

TITLE 9**BUSINESS, PEDDLERS, SOLICITORS, ETC.****CHAPTER**

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2. CABLE TELEVISION.

CHAPTER 1**PEDDLERS, SOLICITORS, ETC.****SECTION**

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9-101. Permit required. It shall be unlawful for any peddler, canvasser, solicitor, transient merchant, temporary merchant, or seasonal merchant to sell goods or services or to ply a trade or to conduct business within the corporate limits of the City of Baneberry (hereinafter referred to as "city") without first obtaining a permit and paying the privilege tax therefor in compliance with the provisions of this chapter. (Ord. #215-11, June 2015)

9-102. Permit not transferable. The permit provided for in this chapter shall not be transferable nor give authority to more than one (1) person to sell or exhibit food, beverages, goods, wares and merchandise either by agent or clerk or in any other way than his own proper person, but any person having obtained such license may have the assistance of one (1) or more persons in conducting the sale or exhibit who shall have the authority to aid that principal but not to act for or without him.

No permit shall be used at any time by any person other than the one (1) to whom it is issued. (Ord. #215-11, June 2015)

9-103. Definitions. (1) "Canvasser." A person, corporation or entity that conducts surveys of public opinion, conducts public opinion polls, counts heads, or distributes flyers, materials, or information. This definition shall not be read to prohibit any function of any governmental entity.

(2) "City." The City of Baneberry, Tennessee.

(3) "Door-to-door selling." Going to one (1) or more residences within the city in person or by the agent for the purpose of peddling, soliciting, or vending, who engages in a business of selling or offering for sale, food, beverages, goods, services, wares and merchandise or engages in soliciting orders for the sale of goods, services, wares and merchandise for future delivery.

(4) "Merchandise." Used in its broadest sense, and shall include property of every kind.

(5) "Motor vehicle." Any vehicle used for the displaying, storing, or transportation of articles for sale by a vendor which is required to be licensed and registered by the state department of motor vehicles. This term is to include, but not be limited to, trailers, trucks, buses, and automobiles.

(6) "Peddler." A person, corporation or entity that sells wares, products, services, etc., by carrying them through the streets or that brings goods, services, products, etc., from place to place, exhibiting them for sale.

(7) "Public place." Any public road, street, alley, park, building, or other property of the city or any other place to which people commonly congregate for the purpose of business, recreation, or amusement.

(8) "Recorder." The City Manager of Baneberry or his designee.

(9) "Services." Used in its broadest sense and shall include any work done for the benefit of another person.

(10) "Solicitor." A person, corporation or entity that tries to obtain business orders, advertising, etc.

(11) "Special event." Any occasion including, but not limited to, fairs, shows, exhibitions, city-wide celebrations, festivals, etc., within a specifically defined area of the city for a period of time not to exceed five (5) days.

(12) "Stand." Any newsstand, table, bench, booth, rack, handcart, pushcart, or any other fixture or device which is not required to be licensed and registered by the department of motor vehicles, and is used for the display, storage, or transportation of articles offered for sale by a vendor.

(13) "Temporary." Any such business for which definite arrangements have not been made for the hire, rental or lease of premises for at least one (1) month, in or upon which such business is to be operated or conducted.

(14) "Transient merchant, temporary merchant, or seasonal merchant." A person, corporation or entity that does not have a licensed permanent retail location in the city that displays samples, or models services, goods, wares, products, clothing, or merchandise for the purpose of selling at retail or securing orders for the retail sale of such services, goods, wares, products, clothing, or merchandise.

(15) "Vendor." Additionally, "peddlers," "solicitors," and "vendors" shall mean any person firm or corporation, whether as owner, agent, consignee or employee, whether a resident of the city or not, who engages in a business of selling or offering for sale, food, beverages, goods, services, wares and merchandise or engages in soliciting orders for the sale of goods, services, wares and merchandise for future delivery and who, in furtherance of such purposes, hires, leases, uses or occupies any stand, motor vehicle, tent, or from his or her premises or person. (Ord. #215-11, June 2015)

9-104. Exemptions. The following are exempt from §§ 9-107, 9-108, 9-109 and 9-112 of this title, but shall otherwise be required to comply with all other provisions.

(1) Bona fide non-profit charitable, religious, patriotic or philanthropic organizations including, but not limited to, public or private schools;

(2) Persons selling at wholesale to dealers;

(3) Bona fide merchants, merely delivering goods in the regular course of business;

(4) Persons selling newspapers or magazines; and

(5) Persons selling goods and services on the property or parking lot of an existing business open to the general public during business hours of the business, providing that the individual has filed an application with the city recorder and provided documentation authorizing the individual to sell goods and services on said property.

National retailers that sell and deliver, door-to-door, are not exempt any provision of this title. (Ord. #215-11, June 2015)

9-105. Application for permit. (1) Applicants for a permit must file with the city recorder a sworn written application containing the following:

(a) The full name, home address, permanent business address (if any), telephone number, driver's license number, and proof of identity;

(b) A recent clear photograph approximately two inches (2") square showing the head and shoulders of the applicant;

(c) A copy of the vendor's current State of Tennessee sales tax permit together with written documentation from the state comptroller

that all sales taxes that may be due and owing by the vendor have been fully paid;

(d) A brief description of the nature and character of the business, and the quality of the food, beverages, goods or merchandise to be sold;

(e) If employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship;

(f) The length of time for which the right to do business is desired;

(g) The specific location, if any, in which the vendor intends to conduct business;

(h) A written statement from the property owner consenting to applicant's use of his property for the sales activities indicated in the permit application;

(i) The names of at least two (2) reputable local property owners who will certify as to the applicant's good moral reputation and business responsibility or in lieu of the names of references, such other available evidence as will enable an investigator to evaluate properly the applicant's moral reputation and business responsibility;

(j) A statement as to whether or not the applicant has been convicted of any crime or misdemeanor or for violating any municipal ordinance; the nature of the offense; and, the punishment or penalty assessed therefor; and

(k) The last three (3) cities or towns, if that many, where applicant carried on business immediately preceding the date of application and the addresses from which such business was conducted in those municipalities.

(2) All applicants shall submit and consent (in writing) to a criminal background check, which shall be conducted by the city police department and the recorder.

(3) An applicant shall provide the recorder all applicable permits or licenses required by any state or federal agency or government as a condition of conducting any business or trade as described herein. All peddlers, canvassers, solicitors, transient merchants, temporary merchants or seasonal merchants that sell or distribute "fireworks" as defined by *Tennessee Code Annotated*, § 68-104-101, *et seq.*, shall provide the required applicable permit as a manufacturer, distributor, wholesaler, retailer or seasonal retailer from the State of Tennessee Fire Marshal. (Ord. #215-11, June 2015)

9-106. Health permit. The application of any vendor engaged in the sale or distribution of food or beverages shall also be referred to the State Division of Environmental Health for approval of a valid health permit. The health permit shall be required in addition to the vending license required by this chapter. Such vendor's equipment shall be subject to inspections by the

State Division of Environmental Health at the time of application and at periodic intervals thereafter. (Ord. #215-11, June 2015)

9-107. Application fee. At the time of the filing the application, a fee of two hundred fifty dollars (\$250.00) shall be paid to the city to defray the costs of investigating the applicant's background, criminal history, the facts stated herein and the costs of enforcing this chapter. Permits shall be valid for one (1) year from the date of issuance. (Ord. #215-11, June 2015)

9-108. Privilege tax levied. There is hereby imposed on peddlers, canvassers, solicitors, transient merchants, temporary merchants and seasonal merchants a privilege tax of one hundred dollars (\$100.00). Any person, firm, corporation, or other entity engaged as a peddler, solicitor, canvasser, transient merchant, temporary merchant or seasonal merchant shall remit said tax to the recorder prior to engaging in their trade or business. The privilege tax shall be paid one (1) time per year and shall be due three hundred and sixty-five (365) days after the prior payment of said tax. (Ord. #215-11, June 2015)

9-109. Temporary vending license for special events. Vendors wishing to conduct business at a special event shall apply to the city for a temporary vending license. Application for such a license must be made at least seven (7) days prior to the beginning of the event. The license is valid only for the duration of the special event or the expiration of five (5) days, whichever comes first. The fee for issuance of a temporary vending license shall be sixty dollars (\$60.00) payable to the city manager at the time of issuance. Vendors granted a temporary license shall be subject to the same application and operating regulations as other vendors, except where otherwise specified. (Ord. #215-11, June 2015)

9-110. Issuance or refusal of permit. (1) Each application shall be referred to the chief of police for investigation. The chief shall report his findings to the city recorder within seventy-two (72) hours.

(2) If as a result of such investigation the chief reports the applicant's moral reputation and/or business responsibility to be unsatisfactory, the city recorder shall notify the applicant that his application is disapproved and that no permit will be issued.

(3) If, on the other hand, the chief's report indicates that the moral reputation and business responsibility of the applicant are satisfactory the city recorder shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by § 9-112. The city recorder shall keep a permanent record of all permits issued. (Ord. #215-11, June 2015)

9-111. Appeals. Any person aggrieved by the action of the chief of police and/or the city recorder in the denial of a permit shall have the right to appeal

to the governing body. Such appeal shall be taken by filing with the mayor within fourteen (14) days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The mayor shall set a time and place for a hearing on such appeal and notice of the time and place of such hearing shall be given to the appellant. The notice shall be in writing and shall be mailed, postage prepaid, to the applicant at his last known address at least five (5) days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (Ord. #215-11, June 2015)

9-112. Bond and insurance. Every permittee shall file with the recorder a surety bond to the city in the amount of ten thousand dollars (\$10,000.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of the city and the statutes and regulations of the state that regulate peddlers, canvassers, solicitors, transient merchants, temporary merchants, seasonal merchants, itinerant merchants, or itinerant vendors, as the case may be, and shall guarantee to any and all citizens of the city that all money paid as a down payment will be accounted for and applied according to the representations of the permittee, and further guaranteeing to any citizen of the city doing business with said permittee that the property purchased will be delivered according to the representations of the permittee. Action on such bond may be brought by any person aggrieved and for whose benefit, among other, the bond is given. The surety may be relieved without costs of all further liability by paying, pursuant to order of the court, the face amount of the bond to the clerk of the court in which the suit is commenced. If the permittee's business or trade necessitates or requires said permittee to drive a motor vehicle within the corporate limits of the city, the permittee shall provide the recorder with the necessary proof of insurance, required by *Tennessee Code Annotated* § 55-12-101, *et seq.*

All peddlers, canvassers, solicitors, transient merchants, temporary merchants or seasonal merchants that sell or distribute "fireworks" as defined by *Tennessee Code Annotated*, § 68-104-101, *et seq.* shall provide the recorder with a valid certificate of liability insurance evidencing insurance coverage for their business or trade activities. This certificate of liability insurance shall be in an amount of no less than one hundred thousand dollars (\$100,000.00). (Ord. #215-11, June 2015, modified)

9-113. Loud noises and speaking devices. No permittee, nor any person in his behalf, shall shout, cry out, blow a horn, ring a bell or use any sound amplifying device upon any of the sidewalks, streets, alleys, parks or other public places of the city or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the adjacent sidewalks, streets, alleys, parks, or other public places, for the

purpose of attracting attention to any goods, wares or merchandise which such permittee proposes to sell. (Ord. #215-11, June 2015)

9-114. Use of streets. No permittee shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon, nor shall any be permitted to operate in a congested area where the operation might impede or inconvenience the public use of the streets. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (Ord. #215-11, June 2015)

9-115. Restrictions applicable to all vendors. (1) Stands. Vendor stands, where permitted by variance authorized by the Baneberry Planning Commission Board of Appeals shall not:

(a) Exceed twenty feet (20') in length, ten feet (10') in width or thirteen feet (13') in height;

(b) Impede access or hinder the view to or from the entrance or driveway of any adjacent building; or

(c) Occupy more than one-half (1/2) of the available sidewalk width or twenty feet (20') of such sidewalk; whichever is less.

(2) Hours of operation. Except for the vending of food or drinks from a motor vehicle or other non-stationary means within construction, manufacturing or similar areas in the manner specified in subsection (7) below, vendors shall be allowed to engage in the business of vending only between the hours of 8:00 A.M. to 6:00 P.M. All vending stands must be removed during non-vending hours. When temporary vending permits are issued for special events under the provisions of § 9-109 above, the applicant may request from the city an exception to the usual hours of operation. All stands and other vending operations must be removed during non-operating hours.

(3) Handicapped areas. No vendor shall conduct business within twenty feet (20') of any handicapped parking space or access ramp.

(4) Removal of trash. All trash or debris accumulating within fifty feet (50') of any vending stand shall be collected by the vendor and deposited in an authorized trash container. All vendors selling food or beverages must provide trash receptacles adjacent to or as a part of their stands.

(5) Prohibited areas. A vending license issued pursuant to this chapter is valid only on specified public ways or in public places of the City of Baneberry. The city shall prohibit vendors from selling on specified public ways or in public places if it determines such prohibitions are necessary for the protection of public health and safety. Vendor stands and motor vehicles are prohibited within twenty feet (20') of a fire hydrant, fire escape, loading zone, or the driveway of a fire station, police station or hospital.

(6) Monthly reports. All vendors shall provide a copy of their monthly report of sales tax receipts to the recorder.

- (7) **Motor vehicles.** No vendor vending from a motor vehicle shall:
- (a) Stop, stand or park the vehicle within twenty feet (20') of any intersection, within any other prohibited area, or during prohibited hours; or
 - (b) Conduct business in such a way as would increase traffic congestion or delay, constitute a hazard to life or property, interfere with an abutting property owner, or obstruct access to emergency vehicles. (Ord. #215-11, June 2015)

9-116. Exhibition of permit. Permittees are required to exhibit their permits at the request of any police officer or citizen. (Ord. #215-11, June 2015)

9-117. City police officers to enforce. It shall be the duty of all city police officers to see that the provisions of this chapter are enforced. (Ord. #215-11, June 2015)

9-118. Revocation or suspension of permit. (1) Fraud, misrepresentation, or incorrect statement contained in the application for a permit or made in the course of carrying on the business of solicitor, canvasser, peddler, transient merchant, temporary merchant, seasonal merchant, itinerant merchant, or itinerant vendor.

(2) Any violation of this chapter.

(3) Conviction of any crime or misdemeanor.

(4) Conducting the business of peddler, canvasser, solicitor, transient merchant, temporary merchant, seasonal merchant, itinerant merchant, or itinerant vendor, as the case may be, in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public.

(5) Notice of the hearing for revocation of a permit shall be given by the city recorder in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed to the permittee at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing.

(6) When reasonably necessary in the public interest the mayor may suspend a permit pending the revocation hearing. (Ord. #215-11, June 2015)

9-119. Sales tax receipts and sales documentation. All peddlers, canvassers, solicitors, transient merchants, temporary merchants, seasonal merchants, itinerant merchants and itinerant vendors shall provide the recorder with any and all sales tax receipts and sales information and documentation. This information shall be provided to the recorder by the tenth (10th) day of each month. (Ord. #215-11, June 2015)

9-120. Renewal and reapplication. Licenses may be renewed, provided an application for renewal and license fees are received by the city no later than the expiration date of the current license. Applications received after that date shall be processed as new applications. The city shall review each application for renewal to determine that the applicant is in full compliance with the provisions of this chapter, if the city finds that the application meets the above requirements, the city shall renew said license for a period of one (1) year upon payment of all applicable license fees.

No permittee whose permit has been revoked shall make further application until a period of at least six (6) months has elapsed since the last revocation. (Ord. #215-11, June 2015)

9-121. Sale on public property prohibited. It shall be unlawful for any person, group, company, or corporation to sell, exchange, lease or transfer, or offer to sell, exchange, lease or transfer any tangible personal property of any kind upon any property owned or leased by the city.

(1) This section shall not affect the rights of private property owners to sell, exchange, lease or transfer property of any kind upon private property.

(2) This section shall not apply to vendors participating in a community-wide event sanctioned or sponsored by the city. (Ord. #215-11, June 2015)

9-122. Garage sales. Garage sale items may be set up outside, in carports, under shelter, or on property for a maximum of three (3) days. (Ord. #219-9, Jan. 2020)

9-123. Violations and penalty. The penalty for violation of this section is a maximum fine of fifty dollars (\$50.00). Each day that any violation continues shall constitute a separate offense. However, an offense related to any provision of this chapter which also constitutes an offense to state law shall be punishable in accordance with the applicable state law. (Ord. #215-11, June 2015)

CHAPTER 2

CABLE TELEVISION

SECTION

9-201. To be furnished under franchise.

9-201. To be furnished under franchise. The Competitive Cable and Video Services Act of 2008 essentially grants statewide cable service franchises to those service providers who seek and obtain a state franchise. The Competitive Cable and Video Services Act of 2008, § 7-59-304; Franchise options; negotiated agreements; certificate of franchise authority; (b)(1) provides that the municipal or county franchise is terminated on the date the department Tennessee Regulatory Authority issues the state-issued certificate of franchise authority and no provision of the terminated local franchise is enforceable thereafter, except that until the date upon which the local franchise would have naturally expired, an incumbent cable service provider or entity or person providing cable or video services under a local franchise agreement that is terminated pursuant to this part shall not reduce or otherwise diminish access to cable or video services of any subscriber as of the date of termination if the subscriber does not have access to cable or video services from another local franchise holder or a holder of a state-issued certificate of franchise authority concerned.¹ (Ord. #217-06, March 2017)

¹For complete details relating to the cable television franchise agreement see Ord. #217-06, dated March 2, 2017 in the office of the city recorder.