



ORDINANCE # 2012 - 219

AN ORDINANCE ESTABLISHING REGULATIONS GOVERNING RETAIL LIQUOR STORES IN THE TOWN OF UNICOI

WHEREAS, the citizens of the Town of Unicoi voted in a referendum allowing the operation of off-premise retail liquor stores within the Town of Unicoi, and upon certification by the Election Commission, the Town residents have approved the operation of such “package stores”; and,

WHEREAS, the Board of Mayor and Aldermen has the responsibility and authority to establish guidelines and regulations for an off-premises retail liquor store including governing those components of a Certificate of Compliance and other requirements allowed through the Tennessee Code; then,

NOW, THEREFORE BE IT ORDAINED by the Board of Mayor and Aldermen of the Town of Unicoi, Tennessee that Title 8, Chapter 2, Intoxicating Liquors of the Unicoi Municipal Code be amended to delete the former Section 8-208 and adding the following Section 8-208:

8-208. Retail Stores

- (1) Sale Authorized: It shall be lawful for a licensee to sell alcoholic beverages at retail in a liquor store within the corporate limits of Unicoi, provided such retail license has been appropriately approved by the Town and the State, and such sales are made in compliance with applicable state and federal statutes, rules and regulations, as well as the provisions established in this Chapter. It shall be unlawful to engage in the business of selling, storing, transporting, distribution, or to purchase or possess alcoholic beverages within the corporate limits of this city except as provided by this ordinance and Tennessee Code Annotated, Title 57.

- (2) License and Certificate Required: It shall be unlawful for any person, firm or corporation to sell alcoholic beverages at retail without first obtaining a license for such privilege in an off-premise liquor store through the State of Tennessee Alcoholic Beverage Commission, and without obtaining a Certificate of Compliance for a specific store location by the Unicoi Board of Mayor and Aldermen as required by Tennessee Code Annotated (TCA) §57-3-208.

- (3) License Restrictions: The requirements or restrictions established in TCA §57-3-204 through §57-3-210 apply to applicants for a retail liquor store license in Unicoi, including but not limited to the following:
 - (a) No retail license shall be issued to a person who is a holder of public office, either appointive or elective, or who is a public employee, either national, state, city or county except as specified in § 57-3-210(b)(1).

 - (b) No retailer or any employee shall be a person who has been convicted of a felony involving moral turpitude within ten (10) years prior to the time of the application, with the exception of such person whose rights of citizenship have been restored or judgment of infamy has been removed by a Court of competent jurisdiction. No license shall be issued to a retailer who within ten (10) years preceding the application has been convicted of any offense under the laws of Tennessee or any other state in the United States prohibiting or regulating the sale, possession, transportation, storing, or manufacturing or otherwise handling of intoxicating liquors.

 - (c) No person shall have ownership in, or participate in, either directly or indirectly, the profits of any wholesale or retail liquor business licensed through the TCA unless the interest in such business and the nature, extent and character thereof shall appear on the application or unless such interest is fully disclosed to the Alcoholic Beverage Commission and is approved by it.

 - (d) No person shall be employed in a retail liquor store within the Town of Unicoi unless they are a citizen of the United States.

 - (e) No retailer or any employee thereof shall be a person under eighteen (18) years of age.

 - (f) A retailer must currently be a resident of the State of Tennessee and must have been a resident of Tennessee for two (2) years immediately proceeding the date the application is filed.

 - (g) The Town of Unicoi may make unscheduled inspections of retail liquor stores within the Town of Unicoi at any time.

- (4) License Application: Any person, firm, or corporation desiring to sell alcoholic beverages at a retail liquor store and not for consumption on premises, shall make

application to the Tennessee Alcoholic Beverage Commission (ABC) for a retailer's license. The following conditions apply:

- (a) Conditions established in TCA §57-3-204 must be met including payment of the application fee mandated by the State of Tennessee, as well as compliance with any applicable Rules and Regulations of the Alcoholic Beverage Commission.
 - (b) The license application must be accompanied by a properly executed Certificate of Compliance from the Town of Unicoi.
 - (c) The license expires in twelve (12) months following the date of issuance. Each licensee must submit renewal applications annually to the ABC accompanied by the annual license fee.
 - (d) The Applicant for a license must meet the Public Notice requirements established in Section 0100-03-09 (10) and (11) of the Rules of the Alcoholic Beverage Commission and must submit to the Town of Unicoi a copy of the newspaper notice with paper header showing compliance with this requirement.
- (5) Application for Certificate of Compliance: An applicant for a license shall first obtain a Certificate of Compliance from the Town of Unicoi, as provided in TCA §57-3-208. The application for the certificate shall be in writing on forms prescribed and furnished by the City Recorder. The application includes a request for a Certificate of Good Moral Character, as provided by TCA §57-3-208 et seq. Applications shall include but not be limited to the following information:
- (a) The name, date of birth and street address of each person to have an interest, direct or indirect, in the license as owner, partner, or stockholder, director, officer, member or otherwise. In the event that a corporation, partnership, Limited Liability Company or other legally recognized entity is an Applicant or member of an Applicant Group, each person with an interest therein must be disclosed and must provide the information herein required by the Town.
 - (b) Statement that each Applicant or member in the Applicant Group has been a bona fide resident of the State of Tennessee for at least two (2) years immediately preceding the date the application is filed.
 - (c) The names and addresses of at least three residents of the Town or State that have known each Applicant for at least two years.
 - (d) Occupation or business name and location of such business of Applicant or persons in the Applicant Group, and length of time engaged in such occupation or business, including the name of the licensee and address of any other off-premise liquor stores in which an ownership interest is held by the

Applicant or any member of the Applicant Group, identifying the Applicant or group members holding each interest.

- (e) In the case where the Applicant is a partnership, corporation, limited liability company or other such legally recognized entity, the application shall be accompanied by a copy of the partnership agreement, corporate charter, operations agreement or other such document as well as a breakdown of all partners, shareholders, members, etc. with their ownership percentages.
- (f) The identity of the Applicant(s) who will be in actual charge of the day-to-day operation of the retail liquor store.
- (g) Certification that the Applicant or Applicant Group or any employee, now intended or in the future, that will be employed to manage or assist in the operation of the retail liquor store has not been convicted of a felony within the ten (10) year period immediately preceding the date of the application of any violation of any State or Federal law, or of any violation of any municipal ordinance involving alcohol related offenses. This certification shall be accompanied by a criminal background check or consent to and request for same for each applicant, applicant group and management employee of the liquor store. The cost of obtaining such criminal background checks shall be borne and paid by the applicant, applicant group and employer of the management employee
- (h) Name of the retail liquor store proposed in the application and the zoning designation applicable to such location.
- (i) Address of the retail liquor store proposed in the application.
- (j) A site plan drawn to a scale by a licensed surveyor or engineer, of not less than one (1) inch equals twenty (20) feet that includes the following information:
 - 1. The shape, size, and location of the lot where the retail liquor store is to be located.
 - 2. The shape, size, height, number of floors and location on the lot of all buildings whether they are to be erected, altered, moved or existing upon the lot.
 - 3. Off-street parking spaces and off-street loading/unloading area.
 - 4. Ingress and egress to lot.
 - 5. Location of all doors accessing the building with designation of public access to building and designation of any landscaping, walls, fencing or

other such possible obstruction limiting visual access to building entrances.

6. Designation of zone(s) of lot and adjoining properties.
 7. Owners of adjoining properties, designation of use, and name of any business.
 8. The identification of every parcel within 200 feet of the lot which the liquor store is to be operated, indicating ownership thereof, and the locations of structures situated thereon and the use being made of every such parcel.
 9. Lighting of building exterior and parking area.
- (k) Certification by the Applicant stating that the premises of the proposed retail liquor store are in full compliance with the distance requirements established in Subsection 8-208(8) of this Chapter.
 - (l) The agreement of each applicant to comply with state and federal statutes, Unicoi regulations governing retail liquor stores, and all state rules and regulations with reference to the sale of alcoholic beverages.
 - (m) Verification that the Applicant has secured the location for the business at the location submitted in the application.
 - (n) A time schedule detailing any construction or renovation of the store building, improvements to grounds, and store opening date.
 - (o) Copies of all documentation required by the Tennessee Alcoholic Beverage Commission for license application to the State of Tennessee for a retail liquor store license.
 - (p) Applicant's business plan for the retail liquor store including, but not limited to, start-up funding, cost of establishing and opening the business and projected sales for the first 24 months of operation.
 - (q) The application form shall be signed and verified by each person who has any interest in the license either as owner, partner, stockholder, director, officer or otherwise.
 - (r) The application for certificate of compliance shall be submitted with payment of the first year of the two year certificate's non-refundable annual application fee of \$500.00. On the one year anniversary of the issuance of the Certificate of Compliance the second annual application fee shall be due and payable and

must paid to the City Recorder not later than 30 days after the one year anniversary of issuance of the Certificate of Compliance.

- (6) Application Advertising Requirements: Before a Certificate of Compliance application for a retail liquor store may be considered by the Planning Commission and then the Board of Mayor and Aldermen, whether the application is for a transfer of an existing license to a new location or for a new license, the Applicant must place at least one (1) advertisement, at his/her own expense, in a newspaper of general circulation in the Town, a minimum of seven (7) days prior to the application being initially reviewed by the Unicoi Planning Commission, with the published notice including the following information.

- (a) Name and address of applicant.

- (b) Nature and purpose of application.

- (c) Location/address of store location.

- (d) Date the application is proposed to be reviewed by the Planning Commission.

- (7) Review and Consideration of Applications for Certificate of Compliance: Applications to the Town for a Certificate of Compliance needed to license a retail liquor store shall be submitted to the City Recorder. The City Recorder shall review the documentation provided to see that all information requested has been submitted and appears to be complete. Although the Recorder will initially review materials submitted for compliance, and will to the extent possible identify insufficient information, it is responsibility of the Applicant to provide all of the information required regardless of the Recorder's review. When the Recorder does identify insufficient information, the Applicant shall have until the materials are sent to the Planning Commission to complete the application packet. An application shall not be deemed "filed" until it contains all of the information requested. After the initial review, a date shall be determined to send the full application to the Planning Commission for consideration. The Applicant must provide proper notification in an acceptable publication at least seven (7) days in advance of the meeting in which the Planning Commission will consider the application and supply unto the Town of Unicoi a copy of the newspaper notice with paper header showing compliance with this requirement. In reviewing the application, the Planning Commission shall consider at least the following:

- (a) Whether the application meets all state and federal requirements.

- (b) When there is more than one application for a Certificate of Compliance in the same overlay zone area or more applications than the maximum number of retail liquor store licenses authorized by this ordinance, the Planning

Commission shall consider at least the following without necessity of regard for the order in which the applications were filed:

1. The retail store locations submitted and the considerations of safety, lighting, ingress and egress, size of store, impact on traffic patterns, and ease of enforcement relative to each location.
 2. The most suitable circumstances and location in consideration of the health, safety and welfare of the citizens of Unicoi and the lawful operation of an off-premise retail liquor store.
 3. The ability of the Applicant to obtain the necessary license from the State, and to construct, renovate or otherwise develop the premises necessary for the retail store and open it to the public in a timely manner.
 4. The compatibility of the building and landscaping with the surrounding properties, including building materials, roof pitch, etc., as well as compatibility with any Town of Unicoi plan and vision for commercial areas of Unicoi.
 5. An applicant for a retail liquor license shall appear at the Planning Commission considering the applicant's application for Certificate of Compliance.
- (c) Initially, the Town will advertise, at a convenient time, the projected schedule for adoption of the ordinance governing location, number, and other considerations regulating Retail Liquor Stores and the issuance of a Certificate of Compliance. The notice will also establish a date the ordinance will become effective which will be the first date to receive applications. The projected meeting date of the Planning Commission in which Liquor Store applications will be reviewed shall also be included in the notice, as well as the date the Board of Mayor and Aldermen will act on the applications so that the application, review, and approval/denial process falls within the sixty (60) day requirement for action outlined in TCA Section §57-3-208.
- (d) If a retail liquor store becomes available in an existing zone area or a new store zone is established, any voluntary request to transfer an existing and operating store location shall be evaluated and considered based on the criteria in subsection (7)(b) the same as any other application submitted.
- (e) Applications, and all matters submitted with or as a part of such applications become at the time they are submitted the sole and exclusive property of the Town and constitute public records open to public inspection.

- (f) Because of the sixty (60) day requirement for Board action on applications outlined in TCA §57-3-208, any application submitted that is not approved for a Certificate of Compliance shall be denied by the Board of Mayor and Aldermen. Said applications, however, shall be held by the Town until the retail liquor store(s) approved are open and operating. At that time, the application may be disposed of by the Town. If the approved store is not licensed by the ABC or fails to open in a timely manner and loses its license, the applications on file for a Certificate of Compliance may be reactivated and considered submitted upon written request by the applicant.
- (8) Restrictions on Location of and Access to Retail Liquor Stores: No location for a retail store shall be approved on any premise within the Town, except on premises that are:
- (a) Zoned B-3, B-4 or PBD
 - (b) Within a Retail Liquor Store (RLS) Overlay Zone and within the B-3, B-4 or PBD zones with one and only one retail store authorized per RLS Overlay Sub-district Zone area and no more than two retail stores total within the Town of Unicoi in all of the RLS Overlay Sub-district zones. The number of permitted Liquor Stores and the number of sub-district zones may be modified from time to time by the Board of Mayor and Aldermen.
 - (c) At least 200 feet from the nearest front entrance of any church, public or private school, day care center, playground or park, recreational facility or residential buildings. For the purposes of measurement, the distance shall be determined from the center of the public entrance to the retail liquor store in a straight line the shortest most direct distance to the main entrance to the facilities and institutions listed. The restrictions set forth herein as to locations apply to conditions existing as of the time the application for a Certificate is filed, and the future presence of any uses listed above in this subsection within the 200 foot distance requirement shall not be grounds for revocation of a license or denial of a certificate if a valid license had been issued to any retail liquor store at the same location and the business has been in continuing operation since that date.
 - (d) Located in or developed with a building in which the retail liquor store is only on the ground floor.
 - (e) The retail liquor store shall have one entrance for use by the public. Provided, however, in the event the building is located on a corner with building entrances and parking fronting on both intersecting streets the applicant may petition the Town of Unicoi for approval of a second public entrance to the retail liquor store. Such petition must be accompanied by all supporting documentation as is required for a second entrance to a retail liquor store under the statutes and regulations provided by the State of Tennessee.

- (f) The retail liquor store must meet all Town of Unicoi regulations concerning commercial building and nothing shall be “grandfathered in” from a prior business location. Any non-conforming business premises must be renovated to current Town of Unicoi standards prior to the location of a retail liquor store on said premises.
 - (g) The minimum size for a retail liquor store within the Town of Unicoi shall be 1800 square feet.
- (9) Number of Stores – There shall, unless later modified by act of Board of the Mayor an Aldermen, be only two liquor stores within the Town of Unicoi and no more than one liquor store may be located in any RLS Overlay Sub-district Zone. The Board of Mayor and Aldermen retains the power and authority to modify the number of total retail liquor stores and the number and location of Overlay Sub-district Zones at any time.
- (10) Restrictions on Issuance of Certificate of Compliance: No original or renewal Certificate of Compliance shall be issued for any location until:
- (a) An application has been filed with the City Recorder.
 - (b) All requirements to obtain a Certificate have been met, and the application complies with all restrictions as to location and number of retail licenses issued within Unicoi.
 - (c) A written certification by the Applicant is submitted stating that the premises of the retail liquor store are in full and complete compliance with the distance requirements established in Section 2-208-(8) of this Chapter.
 - (d) The application shall be signed and verified by each person to have an interest in the retail liquor store either as an owner, partner, member, stockholder or otherwise.
 - (e) The application has been reviewed and considered by the Unicoi Planning Commission and recommended to the Board of Mayor and Aldermen.
 - (f) The application has been considered at a regular or called meeting of the Unicoi Board of Mayor and Aldermen and approved by majority vote.
- (11) Term of Certificate of Compliance: Once issued by the Board of Mayor and Aldermen, a Certificate of Compliance required by TCA §57-3-208 shall be valid for two (2) years. A new certificate therefore is required every other year, to be submitted to the ABC with application for the annual license renewal.

(12) Full and Accurate Disclosure Required:

- (a) It shall be unlawful for any person to have ownership in or participate, either directly or indirectly, in the profits of any retail store license under this Chapter, unless his/her interest in the business and the nature, extent and character thereof shall appear on the application for a Certificate of Compliance; or if the interest is acquired after the issuance of a license, unless it is fully disclosed to and approved by the Board of Mayor and Aldermen (City Recorder). Where such interest is owned by such a person on or before the application for any Certificate, the burden shall be upon such person to see that this section is not violated, whether he/she signs or prepares the application, or whether the same is prepared by another; or if the interest is acquired after the issuance of the Certificate, the burden of disclosure of the acquisition of such interest shall be upon the seller and the purchaser.
- (b) Misrepresentation of a material fact, or concealment of a material fact, required to be shown in the application for a license or Certificate shall be a violation of this Chapter. The Board of Mayor and Aldermen may refuse to issue a Certificate if, upon investigation, the Town finds that the applicant for a Certificate has concealed or misrepresented in writing or otherwise any material fact or circumstance concerning the operation of the retail liquor store, or if the interest of any applicant in the operation of the business is not truly stated in the application, or in case of any fraud or false swearing by any applicant concerning any matter related to the operation of the business. All data, written statements, affidavits, evidence, or other documents submitted in support of an application are part of the application.
- (c) If the provisions of this Section and Chapter are alleged to have been violated, the Board of Mayor and Aldermen may by majority vote revoke any Certificate which has been issued, after first providing an opportunity for the applicant(s) or licensee to refute such allegations and/or show cause why the Certificate should not be revoked.

(13) Regulation of Retail Sales: Retailers licensed under TCA §57-3-204 shall comply with the regulation of retail sales established in TCA §57-3-406 included but not limited to the following:

- (a) Hours and Days of Operation – No retailer shall sell or give away or otherwise dispense any alcoholic beverages except between the hours of eight o'clock a.m. (8:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Monday through Saturday, but not the holidays specified below. No retailer shall sell or give away alcoholic beverages between eleven o'clock p.m. (11:00 p.m.) on Saturday and eight o'clock a.m. (8:00 a.m.) on Monday each week.

- (b) Sale During Holidays – No retailer shall sell or give away alcoholic beverages on Thanksgiving Day, Christmas Day, New Year’s Day, Independence Day (Fourth of July), and Labor Day.
 - (c) No audible radio, pinball machine, slot machine, video game, audible music machine, or other amusement devices which tend to cause persons to congregate in such place shall be maintained in any retail liquor store. This provision shall not prevent the broadcast of “elevator” or background music or personal music devices heard only by one person.
 - (d) No alcoholic beverages shall be sold or given away for consumption on the premises of the retailer and no cups, ice or other supplies for drinking items shall be sold at a retail liquor store within the Town of Unicoi.
 - (e) Retail liquor stores shall only sell alcoholic beverages.
 - (f) The sale and delivery of alcoholic beverages at a retail liquor store shall be confined to the building premises of the licensee, and no curb service or drive-thru service is permitted.
- (14) License Display: Persons granted a license to carry on any business or undertaking contemplated herein shall, before being qualified to do business, display and post and keep displayed and posted, in the most conspicuous place in their premises, such license.
- (15) Advertising/Signage: Advertising by a licensee, and signs, displays, posters and designs intended to advertise any alcoholic beverages, shall be governed by the applicable rules of the Tennessee Alcoholic Beverage Commission and/or the sign provisions and restrictions of the underlying zoning district as may be specified in the Unicoi Sign and Zoning Ordinances.
- (16) Transfer of License and Certificate: The holder of a license for a retail liquor store may not sell, assign or transfer such license to any other person, and such license shall be good and valid only for the twelve (12) months after the same was issued. Except as expressly authorized, there shall be no transfer of any license from one location to another. An application for a retail liquor store license from the Alcoholic Beverage Commission resulting from a change in ownership or store location shall require a re-submittal of an application for a Certificate of Compliance.
- (17) Inspection Fee Levied: For the purpose of providing a means of regulating the sale of alcoholic beverages within the Town, and to provide means of enforcing the provisions of this Chapter, there is hereby levied and imposed an inspection fee of five (5) percent of the wholesale price of all alcoholic beverages sold by wholesalers to any licensed retail liquor store within the corporate limits of Unicoi. Collection of this inspection fee by wholesalers shall be undertaken

under regulations established in TCA §57-3-501 through 57-3-503, including but not limited to the following:

- (a) The inspection fee is imposed upon licensed retailers but is collected by wholesalers.
 - (b) The inspection fee shall be collected by the wholesaler at the time of the sale or at the time the retailer makes payment for the delivery of the alcoholic beverages, and said fee may be added by the wholesaler to the invoice for alcoholic beverages sold to the licensed retailers.
 - (c) Each wholesaler making sales to retailers located within the Unicoi city limits shall make monthly payments to the Town of the inspection fees invoiced.
 - (d) Monthly payments shall be paid by the twentieth (20th) day of the month following which sales were made, and shall be accompanied with monthly reports that include the information required in TCA §57-3-503.
 - (e) Wholesalers collecting and remitting inspection fees to the Town shall be entitled to reimbursement for this collection service, a sum equal to five (5%) percent of the total amount of the inspection fees collected, and such reimbursement may be deducted and shown on the monthly report to the Town of Unicoi.
 - (f) Failure to collect and/or report and/or to pay the inspection fee collected by the day required shall result in a penalty of ten (10%) percent of the fee due, which shall also be paid to the Town.
 - (g) The Town of Unicoi has the authority to audit the records of wholesalers supplying liquor and reporting sales to retail liquor stores in Unicoi to determine the accuracy of reports.
 - (h) Nothing within this Subsection 2-208-(17) herein shall relieve the licensee of the obligation for the payment of the inspection fee, and it shall be the licensee's duty to see that the payment of the inspection fee is made to the City Recorder.
 - (i) The inspection fee levied in this Chapter shall be in addition to any general gross receipts, sales and other general taxes applicable to the sale of alcoholic beverages, and shall not be in substitution for such taxes.
- (18) Surrender of License if Business Discontinued: Whenever any licensee discontinues business for any reason, he/she shall immediately notify the Alcohol Beverage Commission and the City
- (19) Record in writing and surrender the license and Certificate of Compliance.

- (20) Revocation Procedures: Whenever the Board of Mayor and Aldermen find that a licensee has been, or is, in violation of the Tennessee Code Annotated, Title 57, Chapter 1, the Rules and Regulations of the Alcoholic Beverage Commission, or the provisions of this Chapter, the Board shall certify such violation(s) to the State Alcoholic Beverage Commission, in such form as the Commission requires. The Alcoholic Beverage Commission shall have the responsibility for determining whether the offender's license shall be revoked. The Board of Mayor and Aldermen, upon determination of violations of state or local regulations governing the retail sale of alcoholic beverages may revoke the Town issued Certificate of Compliance, and shall communicate said revocation to the Alcoholic Beverage Commission for possible further action.
- (21) Penalties: Any violation of the terms of this Chapter and Section shall be punishable as a Class C Misdemeanor, with a fine of up to \$50.00 for each day that any violation of the Chapter or Section continues in addition to Town of Unicoi Municipal Court Costs and any additional penalties owed for late payment of costs.

This ordinance shall become effective February 4, 2013, after its passage on second and final reading.

Voting by the Board, as follows, on December 17, 2012:

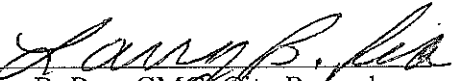
First Reading:

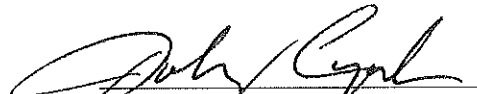
	<u>Yes</u>	<u>No</u>
Mayor Johnny Lynch	X	___
Vice Mayor Doug Hopson	X	___
Alderman Dwight Bennett	X	___
Alderman Michael Phillips	X	___
Alderman Mark Ramsey	X	___

Voting by the Board, as follows, on January 21, 2013:

Second and Final Reading:

	<u>Yes</u>	<u>No</u>
Mayor Johnny Lynch	<u>X</u>	—
Vice Mayor Doug Hopson	<u>X</u>	—
Alderman Dwight Bennett	<u>X</u>	—
Alderman Michael Phillips	<u>X</u>	—
Alderman Mark Ramsey	<u>X</u>	—


Larry B. Rea, CMC, City Recorder


Johnny Lynch, Mayor