

ORDINANCE NO. 00-42

AN ORDINANCE TO AMEND CHAPTER 2, BEER, OF TITLE 8, OF THE MUNICIPAL CODE OF THE CITY OF SPRING HILL, TENNESSEE

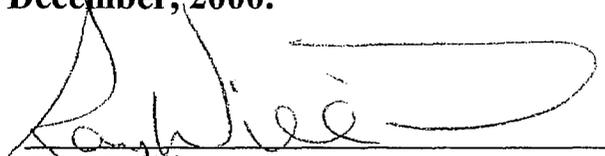
WHEREAS, the Board of Mayor and Aldermen of the City of Spring Hill may, pursuant to it's charter and general laws of the State of Tennessee, enact regulatory ordinances protecting and promoting the general welfare, health and safety of it's citizens.

BE IT THEREFORE ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF SPRING HILL, TENNESSEE:

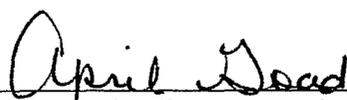
That Title 8, Chapter 2, be and is, hereby amended by deleting the entire Chapter 2 and inserting in its stead Chapter 2, Beer;

BE IT FURTHER ENACTED, that this ordinance shall take effect from and after it's adoption, the public welfare requiring it.

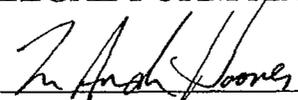
Passed and adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee on the 18th day of December, 2000.


Ray Williams, Mayor

ATTEST:


April Goad, City Recorder

LEGAL FORM APPROVED:


M. Andrew Hoover, City Attorney

Passed on 1st Reading November 20, 2000
Passed on 2nd Reading December 18, 2000

CHAPTER 2

BEER₂

SECTION

- 8-201. Purpose of chapter.
- 8-202. Beer business subject to regulation.
- 8-203. "Beer" defined.
- 8-204. Beer board established; compensation of members.
- 8-205. Meetings of the beer board.
- 8-206. Record of beer board proceedings to be kept.
- 8-207. Requirements for beer board quorum and action.
- 8-208. Powers and duties of the beer board.
- 8-209. Permit required for engaging in the beer business; term of permit.
- 8-210. Restrictions on granting permits.
- 8-211. Application forms; effect of false statements or misrepresentation therein.
- 8-212. Application requirements.
- 8-213. Beer permits to be restrictive.
- 8-214. Permits not transferable.
- 8-215. Display of permit.
- 8-216. Restrictions on permits that would cause congestion or interfere with public health, safety, and morals.
- 8-217. Further restrictions on the issuance of permits.
- 8-218. Issuance of permits to hotels, clubs, etc.
- 8-219. Sanitation for the premises of the permit holder.
- 8-220. Minors, fraudulent evidence of age; purchase in behalf of a minor by a third person, etc.
- 8-221. Investigation of applicants, agents, and/or employees.
- 8-222. Prohibited conduct or activities by beer permit holders.
- 8-223. Suspension and revocation of beer permits.
- 8-224. City business license.
- 8-225. Bond required.
- 8-226. Penalties for violations.
- 8-227. Employees liable for violations.
- 8-228. Notice to be given of permit suspension or revocation.
- 8-229. Application fee for sale of beer.
- 8-230. Privilege tax.

*State law reference

For a leading case on a municipality's authority to regulate beer, see the Tennessee Supreme Court decision in Watkins v. Naifeh. 635 S.W.2d 104 (1982).

8-201. Purpose of chapter. This chapter is adopted to regulate the sale of beer or other beverages of like content as herein defined within the corporate limits of the City of Spring Hill. (Ord. #92-2, Jan. 1992)

8-202. Beer business subject to regulation. It shall hereafter be lawful to transport, store, sell, distribute, possess, receive, or manufacture beer of alcoholic content of not more than such weight, volume, or alcoholic content as provided by the laws of the State of Tennessee, or any other beverages of like alcoholic content, within the corporate limits of the City of Spring Hill, subject to all of the regulations, limitations and restrictions hereinafter provided, and subject to the rules and regulations promulgated by authorized public officials or boards. (Ord. #92-2, Jan. 1992)

8-203. '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. (Ord. #92-2, Jan. 1992)

8-204. Beer board established; compensation of members. There is hereby established a beer board to be composed of three (3) residents of the City of Spring Hill over the age of twenty-one (21) years who shall be appointed by the mayor and approved by the board of mayor and aldermen. The members of said board shall hold office for one (1) year or until their successors are appointed and qualified.

Until such time as members are appointed to the beer board as herein provided, the board of mayor and aldermen shall serve as the beer board. (Ord. #92-2, Jan. 1992)

8-205. Meetings of the beer board. All meetings of the beer board shall be open to the public. The board shall hold meetings as set by the beer board or its chairman (or mayor until members are appointed to the board). A special meeting of the beer board may be called by its chairman provided he gives reasonable notice thereof to each board member, and the board may adjourn a meeting at any time to another time and place. (Ord. #92-2, Jan. 1992)

8-206. Record of beer board proceedings to be kept. The recorder shall act as secretary and shall attend all meetings of the beer board. This secretary shall make a record of the proceedings of the beer board which shall be a public record and shall contain the dates of meetings; the names of the members present and absent; in cases of hearings before the beer board, a record of evidence introduced and testimony heard before the board; the provision of each permit issued by the board as to whether it is a permit for sale for off premises consumption or for sale for on premises consumption. The

secretary shall also maintain a current list of the names and addresses of all holders of beer permits. (Ord. #92-2, Jan. 1992)

8-207. Requirements for beer board quorum and action. 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. 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. (Ord. #92-2, Jan. 1992)

8-208. 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.

The beer board is hereby given broad powers of investigation, and it shall have the authority to inspect the premises of any applicant and at all reasonable hours may investigate the premises of all permit holders. (Ord. #92-2, Jan. 1992)

8-209. Permit required for engaging in the beer business; term of permit. No person shall engage in the storing, selling, distributing, or manufacturing of beer or other beverages of like alcoholic content within the corporate limits of the City of Spring Hill until he shall receive a permit to do so from the beer board of the City of Spring Hill. The permit shall at all times be subject to all of the limitations and restrictions herein provided. Also, the applicant shall certify that he has read and is familiar with the provisions of this chapter.

No permit shall be issued for a period longer than one (1) year, but the board may issue a permit for a shorter period if in its discretion it deems proper. In no event shall a permit be issued without its approval by a majority of the beer board.

All permits in existence on January 1, 1992, shall expire on the next anniversary date of their issuance.

Each new applicant for a permit to sell beer within the city limits of the City of Spring Hill shall be required to pay an application fee of \$250.00 to the recorder. No portion of this fee shall be refunded to the applicant whether the application is approved or denied. (Ord. #92-2, Jan. 1992, as amended by Ord. #93-16, Aug. 1993)

8-210. Restrictions on granting permits. No permit shall be issued to sell any beverage coming within the provisions of this chapter:

- (1) In violation of any provisions of the state law or of this chapter, or any amendments thereto.
- (2) In violation of the Zoning Ordinance of the City of Spring Hill.

(3) To any applicant whose place of business remains open between 12:30 A.M. and 6:00 A.M. except those as may be specifically authorized by the board. Any such authorization will be noted on the permit. The board may also authorize other permit holders exceptions to this restriction on specific dates.

The judgment of the beer board on all such matters shall be final, except as same is subject to review under Tennessee Code Annotated § 57-5-105. (Ord. #92-2, Jan. 1992)

8-211. Application forms; effect of false statements or misrepresentation therein. No permit shall be issued except upon an application in writing submitted to the board. The application shall be on proper forms furnished by the recorder, shall be sworn to by the applicant, and for applications of natural persons, verified by the affidavit of two respectable citizens who are acquainted with the applicant. Any misrepresentation or false statement contained in the application upon which a permit is issued shall subject said permit to immediate revocation upon a hearing after notice as provided below issued upon a proper complaint charging that there has been a misrepresentation or false statement in said application. At such hearing the burden of proof shall be upon the holder of the permit to establish the truth of each statement and representation made in his application. (Ord. #92-2, Jan. 1992)

8-212. Application requirements. (1) Each application must explicitly and affirmatively state:

- (a) The location of the premises at which the business shall be conducted.
- (b) The owner or owners of such premises and the terms of any lease or agreement pertaining thereto.
- (c) The names and addresses of all other persons or firms who have any financial interests whatsoever in the beer business proposed to be established.
- (d) Whether the applicant will operate the business in person or by agent and, if by agent, the name and address of such agent.
- (e) That no person will be employed in the storage, sale or manufacture of such beverages who has been convicted within the past ten (10) years of any law against possession, sale, manufacture, or transportation of intoxicating liquor or any crime involving moral turpitude.
- (f) That the applicant will not engage in the sale of such beverages except at the place or places for which the beer board has issued a permit or permits to such applicant.
- (g) That no sale of such beverages will be made except in accordance with the permit granted.
- (h) That, if the application is for a permit to sell for consumption

off the premises, that no sale shall be made for consumption on the premises, and that no consumption will be allowed on the premises thereof.

(i) That no sale will be made to minors, and that the applicant will not permit minors or disorderly, intoxicated, or disreputable persons to loiter around the place of business.

(j) That the applicant will be responsible for any gambling on its premises and its permit subject to revocation by reason of the same. That the applicant will not allow nor has allowed its place of business to become a public nuisance or a nuisance to law enforcing agencies of the City of Spring Hill, nor that it has, or will, create a nuisance.

(k) That the applicant has secured a certificate or statement from the chief of police or other officially designated official that the premises which the application covers meets the requirements of this chapter. Such certificate or statement must be attached to the original application.

(l) That the applicant has not had his license revoked in the past year.

(2) No application shall be acted upon by the board unless:

(a) The application is submitted to the city recorder at least fifteen (15) days prior to the beer board meeting at which it is to be considered unless said period is waived by the beer board. The recorder shall, within twenty (20) days after receipt of an application, notify each member of the beer board of such application.

(b) The application shall be reviewed by the city attorney or city administrator to assure compliance with all questions required by a City ordinance or state law governing the issuance of permits or the applications therefor.

(c) The applicant will not conduct business or serve customers between 12:30 and 6:00 A.M. except as authorized by the board pursuant to § 8-210(3). (Ord. #92-2, Jan. (1992)15

8-213. Beer permits to be restrictive. All beer permits shall be restrictive as to the type of beer business authorized under them and separate permits shall be required for:

- (1) Selling at retail;
- (2) Selling at retail where dancing is allowed;
- (3) Storing;
- (4) Distributing; and
- (5) Manufacturing.

Beer permits for the retail sale of beer may be further restricted by the beer board so as to authorize sales only for:

- (a) On premises consumption; or
- (b) Off premises 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 or application therefor. (Ord. #92-2, Jan. 1992)

8-214. Permits not transferable. Beer permits shall not be transferable from one person to another or from one location to another. A

new permit is required in the manner provided herein when a holder disposes of his business or transfers to another location. (Ord. #92-2, Jan. 1992)

8-215. Display of permit. The permit required by this chapter shall be posted in a conspicuous place on the premises of the permit holder, together with all other permits, licenses, and stamps as required by law. (Ord. #92-2, Jan. 1992)

8-216. Restrictions on permits that would cause congestion or interfere with public health, safety, and morals. No permit authorizing the sale of beer will be issued when such business is within two hundred feet (200'), measured from the nearest building corner of the permit premises to the nearest building corner of schools, churches, or other places of public gathering, or would otherwise interfere with the public health, safety, and morals, or would cause congestion of traffic. (Ord. #92-2, Jan. 1992)

8-217. Further restrictions on the issuance of permits. No permit shall be issued to any person who has been convicted of violating laws against possession, sale, manufacture, or transportation of intoxicating liquors or any crime involving moral turpitude within the past ten (10) years.

The board in its discretion may refuse to issue a permit for any place of business, which in the period immediately preceding the application for a permit, was operated in such a manner as to create a public nuisance or which was operated in such a manner as to materially contribute with places of like character in its vicinity in the creation or maintaining of a public nuisance.

In determining whether a permit shall be issued, the board shall consider the character of the neighborhood, the space available for building, space available for off street parking, and the effect of the business on neighboring users. (Ord. #92-2, Jan. 1992)

8-218. Issuance of permits to hotels, clubs, etc. It shall be lawful for the beer board to issue a permit, for the sale of any beverage coming within the provisions of this chapter, to bona fide restaurants, hotels, motels, clubs, or lodges, subject to the limitations and restrictions contained in state law, and the rules and regulations promulgated thereunder, and subject to all the limitations and restrictions contained in the permit provided for by this chapter. (Ord. #92-2, Jan. 1992)

8-219. Sanitation for the premises of the permit holder. The premises of the permit holder shall be defined as the lot or property under control of the permit holder, both inside the building and outside the building. The permit holder shall be responsible for the sanitation of the premises including refuse storage, both inside and outside the building, lavatory facilities, and general cleanliness of the grounds and structure. The chief of police, the mayor, the city administrator, or any properly authorized person is hereby authorized to enter the premises at all reasonable hours for the making of such inspections as may be necessary. The determination of the sanitary conditions is solely a question for the City of Spring Hill. (Ord. #92-2, Jan. 1992)

8-220. Minors, fraudulent evidence of purchase in behalf of a minor by third person, etc. It shall be unlawful for any minor to purchase, attempt to purchase, or to possess any such beverage covered under this chapter, or for anyone to purchase such beverage for a minor. It shall be unlawful for any minor to present or offer to the holder of a permit, his agent or employee, any written evidence of his age which is false, fraudulent, or not actually his own, for the purpose of purchasing or attempting to purchase such beverages. Any person who acts in violation of any one or more of the provisions of this section shall be deemed guilty of a misdemeanor and if eighteen (18) years of age, or more, shall upon conviction, be subject to a penalty under the general penalty clause for this code; if seventeen (17) years of age, or less, he shall be taken before the juvenile judge for appropriate proceedings. (Ord. #92-2, Jan. 1992)

8-221. Investigation of applicants, agents, and/or employees. Applicants for, and holders of retail permits under this chapter and their agents or employees are subject to be investigated by any municipal, county, or state authorities, including members of the beer board, and must submit such information and records as the beer board may require. (Ord. #92-2, Jan. 1992)

8-222. Prohibited conduct or activities by beer permit holders. It shall be unlawful for any beer permit holder to:

(1) Employ any person who, within the previous ten (10) years, has been convicted of any law against possession, sale, manufacture, or transportation of intoxicating liquors or any crime involving moral turpitude.

(2) Employ any minor in the sale or dispensing of beer at retail for consumption on the premises. The holder of a beer permit shall be held strictly accountable for the violation of this provision and the burden of ascertaining the age of any minor shall be upon the holder and operator of such place of business.

(3) Make or allow any sale of beer, or make, cause, or allow to be made any gift thereof, between the hours of 12:00 midnight. and 6:00 A.M. during any night of the week or between 12:01 A.M. and 12:00 noon on Sunday; nor shall any person holding a permit allow beer to be consumed on the premises after 12:15 A.M., and the presence of open beer bottles or glasses containing beer after 12:15 A.M. shall be prima facie evidence of a violation of this chapter.

(4) Allow any loud, unusual, or obnoxious noises to emanate from his premises.

(5) Make or allow any sale of beer, or make, cause, or allow to be made any gift thereof to a minor, or permit such sale by any employee or any person in any way connected with his place of business. The holder of a beer permit shall be held strictly accountable for the violation of this provision and the burden of ascertaining the age of any customer shall be upon the owner or operator of such place of business and he shall be held strictly accountable for all acts of his employees.

(6) Allow any minor to loiter in his place of business. The burden of ascertaining the age of any person shall be upon the owner or operator of such place of business and he shall be held strictly accountable for any actions of his employees for the violation of this provision.

(7) Make or allow any sale of beer, or make, cause, or allow to be made any gift thereof, to any intoxicated person.

(8) Allow drunk or intoxicated persons to loiter on his premises.

(9) Allow dancing on his premises unless specified in his license application.

(10) Fail to provide and maintain adequate separate sanitary toilet facilities for men and women.

(11) Allow any sale or delivery of beer for consumption on the premises outside of the building occupied by the holder of the permit. Any sales for consumption on the premises but outside of the building from which the business is operated shall be made from within the building, it being the intention of this provision to prohibit the sale of beer by what are commonly called "curb sales".

(12) Allow its business to be open to the public between 12:00 A.M. and 6:00 A.M. except with permission of the board.

Each owner and each operator of a business where beer is sold shall be held strictly accountable for any actions of his employees which violate any of the above provisions.

(13) Allow its business to operate in such a way as to create any of the conditions described in §§ 8-216 or 8-217 or to violate any of the prohibitions set forth therein. (Ord. #92-2, Jan. 1992, modified)

8-223. Suspension and revocation of beer permits. All permits issued by the beer board under the provisions of this chapter shall be subject to suspension or revocation by the beer board for the violation of any provision of the state beer laws, or any provision of this chapter. Suspension or revocation proceedings may be initiated by any interested person, by the chief of police, or any member of the police force of the City of Spring Hill, the city administrator, or by any member of the Beer Board of the City of Spring Hill. The board is vested with full and complete power to investigate any charges against any permit holder and to cite any permit holder to appear and show cause why his permit should not be suspended or revoked.

Complaints filed against any permit holder for the purpose of suspending or revoking his permit shall be made in writing and filed with the secretary to the board. When the chairman of the beer board shall have reason to believe that any permit holder shall have violated the provisions of the state beer act or any of the provisions of this chapter, the chairman of the beer board is authorized to notify the permit holder of said violations, and to cite said permit holder by written notice to appear and show cause why his permit should not be suspended or revoked for such violations at a special or regular meeting of the beer board. The notice to appear and show cause shall state the alleged violations charged and shall be served upon the permit holder either by registered letter or by a member of the police department of the City of Spring Hill. The notice shall be served upon the permit holder at least five (5) days before the date of the hearing. At the hearing

the board shall publicly hear the evidence both in support of the charges and on behalf of the permit holder. After such hearing the board may, in its discretion, suspend or revoke said permit. The action of the board in all such hearings shall be *final*, subject to review by the courts as provided in the state beer law. When a permit is revoked, no new permit shall be issued hereunder for the sale of beer to the permit holder until the expiration of one (1) year from the date such revocation becomes final.

At any hearing held pursuant to this chapter for the suspension or revocation of a beer permit, the hearing shall be broad in character and evidence may be heard upon any facts or circumstances pertinent to or applicable to the charges made in the complaint. The reputation and character of the place in question and of the operator and the employees thereof or the holder of the permit complained of shall be material and competent evidence for the consideration of the board at such hearing. (Ord. #92-2, Jan. 1992)

8-224. City business license. Each applicant granted a permit to sell any beverage coming within the provisions of this chapter shall, before engaging in such sale, secure from the City Recorder of the City of Spring Hill, Tennessee, a city business license as provided in the Tennessee Code Annotated. (Ord. #92-2, Jan. 1992)

8-225. Bond required. Every person to whom a permit is issued shall, before selling at retail any beverage permitted to be sold under this chapter, execute and file with the Recorder of the City of Spring Hill, a bond in the sum of two hundred and fifty dollars (\$250.00). The bond shall be conditioned that the principal thereof will pay any fine arising from any violation of this chapter which may be assessed against such principal or any agent or employee thereof by the city court or any court of competent jurisdiction to which any suit from the city court is appealed. The bond shall be executed by some solvent surety company authorized to do business in the State of Tennessee, or by solvent personal sureties approved by the city attorney. (Ord. #92-2, Jan. 1992)

8-226. Penalties for violations. Each day of violation of any provision of this chapter by any permit holder, or each sale made in violation of any provision of this chapter, shall constitute a separate misdemeanor which shall be punishable under the general penalty clause for this code. If appropriate, action may also be taken for suspension or revocation of the permit issued hereunder or by both a fine and suspension or revocation.

Upon the conviction of any permit holder for the violation of any provision of this chapter or the beer laws of the State of Tennessee, the municipal judge shall have the authority to suspend the beer permit for a period not to exceed sixty (60) days from the recommendation of the chief of police or city administrator. The municipal judge shall have like authority to suspend a permit not to exceed sixty days when any employee of the holder thereof is convicted for violating any of the provisions of & 8-222 of this chapter. (Ord 92.2, Jan. 1992)

in the above, but is supplementary thereto. The municipal judge shall have like authority to suspend a permit for a period not to exceed thirty (30) days when any employee of the holder thereof is convicted for violating any of the provisions of § 8-222 of this chapter. (Ord. #92-2, Jan. 1992)

8-227. Employees liable for violations. Any employee of any permit holder who violates the provisions of this chapter or any provision of the state beer act while so employed by such permit holder shall be guilty of a misdemeanor which shall be punishable under the general penalty clause for this code. (Ord. #92-2, Jan. 1992)

8-228. Notice to be given of permit suspension or revocation. The board shall cause the secretary to notify the chief of police and all interested wholesalers of the suspension or revocation of any permit. (Ord. #92-2, Jan. 1992)

8-229. Application fee for sale of beer. All new applicants for a beer permit issued pursuant to this chapter shall pay to the City of Spring Hill the sum of two hundred fifty dollars (\$250.00) for use in offsetting the expenses of investigating the applicant to determine whether a permit shall be issued. Regardless of whether the permit is approved or denied, any portion of the fee collected in excess of that actually used in the investigation shall become the property of the City of Spring Hill at the end of each calendar year and shall be used at the discretion of the Board of Mayor and Aldermen of the City of Spring Hill. Any applicant for a renewal of an existing permit shall not be required to pay this fee. Any application for a change in location shall be required to pay this fee. (Ord. #92-2, Jan. 1992)

8-230. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer within the City of Spring Hill an annual privilege tax of \$200.00, notwithstanding the provisions of Tennessee Code Annotated, § 57-6-112. Each holder of a beer permit shall remit this fee on January 1, 1994, and each successive January 1 thereafter to the Recorder of the City of Spring Hill.

The privilege tax hereby imposed shall be in addition to any and all other privilege taxes to which the holder of beer permits are subject. (Ord. #93-16, Aug. 1993) (Ord #00-42, Dec. 2000)