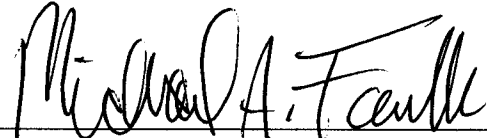
GARY LAWSON, Mayor

ATTEST:



NANCY CARTER, Recorder

APPROVED AS TO FORM:



LAW OFFICE OF MICHAEL A. FAULK

NOTICE OF PUBLIC HEARING PUBLISHED ON: 1-3-2002
NAME OF PUBLICATION: Kingsport Times News
PUBLIC HEARING HELD ON: 1-24-02

FIRST READING	AYES	NAYS	OTHER
PAUL HALE	✓		
HENRY BAILEY		✓	
EUGENE CHRISTIAN	✓		
GEORGE PIERCE		✓	
GARY LAWSON, MAYOR	✓		
THOMAS WHEELER	✓		
WANDA WORLEY	✓		
TOTALS	5	2	0

PASSED FIRST READING: 12-20-2001

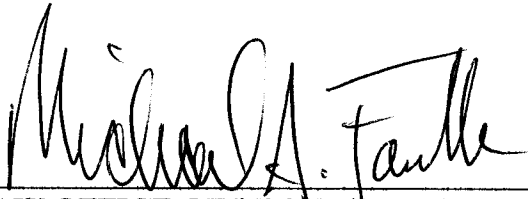
SECOND READING	AYES	NAYS	OTHER
PAUL HALE	✓		
HENRY BAILEY		✓	
EUGENE CHRISTIAN	✓		
GEORGE PIERCE		✓	
GARY LAWSON, MAYOR	✓		
THOMAS WHEELER	✓		
WANDA WORLEY	✓		
TOTALS	5	2	0

PASSED SECOND READING: 1-24-02

PUBLISHED ON:

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APPROVED AS TO FORM:



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NOTICE OF PUBLIC HEARING PUBLISHED ON: 1-3-02
NAME OF PUBLICATION: Kpt. Times News
PUBLIC HEARING HELD ON: 1-24-02

FIRST READING	AYES	NAYS	OTHER
HENRY BAILEY		✓	
EUGENE CHRISTIAN	✓		
GARY LAWSON, MAYOR	✓		
PAUL HALE	✓		
GEORGE E. PIERCE		✓	
THOMAS WHEELER	✓		
WANDA WORLEY	✓		
TOTALS	5	2	0

PASSED 1ST READING: _____ Ayes 5 Nays 2 Other 0