

ORDINANCE NO. 2009-169

AN ORDINANCE OF THE CITY OF DYER, TENNESSEE, TO REPEAL TITLE 8, CHAPTER 2 OF THE DYER MUNICIPAL CODE RELATING TO ALCOHOLIC BEVERAGES, AND REPLACING SAME WITH A NEW TITLE 8, CHAPTER 2 ALSO RELATING TO ALCOHOLIC BEVERAGES.

WHEREAS, the *Tennessee Code Annotated*, Section 57-5-106 authorizes Tennessee municipalities to adopt “proper ordinances governing the issuance and revocation or suspension of licenses for the storage, sale, manufacture and/or distribution of beer; and

WHEREAS, the Dyer City Council has determined the need to update and modernize the city’s beer regulations.

NOW, THEREFORE, be it enacted by the City Council of the City of Dyer, Tennessee, as follows:

1. Beer regulations repealed. Title 8, Chapter 2 of the Dyer municipal code relating to beer is hereby repealed in its entirety.

2. Beer regulations adopted. A new Title 8, Chapter 2 of the Dyer municipal code relating to beer is hereby adopted, reading as follows:

CHAPTER 2

BEER

8-201. Beer board established. There is hereby established a beer board to be composed of the Board of Mayor and Aldermen of the City of Dyer. The Mayor shall serve as chairperson of the Beer Board. Members of the beer board 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 Dyer 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 chairperson, provided that a reasonable notice thereof is provided to each member. The board may adjourn a meeting at any time to another place and time.

8-203. Record of beer board proceedings to be kept. The city 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 information:

- a. the date and time of each meeting;
- b. the names of the board members present and absent;
- c. the names of the members introducing and seconding motions and resolutions, etc. before the board.
- d. a copy of each such motion or resolution presented;
- e. the vote of each member thereon;
- f. 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 is hereby directed, to regulate the selling, storing for sale, distributing for sale, and manufacturing of beer within the City of Dyer, in accordance with the provisions of this ordinance.

8-206. “Beer” defined. The term “beer”, as used in this ordinance, shall mean and include all beers, ales, and other malt liquors having an alcoholic content of not more than five per-cent (5.00%) by weight.

8-207. Permit required for engaging in beer business. It shall be unlawful for any person, group of persons, business, or corporation to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the beer board. Such application shall be made on such form as the board shall prescribe or furnish. Each applicant must be a person of good moral character and must certify that he/she has read and is familiar with the provisions of this ordinance. As specified in *Tennessee Code Annotated* § 57-5-104(a), each applicant for a beer permit shall be required to pay an application fee of two hundred fifty dollars (\$250.00) to the City of Dyer. No portion of the application fee shall be refunded to the applicant, notwithstanding whether an application is approved or denied. Pursuant to *Tennessee Code Annotated* § 57-5-104(b), there is hereby imposed on the business selling, distributing, storing or manufacturing beer in the City of Dyer a privilege tax of \$100 per year.

8-208. 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, or manufacturing. 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/her permit. It shall likewise be unlawful for any permit holder to fail to comply with any and all express restrictions or conditions which may be written into his/her permit by the beer board.

8-209. On premises consumption permits. An on-premises consumption permit shall be issued for the consumption of beer only on the premises. To qualify for an on-premises consumption permit, the establishment must, in addition to meeting the other regulations and restrictions in this ordinance:

- a. be primarily a restaurant or an eating place; and
- b. have operable and cleanly maintained commercial cooking equipment on the premises; and
- c. be able to seat a minimum of seventy (70) people, including children, in booths and at tables, in the interior of the building under a permanent roof; in addition to any other seating it may have; and
- d. have been in continual operation for a period of at least six (6) months, and;
- e. be kept and maintained in a safe, clean, and sanitary condition as required for a rating of class “B” or better as established by the Tennessee Department of Conservation, Division of Hotels and Restaurant Inspections.

In addition, the monthly beer sales of any establishment which holds an on-premises consumption license shall not exceed fifty percent (50%) of the gross sales of the establishment. Any such establishment which for two (2) consecutive months, or for any three (3) months in any calendar year, has sales exceeding fifty percent (50%) of its gross sales, shall have its beer permit revoked.

8-210. Off premises permit. An off-premises beer permit shall be issued for the consumption of beer only off the premises of the permittee. To qualify for an off-premises permit, an establishment must, in addition to meeting the other regulations and restrictions of this ordinance:

- a. be a grocery store or a convenience type market; and
- b. in either case, be primarily engaged in the sale of grocery, personal, and home care and cleaning articles, but also may sell gasoline.

In addition, the monthly beer sales of any establishment which holds an off-premises permit shall not exceed twenty-five percent (25%) of the gross sales of the establishment. Any establishment which for two (2) consecutive months, or for three (3) months in any calendar year, has beer sales exceeding twenty-five percent (25%) of its gross sales, shall have its beer permit revoked.

8-211. Limitation on number of permits. The beer board shall limit the number of beer permits issued in the City of Dyer as follows:

- a. On-premises permits: not to exceed five (5) permits.
- b. Off-premises permits: not to exceed ten (10) permits.

There shall be no limit on the number of permits issued for the storage, distribution, or manufacture of beer.

8-212. Issuance of permits to illegal aliens prohibited. No permit to engage in the beer business shall be granted by the beer board to any alien determined to be illegally in the United States of America.

8-213. Interference with public health, safety, and morals prohibited. (a) No permit authorizing the sale of beer will be issued when such business would cause congestion of traffic or would interfere with the operation of schools, churches, or other places of public gathering, or would otherwise interfere with the public health, safety, and morals.

- (b) Subject to the exception for restaurants hereinafter provided, no permit shall be issued authorizing the retail sale of beer for consumption on the premises of the permit holder if such premises are located within four hundred (400) feet of any school, church, playground, ballpark, hospital, nursery, or nursing home.
- (c) No permit shall be issued for the retail sale of beer to be removed from the premise of the permit holder if such premises are located within three hundred (300) feet of any school, church, playground, ballpark, hospital, nursery, or nursing home. The distance hereinabove established shall be measured along straight lines from building to building nearest corner to nearest corner. Further, the distance restrictions hereinabove established shall apply only to applications for permits to sell beer submitted after the effective date of this chapter and shall have no effect on the holders of permits issued before that date.
- (d) A restaurant within the municipal limits of the city may be issued a permit authorizing the sale and storage of beer for consumption on the premises if either of the following two conditions are met:
 - (1) The restaurant is the holder in good standing of a license issued by the State of Tennessee Alcoholic Beverage Commission authorizing the sale of spirits and liquor by the drink. And such restaurant shall be classified as a Category I Restaurant; or
 - (2) The restaurant is primarily an eating place, derives a minimum of 50% of its gross receipts from the sale of food, is located more than one hundred fifty (150) feet from any playground, ballpark, hospital, nursery, or nursing home and is located more than four hundred (400) feet from any school or church. Any such restaurant shall be classified as a Category II Restaurant.

All restaurants holding beer permits shall submit annually, prior to January 15 for the year ending December 31, a certified statement that they are in full compliance with this section and that a minimum of 50% of its gross receipts are derived from the sale of food. The certified statement shall be accompanied by proof of gross receipts and purchases for food and beer for the year in question. The City of Dyer may make a reasonable inquiry to verify the information on the certified statement and accompanying documentation within six (6) months of filing of the certified statement. Failure to submit a certified statement in compliance with this section may result in the revocation of the non-complying restaurant's permit.

8-214. Issuance of permits to persons convicted of certain crimes prohibited. No beer permit shall be issued to any person who has been convicted for the illegal possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude, within the ten (10) year period preceding the date of application for a beer permit.

8-215. Prohibited conduct or activities by beer permit holders. It shall be unlawful for any beer permit holder to:

- a. Employ any person convicted for the illegal possession, sale, manufacture, or transportation of intoxicating liquor, or a crime involving moral turpitude within ten (10) years of such person's employment with the permittee.
- b. Employ any minor under the age of eighteen (18) years of age in the sale, storage, distribution, or manufacture of beer.
- c. Make or allow any sale of beer between the hours of 12:00 midnight and 5:00 a.m. during any night of the week and Sunday between 12:00 midnight and 12:00 noon and 6:00 p.m. and 5:00 a.m. Monday.
- d. Allow any loud, unusual, or obnoxious noises to emanate from the permittee's premises.
- e. Make or allow any sale of beer to any person less than twenty-one (21) years of age.
- f. Allow any minor under the age of eighteen (18) years of age to loiter in or about the permittee's place of business.
- g. Make or allow any sale of beer to any intoxicated person.
- h. Allow intoxicated or disruptive persons to loiter about the permittee's premises.
- I. Serve, sell, or allow the consumption on the permittee's premises of any alcoholic beverage with an alcoholic content greater than five percent (5.00%) by weight.
- J. Allow pool or billiard playing in the same room where beer is sold and/or consumed.
- K. Fail to provide and maintain sanitary toilet facilities.

8-216. Revocation of beer permits. The beer board shall have the power to revoke any beer permit issued under the provisions of this ordinance when the holder thereof is guilty of making a false statement or misrepresentation in his/her application or of violating any of the provisions of this ordinance. However, no beer permit shall be revoked until a public hearing is held by the board after giving reasonable notice to all the known parties of interest. Revocation proceedings may be initiated by the police chief or by any member of the municipal governing body.

3. Effective Date. This ordinance shall be in full force and effect beginning from and after its date of passage.

4. Severability. Should any section, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by State or Federal law or regulation, such decision or legislation shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

5. Repealer. All ordinances and parts of ordinances which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

PASSED AND APPROVED THIS 22 DAY OF JUNE, 2009 BY A ROLL CALL VOTE OF THE DYER, TENNESSEE, BOARD OF MAYOR AND ALDERPERSONS.

DATE OF 1ST READING: 6-8-2009

DATE OF 2ND READING: 6-22-2009

Walter Thompson
MAYOR

ATTEST: Kenneth W McEwen
CITY RECORDER