

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.¹

CHAPTER

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CHAPTER 1

MISCELLANEOUS

SECTION

- 9-101. Ambulances, etc., to be insured.
 9-102. "Going out of business" sales.
 9-103. Central business district sign ordinance.

9-101. Ambulances, etc., to be insured. All emergency vehicles, such as ambulances, shall be covered by liability insurance in the amounts of fifty thousand dollars (\$50,000.00) and one hundred thousand dollars (\$100,000.00). Said insurance shall be carried with insurance companies authorized to do business in the State of Tennessee by the State of Tennessee Commissioner of Insurance and Banking. (2005 Code, § 9-101)

9-102. "Going out of business" sales. It shall be unlawful for any person to falsely represent a sale as being a "going out of business" sale. A "going out of business" sale, for the purposes of this section, shall be a "fire sale," "bankrupt sale," "loss of lease sale," or any other sale made in anticipation of the termination of a business at its present location. When any person, after advertising a "going out of business" sale, adds to his stock or fails to go out of

¹Municipal code references

Building, plumbing, wiring and residential regulations: title 12.

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

business within ninety (90) days he shall prima facie be deemed to have violated this section. (2005 Code, § 9-102)

9-103. Central business district sign ordinance. (1) This section shall be known as the "central business district sign ordinance" for the Town of Erwin, Tennessee.

(2) This section authorizes the use of signs visible from public rights-of-way provided the signs are:

(a) Compatible with their surroundings, pursuant to the objectives of proper design and zoning amenities;

(b) Allowing and promoting optimum conditions for meeting the sign users' needs while at the same time promoting the amenable environment desired by the general public;

(c) Designed, constructed, installed, and maintained in such a manner that they do not endanger public safety or traffic safety;

(d) Legible, readable, and visible in the circumstances in which they are used; and

(e) Respectful of the reasonable rights of other advertisers whose messages are displayed.

(3) No sign may be so arranged that it interferes with traffic through glare, through blocking of reasonable sight lines for streets, sidewalks, or driveways, through confusion with a traffic control device (by reason of its color, location, shape, or other characteristics), or through any other means. Rotation beacons or flashing signs are prohibited.

(4) Any portion of a sign or a pole or standard for such sign, which is in contact with the ground shall be within the lot lines of the property.

(5) Signs painted directly on the structure are prohibited, with the exception of entrances, doorways, and window display areas.

(6) Signs that advertise a product, service, or other business not situated on the same premises are prohibited. Any sign which is constructed of wood, masonite, plywood, and other porous material of a non-permanent nature subject to deterioration is prohibited.

(7) Roof signs which are not an integral part of the buildings design are prohibited.

(8) Overhanging signs referring to businesses operated on the premises are permitted, provided that any such sign shall not be allowed to protrude more than two feet (2') from the building front, and shall not exceed one (1) square foot for each front foot of that business store front, up to a maximum of one hundred (100) square feet.

(9) Except as otherwise provided in this section, no sign or any portion thereof shall be permitted which moves or assumes any motion constituting a non-sanitary or fixed condition except for the rotation of barber poles, permissible changing signs, or permissible multi-prism units. Indexing multi-prism units must not exceed a speed of two (2) complete revolutions every

twenty (20) seconds. This section is not meant to prohibit any form of vehicular signage such as a sign attached to a bus or lettered on a motor vehicle.

(10) Any advertising structure or sign which was lawfully erected and maintained prior to the adoption of the provisions in this section shall be allowed to remain as a nonconforming sign. Any sign damaged to the extent of more than fifty percent (50%) of its appraised value as determined by the building inspector shall be removed. Nonconforming signs advertising a business which changes ownership must be removed within one (1) year of the date of said change of ownership.

(11) No person shall erect, construct or maintain any sign upon any property within the central business district without first submitting a drawing to the building inspector showing sign dimensions, etc., and the area in which the sign is to be located. Upon receiving written approval from the building inspector, the proposed sign may be constructed. (2005 Code, § 9-103)

CHAPTER 2

PEDDLERS, ETC.¹

SECTION

- 9-201. Permit required.
- 9-202. Exemptions.
- 9-203. Application for permit.
- 9-204. Issuance or refusal of permit.
- 9-205. Appeal.
- 9-206. Bond.
- 9-207. Loud noises and speaking devices.
- 9-208. Use of streets.
- 9-209. Exhibition of permit.
- 9-210. Police officers to enforce.
- 9-211. Revocation or suspension of permit.
- 9-212. Reapplication.
- 9-213. Expiration and renewal of permit.

9-201. Permit required. It shall be unlawful for any peddler, canvasser or solicitor, or transient merchant to ply his trade within the corporate limits without first obtaining a permit in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one to whom it is issued. (2005 Code, § 9-201)

9-202. Exemptions. The terms of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to bona fide charitable, religious, patriotic or philanthropic organizations. (2005 Code, § 9-202)

9-203. Application for permit. Applicants for a permit under this chapter must file with the town recorder a sworn written application containing the following:

- (1) Name and physical description of applicant.
- (2) Complete permanent home address and local address of the applicant and, in the case of transient merchants, the local address from which proposed sales will be made.
- (3) A brief description of the nature of the business and the goods to be sold.

¹Municipal code references

Privilege taxes: title 5, chapter 3.

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

(5) The length of time for which the right to do business is desired.

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

(7) 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 properly evaluate the applicant's moral reputation and business responsibility.

(8) 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.

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

(10) At the time of filing the application, a fee of five dollars (\$5.00) shall be paid to the town to cover the cost of investigating the facts stated therein. (2005 Code, § 9-203)

9-204. 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 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 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 town recorder shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by § 9-206. The recorder shall keep a permanent record of all permits issued. (2005 Code, § 9-204)

9-205. Appeal. Any person aggrieved by the action of the chief of police and/or the town recorder in the denial of a permit shall have the right to appeal to the board of mayor and aldermen. 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. (2005 Code, § 9-205)

9-206. Bond. Every permittee shall file with the recorder a surety bond running to the town in the amount of one thousand dollars (\$1,000.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of the town and the statutes of the state regulating peddlers, canvassers, solicitors, transient merchants, itinerant merchants, or itinerant vendors, as the case may be, and shall guarantee to any citizen of the municipality 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 town 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 others, the bond is given, but the surety may, 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, be relieved without costs of all further liability. (2005 Code, § 9-206)

9-207. Loud noises and speaking devices. No permittee, nor any person on 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 municipality 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. (2005 Code, § 9-207)

9-208. 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 such 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. (2005 Code, § 9-208)

9-209. Exhibition of permit. Permittees are required to exhibit their permits at the request of any police officer or citizen. (2005 Code, § 9-209)

9-210. Police officers to enforce. It shall be the duty of all police officers to see that the provisions of this chapter are enforced. (2005 Code, § 9-210)

9-211. Revocation or suspension of permit. (1) Permits issued under the provisions of this chapter may be revoked by the board of mayor and aldermen after notice and hearing, for any of the following causes:

(a) Fraud, misrepresentation, or incorrect statement contained in the application for permit, or made in the course of carrying on the business of solicitor, canvasser, peddler, transient merchant, itinerant merchant, or itinerant vendor.

(b) Any violation of this chapter.

(c) Conviction of any crime or misdemeanor.

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

(2) Notice of the hearing for revocation of a permit shall be given by the 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.

(3) When reasonably necessary in the public interest the mayor may suspend a permit pending the revocation hearing. (2005 Code, § 9-211)

9-212. Reapplication. 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. (2005 Code, § 9-212)

9-213. Expiration and renewal of permit. Permits issued under the provisions of this chapter shall expire on the same date that the permittee's privilege license expires and shall be renewed without cost if the permittee applies for and obtains a new privilege license within thirty (30) days thereafter. Permits issued to permittees who are not subject to a privilege tax shall be issued for one (1) year. An application for a renewal shall be made substantially in the same form as an original application. However, only so much of the application shall be completed as is necessary to reflect conditions which have changed since the last application was filed. (2005 Code, § 9-213)

CHAPTER 3

CHARITABLE SOLICITORS

SECTION

9-301. Permit required.

9-302. Prerequisites for a permit.

9-303. Denial of a permit.

9-304. Exhibition of permit.

9-301. Permit required. No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose without a permit from the recorder authorizing such solicitation. Provided, however, that this section shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes if the solicitations are conducted exclusively among the members thereof, voluntarily and without remuneration for making such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies of any such established organization or church. (2005 Code, § 9-301)

9-302. Prerequisites for a permit. The recorder, upon application, shall issue a permit authorizing charitable or religious solicitations when, after a reasonable investigation, he finds the following facts to exist:

(1) The applicant has a good character and reputation for honesty and integrity, or if the applicant is not an individual person, that every member, managing officer, or agent of the applicant has a good character or reputation for honesty and integrity.

(2) The control and supervision of the solicitation will be under responsible and reliable persons.

(3) The applicant has not engaged in any fraudulent transaction or enterprise.

(4) The solicitation will not be a fraud on the public but will be for a bona fide charitable or religious purpose.

(5) The solicitation is prompted solely by a desire to finance the charitable cause described by the applicant. (2005 Code, § 9-302)

9-303. Denial of a permit. Any applicant for a permit to make charitable or religious solicitations may appeal to the board of mayor and aldermen if he has not been granted a permit within fifteen (15) days after he makes application therefor. (2005 Code, § 9-303)

9-304. Exhibition of permit. Any solicitor required by this chapter to have a permit shall exhibit such permit at the request of any police officer or person solicited. (2005 Code, § 9-304)

CHAPTER 4

TAXICABS¹

SECTION

- 9-401. Taxicab franchise and privilege license required.
- 9-402. Requirements as to application and hearing.
- 9-403. Liability insurance or bond required.
- 9-404. Revocation or suspension of franchise.
- 9-405. Mechanical condition of vehicles.
- 9-406. Cleanliness of vehicles.
- 9-407. Inspection of vehicles.
- 9-408. License and permit required for drivers.
- 9-409. Qualifications for driver's permit.
- 9-410. Revocation or suspension of driver's permit.
- 9-411. Drivers not to solicit business.
- 9-412. Parking restricted.
- 9-413. Drivers to use direct routes.
- 9-414. Taxicabs not to be used for illegal purposes.
- 9-415. Miscellaneous prohibited conduct by drivers.
- 9-416. Transportation of more than one passenger at the same time.
- 9-417. Fares.

9-401. Taxicab franchise and privilege license required. It shall be unlawful for any person to engage in the taxicab business unless he has first obtained a taxicab franchise from the town and has a currently effective privilege license. (2005 Code, § 9-401)

9-402. Requirements as to application and hearing. No person shall be eligible to apply for a taxicab franchise if he has a bad character or has been convicted of a felony within the last ten (10) years. Applications for taxicab franchises shall be made under oath and in writing to the chief of police. The application shall state the name and address of the applicant, the name and address of the proposed place of business, the number of cabs the applicant desires to operate, the makes and models of said cabs, and such other pertinent information as the chief of police may require. The application shall be accompanied by at least two (2) affidavits of reputable local citizens attesting to the good character and reputation of the applicant. Within ten (10) days after receipt of an application the chief of police shall make a thorough investigation of the applicant; determine if there is a public need for additional taxicab

¹Municipal code reference
Privilege taxes: title 5.

service; present the application to the board of mayor and aldermen; and make a recommendation to either grant or refuse a franchise to the applicant. The board shall thereupon hold a public hearing at which time witnesses for and against the granting of the franchise shall be heard. In deciding whether or not to grant the franchise the board shall consider the public need for additional service, the increased traffic congestion, parking space requirements, and whether or not the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such an additional franchise. Those persons already operating taxicabs when this code is adopted shall not be required to make applications under this section but shall be required to comply with all of the other provisions hereof. (2005 Code, § 9-402)

9-403. Liability insurance or bond required. No taxicab franchise shall be issued or continued in operation unless there is in full force and effect a liability insurance policy or bond for each vehicle authorized in the amount equal to that required by the state's financial responsibility law as set out in *Tennessee Code Annotated*, title 55, chapter 12. The insurance policy required by this section shall contain a provision that it shall not be cancelled except after at least twenty (20) days' written notice is given by the insurer to both the insured and the recorder of the town. (2005 Code, § 9-403, modified)

9-404. Revocation or suspension of franchise. The board of mayor and aldermen, after a public hearing, may revoke or suspend any taxicab franchise for misrepresentations or false statements made in the application therefor or for traffic violations or violations of this chapter by the taxicab owner or any driver. (2005 Code, § 9-404)

9-405. Mechanical condition of vehicles. It shall be unlawful for any person to operate any taxicab in the town unless such taxicab is equipped with four (4) wheel brakes, front and rear lights, safe tires, horn, muffler, windshield wipers, and rear view mirror, all of which shall conform to the requirements of the state motor vehicle law. Each taxicab shall be equipped with a handle or latch or other opening device attached to each door of the passenger compartment so that such doors may be operated by the passenger from the inside of the taxicab without the intervention or assistance of the driver. The motor and all mechanical parts shall be kept in such condition or repair as may be reasonably necessary to provide for the safety of the public and the continuous satisfactory operation of the taxicab. (2005 Code, § 9-405)

9-406. Cleanliness of vehicles. All taxicabs operated in the town shall, at all times, be kept in a reasonably clean and sanitary condition. They shall be thoroughly swept and dusted at least once each day. At least once every week they shall be thoroughly washed and the interior cleaned with a suitable antiseptic solution. (2005 Code, § 9-406)

9-407. Inspection of vehicles. All taxicabs shall be inspected at least semiannually by the chief of police to ensure that they comply with the requirements of this chapter with respect to mechanical condition, cleanliness, etc. (2005 Code, § 9-407)

9-408. License and permit required for drivers. No person shall drive a taxicab unless he is in possession of a state special chauffeur's license and a taxicab driver's permit issued by the chief of police. (2005 Code, § 9-408)

9-409. Qualifications for driver's permit. No person shall be issued a taxicab driver's permit unless he complies with the following to the satisfaction of the chief of police:

- (1) Makes written application to the chief of police.
- (2) Is at least eighteen (18) years of age and holds a state special chauffeur's license.
- (3) Undergoes an examination by a physician and is found to be of sound physique, with good eyesight and hearing and not subject to epilepsy, vertigo, heart trouble or any other infirmity of body or mind which might render him unfit for the safe operation of a public vehicle.
- (4) Is clean in dress and person and is not addicted to the use of intoxicating liquor or drugs.
- (5) Produces affidavits of good character from two (2) reputable citizens of the town who have known him personally and have observed his conduct for at least two (2) years next preceding the date of his application.
- (6) Has not been convicted of a felony, drunk driving, driving under the influence of an intoxicant or drug, or of frequent traffic offenses.
- (7) Is familiar with the state and local traffic laws. (2005 Code, § 9-409)

9-410. Revocation or suspension of driver's permit. The board of mayor and aldermen, after a public hearing, may revoke or suspend any taxicab driver's permit for violation of traffic regulations, for violation of this chapter, or when the driver ceases to possess the qualifications as prescribed in § 9-409. (2005 Code, § 9-410)

9-411. Drivers not to solicit business. All taxicab drivers are expressly prohibited from indiscriminately soliciting passengers or from cruising upon the streets of the town for the purpose of obtaining patronage for their cabs. (2005 Code, § 9-411)

9-412. Parking restricted. It shall be unlawful to park any taxicab on any street except in such places as have been specifically designated and marked by the town for the use of taxicabs. It is provided, however, that taxicabs may stop upon any street for the purpose of picking up or discharging

passengers if such stops are made in such manner as not to unreasonably interfere with or obstruct other traffic and provided the passenger loading or discharging is promptly accomplished. (2005 Code, § 9-412)

9-413. Drivers to use direct routes. Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route. (2005 Code, § 9-413)

9-414. Taxicabs not to be used for illegal purposes. No taxicab shall be used for or in the commission of any illegal act, business, or purpose. (2005 Code, § 9-414)

9-415. Miscellaneous prohibited conduct by drivers. It shall be unlawful for any taxicab driver, while on duty, to be under the influence of, or to drink any intoxicating beverage or beer; to use profane or obscene language; to shout or call to prospective passengers; to unnecessarily blow the automobile horn; or to otherwise unreasonably disturb the peace, quiet and tranquility of the town in any way. (2005 Code, § 9-415)

9-416. Transportation of more than one passenger at the same time. No person shall be admitted to a taxicab already occupied by a passenger without the consent of such other passenger. (2005 Code, § 9-416)

9-417. Fares. Fares for taxicab service shall be charged in accordance with such rate schedule as may be approved by resolution of the board of mayor and aldermen. (2005 Code, § 9-417)

CHAPTER 5**POOL ROOMS¹****SECTION**

9-501. Hours of operation regulated.

9-502. Minors to be kept out.

9-501. Hours of operation regulated. It shall be unlawful for any person, firm, or corporation owning, operating, or conducting a pool room in the Town of Erwin, to operate, conduct, or open for the purpose of operating or conducting, such pool room between the hours of 10:30 P.M. and 6:00 A.M. on any day, except that on Saturday nights the closing hour may be extended to 11:30 P.M.

It shall be unlawful for any person, firm, or corporation owning, operating, or conducting a pool room in said town to operate or conduct, or open the same for the purpose of operating or conducting it, at any time on Sunday.

It shall be unlawful for any person, firm, or corporation owning, operating, or conducting a pool room in said town to suffer or permit persons to loiter, loaf, or congregate in said pool room during the closing hours thereof as provided herein. (2005 Code, § 9-501)

9-502. Minors to be kept out. It shall be unlawful for any minors under eighteen (18) years of age, to congregate, loaf, or loiter in a pool room within the Town of Erwin.

Furthermore, no owner or manager of a pool room shall permit the same to be done. (2005 Code, § 9-502)

¹Municipal code reference
Privilege taxes: title 5.

CHAPTER 6

CABLE TELEVISION

SECTION

9-601. To be furnished under franchise.

9-601. To be furnished under franchise. Cable television service shall be furnished to the Town of Erwin and its inhabitants under franchise as the board of mayor and aldermen shall grant. The rights, powers, duties and obligations of the Town of Erwin and its inhabitants and the grantee of the franchise shall be clearly stated in the franchise agreement which shall be binding upon the parties concerned.¹

¹For complete details relating to the cable television franchise agreement, see Ord. #464, dated December 1983 in the office of the town recorder.

CHAPTER 7

SEXUALLY ORIENTED BUSINESSES

SECTION

- 9-701. Purpose and findings.
- 9-702. Definitions.
- 9-703. Classification.
- 9-704. License required.
- 9-705. Issuance of license.
- 9-706. Fees.
- 9-707. Inspections.
- 9-708. Expiration of license.
- 9-709. Suspension.
- 9-710. Revocation.
- 9-711. Transfer of license.
- 9-712. Location of sexually oriented businesses.
- 9-713. Additional regulations for adult motels.
- 9-714. Regulations pertaining to exhibition of sexually explicit films, videos or live entertainment in viewing rooms.
- 9-715. Additional regulations for escort agencies.
- 9-716. Additional regulations for nude model studios.
- 9-717. Additional regulations concerning public nudity.
- 9-718. Prohibition against children in a sexually oriented business.
- 9-719. Hours of operation.
- 9-720. Exemptions.
- 9-721. Violations and penalty.

9-701. Purpose and findings. (1) Purpose. It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the town. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

(2) Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the board, and on findings incorporated in the cases of *City of*

Renton V. Playtime Theatres, Inc., 475 U.S. 41 (1986), *Young V. American Mini Theatres*, 426 U.S. 50 (1976), and *Barnes V. Glen Theatre, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and also on findings from the Report of the Attorney Generals Working Group on the Regulation of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the council finds:

(a) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

(b) Certain employees of sexually oriented businesses defined in this chapter as adult theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(c) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

(d) Offering and providing such space encourages such activities, which creates unhealthy conditions.

(e) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

(f) At least fifty (50) communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, non A, non B amebiasis, salmonella infections and shigella infections.

(g) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States—six hundred (600) in 1982, two thousand two hundred (2,200) in 1983, four thousand six hundred (4,600) in 1984, eight thousand five hundred and fifty-five (8,555) in 1985 and two hundred fifty-three thousand, four hundred forty-eight (253,448) through December 31, 1992.

(h) There have been thousands of reported cases of AIDS in the State of Tennessee.

(i) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in Tennessee.

(j) The number of cases of early (less than one (1) year) syphilis in the United States reported annually has risen, with thirty-three thousand, six hundred thirteen (33,613) cases reported in 1982 and forty-five thousand, two hundred (45,200) through November of 1990.

(k) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million (500,000) cases being reported in 1990.

(l) The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

(m) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(n) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(o) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.

(p) The findings noted in subsections (2)(a) through (2)(o) raise substantial governmental concerns.

(q) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(r) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the town. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(s) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial

governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

(t) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

(u) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

(v) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this chapter is designed to prevent or who are likely to be witnesses to such activity.

(w) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this chapter.

(x) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

(y) The general welfare, health, morals and safety of the citizens of the town will be promoted by the enactment of this chapter. (2005 Code, § 9-701)

9-702. Definitions. (1) "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specific sexual activities" or "specific anatomical areas."

(2) "Adult bookstore, adult novelty store or adult video store" means a commercial establishment which, as one (1) of its principal purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" or

(b) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities." A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as "adult bookstore, adult novelty store, or adult video store." Such other business purposes will not serve to exempt such commercial establishments from being categorized as an "adult bookstore, adult novelty store, or adult video store" so long as one (1) of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(3) "Adult cabaret" means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(a) Persons who appear in a state of nudity or semi-nude;

(b) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities;" or

(c) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(4) "Adult motel" means a hotel, motel or similar commercial establishment which:

(a) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;

(b) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

(c) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

(5) "Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(6) "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(7) "Employee" means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for delivery of goods to the premises.

(8) "Escort" means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(9) "Escort agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one (1) of its primary business purposes for a fee, tip, or other consideration.

(10) "Establishment" means and includes any of the following:

(a) The opening or commencement of any sexually oriented business as a new business;

(b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(c) The additions of any sexually oriented business to any other existing sexually oriented business; or

(d) The relocation of any sexually oriented business.

(11) "Licensee" means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

(12) "Nude model studio" means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. "Nude model studio" shall not include a proprietary school licensed by the State of Tennessee or a college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

(a) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;

(b) Where in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

(c) Where no more than one (1) nude or semi-nude model is on the premises at any one (1) time.

(13) "Nudity" or a "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

(14) "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(15) "Semi-nude" or in a "semi-nude condition" means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

(16) "Sexual encounter center" means a business or commercial enterprise that, as one (1) of its principal business purposes, offers for any form of consideration:

(a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) Activities between male and female persons and/or persons of the same sex when one (1) or more of the persons is in a state of nudity or semi-nude.

(17) "Sexually oriented business" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

(18) "Specified anatomical areas" means:

(a) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(b) Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

(19) "Specified criminal activity" means any of the following offenses:

(a) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

(b) For which:

(i) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the

conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(ii) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense;

(iii) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period; and

(iv) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

(20) "Specified sexual activities" means any of the following:

(a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or

(c) Excretory functions as part of or in connection with any of the activities set forth in (20)(a) through (20)(b) above.

(21) "Substantial enlargement" of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this chapter takes effect.

(22) "Transfer of ownership or control" of a sexually oriented business means and includes any of the following:

(a) The sale, lease, or sublease of the business;

(b) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control. (2005 Code, § 9-702)

9-703. Classification. Sexually oriented businesses are classified as follows:

(1) Adult arcades;

(2) Adult bookstores, adult novelty stores, or adult video stores;

(3) Adult cabarets;

(4) Adult motels;

(5) Adult motion picture theaters;

(6) Adult theaters;

(7) Escort agencies;

- (8) Nude model studios; and
- (9) Sexual encounter centers. (2005 Code, § 9-703)

9-704. License required. (1) It is unlawful:

(a) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the town pursuant to this chapter.

(b) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the town pursuant to this chapter.

(c) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this chapter.

(2) An application for a license must be made on a form provided by the town clerk.

(3) All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information (including fingerprints) as to enable the town to determine whether the applicant meets the qualifications established in this chapter.

(4) If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a twenty percent (20%) or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.

(5) The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

(a) If the applicant is:

(i) An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is eighteen (18) years of age;

(ii) A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any; or

(iii) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.

(b) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state:

- (i) The sexually oriented business's fictitious name; and
- (ii) Submit the required registration documents.

(c) Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this chapter, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.

(d) Whether the applicant, or a person residing with the applicant, has had a previous license under this chapter or other similar sexually oriented business ordinances from another town or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this chapter whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(e) Whether the applicant or a person residing with the applicant holds any other licenses under this chapter or other similar sexually oriented business ordinance from another town or county and, if so, the names and locations of such other licensed businesses.

(f) The single classification of license for which the applicant is filing.

(g) The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.

(h) The applicant's mailing address and residential address.

(i) A recent photograph of the applicant(s).

(j) The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number.

(k) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6").

(l) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor

depicting the property lines and the structures containing any existing sexually oriented businesses within one thousand feet (1,000') of the property to be certified; the property lines of any established religious institution/synagogue, school, or public park or recreation area within one thousand feet (1,000') of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(m) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in § 9-714.

(6) Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the town the following information:

- (a) The applicant's name or any other name (including "stage" names) or aliases used by the individual;
- (b) Age, date, and place of birth;
- (c) Height, weight, hair and eye color;
- (d) Present residence address and telephone number;
- (e) Present business address and telephone number;
- (f) Date, issuing state and number of driver's permit or other identification card information;
- (g) Social Security number; and
- (h) Proof that the individual is at least eighteen (18) years of age.

(7) Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:

(a) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.

(b) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, town, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial,

revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(c) A statement whether the applicant has been convicted of a specified criminal activity as defined in this chapter and, if so, the specified criminal activity involved, the date, place and jurisdiction of each. (2005 Code, § 9-704)

9-705. Issuance of license. (1) Upon the filing of said application for a sexually oriented business employee license, the town shall issue a temporary license to said applicant. The application shall then be referred to the appropriate town departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty (30) days from the date the completed application is filed. After the investigation, the town shall issue a license, unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:

(a) The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(b) The applicant is under the age of eighteen (18) years;

(c) The applicant has been convicted of a "specified criminal activity" as defined in this chapter;

(d) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this chapter; or

(e) The applicant has had a sexually oriented business employee license revoked by the town within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in § 9-710.

(2) A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the town that the applicant has not been convicted of any "specified criminal activity" as defined in this chapter or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in § 9-706.

(3) Within thirty (30) days after receipt of a completed sexually oriented business application, the town shall approve or deny the issuance of a license to an applicant. The town shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:

(a) An applicant is under eighteen (18) years of age.

(b) An applicant or a person with whom applicant is residing is overdue in payment to the town of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.

(c) An applicant or a person with whom applicant is residing is overdue in payment to the town of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.

(d) An applicant or a person with whom the applicant is residing has been denied a license by the town to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

(e) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this chapter.

(f) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances.

(g) The license fee required by this chapter has not been paid.

(h) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.

(4) The license, if granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to § 9-703. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.

(5) The health department, fire department, and the building official shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the town.

(6) A sexually oriented business license shall be issued for only one (1) classification as found in § 9-703. (2005 Code, § 9-705)

9-706. Fees. (1) Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a one thousand dollar (\$1,000.00) non-refundable application and investigation fee.

(2) In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the town an annual non-refundable license fee of five hundred dollars (\$500.00) within thirty (30) days of license issuance or renewal.

(3) Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be

accompanied by an annual one thousand dollars (\$1,000.00) non-refundable application, investigation, and license fee. (2005 Code, § 9-706)

9-707. Inspections. (1) An applicant or licensee shall permit representatives of the police department, health department, fire department, building inspection department, or other town departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(2) A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises at any time it is open for business. (2005 Code, § 9-707)

9-708. Expiration of license. (1) Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in § 9-704. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.

(2) When the town denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial. If, subsequent to denial, the town finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final. (2005 Code, § 9-708)

9-709. Suspension. The town shall suspend a license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:

(1) Violated or is not in compliance with any section of this chapter.

(2) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter. (2005 Code, § 9-709)

9-710. Revocation. (1) The town shall revoke a license if a cause of suspension in § 9-709 occurs and the license has been suspended within the preceding twelve (12) months.

(2) The town shall revoke a license if it determines that:

(a) A licensee gave false or misleading information in the material submitted during the application process;

(b) A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(c) A licensee has knowingly allowed prostitution on the premises;

(d) A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(e) Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or

(f) A licensee is delinquent in payment to the town, county, or state for any taxes or fees past due.

(3) When the town revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the town finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

(4) After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court. (2005 Code, § 9-710)

9-711. Transfer of license. A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application. (2005 Code, § 9-711)

9-712. Location of sexually oriented businesses. (1) A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business in any zoning district other than in an M-1 (Industrial) Zoning District as defined by the Town of Erwin Comprehensive Zoning Ordinance.

(2) A person commits an offense if the person operates or causes to be operated a sexually oriented business within one thousand feet (1,000') of:

(a) The property line of a church, cemetery, funeral home, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;

(b) A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

(c) A boundary of a residential district as defined in the Erwin Municipal Zoning Code;

(d) A public park or recreational area which has been designated for park or recreational activities including but not limited to

a park, playground, nature trails, swimming pool, reservoir, wilderness areas, or other similar public land within the town which is under the control, operation, or management of the town park and recreation authorities;

(e) The property line of a lot devoted to a residential use as defined in the zoning code;

(f) An entertainment business which is oriented primarily towards children or family entertainment; or

(g) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the state and town.

(3) A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand feet (1,000') of another sexually oriented business.

(4) A person commits a misdemeanor if that person causes or permits the operation, establishment, or maintenance of more than one (1) sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(5) For the purpose of subsection (2) of this section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection (2). Presence of a town, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

(6) For purposes of subsection (3) of this section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

(7) Any sexually oriented business lawfully operating on April 1, 1998 that is in violation of subsection (1) through (6) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one (1) year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within one thousand feet (1,000') of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is/are nonconforming. (2005 Code, § 9-712)

9-713. Additional regulations for adult motels. (1) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.

(2) A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

(3) For purposes of subsection (2) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration. (2005 Code, § 9-713)

9-714. Regulations pertaining to exhibition of sexually explicit films, videos or live entertainment in viewing rooms. (1) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(a) Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (6"). The town may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(b) The application shall be sworn to be true and correct by the applicant.

(c) No alteration in the configuration or location of a manager's station may be made without the prior approval of the town.

(d) It is the duty of the licensee of the premises to ensure that at least one (1) licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(f) It shall be the duty of the licensee to ensure that the view area specified in subsection (1)(e) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1)(a) of this section.

(g) No viewing room may be occupied by more than one (1) person at any time.

(h) The premises shall be lighted with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) footcandles as measured at the floor level.

(i) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(j) No licensee shall allow openings of any kind to exist between viewing rooms or booths.

(k) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(l) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(m) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(n) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight inches (48") of the floor.

(2) A person having a duty under subsections (a) through (n) of subsection (1) above commits a misdemeanor if he knowingly fails to fulfill that duty. (2005 Code, § 9-714)

9-715. Additional regulations for escort agencies. (1) An escort agency shall not employ any person under the age of eighteen (18) years.

(2) A person commits an offense if the person acts an escort or agrees to act as an escort for any person under the age of eighteen (18) years. (2005 Code, § 9-701)

9-716. Additional regulations for nude model studios. (1) A nude model studio shall not employ any person under the age of eighteen (18) years.

(2) A person under the age of eighteen (18) years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen (18) years was in a restroom not open to public view or visible to any other person.

(3) A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.

(4) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public. (2005 Code, § 9-716)

9-717. Additional regulations concerning public nudity. (1) It shall be a misdemeanor for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.

(2) It shall be a misdemeanor for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten feet (10') from any patron or customer and on a stage at least two feet (2') from the floor.

(3) It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.

(4) It shall be a misdemeanor for an employee, while semi-nude, to touch a customer or the clothing of a customer. (2005 Code, § 9-717)

9-718. Prohibition against children in a sexually oriented business. A person commits a misdemeanor if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business. (2005 Code, § 9-718)

9-719. Hours of operation. No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 1:00 A.M. and 8:00 A.M. on weekdays and Saturdays. No sexually oriented business may remain open at any time between the hours of 1:00 A.M. Sunday and 12:00 midnight Sunday. (2005 Code, § 9-719)

9-720. Exemptions. It is a defense to prosecution under § 9-717 that a person appearing in a state of nudity did so in a modeling class operated:

(1) By a proprietary school, licensed by the State of Tennessee; a college, junior college, or university supported entirely or partly by taxation;

(2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

(3) In a structure:

(a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing;

(b) Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

(c) Where no more than one (1) nude model is on the premises at any one (1) time. (2005 Code, § 9-720)

9-721. Violations and penalty. Any violation of this chapter shall subject the offender to a penalty under the general penalty provision of this municipal code. Each day a violation is allowed to continue shall constitute a separate offense. (2005 Code, § 9-721)

CHAPTER 8

MOBILE FOOD VEHICLE VENDORS¹

SECTION

- 9-801. Short title.
- 9-802. Definitions.
- 9-803. Scope.
- 9-804. License required.
- 9-905. Regulations.
- 9-906. Enforcement.

9-801. Short title. This chapter may be referred to as the Town of Erwin Mobile Food Vehicle Ordinance. (Ord. #716-20, March 2020)

9-802. Definitions. (1) "Mobile food vehicle." A mobile food vehicle which may upon issuance of a license by the city recorder and conformance with the regulations established by this chapter may temporarily park upon a public street or other public or private property and engage in the service, sale or distribution of ready to eat food for individual portion service to the general public directly from the vehicle.

(2) "Mobile food vehicle vendor." The registered owner of a mobile food vehicle or the owner's agent or employee; and referred to in this chapter as "vendor."

(3) "Operate." To "operate" or "operation" shall mean all activities associated with the conduct of business, including, but not limited to, set up, take down, and actual hours where the mobile food vehicle is open for business. (Ord. #716-20, March 2020)

9-803. Scope. The provisions of this chapter apply to mobile food vehicles engaged in the business of cooking, preparing, and distributing food or beverage with or without charge upon or in public and private restricted spaces. This chapter does not apply to vehicles which dispense food and that move from place to place and are stationary in the same location for no more than fifteen (15) minutes at a time, such as ice cream trucks, or food vending pushcarts and stands located on sidewalks. (Ord. #716-20, March 2020)

9-804. License required. (1) Any person, including any religious, charitable, or nonprofit organization operating a mobile food vehicle within the

¹Erwin food truck parking area maps, and any amendments thereto, may be found in the recorder's office.

town without having obtained from the city recorder a license for that purpose shall be unlawful.

(2) A person desiring to operate a mobile food vehicle shall make written application for such license to the city recorder. The application for a license shall be on forms provided by the city recorder and shall include the following:

(a) Name, signature, phone number, email contact, and business address of the applicant.

(b) A description of the preparation methods and food product offered for sale including the intended menu.

(c) Information on the mobile food vehicle to include year, make, and model of the vehicle and dimensions, which shall not exceed thirty-six feet (36') length or nine feet (9') in width, and color photographs of the unit including front, both sides, and rear.

(d) Information setting forth the proposed hours of operation, area of operations, plans for power access, water supply, and wastewater disposal.

(e) Proof of compliance with all health and sanitation regulations and requirements for food trucks/trailers and vending carts and for selling food and/or non-alcoholic beverages and copies of all required permits.

(f) A copy of health department approval.

(g) Written approval of the mobile food vehicle and its systems by the fire marshal, or equivalent approval by another local government entity and posted in the mobile food vehicle.

(h) A valid business license issued in Tennessee.

(i) Copy of valid government-issued driver's license for all drivers.

(j) Insurance coverage:

(i) Proof of general comprehensive liability policy with limits of no less than one million dollars (\$1,000,000.00) combined single limit coverage issued by an insurer licensed to do business in Tennessee and which names the Town of Erwin as an additional injured.

(ii) Proof of public liability and property damage motor vehicle policy with the minimum limits per state law, and issued by an insurer licensed to do business in Tennessee.

(iii) A license issued under this chapter shall not be transferrable from person to person.

(iv) A license is valid for one vehicle only and shall not be transferred between vehicles. (Ord. #716-20, March 2020)

9-805. Regulations. (1) No operator of a mobile food vehicle shall park, stand, or move a vehicle and conduct business within areas of the town where

the license holder has not been authorized to operate. The board of mayor and aldermen shall by ordinance identify those streets and public areas where parking by mobile food vehicles is permitted.

(2) The customer service area for mobile food vehicles shall be on the side of the truck that faces a curb, lawn or sidewalk when parked. No food service or customer service area shall be provided on the driving lane side of the truck. No food shall be prepared, sold, or displayed outside of mobile food vehicles area.

(3) No mobile food vehicle vendor shall provide or allow any dining area on the exterior of the mobile food vehicle when operating on public property or in the right-of-way, including but not limited to tables and chairs, booths, stools, benches, or stand up counters, unless approved by the fire marshal.

(4) Customers shall be provided with single service articles such as plastic utensils and paper plates and a waste container for their disposal. All mobile food vehicle vendors shall offer a waste container for public use which the vendor shall empty at its own expense. All trash and garbage originating from the operation of mobile food vehicles shall be collected and disposed of off-site by the operators each day. Spills of food or food by-products shall be cleaned up, and no dumping of gray water on the streets is allowed.

(5) No mobile food vehicle shall make or cause to be made any unreasonable or excessive noise. The operation of all mobile food vehicles shall meet the town noise ordinance, including generators. No loud music, other high-decibel sounds, horns, or amplified announcements are allowed.

(6) Signage is only allowed when placed on mobile food vehicles. No separate freestanding signs are permitted.

(7) No flashing or blinking lights, or strobe lights are allowed on mobile food vehicles or related signage when the vehicle is parked and engaged in serving customers. All exterior lights with over sixty (60) watts shall contain opaque, hood shields to direct the illumination downward.

(8) Mobile food vehicles when parked on public streets shall be parked in conformance with all applicable parking restrictions and shall not hinder the lawful parking or operation of other vehicles. Placement of mobile food vehicles and any related devices, including trailers, shall not obstruct or impede pedestrian or vehicular traffic, access to driveways, and sight distance for drivers.

(9) A mobile food vehicle shall not be parked on the street overnight or left unattended and unsecured at any time food is in the vehicle. Any mobile food vehicle found to be unattended shall be considered a public safety hazard and may be ticketed and impounded.

(10) A vendor shall not operate a mobile food vehicle within two hundred feet (200') of any fair, festival, special event, or civic event that is licensed or sanctioned by the town unless the vendor has obtained written permission from the event sponsor.

(11) The issuance of a mobile food vehicle license does not grant or entitle the vendor to the exclusive use of any service route or parking space to the license holder, except where approved by the town.

(12) A vendor shall not operate on private property without first obtaining written consent to operate from the affected private property owner. A private property owner shall not permit operation of a mobile food vehicle on their property unless the operator is licensed by the town.

(13) When extended, awnings for mobile food vehicles shall have a minimum clearance of seven feet (7') between the ground level and the lowest point of the awning or support structure.

(14) Any power required for the mobile food vehicle operating on a public right-of-way shall be self-contained and a mobile food vehicle shall not use utilities drawn from the public right-of-way, except where approved by the town. Mobile food vehicles on private property may use electrical power from the property being occupied or an adjacent property, but only when the property owner provides written consent to do so. No power cable or equipment shall be extended at or across any public street, alley, or sidewalk unless properly secured with an electric cord cover.

(15) Mobile food vehicles shall not be parked within fifty feet (50') of an existing brick and mortar restaurant during the hours when such restaurant is open to the public for business.

(16) Each mobile food vehicle vendor shall display the following in a conspicuous manner: The mobile food vehicle permit issued by the town, a business license issued in Tennessee, all state and local health and sanitation permits, and all other permits required by law to be displayed.

(17) Mobile food vehicles must meet or exceed all food handling, equipment standards, maintenance, and sanitation requirements set forth by the State of Tennessee.

(18) Separation distances between mobile food vehicles shall be determined by the fire marshal.

(19) All mobile food vehicles must be equipped with a sufficient fire extinguisher that is certified annually by a licensed company. Additionally, mobile food vehicles that produce grease laden vapors (e.g., those with deep fat fryers or flat top griddles) must have a listed fire suppression system certified bi-annually by a licensed company. All certifications must be kept in the mobile food vehicle and must be able to make available immediately upon request.

(20) A vendor may only sell food or beverage items as described in the mobile food vehicle license application. The sale or distribution of merchandise and alcoholic beverages is prohibited. (Ord. #716-20, March 2020)

9-806. Enforcement. (1) Any license holder operating a mobile food vehicle in violation of any provision of this chapter or any rules and regulations promulgated by the town shall be subject to a civil fine of fifty dollars (\$50.00)

per day up to a total fine not to exceed five hundred dollars (\$500.00) per day. Each day a violation exists shall constitute a separate and distinct offense.

(2) Once a license has been issued it may be revoked, suspended, or not renewed by the city recorder for failure to comply with the provisions of this chapter and any rules or regulations promulgated by the town. (Ord. #716-20, March 2020)