

ORDINANCE NO. 503

**AN ORDINANCE OF THE CITY OF SMITHVILLE, TENNESSEE,
AMENDING CITY CODE DOCUMENT NO. 175, CITY CODE
DOCUMENT NO. 249, AND CITY CODE DOCUMENT NO. 308,
SMITHVILLE BEER ORDINANCES, AND ESTABLISHING A NEW
SMITHVILLE BEER ORDINANCE**

WHEREAS, the Mayor and Board of Aldermen of the City of Smithville, Tennessee passed on first reading on April 19, 1976, and passed on second reading on May 3, 1976, City Code Document No. 103, captioned the "Smithville Beer Ordinance"; and,

WHEREAS, the Mayor and Board of Aldermen of the City of Smithville, Tennessee passed on first reading on June 4, 1984, and passed on second reading on June 18, 1984, City Code Document No. 175, captioned "An Ordinance Amending City Code Document No. 103"; and

WHEREAS, the Mayor and Board of Aldermen of the City of Smithville, Tennessee passed on first reading on October 18, 1993, and passed on second reading on November 1, 1993, City Code Document No. 249, captioned "An Ordinance Amending City Code Document No. 103 and City Code Document No. 175"; and

WHEREAS, the Mayor and Board of Aldermen of the City of Smithville, Tennessee passed on first reading on November 6, 2000, and passed on second reading on November 20, 2000, City Code Document No. 308, captioned "An Ordinance Amending City Code Document No. 103, and City Code Document No. 175, and City Code Document No. 249, Smithville Beer Ordinances, and Establishing a New Smithville Beer Ordinance"; and

WHEREAS, the Mayor and Board of Aldermen of the City of Smithville, Tennessee deem it appropriate to rescind all provisions of City Code Document No. 103, City Code Document No. 175, City Code Document No. 249, and City Code Document No. 308 and to substitute in their place the provisions contained herein; and

WHEREAS, the Smithville Municipal Code provisions addressing beer require updating and this ordinance replaces Chapter 2 of Title 8 of the Smithville Code.

NOW, THEREFORE, Be It Ordained by the Board of Mayor and Aldermen of the City of Smithville, Tennessee, that from and after its passage, this Ordinance shall be known as the "Smithville Beer Ordinance." The current Chapter 2 of Title 8 of the Smithville Code is hereby repealed and replaced with the following new Chapter on the subject of "Beer":

- 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. Permit required for engaging in beer business.
- 8-208. Privilege tax.
- 8-209. Beer permits shall be restrictive.
- 8-210. Interference with public health, safety, and morals prohibited.
- 8-211. Prohibited conduct or activities by beer permit holders, employees and persons engaged in the sale of beer.
- 8-212. Revocation or suspension of beer permits.
- 8-213. Civil penalty in lieu of revocation or suspension.
- 8-214. Loss of clerk's certification for sale to minor.
- 8-215. Violations.
- 8-216. Effective Date.

8-201. Beer board established. There is hereby established a beer board to be composed of five (5) members appointed by the governing body. All members of the beer board shall be citizens of the municipality. They shall be appointed for five (5) year terms except that the first members shall expire each year thereafter. A chairman shall be elected annually by the board from among its members. Members of the beer board shall serve without compensation. All members presently serving are hereby appointed to continue in their capacity of members of the Smithville beer board until the expiration of their terms. Any members of the beer board may be removed by the governing body with cause.

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 adequate 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. 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 be the same definition appearing in Tennessee Code Annotated §57-5-101.

8-207. Permit required for engaging in beer business. 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 non-refundable application fee of two hundred and fifty dollars (\$250.00). Said fee shall be in the form of a cashier's check payable to the City of Smithville. 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. 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 City of Smithville, 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. Beer permits 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 retail sale of beer may be further restricted so as to authorize sales only for off-premises consumption. A single permit may be issued for on-premise and 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 his permit. It shall likewise be unlawful for him not to comply with any and all express restrictions or conditions in his permit.

8-210. Interference with public health, safety, and morals prohibited. No permit authorizing the sale of beer will be issued when such business would cause congestion of traffic or would interfere with schools or churches, or would otherwise interfere with the public health, safety, and morals. In no event will a permit be issued authorizing the manufacture or storage of beer, or the sale of beer within four hundred (400) feet of any school or church. The distance requirement contained herein shall be measured in a straight line from the primary entrance of the establishment seeking a permit to sell beer to the primary entrance of the school or church. No permit shall be suspended, revoked or denied on the basis of proximity of the establishment to a school or church if a valid permit had been issued to any business on that same location unless beer is not sold, distributed or manufactured at that location during any continuous six-month period.

8-211. 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. Allow any person under twenty-one (21) years of age to loiter in or about his place of business.
3. Make or allow any sale of beer to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person.
4. Allow drunk persons to loiter about his premises.
5. Serve, sell, or allow the consumption on his premises of any alcoholic beverage with an alcoholic content higher than beer unless otherwise authorized by law.

8-212. 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 §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.

8-213. 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," 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.

8-214. 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.

8-215. Violations. Except as provided in §8-215, 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.

8-216. Effective Date. This ordinance shall take effect immediately upon its passage upon final reading by the governing body, the public welfare requiring.

FIRST READING _____

SECOND READING _____

MAYOR

ATTEST:

CITY RECORDER

ORDINANCE 445

AN ORDINANCE OF THE CITY OF SMITHVILLE, TENNESSEE AMENDING TITLE 8 ALCOHOLIC BEVERAGES, CHAPTER 2 OF THE CITY OF SMITHVILLE CODE OF ORDINANCES BY AMENDING THE SALE OF BEER TO ALLOW ON PREMISES AND ALLOWING SUNDAY SALES

Be It Ordained by the Mayor and Board of Aldermen that:

Section 1: A Class 1 On Premises Permit shall be issued for the consumption of beer only on the premises. To qualify for a Class 1 On Premises permit, an establishment must, in addition to meeting the other regulations and restrictions in this chapter:

- (a) Be primarily a restaurant or an eating place; and
- (b) Be able to seat a minimum of thirty people in booths and at tables, in addition to any other seating it may have; and
- (c) All seating must be part of the premises. In case of any outdoor seating, the outdoor seating area must be accessible from the inside of the restaurant or eating place and the outdoor seating area must have some type of enclosure around it, such as a wall or fencing; and
- (d) In addition to the requirements of subsections 8-210(1)(a) through (c), the monthly beer sales of any establishment which holds a Class 1 On Premises Permit shall not exceed fifty percent (50%) of the monthly gross sales of the establishment. As used herein, the term "gross sales" means all retail sales of the permit holder plus any applicable taxes. As used herein, the term "beer sales" includes all retail beer sales plus any taxes applicable to beer sales.

Section 2: Section 8 -211 Prohibited conduct or activities by beer permit holders: Section 8-211 (2) is hereby amended by changing the following text: "Make or allow any sale of beer between the hours of 12:00 midnight and 6:00 AM. during any night of the week, at any time on Sunday, and at any time on Christmas Day to the following: ""Make or allow any sale of beer between the hours of 12:00 midnight and 6:00 AM. during any night of the week.

Section 3: This ordinance shall take effect from and after its final passage, the public welfare requiring it.

Passed first reading: December 17, 2012

Passed second reading: December 27, 2012

Approved: Sammy W. Potts
Mayor

Attest: Hunter Hendrix
Recorder