

## TITLE 9

### BUSINESS, PEDDLERS, SOLICITORS, ETC.<sup>1</sup>

#### CHAPTER

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#### CHAPTER 1

### PEDDLERS, SOLICITORS, TRANSIENT VENDORS, MOBILE FOOD VENDORS, AND STREET BARKERS<sup>2</sup>

#### SECTION

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<sup>1</sup>Municipal code references

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

Liquor and beer regulations: title 8.

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<sup>2</sup>Municipal code reference

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- 9-109. Restrictions on advertising, etc. by transient vendors and mobile food vendors.
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**9-101. Definitions.** Unless otherwise expressly stated, whenever used in this chapter, the following words shall have the meanings given to them in this section:

(1) "Peddler" means any person, firm or corporation, either a resident or a nonresident of the city, who has no permanent regular place of business and who goes from dwelling to dwelling, business to business, place to place, or from street to street, carrying or transporting goods, wares or merchandise and offering or exposing the same for sale.

(2) "Solicitor" means any person, firm or corporation who goes from dwelling to dwelling, business to business, place to place, or from street to street, taking or attempting to take orders for any goods, wares or merchandise, or personal property of any nature whatever for future delivery, except that the term shall not include solicitors for charitable and religious purposes and solicitors for subscriptions as those terms are defined below.

(3) "Solicitor for charitable or religious purposes" means any person, firm, corporation or organization who or which solicits contributions from the public, either on the streets of the city or from door to door, business to business, place to place, or from street to street, for any charitable or religious organization, and who does not sell any single item at a cost to the purchaser in excess of twenty-five dollars (\$25.00). No organization shall qualify as a "charitable" or "religious" organization unless the organization meets one of the following conditions:

(a) Has a current exemption certificate from the Internal Revenue Service issued under Section 501(c)(3) of the Internal Revenue Service Code of 1954, as amended and delivers a copy of such certificate to the city;

(b) Is a member of United Way, Community Chest or similar "umbrella" organizations for charitable or religious organizations and provides proof of such membership to the city; or

(c) Has been in continued existence as a charitable or religious organization in Shelby County for a period of two (2) years prior to the date of its application for registration under this chapter and provides proof of such continued existence to the city.

(4) "Solicitor for subscriptions" means any person who solicits subscriptions from the public, either on the streets of the city, or from door to door, business to business, place to place, or from street to street, and who offers for sale subscriptions to magazines or other materials protected by provisions of the Constitution of the United States.

(5) "Transient vendor"<sup>1</sup> means any person who brings into temporary premises and exhibits stocks or merchandise to the public for the purpose of selling or offering to sell the merchandise to the public. "Transient vendor" does not include any person selling goods by sample, brochure, or sales catalog for future delivery; or to sales resulting from the prior invitation to the seller by the owner or occupant of a residence. For purposes of this definition, "merchandise" means any consumer item that is or is represented to be new or not previously owned by a consumer, and "temporary premises" means any public or quasi-public place including a hotel, rooming house, storeroom, building or part of a building, tent, vacant lot, railroad car, or motor vehicle which is temporarily occupied for the purpose of exhibiting stocks of merchandise to the public. Premises are not temporary if the same person has conducted business at those premises for more than six (6) consecutive months or has occupied the premises as his or her permanent residence for more than six (6) consecutive months.

(6) "Street barker" means any peddler who does business during recognized festival or parade days in the city and who limits his business to selling or offering to sell novelty items and similar goods in the area of the festival or parade.

(7) "Mobile food vendor" means as any person selling food and/or drink from a mobile vehicle, including a food truck, food trailer, and ice cream truck.

(8) "Mobile food service vehicle" is defined as a vehicle that returns daily to its base of operations and is used either in the preparation or sale of food or drink products, or both.

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<sup>1</sup>State law references

Tennessee Code Annotated, § 62-30-101 et seq. contains permit requirements for "transitory vendors."

The definition of "transient vendors" is taken from Tennessee Code Annotated, § 62-30-101(3). Note also that Tennessee Code Annotated, § 67-4-709(a)(6) prescribes that transient vendors shall pay a tax of \$50.00 for each 14 day period in each county and/or municipality in which such vendors sell or offer to sell merchandise for which they are issued a business license, but that they are not liable for the gross receipts portion of the tax provided for in Tennessee Code Annotated, § 67-4-709(b).

(9) "Food truck" is defined as an enclosed motor vehicle equipped with facilities for preparing, cooking and selling various types of food and/or drink products other than exclusively ice cream and related frozen products.

(10) "Food trailer" is defined as a detached trailer that is equipped with facilities for preparation, cooking, and selling various types of food and/or drink products.

(11) "Ice cream truck" means a motor vehicle containing a commercial freezer from which a vendor sells only frozen, pre-packaged food products such as ice cream, frozen yogurt, frozen custard, flavored frozen water and similar frozen items.

(12) "Edible food products" means those products that are ready for immediate consumption, including prepackaged food and food cooked, prepared or assembled on-site. The term "edible food products" does not include fresh produce unless the produce has been packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption.

(13) "Location" means any single property parcel or any combination of contiguous parcels that are owned or controlled by a single entity or affiliated entities.

(14) "Mobile food vendor permit" means a permit issued by the city for the operation of a mobile food service vehicle valid for not more than three (3) days per permit. Permits for food trucks are valid for special events only.

(15) "Operate" means to sell food, beverages, and other permitted items from a mobile food service vehicle and includes all tenses of the word.

(16) "Operator" means any person operating or permitted to operate a mobile food service vehicle.

(17) "Permit administrator" means the city clerk who oversees the issuance, suspension and revocation of mobile food vendor permits.

(18) "Vehicle" means every device in, upon or by which any person or property may be transported or drawn upon a street, including devices moved by human power.

(19) "City sponsored special event" owners of private property, churches and non-profit organizations as described in § 9-106(3) may request city approval of a special event two (2) times each calendar year. This event shall not last for more than three (3) days and no more than three (3) mobile food vendors shall be permitted. All requests for mobile food vendor permits on private property, churches and non-profit organizations shall be accompanied by a request for special event approval signed by the property owner. (1981 Code, § 5-201, as replaced by Ord. #2005-21, Nov. 2005, and amended by Ord. #2021-21, Jan. 2022 *Ch17\_01-09-23*)

**9-102. Exemptions.** Except to the extent necessary for public safety under § 9-108(3) of this chapter, the terms of this chapter shall not apply 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

persons selling agricultural products, who, in fact, themselves produced the products being sold, nor to minor school children who are selling merchandise or soliciting solely to benefit the school which they attend. (1981 Code, § 5-202, as replaced by Ord. #2005-21, Nov. 2005)

**9-103. Permit required.** (1) No person, firm, corporation or other entity shall operate a business as a peddler, transient vendor, solicitor or street barker, and no solicitor for charitable or religious purposes or solicitor for subscriptions shall solicit within the city unless the same has obtained a permit from the city in accordance with the provisions of this chapter. Provided, however, that this section shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes when the solicitations are conducted exclusively among the members thereof, voluntarily and without remuneration for making such solicitations, or when the solicitations are in the form of collections or contributions at the regular assemblies of any such established organization or church.

(2) It shall be unlawful for any person to engage in business as a mobile food vendor in the City of Millington without first obtaining a mobile food vendor's permit. Any permits, licenses, and certifications required by the Shelby County Department of Health and/or State of Tennessee for operation of the business are also required. City of Millington transient vendor licenses will not be required for those business owners residing in the State of Tennessee and/or businesses based in Tennessee. State transient vendor licenses will be required for owners of businesses residing outside of Tennessee and/or businesses based outside of Tennessee as required by the State of Tennessee. Upon being granted a mobile food vendor permit, a mobile food vendor must comply with the rules and regulations outlined herein. (1981 Code, § 5-203, as replaced by Ord. #2005-21, Nov. 2005, and amended by Ord. #2021-21, Jan. 2022 *Ch17\_01-09-23*)

**9-104. Permit application.** (1) A sworn application containing the following information, together with evidence of the applicant's status if required under § 9-101(3), shall be completed and filed with the city clerk by each applicant for a permit as a peddler, transient vendor, mobile food vendor, solicitor, or street barker and by each applicant for a permit as a solicitor for charitable or religious purposes or as a solicitor for subscriptions:

- (a) The complete name, permanent address, telephone number and social security number or federal employer identification number of the applicant, and the complete name, permanent address, telephone number and federal employer identification number of the business or organization the applicant represents;
- (b) A brief description of the type of business and the goods to be sold;
- (c) A recent clear photograph approximately two inches square showing the head and shoulders of the applicant;

(d) The dates, times and places during which the applicant intends to do business or make solicitations;

(e) The names, permanent addresses, telephone numbers and social security numbers of each person who will make sales or solicitations within the city on behalf of or as a representative of the applicant;

(f) 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, the date and jurisdiction of conviction, and the punishment or penalty assessed therefor;

(g) The make, model, complete description, and license tag number and state of issue, of each vehicle to be used to make sales or solicitations, whether or not such vehicle is owned individually by the person making sales or solicitations, by the business or organization itself, or rented or borrowed from another business or person; and

(h) Proof of valid automobile liability insurance in an amount required by law for operation of the applicable mobile food vendor vehicle. Failure to maintain this insurance during the time of the permit will result in an immediate revocation of the mobile food vendor permit; and.

(i) Tennessee sales tax number, if applicable.

(2) Each applicant for a transient vendor or mobile food vendor permit shall submit, along with the permit application, written consent by the property owner or authorized agent for the property owner, for the applicant to use said owner's private property for the purpose stated in the application.

(3) Due to the highly perishable nature of seafood and the severity of poisoning that can result, each transient vendor who desires to sell seafood (including all types of fish and shellfish) shall present to the city a health permit issued by the Shelby County Health Department with the application. In addition, a plan of the property showing the proposed location of the vendor shall be provided. (1981 Code, § 5-204, as replaced by Ord. #2005-21, Nov. 2005, as amended by Ord. #2021-21, Jan. 2022 ***Ch17\_01-09-23***)

**9-105. Permit fee.** Each applicant for a permit as a peddler, transient vendor, solicitor or street barker shall submit with the application a non-refundable administrative fee of twenty-five dollars (\$25.00). The permit fee for a mobile food vendor shall be two hundred fifty dollars (\$250.00). Notwithstanding the provisions of Tennessee Code Annotated, § 67-4-719 and any other law to the contrary, such tax shall be paid prior to the first day of engaging in business. For transient vendors, state law prescribes an additional fee.<sup>1</sup> There shall be no fee for an application for a permit as a solicitor for

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<sup>1</sup>State law reference:

charitable or religious purposes or as a solicitor for subscriptions. (1981 Code, § 5-205, as replaced by Ord. #2005-21, Nov. 2005, and amended by Ord. #2021-21, Jan. 2022 *Ch17\_01-09-22*)

**9-106. Location of transient vendor and mobile food vendor sites.**

(1) Transient vendor sites shall be allowed only in B-2 (general commercial) or PC (planned commercial) zoning districts. A minimum setback of fifteen feet (15') from all public sidewalks or rights of way shall be required for the location of any transient vendor site. Setbacks from streets or rights of way shall be measured from the curb or right of way line, and setbacks from sidewalks shall be measured from the edge of the sidewalk farthest away from the curb.

(2) Location of mobile food vendors on streets and public property.

(a) Ice cream trucks are permitted to vend on public streets as long as they remain mobile and only make stops of ten (10) minutes or less at one location. The hours of operations for ice cream trucks are from 10:00 A.M. until sunset.

(b) Food trucks and food trailers are prohibited from selling food on any public street, sidewalk, alley, trail, or right-of-way or any city owned or controlled property. This includes, but is not limited to, parks and schools unless approved by the city as a part of a city permitted special event. All mobile food vendors must comply with all rules, regulations and requirements related to the city permitted special event, including but not limited to, provisions as to where the mobile food vendors will be located, how long the mobile food vendors can be present at the location, and how many and which food trucks can participate in the city permitted special event.

(c) City-wide and other publicly sponsored festivals and events such as: Goat Days, Flag City Freedom fireworks, Midsouth Airshow, and other festivals and events that may be authorized by the Millington Board of Mayor and Aldermen shall be exempt from this ordinance.

(3) Location of mobile food vendors on private property. Mobile food vendors are prohibited from conducting business on private property unless it is a city permitted special event. Property owners of properties zoned B-2 and P-C shall be permitted to hold a city permitted special event two (2) times per year. These special events shall be limited to three (3) mobile food vendors. Churches and other non-profit organizations are also permitted to hold a special

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<sup>1</sup>(...continued)

Tennessee Code Annotated, § 67-4-709(a)(6). Transient vendors shall pay a tax of fifty dollars (\$50.00) for each fourteen (14) day period in each county and/or municipality in which such vendors sell or offer to sell merchandise or for which they are issued a business license.

city permitted event two (2) times per year. These special event shall be limited to three (3) mobile food vendors, provided that all activities shall not be within one hundred feet (100') of any residential property. (1981 Code, § 5-206, as replaced by Ord. #2005-21, Nov. 2005, and amended by Ord. #2021-21, Jan. 2022 *Ch17\_01-09-23*)

**9-107. Issuance of permit.** Upon the completion of the application form, presentation of any additional required documentation and the payment of the permit fee (where required), the city clerk shall issue a permit and shall provide a copy of the permit to the applicant. Upon issuance of the permit, the city clerk shall immediately deliver a copy of the application, together with all required documentation, and a copy of the permit to the chief of police. (1981 Code, § 5-207, as replaced by Ord. #2005-21, Nov. 2005)

**9-108. Restrictions on transient vendors, mobile food vendors, peddlers, street barkers and solicitors.** (1) No transient vendor, peddler, street barker, solicitor, solicitor for charitable purposes, or solicitor for subscriptions shall:

(a) Be permitted to set up and operate a booth or stand on any street or sidewalk, or in any other public area within the city;

(b) Stand or sit in or near the entrance to any dwelling or place of business, or in any other location that may disrupt or impede pedestrian or vehicular traffic;

(c) Offer to sell goods or services, or solicit in, vehicular traffic lanes, or operate a "road block" of any kind, except as otherwise permitted by state law, or use a parked vehicle on public streets, highways or rights of way as a business stand to sell goods, wares or merchandise to occupants of other vehicles;

(d) Call attention to his business or merchandise or to his solicitation efforts by crying out, blowing a horn, ringing a bell, using any sound amplifying device, or creating other noise, 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 person proposes to sell, except that street barkers shall be allowed cry out to call attention to their business or merchandise, as applicable, during recognized parade or festival days of the city;

(e) For purposes of the activities regulated by this chapter, enter in or upon any premises or attempt to enter in or upon any premises where a sign or placard bearing the notice "Peddlers or Solicitors Prohibited", or similar language carrying the same meaning, is located, or where the owner of said premises requests that the transient vendor, peddler, street barker, solicitor, solicitor for charitable purposes,



or solicitor for subscriptions leave his or her property. Violation of this sub-section (5) shall constitute trespassing as well as a violation of this chapter.

(2) All mobile food vendors shall: (a) Maintain litter receptacle/s of sufficient size to accept the litter being generated by the sales from the vendor's mobile food vehicle at the point of sales. The receptacle must be maintained in such a manner as to preclude an overflow of refuse. Each mobile food vendor shall pick up litter which is associated with the vendor's sale in the vicinity of the vendor's mobile food vehicle prior to departing a sales location. A pattern of leaving excessive litter caused by product packaging shall be basis for suspension or revocation of the mobile food vendor license.

(b) Mobile food vendors shall be limited to edibles and hot and cold beverages containing no alcohol. The sale of non-food or drink items from mobile food vendor vehicles shall be limited to merchandise displaying the mobile food company logo and/or branding.

(c) There shall be no benches, tables, chairs or other furniture which may be used for eating or sitting provided by or associated with a mobile food vendor vehicle.

(d) All food trucks and food trailers must be equipped with a fire extinguisher that is certified annually by a licensed company. Additionally, food trucks and food trailers that produce grease laden vapors (i.e., units with deep fat fryers or flat-top griddles) must have a fire suppression system certified bi-annually by a licensed company.

(e) Mobile food vendor vehicles shall not obstruct or impede pedestrian or vehicular traffic, access to driveways, and sight distance for drivers. Mobile food vendor vehicles shall serve pedestrians only; drive-through or drive-in services are hereby prohibited.

(f) Other than ice cream trucks being able to play a song associated with its business at a reasonable level of sound, no mobile food vendors shall sound any device which produces an offensive or loud noise to attract customers, and mobile food vendors shall not use a public-address system on the vehicle to broadcast and advertise products.

(g) Signs which are permanently affixed to the mobile food vendor vehicle shall extend no more than six inches (6") from the vehicle. Except as stated herein, all signs shall be attached or painted on the mobile food vendor vehicle. Electronic signs are prohibited as are signs that flash, reflect motion pictures, emit smoke or vapor, or produce any rotation, motion or movement. Each food truck or food trailer is permitted one sandwich board type sign located within ten feet (10') of the applicable food truck or food trailer for advertisement purposes while the food truck or food trailer is open for business. Such sandwich board sign shall be no more than forty-eight inches (48") high and contain no more than seven (7) square feet.

(h) All mobile food vendors shall be located at least three hundred feet (300') from any eating establishment and one hundred feet (100') from any retail store that sells food unless both the owners of the eating establishment and retail stores and their leaseholders grant written notarized permission.

(i) Mobile food vendors operating at a location for a duration of more than three (3) hours shall provide a notarized permission statement from the property owners to have access to a flushable restroom with hand washing facilities within three hundred feet (300') for the duration of the sales. (1981 Code, § 5-208, as replaced by Ord. #2005-21, Nov. 2005, and amended by Ord. #2021-21, Jan. 2022 *Ch17\_01-09-23*)

**9-109. Restrictions on advertising, etc. by transient vendors and mobile food vendors.** A transient vendor or mobile food vendor shall not advertise, represent, or hold forth a sale of goods, wares or merchandise as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver's or manufacturer's wholesale, cancelled order, or misfit sale, or closing-out sale, or a sale of any goods damaged by smoke, fire, water or otherwise, unless such advertisement, representation or holding forth is actually of the character it is advertised, represented or held forth. (1981 Code, § 5-209, as replaced by Ord. #2005-21, Nov. 2005, and amended by Ord. #2021-21, Jan. 2022 *Ch17\_01-09-23*)

**9-110. Display of permit.** Each peddler, street barker, transient vendor, solicitor, solicitor for charitable purposes or solicitor for subscriptions is required to have in his possession a valid permit while making sales or solicitations and shall be required to display the same to any police officer or codes enforcement officer upon demand or to any person solicited, upon such person's request. (1981 Code, § 5-210, as replaced by Ord. #2005-21, Nov. 2005)

**9-111. Suspension or revocation of permit.** (1) The permit issued to any person or organization under this chapter may be suspended or revoked for any of the following causes:

(a) Any false statement, material omission, or untrue or misleading information which is contained in or left out of the application or other documentation required to be provided to the city along with the application; or

(b) Any violation of this chapter.

(2) The permit issued to any person or organization under this chapter may be suspended or revoked by the board of mayor and aldermen, after notice and hearing, for the same causes set out in § 9-111(1) above. The city clerk shall give written notice to the application of the hearing on proposed suspension or revocation of a permit issued under this chapter, which notice shall set forth specifically the grounds of complaint and the date, time and place of the hearing.

Such notice shall be mailed to the permit holder at his or her 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 hearing. (1981 Code, § 5-211, as replaced by Ord. #2005-21, Nov. 2005)

**9-112. Expiration and renewal of permit.** (1) The permits of peddlers, solicitors and transient vendors shall expire on the same date that the permit holder's privilege license expires. The permit of any peddler, solicitor, or transient vendor who for any reason is not subject to the Tennessee privilege tax shall be valid for a period of six (6) months from the date of issuance. The permits of street barkers shall be for a period corresponding to the dates of the recognized parade or festival days of the city. The permits of solicitors for religious or charitable purposes and solicitors for subscriptions shall expire on the date provided in the permit, not to exceed thirty (30) days from the date of issuance. Any permits for mobile food vending shall expire three (3) days after the permit is issued. Except as provided in subsection (2) below, and provided they are in compliance with this chapter, holders of expired permits may apply for issuance of a new permit.

(2) No permit holder whose permit has been revoked by the board of mayor and aldermen shall make application for a new permit until a period of at least six (6) months has elapsed since the last revocation.

(3) An application for renewal of a permit issued under this chapter shall be made substantially in the same form as an original application, provided that only so much of the application shall be completed as is necessary to identify the renewal applicant and to show the same information required in the initial application as to any conditions or personnel that have changed since the last application was filed. (1981 Code, § 5-212, as replaced by Ord. #2005-21, Nov. 2005, and amended by Ord. #2021-21, Jan. 2022 *Ch17\_01-09-23*)

**9-113. Enforcement by city's police department and codes enforcement officers.** The provisions of this chapter shall be enforced by the city's police department and codes enforcement officers. (1981 Code, § 5-213, as replaced by Ord. #2005-21, Nov. 2005)

**9-114. Use of streets and other public property.** No permit holder shall have any exclusive right to any location on public streets or other public property, nor shall any permit holder be permitted a stationary location thereon. No permit holder shall 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, or codes enforcement officer exercised in good faith shall be deemed conclusive as to whether the area is congested and

the public impeded or inconvenienced by the location of a permit holder. (as added by Ord. #2005-21, Nov. 2005)

**9-115. Time requirements.** No transient vendor shall keep his business open, and no peddler or solicitor shall solicit business after 8:00 P.M. and prior to 8:00 A.M. (as added by Ord. #2005-21, Nov. 2005)

**9-116. No transfer or assignment.** No permit issued under the provisions of this chapter shall be transferred or assigned, and no such permit shall be used by any person other than the one to whom it was issued. (as added by Ord. #2005-21, Nov. 2005)

**9-117. Violation and penalty.** Violation of any provision of this chapter shall be a misdemeanor, and such violation shall be punishable by a fine of up to \$50.00. Each day a violation occurs shall constitute a separate offense. In addition to any fine that may be imposed, the permit of any permit holder convicted of violation of this chapter shall be cancelled and revoked by the court. (as added by Ord. #2005-21, Nov. 2005)

## CHAPTER 2

### TAXICABS

#### SECTION

- 9-201. Definitions.
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- 9-220. Appeal.
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**9-201. Definitions.** The word "taxicab" as used in this chapter means any motor vehicle used for the purpose of transporting persons within the city for hire and not operating upon a fixed route or schedule, including taxicabs, limousines and sedans as defined in Tennessee Code Annotated, § 7-51-1007. This chapter shall not apply to motor vehicles used principally for funerals, weddings and other similar operations. (1981 Code, § 5-301, as replaced by Ord. #2005-11, June 2005)

**9-202. Taxicab franchise and privilege license required.** It shall be unlawful for any person to engage in the taxicab business in the City of Millington unless such person has first obtained a taxicab franchise from the city and has a currently effective privilege license. For purposes of this chapter, "person" shall mean and include individuals, corporations, limited liability companies, partnerships and other legal entities. (1981 Code, § 5-302, as replaced by Ord. #2005-11, June 2005)

**9-203. Application.** An application for a taxicab franchise shall be made on a form provided by, and shall be filed with, the city clerk. The applicant shall provide the following information:

(1) The applicant's full legal name, address(es) for the three (3) years preceding the date of the application, and current telephone number;

(2) The applicant's education history and the applicant's employment history;

(3) The name, including any trade name, under which the applicant does or proposes to operate the business, and the address of the proposed place of business;

(4) The applicant's social security number or, if none, employer identification number;

(5) The number of taxicabs the applicant desires to operate, together with a description of the vehicles to be used, including year, make and model of each vehicle and a copy of the certificate of title or lawful evidence thereof to each vehicle;

(6) The color scheme and a photograph or drawing of the insignia or other lettering and marks to be used on the vehicles;

(7) A statement whether the applicant has been convicted of a felony or any crime involving moral turpitude within the 10 years prior to the date of the application, and if so, identification of the type and date of the conviction and the jurisdiction in which the conviction occurred;

(8) A statement whether the applicant has been convicted of any violation of the Millington Municipal Code, and if so, identification of the type and date of the conviction;

(9) A statement whether the applicant has previously owned or operated a taxicab business in any jurisdiction, and whether the applicant has held a taxicab franchise, permit or license from any jurisdiction within the last ten years, and if so, the name of the jurisdiction, the date of issuance of the franchise, permit or license; whether said franchise, permit or license is in effect as of the date of the application, and if it is not, the date and circumstances of its termination, suspension or revocation;

(10) Two clear frontal photographs of the applicant, at least 2" by 2";

(11) A sworn statement that the information contained in and provided with the application is true and correct to the best of the applicant's knowledge; and

(12) A sworn statement that the applicant has read this taxicab chapter in its entirety and agrees to comply with this chapter and with all applicable federal, state and local laws; and

(13) Proof of financial responsibility and proof of insurance coverage as required by this chapter; and

(14) If the taxicab business is to be owned by a corporation, limited liability company or other similar legal entity, each owner of a majority interest in such entity, and each director and officer of such entity shall be considered

an applicant, and shall provide the information required by this chapter. If the taxicab business is to be owned by a general partnership, each partner shall be considered an applicant and shall provide the information required by this chapter. (1981 Code, § 5-303, as replaced by Ord. #2005-11, June 2005)

**9-204. Investigation and public hearing.** Upon receipt of a completed franchise application and the required application fee, the city clerk shall provide a copy of the application to the chief of police, shall publish a notice of public hearing on the application and shall deliver a copy of the application to the board of mayor and aldermen. The chief of police shall cause a background investigation of the applicant to be conducted within ten (10) days and shall deliver the report of such investigation to the board and, if requested, to the applicant. The board of mayor and aldermen shall hold a public hearing at the place and time stated in the published notice, at which time the applicant must be present, and the applicant and citizens for and against the application shall have the right to be heard. (1981 Code, § 5-304, as replaced by Ord. #2005-11, June 2005)

**9-205. Award of franchise.** After the hearing, the board shall, by resolution, award a franchise if it deems such award to be appropriate and in the best interest of the city. In deciding whether to grant the franchise, the board shall consider, in addition to matters set out in the application and the police investigation of the applicant, the public need for the proposed service, the traffic, safety and parking impact of the proposed service, whether the proposed business location is in compliance with zoning requirements, and such other matters as the board deems appropriate. Upon award of an original or renewal franchise, the city clerk shall issue a franchise certificate to the applicant. Said certificate shall show the name and address of the franchise holder and if different, the address of the taxicab business, the date of issuance and the date of expiration. Franchises shall be issued in the name of a natural person, with the name of the legal entity which owns the business stated thereon, if applicable. (1981 Code, § 5-305, as replaced by Ord. #2005-11, June 2005)

**9-206. Renewal.** The term of all franchises shall be one (1) year, and each franchise shall be renewable annually, upon the anniversary of its issuance. A renewal franchise may be granted upon the written application of the franchise holder filed within thirty (30) days prior to the expiration date of the then-current franchise. The franchise renewal fee shall be paid upon filing of the renewal application. In the renewal application, the applicant shall, under oath, either state that all information and documentation previously provided to the city in or with the original application or subsequent thereto has not changed, or shall identify and provide the information and/or documentation that has changed.

Before any franchise may be renewed, the chief of police shall update the investigation of the franchisee from the date of the prior original or renewal application, which investigation shall include a determination whether the applicant is in compliance with this chapter. Said investigation shall be conducted within ten (10) days. If there is no information that would indicate a change in the status or behavior of the franchise holder that would be the cause for denial of an original franchise application, the chief of police shall so notify the city clerk and the applicant, and provided it is determined the applicant is otherwise in compliance with this chapter, the city clerk shall issue the renewal franchise.

If either the chief of police or the city clerk receives information that reasonably indicates the renewal application should be denied, including non-compliance with this chapter, he or she shall notify the board of mayor and aldermen and the applicant. Upon receipt of such notice, the board shall set a hearing at its next regular meeting on the renewal application and shall give public notice thereof. The franchise holder shall have the right to be heard at such hearing. If the next regular meeting of the board will be held after the expiration date of the existing franchise, the franchise shall remain in effect until renewal is considered by the board.

After the hearing, the board shall, by resolution, award or deny the renewal franchise as it deems to be appropriate and in the best interest of the city. (1981 Code, § 5-306, as replaced by Ord. #2005-11, June 2005)

**9-207. Franchise application and franchise fees.** The following fees shall be paid to the city in connection with the grant of taxicab franchises:

- (1) An initial application and investigation fee in the amount of \$150.00, which fee shall be paid upon submission of the application;
  - (2) A annual franchise permit fee, which shall be paid upon grant of the initial franchise and upon each annual renewal of the franchise, in the amount of \$100.00; and
  - (3) An annual permit fee for each driver in the amount of \$10.00.
- (1981 Code, § 5-307, as replaced by Ord. #2005-11, June 2005)

**9-208. Proof of financial responsibility/liability insurance.** No taxicab franchise shall be issued or continue in effect unless there is in full force and effect proof of financial responsibility for each vehicle authorized in an amount in accordance with the minimum limits set forth in Tennessee Code Annotated, § 55-12-102 or any successor statute. In addition, each franchisee shall maintain liability insurance on all vehicles in the amount of \$100,000 per person and \$300,000 per incident for personal injury and \$50,000 for property damage, and proof of such insurance coverage and any changes or renewals thereof shall have been delivered to the city. Any such policy shall provide that it will not be cancelled without prior notice to the city. (1981 Code, § 5-308, as replaced by Ord. #2005-11, June 2005)



**9-209. Location of taxicab business.** All taxicab business offices, off-duty parking and storage and garages or other places where vehicles are repaired or maintained shall be located in B2, PC or industrial zoning districts of the city. (1981 Code, § 5-309, as replaced by Ord. #2005-11, June 2005)

**9-210. Report of additional taxicabs/condition of taxicabs.** Each franchise holder shall notify the city within ten days, providing the information required by this chapter, if it puts any taxicabs into service that have not previously been identified to the city or for which the information required by this chapter has been provided to the city. It is unlawful to operate of any taxicab, whether an addition or replacement vehicle, without providing such information to the city.

It shall be unlawful to operate any taxicab in the City of Millington unless such taxicab is kept in such condition and repair as is reasonably necessary to provide for the safety of passengers, the public and the continuous satisfactory operation of the taxicab. All taxicabs operated within the city shall be kept at all times in a reasonably clean and sanitary condition. If any taxicab operated within the city appears to be unsafe, any city police officer who observes such condition may inspect the taxicab and notify the city clerk, giving the details of the unsafe condition, and the city clerk shall send a notice requiring the franchise holder to provide proof that such unsafe condition has been remedied. (1981 Code, § 5-310, as replaced by Ord. #2005-11, June 2005)

**9-211. Current motor vehicle license required.** Each taxicab operated within the city shall at all times maintain a current motor vehicle license and shall provide the city with written evidence of the existence and license number thereof. (1981 Code, § 5-311, as replaced by Ord. #2005-11, June 2005)

**9-212. Display of company identification.** All taxicabs operating under a franchise shall display on their exterior, in a manner legible from a distance of 100 feet, the name of the taxicab franchise under which they are operated, the business's insignia and colors. (1981 Code, § 5-312, as replaced by Ord. #2005-11, June 2005)

**9-213. Parking restricted/solicitation prohibited.** It shall be unlawful for any taxicab to remain parked on the street, other than in spaces specifically designated for the use of taxicabs, longer than reasonably necessary to pick up or discharge passengers. Such stops shall be made in a manner that will not interfere with or obstruct other traffic or pedestrians. It shall be unlawful for any taxicab driver to indiscriminately solicit passengers or cruise upon the streets of the city for the purpose of obtaining passengers. (1981 Code, § 5-313, as replaced by Ord. #2005-11, June 2005)

**9-214. Franchise certificate, driver's permit and rates to be posted.** A true, correct and current copy of each franchise certificate and each driver's permit, and a statement of the applicable rates charged to passengers, including any set charges for travel to places such as airports, train or bus stations, etc. shall be conspicuously posted in each taxicab in a location easily visible to passengers. (1981 Code, § 5-314, as replaced by Ord. #2005-11, June 2005)

**9-215. Requirements for transfer of franchise.** No taxicab franchise shall be transferred or assigned by the holder thereof, nor may the ownership modified in any way, without the prior consent of the board of mayor and aldermen in each case. Such consent may be conditioned upon the transferee's approval for a taxicab franchise as provided in this chapter. (1981 Code, § 5-315, as replaced by Ord. #2005-11, June 2005)

**9-216. No use for illegal purpose/unlawful driver conduct.** No taxicab shall be used for or in the commission of any illegal act, business or purpose. 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 blow the vehicle's horn unnecessarily, or otherwise to disturb the peace and quiet of the city in any way. (as added by Ord. #2005-11, June 2005)

**9-217. Revocation of franchise.** The board of mayor and aldermen shall have the right to revoke any taxicab franchise, upon a hearing held after ten (10) days notice to the franchise holder, for any one or more of the following reasons:

(1) Information or documentation provided to the city in an original or renewal franchise application is determined to have been untrue or misleading in any material respect;

(2) Proof that the franchise holder has discontinued business within the city;

(3) Violation of or noncompliance with this chapter, as it may be amended from time to time, by the franchise holder or its business, or violation of or noncompliance with any other law of the State of Tennessee or the City of Millington relevant to the franchise or operation of the business of the franchise, including delinquency in any taxes due to the city; or

(4) The franchise holder's conviction of a felony or a crime of moral turpitude. (as added by Ord. #2005-11, June 2005)

**9-218. License and permit required for drivers.** No person, including a franchise holder, shall drive a taxicab except under the following conditions:

- (1) The driver has a current valid Tennessee special chauffeur's license;
- (2) A true and correct copy of such license has been delivered to the city clerk, along with notice of the name and address of the taxicab franchise for which the driver is working;
- (3) The driver has submitted an application to the city clerk for a driver's permit, which application shall contain the driver's full legal name, residence addresses for the last three (3) years and social security number, and in which the driver shall state under oath:
  - (a) That he or she is not addicted to the use of drugs or intoxicating liquor; and
  - (b) That he or she has not been convicted of a felony, a crime of moral turpitude, drunk driving or driving under the influence of an intoxicant or drug within the last ten (10) years.
- (4) An application fee in the amount of \$25.00 has been paid to the city.

Upon receipt of the application and the application fee, the city clerk shall issue a taxicab driver's permit to the applicant, unless the city clerk determines, after investigation, that information or documentation submitted with the application is untrue or incorrect in any material respect, or that the applicant is not a person suitable to drive a taxicab in the city. Each driver's permit shall be valid for one (1) year from the date of issuance, and may be renewed by certification to the city clerk that the permit holder has fully complied with the provisions of this chapter, and by providing such other information as may be required by the city clerk for the orderly administration of this chapter. (as added by Ord. #2005-11, June 2005)

**9-219. Revocation or suspension of driver's permit.** The board of mayor and aldermen, after a public hearing at which the applicant for an original or renewal driver's permit shall have the right to be heard, may revoke or suspend any taxicab driver's permit. A driver's permit shall be automatically terminated upon the expiration or revocation of the driver's state special chauffeur's license or upon the driver's conviction of any felony, crime of moral turpitude, drunk driving or driving under the influence of any intoxicant or drug, or upon conviction for reckless driving. (as added by Ord. #2005-11, June 2005)

**9-220. Appeal.** Appeal from denial of an original or renewal taxicab franchise, revocation of a taxicab franchise, denial of an original or renewal driver's permit or revocation of a driver's permit shall be made under the laws of the State of Tennessee, to a court sitting in Shelby County, Tennessee. (as added by Ord. #2005-11, June 2005)

**9-221. Violation a misdemeanor/penalty.** Violation of this chapter shall be a misdemeanor, and there shall be a fine of \$50.00 for each violation. Each day that a violation continues shall constitute a separate violation. (as added by Ord. #2005-11, June 2005)

**9-222. Amendment of this chapter.** The board of mayor and aldermen may amend or revise this chapter, in whole or in part, at any time and from time to time, as it sees fit. (as added by Ord. #2005-11, June 2005)

**CHAPTER 3**

**[DELETED]**

(as deleted by Ord. #2011-6, June 2011)

**CHAPTER 4**

**[DELETED]**

(as deleted by Ord. #2005-21, Nov. 2005)

## CHAPTER 5

### PAWNBROKERS REGULATED

#### SECTION

- 9-501. Pawnbroker defined.
- 9-502. License required.
- 9-503. Record of pawns to be kept, etc.
- 9-504. Additional information to be given.
- 9-505. Pledger to sign and fingerprint card.
- 9-506. Cards to be of separate types and colors; pawnbrokers to fill out proper type.
- 9-507. Cards to be delivered to chief of police.
- 9-508. Contents of records required on watches.
- 9-509. Contents of records required on jewelry.
- 9-510. Contents of records required on clothing.
- 9-511. Contents of records required on other merchandise.
- 9-512. Information required on back of cards.
- 9-513. Pawned goods to be retained not less than 48 hours.
- 9-514. Pawn business to be licensed--transfer of license.
- 9-515. Sign--requirements.
- 9-516. Unacceptable pawns--stolen goods.
- 9-517. Accepting pawn of certain articles forbidden.
- 9-518. Restrictions on interest and charges - allowable fees.
- 9-519. Business hours.
- 9-520. Broker prohibited from purchasing pledge.
- 9-521. Violations.

**9-501. Pawnbroker defined.** For the purpose of this chapter, a pawnbroker shall be deemed to be any person, firm, or corporation whose business or occupation is to take or receive by way of pledge, pawn, or exchange any goods, wares or merchandise, or any kind of personal property whatsoever. (1981 Code, § 5-601)

**9-502. License required.** It shall be unlawful for any person, firm, or corporation to establish or conduct a business of pawnbroker unless there has first been secured a license to conduct such business in the city, in accordance with the regulations hereinafter set forth. (1981 Code, § 5-602)

**9-503. Record of pawns to be kept, etc.** Every pawnbroker shall keep a book which shall be made with a stub, which shall be numbered consecutively and shall correspond in all essential particulars to the detachable pawn ticket attached thereto. The pawnbroker shall, at the time of making any loan, enter upon the stub, as well as the pawn ticket, a clear and accurate description,

written in ink in the English language, of the property pawned, the date and amount of money lent and when due, the name and residence address of the pawnor and, if the article bears a serial number, the serial number. The pawnor shall sign the stub with his residence address and receive the detached pawn ticket, which shall be signed by the pawnbroker. (1981 Code, § 5-603)

**9-504. Additional information to be given.** In addition to the book provided for in the immediately preceding section, every person licensed as a pawnbroker, at the time of taking or receiving any article in the business for which he is licensed, shall place the description of the article or the thing pledged, received or taken, upon the front side of a blank form card, three inches by five inches in size, which card shall be provided by the licensee. The description to be given of such article shall be such description as may be called for by the blank form on such card. The pawnbroker shall fill in such other blank spaces as may appear on the front side of such blank form card with the data as is requested by these blank spaces. (1981 Code, § 5-604)

**9-505. Pledger to sign and fingerprint card.** A separate card shall be provided and used for each such article pledged, received or taken. On the back of each blank form card there shall be written by the pledger, in his own handwriting, his name and address, and such pledger shall also reproduce thereon his right thumbprint at the place indicated therefor on the back of such card. In the event the right thumb is amputated, then such other fingerprint as required by the pawnbroker shall be taken and such fingerprint fully described and designated upon the card. This thumbprint shall be reproduced and taken in the usually approved manner and shall not be blurred or obliterated. The pawnbroker shall then fill in a description of the party so pledging or leaving any such article as the remaining spaces on the back side of such blank form card may call for. (1981 Code, § 5-605)

**9-506. Cards to be of separate types and colors; pawnbrokers to fill out proper type.** The blank cards provided for in this chapter shall be four separate types; one type for watches, which card shall be blue in color; one type for jewelry, which card shall be yellow in color; one type for clothing, which card shall be pink in color; one type for miscellaneous articles, such as adding machines, cash registers, check protectors, typewriters, dictaphones, shotguns, rifles, and musical instruments, which card shall be white in color. The pawnbroker shall fill in the proper type of card for each article pledged or taken. (1981 Code, § 5-606)

**9-507. Cards to be delivered to chief of police.** Every licensed pawnbroker shall deliver to the chief of police every day before the hour of twelve noon, all of such cards describing the goods, articles, things pledged, pawned, taken or received during the preceding day and containing the description, signature and right thumbprint of the person so pledging or



pawning or giving same, unless the information required to be delivered to the chief of police by this chapter 5 is transmitted electronically by such time to the Shelby County Pawn Detail. (1981 Code, § 5-607, as amended by Ord. #2006-12, Dec. 2006)

**9-508. Contents of records required on watches.** The front side of the type of card to be provided and used for watches shall be as follows:

Make \_\_\_\_\_ Style \_\_\_\_\_  
 Initials or Inscriptions \_\_\_\_\_  
 Purchase Price \_\_\_\_\_ Amount Loaned \_\_\_\_\_  
 Received \_\_\_\_\_ Date \_\_\_\_\_  
 Dealer's Name \_\_\_\_\_  
 Location \_\_\_\_\_  
 Dealer's License Number \_\_\_\_\_ Date Reported \_\_\_\_\_  
 (1981 Code, § 5-608)

**9-509. Contents of records required on jewelry.** The front side of the type of card to be provided and used for jewelry and diamonds shall be as follows:

Article \_\_\_\_\_ Material \_\_\_\_\_  
 Inscription, etc. \_\_\_\_\_ Setting and Design \_\_\_\_\_  
 \_\_\_\_\_ No. \_\_\_\_\_ Kind \_\_\_\_\_ Size \_\_\_\_\_  
 Purchase Price \_\_\_\_\_ Amount Loaned \_\_\_\_\_  
 Dealer's Name \_\_\_\_\_  
 Location \_\_\_\_\_  
 Dealer's License Number \_\_\_\_\_ Date Reported \_\_\_\_\_  
 (1981 Code, § 5-609)

**9-510. Contents of records required on clothing.** The front side of the type of card to be provided and used for clothing shall be as follows:

Article \_\_\_\_\_ Color \_\_\_\_\_  
 Maker's Name \_\_\_\_\_ Material \_\_\_\_\_  
 Initials, name and cleaner's mark \_\_\_\_\_ Size \_\_\_\_\_  
 Purchase Price \_\_\_\_\_ Amount Loaned \_\_\_\_\_  
 Received \_\_\_\_\_ Date \_\_\_\_\_ A.M. \_\_\_ P.M.  
 Dealer's Name \_\_\_\_\_  
 Location \_\_\_\_\_  
 Dealer's Ticket No. \_\_\_\_\_ Date Reported \_\_\_\_\_  
 (1981 Code, § 5-610)

**9-511. Contents of records required on other merchandise.** The front side of the type of card to be provided and used for miscellaneous articles shall be as follows:

Article \_\_\_\_\_ Serial Number \_\_\_\_\_  
 Maker's Name \_\_\_\_\_ Color, Style, Design \_\_\_\_\_  
 Marks and further description \_\_\_\_\_  
 Purchase Price \_\_\_\_\_ Amount Loaned \_\_\_\_\_  
 Received \_\_\_\_\_ Date \_\_\_\_\_ A.M. \_\_\_\_\_ P.M.  
 Dealer's Name \_\_\_\_\_  
 Location \_\_\_\_\_  
 Dealer's Ticket No. \_\_\_\_\_ Date Reported \_\_\_\_\_  
 (1981 Code, § 5-611)

**9-512. Information required on back of cards.** The back side of all types of cards required by this chapter to be provided and used shall be as follows:

Signature \_\_\_\_\_  
 Address \_\_\_\_\_  
 Description of customer. To be filled out by dealer.  
 \_\_\_\_\_ Sex \_\_\_\_\_ Age \_\_\_\_\_ Height \_\_\_\_\_ Ft. \_\_\_\_ In. \_\_\_\_ Weight \_\_\_\_\_ Lbs.  
 Race or Nationality \_\_\_\_\_ Clothing \_\_\_\_\_  
 Complexion \_\_\_\_\_

Right Thumb

(1981 Code, § 5-612)

**9-513. Pawned goods to be retained not less than 48 hours.** It shall be unlawful for any pawnbroker to sell, exchange, barter or remove from their place of business, or permit to be redeemed, any of the goods pledged, pawned, or deposited by, to or with them for the period of forty-eight hours after making of the report as provided for in § 9-507 of this chapter. (1981 Code, § 5-613)

**9-514. Pawn business to be licensed--transfer of license.** No person licensed as a pawnbroker shall, by virtue of one license, keep more than one house, shop or place for such business of pawnbroker; provided, however, that such license may be transferred from one place to another with the consent of the chief of police. (1981 Code, § 5-614)

**9-515. Sign--requirements.** Every person licensed under this article shall cause his name with the words "Licensed Pawnbrokers," and no other

words or symbols, to be printed or painted, in large, legible characters, and placed over the outside or door, or entrance of his shop, office or place of business. No other sign or marker of any description shall be permitted upon the front of such building. (1981 Code, § 5-615)

**9-516. Unacceptable pawns--stolen goods.** No person so licensed shall take any article in pawn, pledge, or as security from any person under legal age, nor from any person appearing to be intoxicated, nor from any person known to such pawnbroker to be a thief, or to have been convicted of larceny, burglary, robbery, or housebreaking, without first notifying a police officer. When any person is found to be the owner of stolen property, which has been pawned, such property shall be returned to the owner thereof, without the payment of the amount advanced by the pawnbroker thereon, or any costs or charges of any kind, which the pawnbroker may have placed upon same. (1981 Code, § 5-616)

**9-517. Accepting pawn of certain articles forbidden.** No licensed pawnbroker shall buy, sell or take for pledge, pawn or security any razor except safety razor, any dirk, bowie knife or other knife of like kind or size, or any other knife with any blade over two and one-half (2-1/2) inches long, sword cane, slingshot, black jack, brass knuckles or Spanish stiletto. (1981 Code, § 5-617, modified)

**9-518. Restrictions on interest and charges - allowable fees.** No pawnbroker shall demand or receive an effective rate of interest greater than twenty-four percent (24%) per annum, and no other charge of any description, or for any purpose whatsoever shall be made by the pawnbroker, except that the pawnbroker may charge, contract for and receive a reasonable fee for investigating the security or title, storage and insuring the security, closing the loan, making daily reports to local law enforcement officers and for other expenses and losses of every nature whatsoever and for all other services; it is further provided that such fee when made and collected shall not be deemed interest for any purpose of law. (1981 Code, § 5-618)

**9-519. Business hours.** No pawnbroker shall keep open his place of business before eight (8) o'clock, A.M., or after six (6) o'clock, P.M., of any day during the months of June, July, August and September, and not after seven (7) o'clock, p.M., of any day during the other months of the year, provided that on Saturday of each week and the last fifteen (15) days of December of each year it shall be lawful for pawnbrokers to keep open until nine (9) o'clock, p.M. Pawnbrokers shall keep their places of business closed all day Sunday through the entire year. (1981 Code, § 5-619)

**9-520. Broker prohibited from purchasing pledge.** No pawnbroker shall, in the conduct of such business, purchase or buy any personal property whatsoever. (1981 Code, § 5-621)

**9-521. Violations.** Every person, firm, or corporation, their agents or employees, who shall violate any of the provisions of this chapter shall upon conviction thereof, be deemed guilty of a misdemeanor and shall be fined in accordance with the terms of the general penalty clause in this code of ordinances. Upon such conviction, the license of such person, firm or corporation shall be revoked. (1981 Code, § 5-622)

## CHAPTER 6

### REGULATION OF MASSAGE PARLORS, ETC.

#### SECTION

- 9-601. Regulations for massage parlors established.
- 9-602. Definition of terms.
- 9-603. Permit required, etc.
- 9-604. Application for permit.
- 9-605. Investigation of applicant.
- 9-606. Standards for issuance of permit.
- 9-607. Standards applicable to employees.
- 9-608. Conditions of permit.
- 9-609. Appeal of denial.
- 9-610. Health regulations.
- 9-611. Hours of operation.
- 9-612. Clothing regulations.
- 9-613. Method of operation.
- 9-614. Keeping of records.
- 9-615. Advertising.
- 9-616. Supervision.
- 9-617. Persons under age eighteen prohibited on premises.
- 9-618. Alcoholic beverages prohibited on premises.
- 9-619. Inspection required.
- 9-620. Rules and regulations of the chief of police.
- 9-621. Application of chapter to existing business.
- 9-622. Violations.

**9-601. Regulations for massage parlors established.** There is hereby established provisions for the operation of massage institutes, massage operators, bath houses and other similar business establishments within the corporate limits, as follows. (1981 Code, § 5-701)

**9-602. Definition of terms.** (1) “Massage institute.” For the purpose of this chapter, a massage institute shall be defined as any place in which massage operators are employed to give treatment, but shall not include a hospital or sanitarium or any establishment which is otherwise regulated by law.

(2) “Massage operator.” For the purpose of this chapter, a massage operator shall be defined as a person who applies manual or mechanical massage or similar treatment to the human body, but shall not include a doctor or nurse or any type of person who is otherwise regulated by law.

(3) “Bath house.” For the purpose of this chapter, a bath house shall be defined as any place in which persons are employed to administer baths to

others, but shall not include a hospital or sanitarium or any establishment which is otherwise regulated by law.

(4) "Bath." For the purpose of this chapter, a bath shall be defined as a washing, soaking, or cleansing of all or part of the human body.

(5) "Bather." For the purpose of this chapter, a bather shall be defined as one employed to administer a bath to the human body of another at a bath house, except that it shall not include a doctor, nurse, or any other person who is otherwise regulated by law. (1981 Code, § 5-702)

**9-603. Permit required, etc.** No person shall act as a massage operator or bather or conduct a massage institute or bath house or other similar business establishment in the City of Millington without first obtaining a permit as hereinafter provided from the chief of police.

The annual permit fee for each massage institute or bath house shall be five dollars (\$5.00) and for each operator two dollars (\$2.00) and the permits so issued shall be good for a period of twelve (12) months from the date of their issuance. (1981 Code, § 5-703)

**9-604. Application for permit.** Application for permit issued hereunder shall be made upon blank forms prepared and made available by the chief of police, and shall state:

(1) The full name, residence, present and previous occupations of the applicant.

(2) Whether the person signing the application is a citizen of the United States.

(3) A specific description of the location of the principal place of business of the applicant.

(4) The number of years of experience the applicant has as a massage operator or bather or the operator of a massage institute or bath house or in related fields.

(5) A complete list of the names and residence addresses of all employees in the business and the name and residence addresses of the manager or other person principally in charge of the operation of the business.

(6) Authorization for the city, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit.

(7) The names and addresses of three adults who will serve as character references. These references must be persons other than relatives and business associates.

(8) Written declaration by the applicant, under penalty of perjury, that the foregoing information contained in the application is true and correct, said declaration being duly dated and signed in the city. (1981 Code, § 5-704)

**9-605. Investigation of applicant.** Within ten (10) days after receipt of an application as provided for herein, the chief of police shall cause an investigation to be made of the applicant and his proposed operation. (1981 Code, § 5-705)

**9-606. Standards for issuance of permit.** The chief of police shall issue a permit thereunder when he finds:

(1) That applicant's application for a permit has been properly submitted;

(2) That applicant has never been convicted of a felony or any crime involving sexual misbehavior;

(3) That the operation, as proposed by the applicant, if permitted, would comply with all applicable laws, including but not limited to, the city's building, zoning and health regulations;

(4) That the applicant has not knowingly made any false, misleading, or fraudulent statement of fact in the permit application or in any document required by the city in conjunction therewith;

(5) That the applicant has not had a similar permit or license denied, revoked, or suspended for any of the above causes by the city, or any other state or local agency;

(6) That the applicant is a natural born or fully naturalized citizen of the United States. (1981 Code, § 5-706)

**9-607. Standards applicable to employees.** All employees of any person having or applying for a permit hereunder shall meet the requirements of never having been convicted of any felony or any crime involving sexual misbehavior. It shall be further required that any person having a permit hereunder shall keep on file with the police department a list of those persons currently employed by him in his massage institute or bath house. (1981 Code, § 5-707)

**9-608. Conditions of permit.** The following conditions shall apply to all permits:

(1) Transferability. Permits issued hereunder shall not be transferable.

(2) Revocation and suspension. Permits issued hereunder shall be subject to revocation or suspension by the chief of police for violation of any of the provisions of this chapter, or of the rules and regulations issued hereunder, or misconduct by the permittee or his employees, after reasonable notice and an opportunity to be heard had been given the permittee. The chief of police shall immediately notify any permittee in writing of such suspension or revocation.

(3) Renewal of permit. Each permit shall expire on July 1 of each year, except that a first permit shall expire on the second next ensuing July 1. Permits may be renewed. In processing a renewal application, the police chief

shall consider all the elements and standards contained herein in determining whether or not to renew a permit. An unrevoked permit may be renewed for one year on written application to the police chief made at least one month before its expiration date and accompanied by the required fee, said renewal fee being the same amount as the original permit fee. (1981 Code, § 5-708)

**9-609. Appeal of denial.** Any applicant who was denied a permit hereunder may request a hearing with appropriate police department officials to discuss said denial, that hearing to be held within ten (10) days of the denial. Within ten (10) days after that hearing, an applicant may seek further relief by appealing said denial to the board of mayor and aldermen of the City of Millington. Notice of appeals from said police department hearings to the board of mayor and aldermen of the City of Millington must be filed within said ten (10) days; otherwise the action of the police department shall be deemed and considered to be final. (1981 Code, § 5-709)

**9-610. Health regulations.** (1) All persons employed at a bath house shall be required to obtain health cards from the department of health and sanitation; said cards to be renewed annually.

(2) The department of health and sanitation shall conduct sanitary surveys and inspections of all massage institutes and bath houses frequently enough to maintain the health standards applied to other business establishments within the city, and in no instance shall these surveys and inspections be conducted less frequently than four (4) times a year.

(3) The fee charged by the department of health and sanitation for said sanitary surveys and inspections shall be in accordance with the fee schedule set by the health department and in no instance shall said fee exceed the current fee charged similar business establishments within the city. (1981 Code, § 5-710)

**9-611. Hours of operation.** It shall be unlawful for massage institutes and bath houses to be open between the hours of 10:00 p.M. and 6:00 a.M. (1981 Code, § 5-711)

**9-612. Clothing regulations.** Employees of massage institutes and bath houses and customers thereof shall at all times while inside said massage institutes or bath houses wear sufficient opaque clothing to fully cover the genitalia and buttocks. If such person be a female, she shall at all times while inside said massage institute or bath house wear sufficient opaque clothing to fully cover the breasts, and in no event shall the clothing of said employees be any less than that amount necessary to be deemed to be in accordance with prevailing community standards for morals and decency in dress. (1981 Code, § 5-712)



**9-613. Method of operation.** (1) It shall be unlawful for an employee of any massage institute or bath house to administer massages or baths in any room, cubicle, or area in which more than three-fourths (3/4) of the sides are enclosed by walls, partitions, curtains or any other opaque object.

(2) It shall be unlawful for an employee of any massage institute or bath house to massage or bathe, while inside said massage institute or bath house, the genitalia of another. (1981 Code, § 5-713)

**9-614. Keeping of records.** Every person who operates a massage institute, bath house, or other similar business shall at all times keep an appointment book in which the name of each and every patron shall be entered, together with the time, date, and place of service, and the service provided. Such appointment book shall be available at all times for inspection by the police chief or his authorized representatives.

Every person who practices or provides any massage service, bath service, or other similar service at any location other than the principal place of business of the business establishment, including but not limited to any motel or hotel, must first give notice of his or her presence on the premises at that location and fully identify himself or herself and the patron upon whom the person intends to practice or provide a massage, bath, or other similar service to the owner, manager or person in charge of that location before rendering any service. This provision shall be deemed complied with where the location is a motel or hotel by giving such notice and identification to the person in charge of the registration desk of such motel or hotel. (1981 Code, § 5-714)

**9-615. Advertising.** No person shall publish or distribute, or cause to be published or distributed, any advertising matter or business identification card that states or depicts any portion of the human body that would reasonably suggest to prospective patrons that any service is available other than a massage, bath, or other similar service. (1981 Code, § 5-715)

**9-616. Supervision.** A permittee shall have the premises supervised at all times when open for business. The permittee shall personally supervise the business, and shall not violate or permit others to violate any applicable provision of this chapter. The violation of any such provision by any agent or employee of the permittee shall constitute a violation by the permittee. (1981 Code, § 5-716)

**9-617. Persons under age eighteen prohibited on premises.** No person shall permit any person under the age of eighteen years to come or remain on the premises of any business establishment regulated by this chapter, as employee, or patron, unless such person is on the premises on lawful business. (1981 Code, § 5-717)

**9-618. Alcoholic beverages prohibited on premises.** No person shall sell, give, dispense, provide or keep or cause to be sold, given, dispensed, provided or kept any alcoholic beverage on the premises of any business establishment regulated by this chapter. (1981 Code, § 5-718)

**9-619. Inspection required.** The police chief or his authorized representatives shall from time to time make inspection of each business establishment regulated by this chapter for the purposes of determining that the provisions of this chapter are fully complied with. (1981 Code, § 5-719)

**9-620. Rules and regulations of the chief of police.** The chief of police shall have the authority to enact and enforce reasonable rules and regulations for the operation of massage institutes and bath houses in the interest of public health, safety, morals, and welfare and to effectuate the general purpose of this chapter. (1981 Code, § 5-720)

**9-621. Application of chapter to existing businesses.** The provisions of this chapter shall be applicable to all persons and businesses described herein whether the herein-described activities were established before or after the effective date of this chapter. (1981 Code, § 5-721)

**9-622. Violations.** Any person who shall violate any action of this chapter shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not more than fifty dollars. Each day's continuance of a violation shall be considered a separate offense. (1981 Code, § 5-722, modified)

## CHAPTER 7

### REGULATION OF TOWING SERVICES, ETC.

#### SECTION

- 9-701. Compliance and definitions.
- 9-702. Driving wrecker to scene of accident prohibited; exception.
- 9-703. Soliciting wrecker business at scene of accident prohibited; presence at scene as evidence of violation.
- 9-704. Response to private calls permitted.
- 9-705. License required; storage facilities; expiration date; trade name registration.
- 9-706. License application; hearing renewal.
- 9-707. Fee.
- 9-708. License issuance.
- 9-709. License--display; duplicates.
- 9-710. License--refusal to issue or renew.
- 9-711. License--suspension.
- 9-712. License--revocation.
- 9-713. License--appeal from refusal to issue or renew; from decision to revoke.
- 9-714. Powers and duties of the city clerk.
- 9-715. Wrecker rotation list procedure.
- 9-716. Requirements and operating procedures for operators participating on the wrecker rotation list.
- 9-717. City-owned wreckers.
- 9-718. Fire extinguishers.
- 9-719. City fee.
- 9-720. Violations.

**9-701. Compliance and definitions.** No wrecker or towing operator shall engage in the business of towing, removing wrecked or disabled vehicles within the City of Millington without complying with the provisions of this chapter. As used in this chapter, the following terms will have the following meanings:

(1) "Wrecker or towing operator" means any person, firm or corporation engaged in the business of offering towing services by use of a wrecker.

(2) "Wrecker" means a vehicle designed to be used primarily for removing wrecked or disabled vehicles upon any street.

(3) "Police dispatcher" means the person in the police department assigned by the chief of police to handle calls for wrecker service.

(4) "Towing services" means the towing or removing of wrecked or disabled vehicles from the place where they are disabled to another location. (1981 Code, § 5-801, as replaced by Ord. #2013-23, Jan. 2014)

**9-702. Driving wrecker to scene of accident prohibited; exception.**

No person may drive a wrecker, licensed or unlicensed, to the scene of an accident on the streets of the city unless the person has been called to the scene by the police dispatcher or by the owner or operator of a vehicle disabled in the accident. (1981 Code, § 5-802, as replaced by Ord. #2013-23, Jan. 2014)

**9-703. Soliciting wrecker business at scene of accident prohibited; presence at scene as evidence of violation.**

No person may solicit in any manner, directly or indirectly, on the streets of the city, the business of towing a vehicle which is wrecked or disabled on a street, regardless of whether the solicitation is for the purpose of soliciting the business of towing, removing, repairing, wrecking, storing, trading, or purchasing the vehicle. Proof of the presence of a person in the wrecker business or the presence of a wrecker or motor vehicle owned or operated by a person engaged in the wrecker business, either as owner, operator, employee, or agent, on a street in the city, stopped at the scene of an accident which was not involved in the accident and whose driver or occupants were not witnesses to the accident and which has not been called to the scene by the police dispatcher or by the owner or operator of a vehicle involved in the accident, within one hour after the happening of an accident, is prima facie evidence of a solicitation in violation of this section. (1981 Code, § 5-803, as replaced by Ord. #2013-23, Jan. 2014)

**9-704. Response to private calls permitted.**

A licensed wrecker or towing operator may respond within the city to a private request for wrecker service, when a wreck or collision on a street is involved or to a disabled vehicle not involved in a wreck. (1981 Code, § 5-804, as replaced by Ord. #2013-23, Jan. 2014)

**9-705. License required; storage facilities; expiration date; trade name registration.**

(1) No wrecker or towing operator shall engage in the business of towing services within the city limits without first obtaining a license from the city clerk, provided that before said wrecker or towing operator shall be entitled to a license, the said operator must obtain a certificate of occupancy and use from the City of Millington for his place of business; provided, however, that, wrecker or towing operators located in the county, outside the city limits of Millington, who are licensed to operate in the county, pursuant to the provisions of chapter 189 of the Private Acts of 1961, may apply for a license to operate in the city and such license shall be issued without the necessity of obtaining a certificate of occupancy and use from the City of Millington for his place of business as set forth above, providing they meet all other qualifications for a license as set forth in this chapter and comply with all rules and regulations promulgated pursuant to this chapter; provided further that only those wreckers and towing operators licensed to operate in the city who have been issued certificates of occupancy and use of the City of Millington

for their places of business shall be eligible to be included on any rotation list maintained by the Millington Police Department for use in those instances where wrecker and towing operators are directed to the scene of a wreck by the police dispatcher.

(2) No wrecker or towing operator shall hereafter be eligible to obtain a license as a wrecker or towing operator unless such operator shall have facilities for storage at his place of business where his wreckers are to be operated, sufficient for the storing of not less than twenty-five (25) disabled motor vehicles.

(3) Only one (1) license may be issued to each wrecker or towing operator. A license is not assignable or transferrable. Licenses expire on the 31st day of December of each year. The license issued authorizes the licensee and all its bona fide employees to engage in wrecker service.

(4) Each wrecker or towing operator shall register with the city the trade name of his wrecker company. (1981 Code, § 5-805, as replaced by Ord. #2013-23, Jan. 2014)

**9-706. License application; hearing renewal.** (1) A person desiring to engage in the business of towing service in the city shall file with the city clerk a written application upon a form provided for that purpose, which must be signed by the applicant or his authorized agent. The following information is required in the application:

- (a) Trade name, address, and telephone number of the wrecker business.
- (b) Number and types of wreckers to be operated.
- (c) Name, address, and telephone number of the owner of the business.
- (d) Location of the real estate parcels where the towed vehicle will be stored or taken to in the City of Millington.

(2) To be eligible for a license, an applicant must have a vehicle or vehicles that meet the requirements of this chapter, and the requirements of all applicable state laws and city ordinances. The applicant must also show that the applicant is capable of complying with this chapter and all applicable state laws and city ordinances.

(3) Investigation of applicant. The city clerk will request that the chief of police shall investigate or cause to be investigated each applicant under this chapter to determine whether the applicant qualifies to be issued a license. Such investigation will establish whether or not the wrecker owner/operator has the necessary facilities, equipment and insurance as required under this chapter, whether the owner/operator meets all other requirements of this chapter, and whether the owner/operator has been convicted of a felony within the last ten (10) years, which will disqualify such owner/operator from being included on the police services wrecker rotation call list. Every wrecker operator who desires to participate in the police services wrecker rotation call list shall be required to

operate wreckers from a permanent and established place of business in the City of Millington.

(4) Nothing in this chapter shall be deemed to give the city clerk authority to withhold a license because of any information or opinion as to whether there is a need for another licensee in the city.

(5) After reviewing the application and investigating the applicant, the city clerk shall, within thirty (30) days approve or deny the application based on his findings concerning applicant's compliance with this chapter. The chief of police shall send to the applicant and all licensees a written statement setting forth the reasons for the approval or denial of the application and the date of his action.

(6) An annual license renewal, applied for at least ten (10) days prior to expiration of the license, will be granted upon compliance with the provisions of this chapter. The city clerk shall cause notices to be sent to each licensee at least twenty (20) days prior to the expiration date, notifying each licensee of this provision.

(7) The city clerk may, at any time, require additional information of an applicant or licensee to clarify items on the application. (1981 Code, § 5-806, as replaced by Ord. #2013-23, Jan. 2014)

**9-707. Fee.** (1) When an application has been approved, the city clerk shall grant a license to the applicant upon the payment of an annual fee. The annual license fee shall be five dollars (\$5.00) for each towing car or wrecker unless application is made after July 1, in which event it shall be two dollars and fifty cents (\$2.50) for the remaining period of the year. In addition, a fee of one dollar (\$1.00) shall be paid to the city clerk for the handling and issuance of the license.

(2) The fee for issuing a duplicate license for one lost, destroyed or mutilated is two dollars (\$2.00).

(3) The fees are payable upon issuance of a license. No refund of fees may be made. (1981 Code, § 5-807, as replaced by Ord. #2013-23, Jan. 2014)

**9-708. License issuance.** A license shall be issued to applicants complying with the provisions of this chapter, and a wrecker sticker shall be issued to each wrecker of licensee upon inspection and approval of such. The wrecker inspection sticker must be affixed securely to the inside upper left-hand corner of the windshield of the inspected wrecker. No license authorizing participation in the wrecker service and no inspection sticker approving the operation of a wrecker on the streets of the city shall be issued unless the following requirements are met:

(1) The applicant shall submit every wrecker proposed to be used in the service for inspection, and each wrecker, other than a heavy duty wrecker, must comply with the following minimum requirements:

(a) Each wrecker shall be not less than one ton in size and be equipped with booster brakes.

(b) Each wrecker shall be equipped with a power-operated winch, winch line with a factory-rated lifting capacity, or a city tested capacity, of not less than eight thousand (8,000) pounds, single line capacity.

(c) Each wrecker shall carry, as standard equipment, tow bar, towing dollies, safety chains, a fire extinguisher, wrecking bar, broom, shovel and flares.

(d) Each wrecker and all of its equipment shall be in a safe and good working condition.

(2) Every heavy duty wrecker must comply with the requirements in subsection (1) of this section, except:

(a) Each heavy duty wrecker must be not less than two and one-half (2 1/2) tons in size.

(b) Each heavy duty wrecker shall be equipped with a power-operated winch, winch line with a factory-rated lifting capacity, or a city tested capacity, of not less than thirty-two thousand (32,000) pounds, single or double line capacity.

(3) An applicant must show to the city clerk insurability for public liability as provided in this section. If issuance of a license is approved, an applicant shall procure, prior to issuance of the license, and keep in full force and effect, a policy of public liability insurance issued by a casualty insurance company authorized to do business in the state and in the standard form approved by the board of insurance commissioners of the state. Before the city clerk may issue a license, the applicant must deposit with the city clerk a certificate of an underwriter that the applicant has in force a policy or policies of insurance as required by this section. The coverage provisions must insure the public from loss or damage that may arise to any person or property by reason of the operation of a wrecker of the applicant and provide that the amount of recovery on each wrecker shall be in limits of not less than the following sums:

(a) A garage keeper's legal liability policy covering fire, theft, explosion and collision in the following amounts: fire, theft and explosion, all in the minimum amount of two hundred thousand dollars (\$200,000.00); collision, subject to a deduction of no more than five hundred dollars (\$500.00), with each accident being a separate claim.

(b) A garage liability policy covering the operation of applicant's own business, equipment or vehicles in the amount of one million dollars (\$1,000,000.00) combined single limits to cover bodily injury, including death, and property damage.

(4) The policy mentioned in subsection (c) of this section shall contain an endorsement providing for thirty (30) days' prior notice to the city clerk in the event of any material change or cancellation of the policy.

(5) The owner or operator of a wrecker shall have inscribed on each side thereof, in letters not less than three inches (3") in height, the name and address of the licensee. (1981 Code, § 5-808, as replaced by Ord. #2013-23, Jan. 2014)

**9-709. License--display; duplicates.** (1) Each license issued pursuant to this chapter must be posted and kept in a conspicuous place in the wrecker establishment.

(2) A duplicate license may be issued for one lost, destroyed or mutilated upon application on a form prescribed by the city clerk. Each duplicate license will have the word "duplicate" stamped across its face and will bear the same number as the one it replaces.

(3) Every licensee shall, within ten (10) days after a partial change of control in ownership, or of management, or of change of address or trade name, notify the city clerk and chief of police of such changes. (1981 Code, § 5-809, as replaced by Ord. #2013-23, Jan. 2014)

**9-710. License--refusal to issue or renew.** The city clerk shall refuse to approve issuance or renewal of a wrecker company license for one (1) or more of the following reasons:

(1) The making of any false statement as to a material matter in an application for a license, or license renewal, or in a hearing concerning the license.

(2) Violation by the licensee, applicant or an employee of licensee or applicant of a provision of this chapter.

(3) Revocation of a license, pursuant to this chapter, of the applicant, or any proprietor, partner or corporate officer of the applicant, within eighteen (18) months preceding application.

(4) Use by the licensee of a trade name for his wrecker company other than the one registered with the city clerk.

(5) Suspension of the licensee's wrecker license three (3) times within twelve (12) months. (1981 Code, § 5-810, as replaced by Ord. #2013-23, Jan. 2014)

**9-711. License--suspension.** The city manager may suspend wrecker license for a period not to exceed five (5) days for one (1) or more of the following reasons:

(1) Failure of the licensee to maintain his wrecker or equipment in a good and safe working condition.

(2) Violation by the licensee or an employee of licensee of a provision of this chapter.

(3) Violation by a wrecker driver of a provision of the motor vehicle or traffic laws of this state or city while in the scope of his employment in the wrecker service. (1981 Code, § 5-811, as replaced by Ord. #2013-23, Jan. 2014)



**9-712. License--revocation.** The city manager shall revoke wrecker license, upon notice and hearing, for one or more of the following reasons:

- (1) The making of any false statement as to a material matter in an application for a license, license renewal or in a hearing concerning the license.
- (2) Repeated violations by the licensee or an employee of licensee of provisions of this chapter.
- (3) Use by the licensee of a trade name for his wrecker company other than the one registered with the city clerk.
- (4) Suspension of the licensee's wrecker company license three (3) times within twelve (12) months. (1981 Code, § 5-812, as replaced by Ord. #2013-23, Jan. 2014)

**9-713. License--appeal from refusal to issue or renew; from decision to revoke.** Any action refusing to issue, change or renew a license hereunder is final unless the applicant or licensee, within ten (10) days after the date of the action, files a written appeal with the city clerk to the board of mayor and aldermen setting forth specific grounds for the appeal. The board of mayor and aldermen shall, within thirty (30) days, grant a hearing to consider the action. The board of mayor and aldermen has authority to sustain, reverse or modify the action appealed. The decision of the board of mayor and aldermen is final. (1981 Code, § 5-813, as replaced by Ord. #2013-23, Jan. 2014)

**9-714. Powers and duties of the city clerk.** In addition to the powers and duties elsewhere prescribed in this chapter, the city clerk is authorized to:

- (1) Administer and enforce all provisions of this chapter.
- (2) Keep records of all licenses issued, suspended or revoked.
- (3) Keep records of all authorized wreckers.
- (4) Conduct, when appropriate, periodic investigations of wrecker companies throughout the city.
- (5) The city clerk may promulgate rules and regulations describing procedures to be implemented under this chapter and to be observed by licensed wrecker or towing operators. Such rules and regulations shall be submitted to the board of mayor and aldermen for approval. The city clerk shall have authority to change such rules and regulations whenever, in his judgment, the interest of the city requires such change or revision, such change or revision to be submitted to and approved by the board of mayor and aldermen before becoming effective. The violation of such rules and regulations may be grounds for suspension or revocation of the wrecker or towing license as provided in this chapter. (1981 Code, § 5-814, as replaced by Ord. #2013-23, Jan. 2014)

**9-715. Wrecker rotation list procedure.** (1) The city manager shall establish a wrecker rotation list procedure, which shall be made in a manner calculated to best serve the public. This procedure shall be part of the rules and regulations authorized by § 9-714(5).

(2) When a wrecker is needed, the investigating police officer will call police department headquarters. On receiving the first call, the dispatcher at headquarters must call the first wrecker company on the rotation list to remove the vehicle to the place designated by the city manager.

(3) In any emergency situation in which undue delay would be caused by relying only on the wrecker on duty, another licensed wrecker may be called. (1981 Code, § 5-815, as replaced by Ord. #2013-23, Jan. 2014)

**9-716. Requirements and operating procedures for operators participating on the wrecker rotation list.** (1) Any wrecker or towing operator participating on the wrecker rotation list shall comply with the following requirements and procedures:

(a) Maintain twenty-four (24) hour wrecker service and operate an electronic paging device on a twenty-four (24) hour basis.

(b) Arrive at the accident within a reasonable time after having been notified to do so by the police department, such response time not to exceed thirty (30) minutes.

(c) Deliver, in every instance, the wrecked or disabled vehicle to a location designated by the chief of police, the police dispatcher or the owner or driver of the vehicle.

(d) Report to the city clerk all changes in wreckers and equipment used in the licensee's wrecker service and render all additional vehicles for inspection by the clerk. A wrecker without a valid wrecker inspection sticker is not allowed to participate in the wrecker rotation list.

(e) Employ wrecker drivers who are not habitual violators of the traffic laws.

(f) Completely remove from the site of an accident all resulting wreckage or debris, including all broken glass, but excluding truck or vehicle cargoes, before leaving the site.

(g) Not permit the use of his wrecker by another licensee.

(h) Store any towed vehicle within the City of Millington to a secure facility located in the City of Millington, Tennessee. After demand for retrieval by a vehicle owner, the wrecker service shall make the vehicle available to the vehicle owner between 8:00 A.M. and 5:00 P.M. Monday through Friday and between 8:00 A.M. to 12:00 P.M. on Saturday.

(2) Nothing in this chapter shall be construed to permit operation of a wrecker as an authorized emergency vehicle. (1981 Code, § 5-816, as replaced by Ord. #2013-23, Jan. 2014)

**9-717. City-owned wreckers.** Nothing in this chapter shall prevent the chief of police or dispatcher from calling city-owned wreckers to the scene of an accident to render emergency wrecker service in lieu of calling a wrecker from

the wrecker rotation list. (1981 Code, § 5-817, as replaced by Ord. #2013-23, Jan. 2014)

**9-718. Fire extinguishers.** Each vehicle used to tow other vehicles shall have on hand at least one fire extinguisher of a type recommended by the manufacturer to put out gasoline fires and fires in automobiles. At least one (1) such fire extinguisher shall be in the garage or other place where vehicles used for towing are stored. Such fire extinguisher shall be in plain sight in an easily accessible location and shall be kept charged. Each employee shall be informed of the location of the fire extinguisher and of the manufacturer's instructions for using it. (1981 Code, § 5-818, as replaced by Ord. #2013-23, Jan. 2014)

**9-719. City fee.** The mayor and board of aldermen, after recommendation of the city manager set a fee for towing to the city lot by resolution. (1981 Code, § 5-819, as replaced by Ord. #2013-23, Jan. 2014)

**9-720. Violations.** Any person, firm, or corporation violating any of the provisions of this chapter, or who shall engage in business as a wrecker or towing car operator without a license as herein provided, shall be guilty of a misdemeanor and shall be punished in accordance with the general penalty clause in this code. (as added by Ord. #2013-23, Jan. 2014)

## CHAPTER 8

CABLE TELEVISION

## SECTION

9-801. Approved fees.

**9-801. Approved fees.**

Basic Service	\$10.50
Basic & HBO	19.45
Basic Service & Cinemax	19.45
Basic & HBO & Cinemax	27.90
Basic & Disney	19.45
Basic & HBO & Disney	27.90
Basic & Cinemax & Disney	27.90
 Total Full Package	 \$35.85
 Additional sets with converter as primary service	 6.00
 Additional outlet without converter	 1.00
 Multi Dwelling Hotel/Motel Bulk Rate Basic Service + HBO + Cinemax + Disney	 28.00

Proposed One Time Charges

Primary Outlet (one set)	\$30.00 <sup>1</sup>
Additional outlet installed at same time as primary outlet	6.00
Upgrade	12.50
Long Converter Jumper (Converter remote from TV set)	4.50
Parental Key Lock	20.00
Relocate TV outlet	10.00
Additional outlet with or without converter after service has been installed (separate trip)	10.00
(1981 Code, § 5-901)	

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<sup>1</sup>50% discount on primary installation on initial turn on of the system.

**CHAPTER 9****FOOD ESTABLISHMENT SANITATION****SECTION**

- 9-901. Definitions.
- 9-902. Water supply.
- 9-903. Sewage disposal.
- 9-904. Plumbing.
- 9-905. Toilet facilities.
- 9-906. Storage and disposal of garbage and rubbish.
- 9-907. Insect and rodent control.
- 9-908. Hand-washing facilities.
- 9-909. Sanitary design, construction, and installation of equipment and utensils.
- 9-910. Cleanliness of equipment and utensils.
- 9-911. Health and disease control.
- 9-912. Cleanliness.
- 9-913. Floors, walls, and ceilings.
- 9-914. Lighting.
- 9-915. Ventilation.
- 9-916. Dressing rooms and lockers.
- 9-917. Food protection.
- 9-918. Permits.
- 9-919. Inspection of food service establishments.
- 9-920. Access to establishments.
- 9-921. Examination and condemnation of food.
- 9-922. Plan review of future construction.
- 9-923. Titles of sections.

**9-901. Definitions.** The following definitions shall apply in the interpretation and the enforcement of this chapter:

- (1) "Adulterated" shall mean the condition of a food
  - (a) If it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health;
  - (b) If it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by regulation, or in excess of such tolerance if one has been established;
  - (c) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption;
  - (d) If it has been processed, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(e) If it is in whole or in part the product of a diseased animal, or an animal which has died otherwise than by slaughter; or

(f) If its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health.

(2) "Approved" shall mean acceptable to the health authority, based on his determination as to conformance with appropriate standards and good public health practice.

(3) "Corrosion-resistance material" shall mean a material which maintains its original surface characteristics under prolonged influence of the food, cleaning compounds and sanitizing solutions which might contact it.

(4) "Easily cleanable" shall mean readily accessible and of such material and finish and so fabricated that residue may be completely removed by normal cleaning methods.

(5) "Employee" shall mean any person working in a food establishment who transports food or food containers, who engages in food preparation or service, or who comes in contact with any food utensils or equipment.

(6) "Equipment" shall mean all stoves, ranges, hoods, meat blocks, tables, counters, refrigerators, sinks, dishwashing machines, steam tables, and similar items other than utensils, used in the operation of food establishments.

(7) "Food" shall mean any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

(8) "Food service establishment" shall mean any bakery, restaurant, lunch stand, café, ice cream plant, public or private market, slaughterhouse, stall, store, storehouse, cold storage plant, cafeteria, tea room, sandwich shop, soda fountain, tavern, lounge, nightclub, industrial feeding establishment; private, public or nonprofit organization or institution routinely serving food; catering kitchen, commissary, food processing plant, grocery, fish market, food storage warehouse, package goods food establishment, drive-in grocery store, or any other place in or from which meat, fish, oysters, birds, fowl, vegetables, fruit, milk, ice cream, ices, beverages or any other food intended for consumption by human beings is manufactured, kept, stored, or offered for sale, disposition, or distribution as food for human beings, with or without charge.

(8)(a) "Temporary food service establishment" shall mean any food service establishment which operates at a fixed location for a period of time not exceeding thirty (30) days.

(9) "Health authority" shall mean the health authority of the County of Shelby, and the Director of the Memphis and Shelby County Health Department or his authorized representative or the Director of Health and Sanitation of the City of Millington.

(10) "Kitchenware" shall mean all multi-use utensils other than tableware used in the storage, preparation, conveying or serving of food.

(11) "Labeling" shall mean the marking, designation, or descriptive device on food containers and/or articles of food denoting the name of the product, ingredients thereof; name and address of manufacturer and/or distributor (if name and address of distributor is utilized then the permit number and the permitting agency shall appear on the product); and any other information the health authority may so designate.

(12) "Misbranded" shall mean the presence of any written, printed or graphic matter upon or accompanying food or containers of food, which is false or misleading, or which violates any applicable state or local labeling requirements.

(13) "Perishable food" is any food of such type or in such condition as may spoil.

(14) "Potentially hazardous food" is any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

(15) "Safe temperatures," as applied to potentially hazardous food, shall mean temperatures of 45° F. or below, and 140° F. or above.

(16) "Sanitize" shall mean effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the health authority as being effective in destroying microorganisms, including pathogens.

(17) "Single-service articles" shall mean cups, containers, lids or closures; plates, knives, forks, spoons, stirrers, paddles; straws, place mats, napkins, doilies, wrapping materials; and all similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic, synthetic, or other readily destructible materials, and which are intended by the manufacturer and generally recognized by the public as for one usage only, then to be discarded.

(18) "Tableware" shall mean all multi-use eating and drinking utensils, including flatware (knives, forks and spoons).

(19) "Utensils" shall mean any tableware and kitchen ware used in the storage, preparation, conveying or serving of food.

(20) "Wholesome" shall mean in sound condition, clean, free from adulteration, and otherwise suitable for use as human food. (1981 Code, § 8-601)

**9-902. Water supply.** The water supply shall be adequate, of a safe, sanitary quality and from an approved source. Hot and cold running water shall be provided in all areas where food is prepared; or where equipment, utensils, or containers are washed. (1981 Code, § 8-602)

**9-903. Sewage disposal.** All sewage shall be disposed of in a public sewerage system, or in other manner approved by the health authority. (1981 Code, § 8-603)

**9-904. Plumbing.** Plumbing shall comply with the plumbing code adopted in title 12. (1981 Code, § 8-604)

**9-905. Toilet facilities.** Each food service establishment shall be provided with adequate, conveniently located toilet facilities. Separate toilets shall be provided for each sex. Toilet facilities shall be located so as the public cannot enter through food processing, food preparation, storage or warehousing area. Vestibules shall be provided. Doors to toilet rooms shall be self-closing. Toilet rooms shall be ventilated and well-lighted. Fixtures shall be kept clean and in good repair. (1981 Code, § 8-605)

**9-906. Storage and disposal of garbage and rubbish.** All garbage and rubbish containing food wastes shall be kept in approved containers with tight-fitting lids. Trash and paper shall be kept in covered containers. (1981 Code, § 8-606)

**9-907. Insect and rodent control.** Effective measures shall be taken to protect against the entrance into the establishment and the breeding or presence on the premises of vermin. (1981 Code, § 8-607)

**9-908. Hand-washing facilities.** Each food service establishment shall be provided with adequate and conveniently located hand-washing facilities for its employees and patrons. Lavatories shall be equipped with hot and cold running water. Soap and individual hand towels or other approved hand-drying device shall be used. Tobacco in any form shall not be used in the preparation of service carriers. After smoking, all food-handling employees shall wash their hands. (1981 Code, § 8-608)

**9-909. Sanitary design, construction, and installation of equipment and utensils.** All equipment and utensils shall be of such material as to be smooth, easily cleanable, and shall be kept in good repair. Food-contact surfaces shall be non-toxic, corrosion resistant, and shall conform to National Sanitation Foundation criteria. (1981 Code, § 8-609)

**9-910. Cleanliness of equipment and utensils.** All eating and drinking utensils shall be thoroughly cleaned and sanitized after each usage. All utensils and food-contact surfaces of equipment used in preparation, service, display or storage of food shall be cleaned and sanitized prior to each use. After cleaning of such utensils and equipment, they shall be stored as to be protected from contamination. Food-service establishments which do not have adequate



and effective facilities for cleaning and sanitizing utensils shall use single-service articles. (1981 Code, § 8-610)

**9-911. Health and disease control.** No person while infected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in any area of a food-service establishment in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms, or transmitting disease to other individuals. All persons working in any food establishment shall have a food handlers' certificate, in date, completely filled out and signed by a registered, licensed physician in the State of Tennessee. (1981 Code, § 8-611)

**9-912. Cleanliness.** All employees shall maintain a high degree of cleanliness and conform to hygienic practices while on duty. No employee shall resume work after visiting the toilet room without first washing his/her hands. Hairnets or other approved hair restraints shall be used by employees engaged in the preparation and service of food. (1981 Code, § 8-612)

**9-913. Floors, walls, and ceilings.** Floors in toilet room, walk-in refrigerators, food preparation areas shall be of smooth, nonabsorbant materials and shall be easily cleanable. All floors shall be kept clean and in good repair. Flood drains shall be provided where floors are subjected to flooding type cleaning or where normal operations release or discharge water or other liquid waste on floors. The walls and ceilings of all rooms shall be kept clean and in good repair. Walls and ceilings in food preparation areas shall be of material that is smooth and can be easily cleaned. (1981 Code, § 8-613)

**9-914. Lighting.** All areas of food establishments shall be well lighted. (1981 Code, § 8-614)

**9-915. Ventilation.** All rooms in which food is prepared, stored or served shall be well ventilated. (1981 Code, § 8-615)

**9-916. Dressing rooms and lockers.** All dressing rooms and lockers shall be kept clean and orderly. (1981 Code, § 8-616)

**9-917. Food protection.** All food while being stored, prepared, displayed, served or sold at food-service establishments, or during transportation between such establishments shall be protected from contamination. All perishable food shall be stored at such temperatures as will protect against spoilage. All potentially hazardous food shall be maintained at safe temperatures (45° F. or below, or 140° F. or above), except during necessary

periods of preparation and service, not to exceed a total elapsed time between these temperatures of more than three (3) hours. (1981 Code, § 8-617)

**9-918. Permits.** It shall be unlawful for any person to operate a food-service establishment within the City of Millington who does not possess a valid permit issued to him by the health authority. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain a permit. Permits shall not be transferable from one person or place to another person or place. (1981 Code, § 8-618)

**9-919. Inspection of food service establishments.** At least once every six (6) months, the health authority shall inspect each food-service establishment located in the City of Millington or its police jurisdiction and shall make as many additional inspections and reinspections as are necessary for the enforcement of this chapter. (1981 Code, § 8-619)

**9-920. Access to establishments.** The health authority shall be permitted to enter, at any reasonable time, any food-service establishment within the City of Millington for the purpose of making inspections to determine compliance with this chapter. (1981 Code, § 8-620)

**9-921. Examination and condemnation of food.** Food may be examined or sampled by the health authority as often as may be necessary to determine freedom from adulteration or misbranding. Proprietors of food establishments shall furnish the health authority, upon request, food samples without charge for laboratory analysis and examination. (1981 Code, § 8-621)

**9-922. Plan review of future construction.** When a food-service establishment is hereafter constructed or extensively remodeled, or when existing structure is converted for use as a food-service establishment, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangement, and construction materials of work area, and the location, size, and the type of fixed equipment and facilities, shall be submitted to the health authority for approval before work is begun. (1981 Code, § 8-622)

**9-923. Titles of sections.** It is hereby expressly declared and recognized that the titles of sections appearing herein are not part of this chapter, and are not intended to determine or restrict the meaning of its provisions. (1981 Code, § 8-623)

## CHAPTER 10

### TATTOO REGULATION

#### SECTION

9-1001. Definitions.

9-1002. Application.

9-1003. Certificate of sanitation.

9-1004. Requirements for certificate of sanitation.

9-1005. Minimum operating standards.

9-1006. Penalties.

**9-1001. Definitions.** The following definitions shall apply to the interpretation and enforcement of this chapter:

(1) "Tattoo or tattooing" - to mark or cover the skin by subcutaneous introduction by sticking in of nontoxic dyes or pigments so as to form indelible marks or figures, or by the production of scars.

(2) "Tattoo artist" - one who engages in tattooing.

(3) "Director" - director of the department of health and sanitation as established and appointed pursuant to Ordinance No. 1955-3, and as codified in § 20-202 of this code.

(4) "Certificate of sanitation" - that certificate to be issued by the director. (1981 Code, § 8-801)

**9-1002. Application.** Any person desiring to engage in tattooing shall submit an application to the director of the department of health and sanitation on a form prescribed by the Director giving the following information:

(1) Name, age, and address.

(2) Address of the proposed place of business.

(3) Date of admission to practice medicine in the State of Tennessee.

(4) Certified results of a chest x-ray, and a Wasserman or other acceptable venereal test, each made within thirty (30) days of the application date.

(5) A brief statement of the applicant's experience in the art of tattooing. (1981 Code, § 8-802)

**9-1003. Certificate of sanitation.** No person shall operate a tattooing business or shop unless or until such person has received a certificate of sanitation from the director of the department of health and sanitation of the City of Millington. (1981 Code, § 8-803)

**9-1004. Requirements for certificate of sanitation.** The following requirements for a tattooing shop must be complied with in order to qualify and hold a certificate of sanitation.

(1) The shop shall be located in a permanent building so constructed as to prevent the contamination of the work area by dust from the street or sidewalk.

(2) The shop shall be maintained in a sanitary and antiseptic condition.

(3) All walls, ceilings, and floors shall be smooth and easily cleaned. Walls and ceilings are to be painted a light color, and shall be kept clean and free from dust and debris. The floor shall be swept and mopped daily. Floors, walls, and ceilings shall not be swept or cleaned while tattooing is in operation.

(4) Adequate light and ventilation must be provided.

(5) Each tattooing shop shall contain a sink for the exclusive use of the tattoo artist to wash his hands and prepare the customers for tattooing. The sink shall be provided with adequate hot and cold running water. There shall also be available at the sink approved soap, clean individual towels, and refuse containers.

(6) Adequate toilet, urinal, and hand-washing facilities shall be available on the premises for the use of customers and the tattoo artist. Toilets, urinals, and hand-washing facilities shall be maintained in a sanitary and antiseptic condition at all times.

(7) An adequate number of work tables shall be provided for each tattoo artist. The surface of all work tables shall be constructed of metal or other material which is smooth, light-colored, non-absorbent, corrosive resistant, and easily sanitized.

(8) The shop shall be so arranged that the work tables shall be located at least ten (10) feet from observers or waiting customers, or such work tables shall be separated from observers or waiting customers by a panel or other barrier at least eight feet high. The panel may be constructed of glass, solid plastic, or similar wall material.

(9) Proper closed cabinets for the exclusive storage of instruments, dyes, pigments, carbons, stencils, and other paraphernalia used in the shop shall be provided for each tattoo artist.

(10) The tattooing shop shall have proper facilities for the disposition of waste materials.

(11) Each tattoo artist shall be provided with individual hand brushes and fingernail files.

(12) The holder of any certificate of sanitation shall not allow a tattoo artist to perform in his tattoo shop unless the tattoo artist is a duly licensed physician in the State of Tennessee.

(13) The holder of a certificate of sanitation shall maintain proper records for each patron, and shall include the date on which he was tattooed, his name, his signature, address, age, design of the tattoo and its location on his body, his branch of service, rate or rank and serial number if the customer is in the armed services, and the name of the tattoo artist who tattooed him. These records shall be entered in ink or indelible pencil in a bound book kept solely for

this purpose. This book shall be available at reasonable hours for examination by the Director or any law enforcement officer, and shall be preserved for at least two years from the date of the last entry therein.

(14) No individual shall be tattooed unless he or she is at least eighteen (18) years of age or unless there is presented written consent from at least one parent and/or his guardian, which consent shall be kept as other records required herein. (1981 Code, § 8-804)

**9-1005. Minimum operating standards.** Tattoo artists shall use standards of aseptic technique in tattooing, dressing and other operations, and all instruments, needles, stencils, dyes, pigments, dressing materials, razors, hand brushes, fingernail files, and other equipment used by the tattoo artist while tattooing shall be sterile, and the following minimum standards shall be observed at all times:

(1) No person except a duly licensed physician may practice tattooing.  
(2) It shall be unlawful to perform any tattooing on an individual who is under the influence of an intoxicating liquor.

(3) It shall be unlawful to perform any tattooing on an individual under the age of eighteen (18) years, without the written consent of one of his parents or his legal guardian. Such written consent shall be kept on file as provided for in these regulations.

(4) No person with any disease in a communicable form, or suspected of having such disease, shall engage in tattooing.

(5) Immediately after tattooing a patron, the tattoo artist shall advise the patron on the care of the tattoo and shall instruct the patron to consult a physician at the first sign of infection of the tattoo.

(6) Each tattoo artist must wear a clean outer garment.

(7) The stencil for transferring the design to the skin shall be thoroughly cleansed and rinsed in an approved germicidal solution for at least twenty minutes, and then it shall be dried with sterile gauze or in the air before each use.

(8) Only non-toxic dyes or pigments may be used. Single service or individual portions of dyes or pigments in clean sterilized individual containers, or single-service containers must be used for each patron. After tattooing, the remaining unused dye or pigment in the single-service or individual container must be discarded.

(9) A set of individual, single-service sterilized needles shall be used for each patron.

(10) Storage cabinets shall be maintained in a sanitary condition and all instruments, dyes, pigments, stencils and other paraphernalia shall, when not being used, be kept in them in an orderly arrangement.

(11) Work tables shall be kept clean and orderly. (1981 Code, § 8-805)

**9-1006. Penalties.** Any person who shall knowingly or wilfully make any false statements in his application, or shall violate any provisions of this chapter shall be guilty of a misdemeanor, and, upon conviction thereof shall be punished in accordance with the general penalty provisions for this code. Any conviction under this chapter shall be grounds for suspension or revocation of the certificate of sanitation. (1981 Code, § 8-806)

## CHAPTER 11

### SEXUALLY ORIENTED BUSINESSES

#### SECTION

- 9-1101. Purpose and findings.
- 9-1102. Classifications.
- 9-1103. Definitions.
- 9-1104. Sexually oriented business license required.
- 9-1105. Issuance of sexually oriented business license.
- 9-1106. Sexually oriented employee license required.
- 9-1107. Issuance of sexually oriented business employee license.
- 9-1108. Inspection.
- 9-1109. Expiration of license.
- 9-1110. Renewal.
- 9-1111. Suspension.
- 9-1112. Revocation.
- 9-1113. No transfer of license.
- 9-1114. Location of sexually oriented businesses.
- 9-1115. Additional regulations for sexually oriented motels.
- 9-1116. Additional regulations pertaining to exhibition of sexually explicit films, DVD's, videos or other similar reproductions or live entertainment in viewing rooms.
- 9-1117. Additional regulations for escort agencies.
- 9-1118. Additional regulations for nude model studios.
- 9-1119. Additional regulations concerning public nudity.
- 9-1120. Prohibition against children in a sexually oriented business.
- 9-1121. Hours of operation.
- 9-1122. Exemptions.
- 9-1123. Fees.
- 9-1124. Penalties and injunction.
- 9-1125. Procedure for suspension or revocation; appeal.

**9-1101. Purpose and findings.** (1) Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the city. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. It is not the intent nor effect of this ordinance to restrict or deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market, nor is it the intent or effect of this ordinance to condone or legitimize the distribution of obscene material.

(2) Findings. Based on evidence concerning the adverse secondary effects of sexually oriented uses on the community presented in hearings and in reports made available to the board of mayor and aldermen, 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); on studies in other communities including, but not limited to, Phoenix and Tucson, Arizona; Indianapolis, Indiana; Minneapolis and St. Paul, Minnesota; Amarillo, Austin, Beaumont and Houston, Texas; Newport News, Virginia; Garden Grove, Los Angeles and Whittier, California; Seattle, Washington; Oklahoma City, Oklahoma; and Cleveland, Ohio; and on findings from the Report of the Attorney General's Working Group on The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Report to: The American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses, ERG/Environmental Research Group (1996); the HIV/AIDS Surveillance Report of the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, No. 2005, 15; and United States HIV & AIDS Statistics by Year (last updated December 9, 2004, and based on the HIV/AIDS Surveillance Report 2001, 13 (no. 2)); and various reports on sexually transmitted diseases from the Memphis and Shelby County Health Department, the board of mayor and aldermen finds as follows:

(a) Sexually oriented business lend themselves to ancillary unlawful and unhealthy activities that are presently or may be uncontrolled by the operators of such 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 ordinance as sexually oriented theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(c) Sexual acts of various kinds occur at sexually oriented business, 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 sexually oriented theaters, sexually oriented arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

(f) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infections (HIV-AIDS), genital herpes, hepatitis B, 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 -- 600 in 1982, 253,448 through 1992, and 929,985 through 2003. As of the end of 2003, more than 500,000 people are estimated to have died of AIDS in the United States.

(h) As of December 31, 2003, there were 6,678 people reported to be living with HIV infection (not AIDS) in the state of Tennessee, and 5,817 people reported to be living with AIDS in this state. From 1992 through December 31, 2004, 6,531 people were reported to have been diagnosed with HIV in Shelby County, and through December 31, 2003, there were 3,653 people reported to have been diagnosed with AIDS in Shelby County. From 1999 through 2003, there were 1,835 reported deaths among people with HIV/AIDS 1,835 in the Shelby County area.

(i) In Shelby County for the year 2004, there were 245 reported cases of syphilis, 3,278 reported cases of gonorrhea, and 7,540 reported cases of chlamydia. As of 2000, the U.S. Centers for Disease Control and Prevention ranked Shelby County fourth among all U.S. counties in numbers of reported cases of syphilis and reported a Shelby County rate of 28.2 cases of syphilis per 100,000 of population.

(j) 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.

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

(l) 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.

(m) The findings noted in paragraphs letter (a) through (l) above raise substantial governmental concerns.

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

(o) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the owners and operators to see that sexually oriented businesses are run in

a manner consistent with the health, safety and welfare of their patrons and employees, as well as the citizens of the city.

(p) It is appropriate to require reasonable assurance that the licensee is the actual operator of the sexually oriented business, at all times fully in possession and control of the premises and activities occurring therein.

(q) Removal of doors on booths in sexually oriented businesses and requiring sufficient lighting on premises with such booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in sexually oriented theaters.

(r) 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.

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

(t) 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 ordinance is designed to prevent or who are likely to be witnesses to such activity.

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

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

(w) The general welfare, health, morals and safety of the citizens of the City of Millington will be promoted by the enactment of this ordinance. (as added by Ord. #2005-20, Aug. 2005)

**9-1102. Classifications.** Sexually oriented businesses are classified as follows:

- (1) Sexually oriented arcades;
- (2) Sexually oriented bookstores, sexually oriented novelty stores, or sexually oriented video stores;
- (3) Sexually oriented cabarets;

- (4) Sexually oriented motels;
  - (5) Sexually oriented motion pictures theaters;
  - (6) Sexually oriented theaters;
  - (7) Escort agencies;
  - (8) Nude model studios; and
  - (9) Sexual encounter centers.
- (as added by Ord. #2005-20, Aug. 2005)

**9-1103. Definitions.** For the purpose of this article, the words and phrases used herein shall have the following meanings, unless otherwise clearly indicated by the context:

(1) "Sexually oriented" means, when used in connection with or to modify any item described in this chapter, any such item that regularly depicts material that is distinguished or characterized by an emphasis on matter depicting or describing "specified sexual activities" or "specified anatomical areas" offered for purchase or rent by patrons on the premises of a commercial establishment.

(2) "Sexually oriented 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 any other kind of image-producing devices, in existence as of the effective date of this ordinance or created at any time thereafter, are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(3) "Sexually oriented bookstore or sexually oriented video store" means a commercial establishment which has a majority of its stock in trade or a majority of its floor space in one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, DVD's, video cassettes or video reproductions, slides or any other print or visual representations now in existence or created at any time hereafter, which depict or describe "specified sexual activities" and "specified anatomical areas" as these terms are defined in this section.

(4) "Sexually oriented novelty store" means an establishment having at least five (5%) percent of its retail sales area devoted to goods which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as these terms are defined in this section.

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

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

(6) "Sexually oriented motel" means a hotel, motel or similar commercial establishment which:

(a) Offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, DVD's, 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 sexually oriented type of photographic reproductions; or,

(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 sub-rent the room for a period of time that is less than ten (10) hours.

(7) "Sexually oriented motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, DVD's, video cassettes, slides, or any other similar photographic reproductions in existence as of the effective date of this ordinance or created at any time thereafter are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas," and where the showing of such films, motion pictures and other photographic reproductions is the majority of such theater's business;

(8) "Sexually oriented theater" means a theater, concert hall, auditorium, or similar commercial establishment which regularly as a majority of its business features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical area" or by "specified sexual activities."

(9) "Employee" means a person who performs any job or service on the premises of a sexually oriented business on a full-time or part-time basis, including as an independent contractor, 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 the delivery of goods to the premises.

(10) "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.

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

(12) "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 addition of any sexually oriented business to any other existing sexually oriented business; or,

(d) The relocation of any sexually oriented business.

(13) "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.

(14) "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, junior 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 transferrable 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; and,

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

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

(15) "Nudity or a state of nudity" means the appearance of bare human male or female genitals or pubic area, 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.

(16) "Person" means an individual, proprietorship, general or limited partnership, corporation, association, limited liability company or other legal entity.

(17) "Semi-nude or semi-nude condition" means a state of dress in which clothing covers no more than the genitals, pubic area and areola of the female breast.

(18) "Sexual encounter center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex, or sexual activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

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

(20) "Specified anatomical areas" means, but is not limited to, the following:

(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 area, buttocks or a female breast below a point immediately above the top of the areola.

(21) "Specified criminal activity" means any one or more of the following:

(a) Prostitution or promotion of prostitution; violation of the obscenity laws; sale, loan, distribution or exhibition of harmful material to one or more minors; promotion of performances including sexual conduct by a minor; use of minors for obscene purposes; possession or distribution of child pornography; public lewdness; indecent exposure; rape, aggravated rape, sexual battery, aggravated sexual battery, or any assault of a sexual nature; incest; sale or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of this state or other states or countries;

(b) For which:

(i) Less than two 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 years have elapsed since the date of conviction or the date of release from confinement for the conviction, which ever is the later date, if the conviction, is of a felony offense; or,

(iii) Less than five 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 or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

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

(a) Human genitals in a state of sexual stimulation or arousal;  
 (b) Acts of human masturbation, sexual intercourse or sodomy;  
 (c) Fondling or other erotic touching of human genitals, pubic area, buttock or female breast; or

(d) Excretory functions as part of or in connection with any of the activities set forth above; or

(e) Use of artificial devices or inanimate objects to depict any of the above-described activities.

(23) "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 ordinance takes effect.

(24) "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 constitutes 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. (as added by Ord. #2005-20, Aug. 2005)

**9-1104. Sexually oriented business 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 city pursuant to this ordinance.

(b) For any person who operates a sexually oriented business to employ or contract with a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the city pursuant to this ordinance;

(c) For any person who operates a sexually oriented business to fail to keep on the business premises at all times a complete list containing the name of each employee and a copy of each employee's sexually oriented business employee license.

(2) An application for a license must be made on a form provided by the Millington City Clerk. The license shall be issued only in the name of a natural person.

(3) All applicants must be qualified according to the provisions of this ordinance. The application may request, and the applicant shall provide, such information (including fingerprints) as will enable the city to conduct the

investigation necessary to determine whether the applicant meets the qualifications established in this ordinance.

(4) If a person who wishes to operate a sexually oriented business is an individual, the individual 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 majority interest in the business and each individual who is an officer, director, general partner, managing partner or manager of the sexually oriented business must sign the application for a license as applicant and provide the information required by this ordinance. 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 full legal name and any aliases, and his or her mailing address, and shall submit proof that he or she is 18 years of age;

(ii) A general partnership, the partnership shall state its complete name and business address; the name and address of any partner who owns a majority interest in the partnership; and the name, address, and social security number for each partner who actively participates in management of the business;

(iii) A corporation, limited partnership or limited liability company, such entity shall state its name and principal business address, the name of its registered agent for service of process, its registered office address, the name, address and capacity of all officers and directors or, if applicable, managing partners or managers; and the name and address of any shareholder or member who owns a majority interest in the entity; if a Tennessee entity, shall provide a certificate of existence from the Tennessee Secretary of State and a copy of its articles of incorporation or organization or its certificate of limited partnership certified by the Tennessee Secretary of State, both issued not more than thirty (30) days prior to the date the application is filed with the city. If the applicant has a corporate general partner or other entity required to be registered, the same information, documents and certifications shall also be provided for that entity.

If the applicant is organized under the laws of any state other than the state of Tennessee, it shall provide this same documentation and certifications from the state of its organization and a certificate of authority from the Tennessee Secretary of State, all issued within not more than thirty (30) days prior to the date the application is filed with the city.



(b) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, the applicant shall state the sexually oriented business's fictitious or assumed name and submit copies of the required registration documents.

(c) The applicant shall state whether the applicant has been convicted of a specified criminal activity as defined in this ordinance, and, if so, the specified criminal activity involved, date, place, and jurisdiction of each such conviction and the sentence imposed.

(d) The application shall state whether the proposed licensee that is an entity in or for which the applicant was a controlling stockholder, officer, director, manager, general or managing partner, or operator of a sexually oriented business has had a previous license under this ordinance or under any other similar sexually oriented business ordinance from another city 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 and the date of the denial, suspension or revocation.

(e) The application shall state whether the applicant or any entity in which the individual applicant was or is a controlling stockholder, officer, director, manager, general or managing partner holds any other licenses for or relating to any sexually oriented business under this ordinance or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed business.

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

(g) The application shall state the location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any, which location shall be a permissible location under the terms of this ordinance.

(h) The applicant shall provide two recent photographs of the applicant, at least 2" by 2", clearly showing the applicant's face.

(i) The applicant shall provide his/her valid driver's license number, state and date of issuance of such driver's license and date of expiration, and the applicant's social security number and/or (if not an individual) state or federally issued tax identification number.

(j) A sketch or diagram shall be submitted with the application showing the configuration of the premises in which the sexually oriented business will be operated, including a statement of the square feet of total floor space occupied by the business and the location of any booths. 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 (6) inches.

(k) The applicant shall submit a straight-line drawing, prepared and certified to the city within thirty (30) days prior to the date application is filed with the city, by a land surveyor registered in the state of Tennessee, showing the property boundary lines of the property on which the sexually oriented business for which an application is being filed and showing the property lines and structures containing any existing sexually oriented businesses or any of the properties or uses listed in § 9-1114 of this ordinance that are within 1500 feet of the property for which the application is being filed. 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.

(l) If an applicant wishes to operate a sexually oriented business, other than a sexually oriented 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, DVD's, video cassettes, other video reproductions or any other kind of visual reproductions, or live entertainment which depict specified anatomical areas or specified sexual activities, then the applicant shall comply with the application requirements set forth in § 9-1116.

(m) Any sexually oriented business that exists within the city on the effective date of this ordinance shall submit an application for a license by ninety (90) days after such effective date. Any sexually oriented business that applies for a license by such date may continue to operate the business described in the a plication even if the city clerk and board of mayor and aldermen decline to issue the license, where such denial is appealed to a court as provided in this ordinance, pending a final judgment. (as added by Ord. #2005-20, Aug. 2005)

**9-1105. Issuance of sexually oriented business license.** Application forms shall be available from the city clerk. The original application shall be dated by the city clerk and kept in the city's files. On the next business day after a completed application is filed, copies of the completed application shall be distributed to the applicant and to the police department, the codes enforcement officer, the fire department and the health department for an investigation to be made on such information as is contained therein. The investigation shall be completed, and each of the departments shall provide its response to the city clerk, within twenty (20) days from the date the completed application is filed. Within thirty (30) days after receipt of a completed sexually oriented business application, the city clerk shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

- (1) An applicant is under eighteen (18) years of age.
- (2) An applicant or the entity that will own or operate the sexually oriented business is delinquent in payment to the city of any taxes, fees, fines,

or penalties assessed against or imposed upon it in relation to any sexually oriented business.

(3) An applicant has failed to provide information requested by the application form or has falsely answered a question or request for information on the application form.

(4) An applicant has been denied a license by the city to operate a sexually oriented business within the preceding twelve (12) months or the license to operate a sexually oriented business held by the applicant, the entity for which the license is sought, or an entity in which the applicant was or is a controlling shareholder or member or an officer, director, manager or managing partner has been revoked within the preceding twelve (12) months.

(5) An applicant has been convicted of a special criminal activity as defined in this ordinance.

(6) 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.

(7) The license fee required by this ordinance has not been paid.

(8) An applicant or the proposed establishment is in violation of or is not in compliance with any one or more of the provisions of this ordinance.

(9) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding 12 months and has demonstrated an inability to operate or manage the sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

All sexually oriented business licenses shall state on their face the name of the person or persons to whom it is granted, the issuance and expiration dates, the address of the sexually oriented business and the classification for which the license is issued as described in § 9-1102. All licenses shall be displayed in a conspicuous public place at or near the entrance to the sexually oriented business so that they may be easily read at any time.

A sexually oriented business license shall issue for only one classification as listed in § 9-1103. (as added by Ord. #2005-20, Aug. 2005)

**9-1106. Sexually oriented employee license required.** (1) It shall be unlawful for any person to be an employee of, or an independent contractor with, a sexually oriented business, to perform any work or to provide entertainment at such business, without having secured a sexually oriented business employee license pursuant to this ordinance.

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

- (a) Full name (including all aliases), age, date and place of birth;
- (b) Height, weight, hair and eye color;

(c) Present residence address and telephone number, and residence addresses for the three years prior to the date of application;

(d) Date of issuance, date of expiration, issuing state and number of valid current driver's license or other identification card information; Social Security number, and proof that the individual is at least eighteen (18) years of age.

(e) A statement by the applicant that he/she is familiar with the provisions of this ordinance that apply to him/her and a sworn statement that the information provided on the application is true and accurate.

(f) The name and address of the sexually oriented business at which the applicant proposes to work.

(3) Attached to the application form for a sexually oriented business employee license shall be the following:

(a) Two color photographs of the applicant at least 2" by 2" clearly showing the applicant's face;

(b) The applicant's fingerprints on a form provided by the Millington Police Department. Any fees for the photographs and fingerprints shall be paid by the applicant.

(c) 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 in this or any other county, city, 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, the date(s) of such denial, revocation or suspension, 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.

(d) A statement whether the applicant has been convicted of a specified criminal activity as defined in this ordinance and, if so, the specified criminal activity involved, and the date, place and jurisdiction of each conviction. (as added by Ord. #2005-20, Aug. 2005)

**9-1107. Issuance of sexually oriented business employee license.**

(1) The original completed application shall be dated by the city clerk and kept in the city's files. On the next business day after a completed application is filed, copies of the completed application shall be distributed to the applicant and to the police department, for an investigation to be made on such information as is contained therein. The investigation shall be completed within twenty-five (25) days from the date the completed application is filed.

(2) Upon the filing of the application for a sexually oriented business employee license, the city clerk shall issue a temporary license to the applicant. After the investigation is completed and the police department report has been

provided to the city clerk, the city clerk shall issue a license, unless the investigation shows by a preponderance of the evidence that one or more of the following findings is true:

(a) The applicant has failed to provide the information required by the application form 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 ordinance;

(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 ordinance; or,

(e) The applicant has had a sexually oriented business employee license revoked by the city within two (2) years of the date of the current application.

(f) If an application for a sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void.

(g) All sexually oriented business employee licenses shall state the name of the business at which the employee will work and shall be carried on the person of, or be readily accessible by, the holder of such license during such person's working hours and shall be displayed upon the request of any member of the city's police department, or a health inspector.

(h) If the holder of a sexually oriented business employee license changes the business at which he/she works, the employee shall notify the city clerk in writing of the name and address of the new business at which he/she is employed within thirty (30) days, and such information shall be kept in the employee's file in the clerk's office. Failure to give such notice shall void any sexually oriented employee license issued to such person. (as added by Ord. #2005-20, Aug. 2005)

**9-1108. Inspection.** (1) A licensee or operator of a sexually oriented business, shall permit representatives of the police department, health department or fire department to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law at any time such business is occupied or open for business.

(2) A person who owns or operates a sexually oriented business or his agent or employee commits a misdemeanor violation of this ordinance and any other applicable laws of the state of Tennessee if such person refuses to permit such lawful inspection of the premises at any time it is occupied or open for business. (as added by Ord. #2005-20, Aug. 2005)

**9-1109. Expiration of license.** (1) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in § 9-1110 and paying the fee set out in § 9-1124. Application for renewal of a license 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 date of the license will not be affected.

(2) When the city denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to the denial, the city 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. (as added by Ord. #2005-20, Aug. 2005)

**9-1110. Renewal.** A sexually oriented business license and a sexually oriented business employee license granted pursuant to this ordinance shall be subject to annual renewal upon the written application of the applicant and a finding by the city that the applicant has not been convicted of any specified criminal activity as defined in this ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The application for renewal shall be the same as the initial application, except that the applicant may submit a copy of the original application together with a sworn statement stating any changes from the original application or stating that all the information in the original application remains true and correct in all respects. The renewal of the license shall be subject to the payment of the renewal fee as set forth in § 9-1124. (as added by Ord. #2005-20, Aug. 2005)

**9-1111. Suspension.** (1) The city shall suspend a sexually oriented business license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:

(a) Violated, or is not in compliance with, any section of this ordinance; or

(b) Refused to allow an unimpeded inspection of the sexually oriented business premises as authorized by this ordinance provided, however, the provisions above relating to suspension shall not preclude revocation of a license, if grounds as set out in § 9-1112 below exist; or

(c) Demonstrated an inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers. (as added by Ord. #2005-20, Aug. 2005)

**9-1112. Revocation.** The city shall revoke a sexually oriented business license if a cause of suspension in § 9-1111 occurs and the license has been suspended within the preceding twelve (12) months.

(1) The city shall revoke a sexually oriented business license if it determines that:

(a) A licensee gave materially false or misleading information in the responses or information 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 sexually oriented 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 city, county, or state for any taxes or fees past due in connection with the sexually oriented business or the premises on which such business is operated.

(2) The city shall revoke a sexually oriented business employee license if it determines that:

(a) A licensee Gave materially false or misleading information in the responses or information submitted during the application process;

(b) A licensee possessed, used, gave to others or sold controlled substances on the premises;

(c) A licensee committed or solicited prostitution on the premises;

(d) Licensee operated within a sexually oriented business without proper license; or

(f) A licensee has participated in any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act on the licensed premises.

(3) When the city 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 city 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 initial application or 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 in accordance with laws of the state of Tennessee. (as added by Ord. #2005-20, Aug. 2005)

**9-1113. No transfer of license.** A licensee shall not transfer a sexually oriented business license or a sexually oriented business employee 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. Any attempted transfer of a license shall be void and shall be misdemeanor violation of this ordinance. (as added by Ord. #2005-20, Aug. 2005)

**9-1114. Location of sexually oriented businesses.** (1) A person commits a misdemeanor violation of this ordinance and any other applicable laws of the state of Tennessee if that person operates or causes to be operated a sexually oriented business in any zoning district other than the M-2 General Industrial District as described in title 14, chapter 8 of the Millington Municipal Code.

(2) A person commits a misdemeanor offense if the person operates or causes to be operated a sexually oriented business within 1500 feet of the nearest property line of:

(a) A church, 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, special education schools, colleges and 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 any residential district as defined in the residential zoning classifications in the Millington Zoning Ordinance;

(d) An occupied residential "dwelling" as defined in the Millington Zoning Ordinance or a lot devoted to use as a dwelling;

(e) 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, athletic field, basketball or tennis courts, pedestrian/bicycle paths, greenbelt areas, or other similar public land within the city which is under the control, operation, or management of the city park and recreation authorities;

(f) A lot devoted to use as a "residence" as defined in the Millington Zoning Ordinance.

(g) An entertainment or other business or facility, including but not limited to an entity such as a YMCA or YWCA, which is oriented primarily towards children or family entertainment or activities; or

(3) A person commits a misdemeanor violation of this ordinance and any other applicable laws of the state of Tennessee if that person causes or



permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1500 feet of another sexually oriented business.

(4) A person commits a misdemeanor violation of this ordinance and any other applicable laws of the state of Tennessee if that person causes or permits the operation, establishment, or maintenance of more than one 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; 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 purposes 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 a part of the premises where a sexually oriented business is or to be conducted, to the nearest property line of the premises of a use listed in subsection (2). Presence of a city, 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 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 the date this ordinance becomes effective 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 to the extent permitted by Tennessee Code Annotated, § 13-7-208 unless 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 in accordance with such statute.

(8) A sexually oriented business lawfully in operation as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of a sexually oriented business license, of a use listed in subsection (2) or (3) of this section within 1500 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked. (as added by Ord. #2005-20, Aug. 2005)

**9-1115. Additional regulations for sexually oriented motels.**

(1) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishments has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an sexually oriented motel as that term is defined in this ordinance.

(2) A person commits a misdemeanor violation of this ordinance and any other applicable laws of the State of Tennessee 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 sub-rents a sleeping room to a person, and within ten (10) hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

(3) For purposes of subsection (2) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration. (as added by Ord. #2005-20, Aug. 2005)

**9-1116. Additional regulations pertaining to exhibition of sexually explicit films, DVD's, videos or other similar reproductions or live entertainment in viewing rooms.** (1) A person who operates or causes to be operated a sexually oriented business, other than a sexually oriented 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, DVD, 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 business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one 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 (6") inches. The city 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 stations may be made without the prior approval of the city.

(d) It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in the 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 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 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 person at any time.

(h) The premises shall be equipped 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 (5.0) candles 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 (48") inches of the floor.

(2) A person having a duty under subsection (1)(a) through (h) of subsection (1) above commits a misdemeanor violation of this ordinance and any other applicable laws of the state of Tennessee if he knowingly fails to fulfill that duty. (as added by Ord. #2005-20, Aug. 2005)

**9-1117. Additional regulations for escort agencies.** (1) An escort agency shall not employ any person under the age of 18 years.

(2) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years. (as added by Ord. #2005-20, Aug. 2005)

**9-1118. Additional regulations for nude model studios.** (1) A nude model studio shall not employ any person under the age of 18 years.

(2) A person under the age of 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 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. (as added by Ord. #2005-20, Aug. 2005)

**9-1119. Additional regulations concerning public nudity.** (1) It shall be a misdemeanor violation of this ordinance and any other applicable laws of the State of Tennessee for a person to knowingly and intentionally, in a sexually oriented business, appear in a state of nudity or depict specified sexual activities.

(2) It shall be a misdemeanor violation of this ordinance and any other applicable laws of the State of Tennessee for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least two feet from the floor.

(3) It shall be a misdemeanor violation of this ordinance and any other applicable laws of the State of Tennessee for an employee, while semi-nude in a sexually oriented business, to solicit any payor 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 violation of this ordinance and any other applicable laws of the State of Tennessee for an employee, while semi-nude, in a state of nudity to touch a customer or the clothing of a customer. (as added by Ord. #2005-20, Aug. 2005)

**9-1120. Prohibition against children in a sexually oriented business.** A person commits a misdemeanor if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business. (as added by Ord. #2005-20, Aug. 2005)

**9-1121. Hours of operation.** No sexually oriented business, except for a sexually oriented motel, may remain open at any time between the hours of

one o'clock (1:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and noon (12:00) P.M. on Sundays. (as added by Ord. #2005-20, Aug. 2005)

**9-1122. Exemptions.** It is a defense to prosecution under § 9-1118 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: which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and, where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and where no more than one nude model is on the premises at anyone time. (as added by Ord. #2005-20, Aug. 2005)

**9-1123. Fees.** (1) The following fees shall be payable to the city, for the purpose of defraying costs incurred in connection with the application and investigation process for licenses and the costs of monitoring and insuring compliance with this ordinance:

(a) An initial application and investigation fee in the amount of \$1,000, payable at the time of filing an initial application for a sexually oriented business license.

(b) An annual renewal fee of \$500, payable at the time of filing an application for renewal of a sexually oriented business license. There shall be a \$100 late fee for any renewal application filed less than thirty (30) days prior to the date of expiration of the license. If the renewal license is denied, one-half of the renewal fee shall be returned to the applicant.

(c) An initial application and investigation fee in the amount of \$100, payable at the time of filing an initial application for a sexually oriented business employee license.

(d) An annual renewal fee in the amount of \$50, payable at the time of filing an application for renewal of a sexually oriented business employee license. If the renewal license is denied, one-half of the renewal fee shall be returned to the applicant.

(2) No license, either initial or renewal, shall be issued until the city has received good funds in payment of the applicable fees. (as added by Ord. #2005-20, Aug. 2005)

**9-1124. Penalties and injunction.** Each violation of this ordinance shall be punishable by a fine of not more than fifty dollars (\$50.00). Each day a

sexually oriented business or sexually oriented business employee operates in violation of a provision of this ordinance is a separate offense or violation. In addition to imposition of a fine, the city shall have the right to seek injunctive relief to restrain any violation of this ordinance. (as added by Ord. #2005-20, Aug. 2005)

**9-1125. Procedure for suspension or revocation; appeal.** (1) If the city clerk should determine that there appears to be a violation of this ordinance such that a license should be suspended or revoked, said clerk shall deliver written notice of the reasons notice of the violation, citing the sections of the Millington Municipal Code that have been violated, to the board of mayor and aldermen. The same notice shall be sent at the same time, by certified mail, return receipt requested, the licensee, and if the licensee is an employee of a sexually oriented business, then also to the person who holds the license for the business.

(2) Immediately upon receipt of the clerk's notice, the board of mayor and aldermen shall set a date for a hearing upon the alleged violation, that shall be not more than ten (10) business days after the date of the clerk's notice. The board shall immediately notify the applicant or the person alleged to have violated this ordinance of the date, place and time of the hearing. Upon written request of the applicant or alleged violator submitted to the city clerk prior to the date of the scheduled hearing, the hearing date may be extended for up to five (5) additional business days.

(3) The person alleged to have violated this ordinance shall have the right to present evidence at the hearing. If such person does not attend the hearing, he or she shall be deemed to have waived the right to be present and the right to present evidence.

(4) After hearing the evidence, the board of mayor and aldermen shall render a decision whether to suspend or revoke the license. If the alleged violator is not present at the hearing, he or she shall be notified of the board's decision by certified mail, return receipt requested.

(5) In the event the city clerk determines that an original or renewal application for a sexually oriented business license or a sexually oriented business employee license should be denied, the clerk shall so notify the board of mayor and aldermen and the applicant in writing within thirty (30) days of the date the application is filed. Upon receipt of such notice, the board shall immediately set a hearing on the recommendation for denial and shall notify the applicant of the place, date and time of the hearing. The hearing shall be held not more than forty (40) days after the date of the filing of the application with the city; provided that upon written request of the alleged violator submitted to the city clerk prior to the date of the scheduled hearing, the hearing date may be extended for up to five (5) additional business days.

The applicant shall have the right to present evidence at the hearing. If, after the hearing, the board determines that the original or renewal application

should be denied, it shall so rule, and the applicant shall have the right to appeal the board's decision to the Circuit or Chancery Court of Shelby County, Tennessee pursuant to Tennessee Code Annotated, § 27-9-101 et seq.

(6) In the event of a decision of the board suspending or revoking a sexually oriented business the license holder shall have the right of appeal as set out in Tennessee Code Annotated, § 27-9-101 et seq. (as added by Ord. #2005-20, Aug. 2005)