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5-31-2007

The Responsible Vendor Act of 2006

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Recommended Citation
Jones, Josh, "The Responsible Vendor Act of 2006" (2007). *MTAS Publications: Hot Topics.*
http://trace.tennessee.edu/utk_mtastop/66

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MTAS
Municipal Technical Advisory Service
In cooperation with the Tennessee Municipal League

#140
HOT topic

May 31, 2007

THE RESPONSIBLE VENDOR ACT OF 2006

Josh Jones, Legal Consultant

Historically, municipal beer boards have exercised significant regulatory power over local retailers of beer for off-premises consumption. Our state legislature has for years granted municipalities the authority to either prohibit or allow and regulate the sale of beer within their borders. With the passage of last year's Responsible Vendor Act, some of the regulatory powers of beer boards will be narrowed. The act, which creates a voluntary program for retail vendors, takes effect on July 1, 2007.

Currently, cities that opt to allow the sale of beer within their borders may create a beer board and subsequently prescribe regulatory measures not conflicting with state law. Among these is the authority of local beer boards to revoke a retail vendor's license upon the first offense of sale to a minor. In fact, a municipal beer board may revoke or suspend a license or alternatively impose a civil penalty not exceeding $1,500 for each offense. T.C.A. § 57-5-108 (2) (A). The licensee then has seven days to pay the civil fine before suspension or revocation is imposed. Such sanctions can be quite severe for a vendor, serving as a deterrent to those who might consider the sale of beer to a minor.

The Responsible Vendor program requires participating vendors to comply with employee training requirements, universal customer identification, and mandatory signage. In exchange for complying with the program, certified vendors will receive reduced punishments for illegal sales to minors. Once certified, participating vendors are not subject to permit revocation or suspension upon an initial violation. Instead they are subject to only a civil penalty not exceeding $1,000 per offense of sale to a minor or other offense. Permanent revocation will not be allowable absent two violations within a 12-month period. T.C.A. § 57-5-108 (a) (1) (C).

Nonparticipating vendors will face increased civil penalties. A noncompliant vendor guilty of sale to a minor will be subject to suspension or revocation or a civil penalty not to exceed $2,500. T.C.A. §57-5-108 (a). Municipal beer boards also may revoke the license of a nonparticipating vendor for a first offense. These discrepancies in punishment will serve as a major incentive for retail vendors to become certified.

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Under the Responsible Vendor Act, participating vendors agree to submit all new clerks to a training program within 61 days of hire. The training, which must be approved by the Alcoholic Beverage Commission (ABC), must cover the sale of beer for off-premises consumption, methods of recognizing and dealing with minors who attempt to buy beer, and procedures for refusing to sell beer to minors. Participating vendors pay an initial $35 fee per clerk and an annual fee ranging from $35 to $250 based upon the number of certified clerks who participate. The vendor provides ABC with the names and identifying information for each new clerk, allowing ABC to keep a list of all certified clerks in Tennessee. If a certified clerk is determined to have made an illegal sale to a minor, the certification of that clerk becomes invalid, and the clerk may not apply for recertification for one year.

The Responsible Vendor Act is self-executing, becoming applicable statewide upon the July 1, 2007, effective date. Nonetheless, cities need to, via ordinance, amend their code's chapter on beer sales to reflect the changes. To facilitate this, a sample ordinance for such amendment follows. An updated model code section on beer also follows.

Further information can be found at the Alcoholic Beverages Commission Web site at http://www.tennessee.gov/abc/. Additionally, if you have questions regarding this legislation or its enactment, please contact your MTAS management consultant.

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SAMPLE ORDINANCE

ORDINANCE NO._____

AN ORDINANCE TO DELETE SECTION 8-212, DELETE SUBSECTION (1) OF SECTION 8-213, TO AMEND SECTIONS 8-214 AND 8-215, AND TO ADD SECTION 8-216 TO THE CITY OF _____ MUNICIPAL CODE.

BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF _____, TENNESSEE, THAT:

Section 1. Section 8-212, "Signs to be posted on premises," of the City of _____ Municipal Code is deleted.

Section 2. Subsection (1) of § 8-213 of the City of _____ Municipal Code, which reads, "Employ any person convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years" is deleted.

Section 3. Section 8-214, "Revocation or suspension of beer permits" of the City of _____ Municipal Code is amended by adding a second paragraph to read as follows:

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.

Section 4. Section 8-215, "Civil penalty in lieu of revocation or suspension" of the City of _____ Municipal Code is amended to read as follows:

8-215. 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.

Section 5. Section 8-216, "Revocation of clerk's certification," is added to the City of _____ Municipal Code to read as follows:

8-216. 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.

Section 6. Date of effect. This ordinance shall take effect from and after its final passage, the public welfare requiring it.

Passed 1st reading, _____, 20___.

Passed 2nd reading,_____, 20___.

_____
Mayor

_____
Recorder

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Josh Jones, Legal Consultant

SAMPLE CODE CHAPTER

CHAPTER 2

BEER[1]

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

8-201. Beer board established. There is hereby established a beer board to be composed of the board of mayor and aldermen. The mayor shall be the chairman of the beer board.

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.

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[1]Municipal code references
Minors in beer places, etc.: Title 11, Chapter 1.
Tax provisions: Title 5.

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 nonbeverage 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). Said fee shall be in the form of a cashier's check payable to the City of _____. 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.

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[2]State law reference *Tennessee Code Annotated* § 57-5-106.
[3]State law reference *Tennessee Code Annotated* § 57-5-103.

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 City of _____, 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. Limitation on number of permits. The number of licenses for the sale of beer shall be limited to _____. 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. A new permit may be issued to a qualified purchaser of an existing establishment in which a permit is now held for the sale of beer, and the permit used only within the establishment or building purchased.

8-211. 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, residences, churches, or other places of public gathering, 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 three hundred (300) feet of any school, residence, church or other place of public gathering. The distances shall be measured in a straight line from the nearest point on the property line upon which sits the building from which the beer will be manufactured, stored or sold to the nearest point on the property line of the school, residence, church or other place of public gathering.

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

No permit shall be suspended, revoked or denied on the basis of proximity of the establishment to a school, residence, church, or other place of public gathering 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.

8-212. 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. Make or allow the sale of beer between the hours of 12:00 Midnight and 6:00 A.M. on weekdays and between the hours of 12:00 Midnight Saturday and 12:00 noon on Sunday.
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.
7. Allow pool or billiard playing in the same room where beer is sold and/or consumed.
8. Fail to provide and maintain separate sanitary toilet facilities for men and women.

8-213. 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.

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8-216. 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.

MTAS

May 31, 2007

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Josh Jones, Legal Consultant

The sample ordinance and code chapter included in this publication were prepared by Steve Lobertini, Codification Consultant.

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MTAS1122 • E14-1050-000-054-07

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