

ORDINANCE NO. 16-441
AN ORDINANCE AMENDING MOUNT CARMEL MUNICIPAL
CODE TITLE 8, "ALCOHOLIC BEVERAGES."

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

SECTION I. Title 8 "Alcohol Beverages", shall be deleted in its entirety and in its place the following sections 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. 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. 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.²
- 8-206. "Beer" defined.
- 8-207. Permit required for engaging in beer business.³
- 8-208. Privilege tax.⁴
- 8-209. Permits for retail sale; types designated, multiple type prohibited.
- 8-210. Permit application.
- 8-211. Disposition of application.
- 8-212. Separate permit required for each location.
- 8-213. Display of permit.
- 8-214. Transferability of permits.
- 8-215. Limitation on number of permits.
- 8-216. Interference with public health, safety, and morals prohibited, Zoning Restrictions, and Distance Requirements.
- 8-217. Prohibited conduct or activities by beer permit holders, employees and persons engaged in the sale of beer.
- 8-218. Restrictions upon distributors, wholesalers, warehousemen, manufacturers.
- 8-219. Restrictions on issuance of retail permits.
- 8-220. Restrictions upon distributors, wholesalers, warehousemen, manufacturers.
- 8-221. Revocation or suspension of beer permits.
- 8-222. Civil penalty in lieu of revocation or suspension.
- 8-223. Loss of clerk's certification for sale to minor.
- 8-224. Violations.

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 board shall hold regular meetings in the City Hall at such times as it shall prescribe. When there is business to come before the beer board, a special meeting may be called by the chairman provided he gives a reasonable notice thereof to each member. 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 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; names of the board members present and absent; 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.² 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 this municipality 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 beers, ales, and other malt liquors having an alcoholic content of not more than five percent (5%) by weight; provided however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other non-beverage ingredients containing alcohol.

8-207. Permit required for engaging in beer business.³ It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the beer board. The application shall be made on such form as the board shall prescribe and/or furnish, and pursuant to *Tennessee Code Annotated* §57-5-104(a), shall be accompanied by a nonrefundable application fee of two hundred and fifty dollars (\$250.00). Each applicant must be a person of good moral character and he must certify that he has read and is familiar with the provisions of this chapter.

8-208. Privilege tax.⁴ There is hereby imposed on the business of selling, distributing, storing or manufacturing beer a privilege tax 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 each successive January 1 to the Town of Mount Carmel, 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 prorated basis for each month or portion thereof remaining until the next tax payment date.

8-209. Permits for retail sale; types designated, multiple type prohibited.

- (1) Permits for the retail sale of beer shall be of two types:
 - (a) On-premise permits. "On-premise permits" shall be issued for the consumption of beer on the premises.
 - (b) Off-premise permits. "Off-premise permits" shall be issued for the sale of both refrigerated and unrefrigerated beer to be consumed off the premises.

²State law reference *Tennessee Code Annotated* §57-5-106.

³State law reference *Tennessee Code Annotated* §57-5-103.

⁴State law reference *Tennessee Code Annotated* §57-5-104(b).

- (2) No person shall be issued both types of permits for the same location.
- (3) 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.

8-210. 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:

- (1) The name and residence of the applicant and the length of time the applicant has resided there;
- (2) 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;
- (3) The type of permit desired;
- (4) The name of the owner of the business premises;
- (5) A statement that the applicant is of good moral character and has not been convicted of a felony;
- (6) 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;
- (7) 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;
- (8) A statement that the applicant has not had revoked any license or permit for the sale, storage, manufacture or distribution of alcoholic beverages;
- (9) A statement that the applicant will be conducting the daily business in person;
- (10) A statement that no brewer, manufacturer, distributor or warehouseman of legalized beer has any interests in the business, or business premises;
- (11) 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;
- (12) An oath or affidavit by the applicant that the facts represented in the application is true;
- (13) Any application, which does not contain affirmative responses to all representations requested therein, shall not be considered by the Beer Board.

8-211. 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.

8-212. 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.

8-213. 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.

8-214. Transferability of permits. Permits for the sale, storage, manufacture or distribution of beer hereunder shall not be transferable. A permit holder must return a permit to the city within fifteen (15) days of termination of the business, change in ownership, relocation of the business or change of the business's name; provided, that notwithstanding the failure to return the beer permit, a permit shall expire on termination of the business, change in ownership, relocation of the business or change of the business's name.

8-215. Limitation on number of permits. The number of licenses for the sale of beer shall be limited to ten (10). Provided that all requirements of this chapter are complied with, all existing permits for the sale of beer within the corporate limits of the city at the date of the passage of this ordinance shall continue to be renewed.

8-216. 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 congestion of traffic or would interfere with schools, residences, churches, or other places of public gathering, 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, B-3, ***MX-1 and MX-2***. 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.

8-217. 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 18 years of age in the sale, storage, distribution or manufacture of beer.
- (2) State Regulations require that upon approval of liquor by the drink, the hours of sale for beer shall coincide with the hours of sale for liquor by the drink, such hours being regulated by the State of Tennessee Alcoholic Beverage Commission, *Tenn Code Anno.* §57-5-301(2)(b)(1). (*per Ord 13-389 March 26, 2013*)
- (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 of more than five percent (5%) by weight.

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

- (1) All distributors, wholesalers, warehousemen and manufacturers of beer shall be duly licensed under law to do business in the state.
- (2) 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.
- (3) 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.
- (4) 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.

- (1) 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 (1)(a) below.
 - (a) 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:
- (2) Restaurants and eating places. The issuance of beer permits for restaurants and eating places pursuant to this article and the operation of such establishments shall be subject to the following:
 - (a) Permits for the retail sale of beer for on-premises consumption shall be issued subject to the approval of the beverage board to the owner or operator of any regularly conducted restaurant or eating place. The applicant shall fulfill all other general requirements for the retail sale of beer prescribed in this article.
 - (b) In addition, the restaurant or eating place shall be classified with a value of not less than passing as judged by appropriate state authorities.
 - (c) If after the issuance of a permit for on-premises consumption, the grade of passing is reduced by the appropriate state agency responsible for the grading of restaurants, the beverage board shall notify the permittee to appear before the beverage board to show cause why his permit should not be revoked. The beverage board shall have the authority to grant a temporary extension, not to exceed 90 days, for the permittee to make the corrections necessary and have the numerical grade increased to at least passing.

- (d) If it is shown that any permittee's premises are no longer 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 or provided with adequate and sanitary kitchen and dining room equipment and having employed therein a sufficient number and kind of employees to prepare cook and serve suitable food for the permittee's guests, the beverage board may cancel and revoke the permit.
 - (e) No beer shall be served at tables, stools or booths or in any other manner or place outside of the building except with specific written permission of the beverage board.
- (3) Merchants. Off-premises permits shall be issued only to bona fide merchants who have been licensed to conduct a merchandising business in the city. For the purpose of this subsection, the term "bona fide merchants" shall mean persons regularly operating and conducting business to serve the public on a regular basis, with regular business hours of operation.

8-220. Restrictions upon distributors, wholesalers, warehousemen, manufacturers.

- (1) All distributors, wholesalers, warehousemen and manufacturers of beer shall be duly licensed under law to do business in the state.
- (2) 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.
- (3) 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.
- (4) 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.

8-221. 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 reasonable notice to all the known parties in 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 vendor 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* 9 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.

8-222. 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 responsible vendor a civil penalty not to exceed one thousand dollars (\$1,000.00) for each offense of making or permitting to be made any sales to minors or for any other offense.

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 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.

8-223. 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.

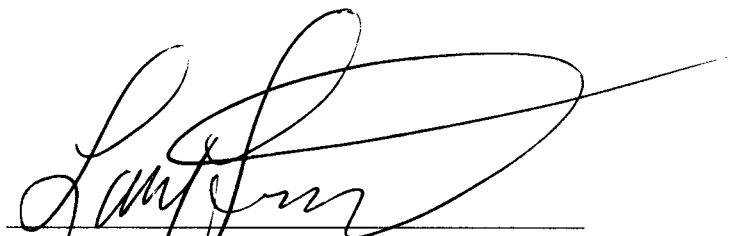
8-224. Violations. Except as provided in § 8-222, any violation of this chapter shall constitute a civil offense and shall, upon conviction, be punishable by a penalty under the general penalty provision of this code. Each day a violation shall be allowed to continue shall constitute a separate offense.

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.

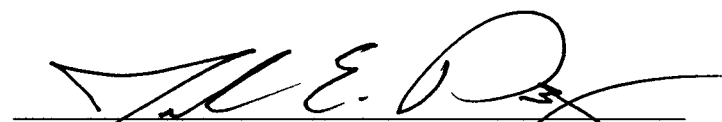
C. **Effective Date.** This ordinance shall become effective upon passage, the public welfare requiring it.

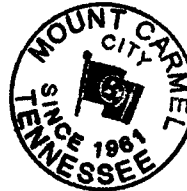

LARRY FROST, Mayor

ATTEST:


MARIAN SANDIDGE, Recorder

APPROVED AS TO FORM:


JOHN PEVY, TOWN ATTORNEY



FIRST READING	AYES	NAYS	OTHER
ALDERMAN EUGENE CHRISTIAN	X		
ALDERMAN MARGARET CHRISTIAN	X		
ALDERMAN WANDA DAVIDSON	X		
ALDERMAN PAUL HALE	X		
ALDERMAN CARL WOLFE	X		
VICE MAYOR CHRISTOPHER JONES	X		
MAYOR LARRY FROST	X		
TOTALS	7	0	0

PASSED FIRST READING: June 28, 2016

SECOND READING	AYES	NAYS	OTHER
ALDERMAN EUGENE CHRISTIAN			
ALDERMAN MARGARET CHRISTIAN			
ALDERMAN WANDA DAVIDSON			
ALDERMAN PAUL HALE			
ALDERMAN CARL WOLFE			
VICE MAYOR CHRISTOPHER JONES			
MAYOR LARRY FROST			
TOTALS			

PASSED SECOND READING: July 26, 2016

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