

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.¹

CHAPTER

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CHAPTER 1

MISCELLANEOUS

SECTION

9-101. "Going out of business" sales.

9-101. "Going out of business" sales. It shall be unlawful for any person to falsely represent a sale as being a "going out of business" sale. A "going out of business" sale, for the purposes of this section, shall be a "fire sale," "bankrupt sale," "loss of lease sale," or any other sale made in anticipation of the termination of a business at its present location. When any person, after advertising a "going out of business" sale, adds to his stock or fails to go out of business within ninety (90) days he shall prima facie be deemed to have violated this section. (1979 Code, § 5-101)

¹Municipal code references

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

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14 and Appendix 1.

CHAPTER 2**PEDDLERS, ETC.**¹**SECTION**

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

9-201. Permit required. It shall be unlawful for any peddler, canvasser or solicitor, or transient merchant to ply his trade within the corporate limits without first obtaining a permit therefor in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one to whom it is issued. (1979 Code, § 5-201)

9-202. Exemptions. The terms of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to bona fide charitable, religious, patriotic or philanthropic organizations. (1979 Code, § 5-202)

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

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

¹Municipal code references

Privilege taxes: title 5, chapter 3.

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

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

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

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

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

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

(10) At the time of filing the application, a fee of ten dollars (\$10.00) shall be paid to the municipality to cover the cost of investigating the facts stated therein. (1979 Code, § 5-203)

9-204. Issuance or refusal of permit. (1) Each application shall be referred to the chief of police for investigation. The chief shall report his findings to the city recorder within seventy-two (72) hours.

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

(3) If, on the other hand, the chief's report indicates that the moral reputation and business responsibility of the applicant are satisfactory the city recorder shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by § 9-206. The city recorder shall keep a permanent record of all permits issued. (1979 Code, § 5-204)

9-205. Appeal. Any person aggrieved by the action of the chief of police and/or the city recorder in the denial of a permit shall have the right to appeal to the governing body. Such appeal shall be taken by filing with the mayor within fourteen (14) days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The mayor shall set a time and place for a hearing on such appeal and notice of the time and place of such hearing shall be given to the appellant. The notice shall be in writing and shall be mailed, postage prepaid, to the applicant at his last known address at least five (5) days prior to the date set for hearing, or shall be delivered by a

police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1979 Code, § 5-205)

9-206. Bond. Every permittee shall file with the city recorder a surety bond running to the municipality in the amount of one thousand dollars (\$1,000.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of this municipality and the statutes of the state regulating peddlers, canvassers, solicitors, transient merchants, itinerant merchants, or itinerant vendors, as the case may be, and shall guarantee to any citizen of the municipality that all money paid as a down payment will be accounted for and applied according to the representations of the permittee, and further guaranteeing to any citizen of the municipality doing business with said permittee that the property purchased will be delivered according to the representations of the permittee. Action on such bond may be brought by any person aggrieved and for whose benefit, among others, the bond is given, but the surety may, by paying, pursuant to order of the court, the face amount of the bond to the clerk of the court in which the suit is commenced, be relieved without costs of all further liability. (1979 Code, § 5-206)

9-207. Loud noises and speaking devices. No permittee, nor any person in his behalf, shall shout, cry out, blow a horn, ring a bell or use any sound amplifying device upon any of the sidewalks, streets, alleys, parks or other public places of the municipality or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the adjacent sidewalks, streets, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such permittee proposes to sell. (1979 Code, § 5-207)

9-208. Use of streets. No permittee shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon, nor shall any be permitted to operate in a congested area where such operation might impede or inconvenience the public use of such streets. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (1979 Code, § 5-208)

9-209. Exhibition of permit. Permittees are required to exhibit their permits at the request of any policeman or citizen. (1979 Code, § 5-209)

9-210. Policemen to enforce. It shall be the duty of all policemen to see that the provisions of this chapter are enforced. (1979 Code, § 5-210)

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

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

(b) Any violation of this chapter.

(c) Conviction of any crime or misdemeanor.

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

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

(3) When reasonably necessary in the public interest the mayor may suspend a permit pending the revocation hearing. (1979 Code, § 5-211)

9-212. Reapplication. No permittee whose permit has been revoked shall make further application until a period of at least six (6) months has elapsed since the last revocation. (1979 Code, § 5-212)

9-213. Expiration and renewal of permit. Permits issued under the provisions of this chapter shall expire on the same date that the permittee's privilege license expires and shall be renewed without cost if the permittee applies for and obtains a new privilege license within thirty (30) days thereafter. Permits issued to permittees who are not subject to a privilege tax shall be issued for one (1) year. An application for a renewal shall be made substantially in the same form as an original application. However, only so much of the application shall be completed as is necessary to reflect conditions which have changed since the last application was filed. (1979 Code, § 5-213)

CHAPTER 3

CHARITABLE SOLICITORS

SECTION

- 9-301. Permit required.
- 9-302. Prerequisites for a permit.
- 9-303. Denial of a permit.
- 9-304. Exhibition of permit.

9-301. Permit required. No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose without a permit from the city recorder authorizing such solicitation. Provided, however, that this section shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes if the solicitations are conducted exclusively among the members thereof, voluntarily and without remuneration for making such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies of any such established organization or church. (1979 Code, § 5-301)

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

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

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

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

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

(5) The solicitation is prompted solely by a desire to finance the charitable cause described by the applicant. (1979 Code, § 5-302)

9-303. Denial of a permit. Any applicant for a permit to make charitable or religious solicitations may appeal to the governing body if he has not been granted a permit within fifteen (15) days after he makes application therefor. (1979 Code, § 5-303)

9-304. Exhibition of permit. Any solicitor required by this chapter to have a permit shall exhibit such permit at the request of any policeman or person solicited. (1979 Code, § 5-304)

CHAPTER 4

TAXICABS¹

SECTION

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

9-401. Taxicab franchise and privilege license required. It shall be unlawful for any person to engage in the taxicab business unless he has first obtained a taxicab franchise from the municipality and has a currently effective privilege license. (1979 Code, § 5-401)

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

¹Municipal code reference
Privilege taxes: title 5, chapter 3.

service; present the application to the governing body; and make a recommendation to either grant or refuse a franchise to the applicant. The governing body shall thereupon hold a public hearing at which time witnesses for and against the granting of the franchise shall be heard. In deciding whether or not to grant the franchise the governing body shall consider the public need for additional service, the increased traffic congestion, parking space requirements, and whether or not the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such an additional taxicab franchise. Those persons already operating taxicabs when this code is adopted shall not be required to make applications under this section but shall be required to comply with all of the other provisions hereof. (1979 Code, § 5-402)

9-403. Liability insurance or bond required. No taxicab franchise shall be issued or continued in operation unless there is in full force and effect a liability insurance policy or bond for each vehicle authorized in an amount equal to that required by the state's financial responsibility law as set out in Tennessee Code Annotated, title 55, chapter 12. The insurance policy or bond required by this section shall contain a provision that it shall not be cancelled except after at least twenty (20) days' written notice is given by the insurer to both the insured and the recorder of the municipality. (1979 Code, § 5-403)

9-404. Revocation or suspension of franchise. The governing body, after a public hearing, may revoke or suspend any taxicab franchise for misrepresentations or false statements made in the application therefor or for traffic violations or violations of this chapter by the taxicab owner or any driver. (1979 Code, § 5-404)

9-405. Mechanical condition of vehicles. It shall be unlawful for any person to operate any taxicab in the municipality unless such taxicab is equipped with four (4) wheel brakes, front and rear lights, safe tires, horn, muffler, windshield wipers, and rear view mirror, all of which shall conform to the requirements of state motor vehicle law. Each taxicab shall be equipped with a handle or latch or other opening device attached to each door of the passenger compartment so that such doors may be operated by the passenger from the inside of the taxicab without the intervention or assistance of the driver. The motor and all mechanical parts shall be kept in such condition or repair as may be reasonably necessary to provide for the safety of the public and the continuous satisfactory operation of the taxicab. (1979 Code, § 5-405)

9-406. Cleanliness of vehicles. All taxicabs operated in the municipality shall, at all times, be kept in a reasonably clean and sanitary condition. They shall be thoroughly swept and dusted at least once each day.

At least once every week they shall be thoroughly washed and the interior cleaned with a suitable antiseptic solution. (1979 Code, § 5-406)

9-407. Inspection of vehicles. All taxicabs shall be inspected at least semiannually by the chief of police to insure that they comply with the requirements of this chapter with respect to mechanical condition, cleanliness, etc. (1979 Code, § 5-407)

9-408. License and permit required for drivers. No person shall drive a taxicab unless he is in possession of a state special chauffeur's license and a taxicab driver's permit issued by the chief of police. (1979 Code, § 5-408)

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

- (1) Makes written application to the chief of police.
- (2) Is at least eighteen (18) years of age and holds a state special chauffeur's license.
- (3) Undergoes an examination by a physician and is found to be of sound physique, with good eyesight and hearing and not subject to epilepsy, vertigo, heart trouble or any other infirmity of body or mind which might render him unfit for the safe operation of a public vehicle.
- (4) Is clean in dress and person and is not addicted to the use of intoxicating liquor or drugs.
- (5) Produces affidavits of good character from two (2) reputable citizens of the municipality who have known him personally and have observed his conduct for at least two (2) years next preceding the date of his application.
- (6) Has not been convicted of a felony, drunk driving, driving under the influence of an intoxicant or drug, or of frequent traffic offenses.
- (7) Is familiar with the state and local traffic laws. (1979 Code, § 5-409)

9-410. Revocation or suspension of driver's permit. The governing body, after a public hearing, may revoke or suspend any taxicab driver's permit for violation of traffic regulations, for violation of this chapter, or when the driver ceases to possess the qualifications as prescribed in § 9-409. (1979 Code, § 5-410)

9-411. Drivers not to solicit business. All taxicab drivers are expressly prohibited from indiscriminately soliciting passengers or from cruising upon the streets of the municipality for the purpose of obtaining patronage for their cabs. (1979 Code, § 5-411)

9-412. Parking restricted. It shall be unlawful to park any taxicab on any street except in such places as have been specifically designated and marked by the municipality for the use of taxicabs. It is provided, however, that taxicabs may stop upon any street for the purpose of picking up or discharging passengers if such stops are made in such manner as not to interfere unreasonably with or obstruct other traffic and provided the passenger loading or discharging is promptly accomplished. (1979 Code, § 5-412)

9-413. Drivers to use direct routes. Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route. (1979 Code, § 5-413)

9-414. Taxicabs not to be used for illegal purposes. No taxicab shall be used for or in the commission of any illegal act, business, or purpose. (1979 Code, § 5-414)

9-415. Miscellaneous prohibited conduct by drivers. It shall be unlawful for any taxicab driver, while on duty, to be under the influence of, or to drink any intoxicating beverage or beer; to use profane or obscene language; to shout or call to prospective passengers; to blow the automobile horn unnecessarily; or otherwise to disturb unreasonably the peace, quiet and tranquility of the municipality in any way. (1979 Code, § 5-415)

9-416. Transportation of more than one passenger at the same time. No person shall be admitted to a taxicab already occupied by a passenger without the consent of such other passenger. (1979 Code, § 5-416)

9-417. Fares. Fares shall be posted in a conspicuous place, either inside or on the outside of the taxi. Each passenger shall be informed of the specific fare to his/her specific destination prior to departure. (1979 Code, § 5-417)

CHAPTER 5

POOL ROOMS AND PINBALL PARLORS¹

SECTION

- 9-501. Prohibited in residential areas.
- 9-502. Hours of operation regulated.
- 9-503. Minors to be kept out; exception.
- 9-504. Gambling etc., not to be allowed.

9-501. Prohibited in residential areas. It shall be unlawful for any person to open, maintain, conduct, or operate any place where pool tables, billiard tables or pinball machines are kept for public use or hire on any premises located in any block where fifty percent (50%) or more of the land is used or zoned for residential purposes. (1979 Code, § 5-501)

9-502. Hours of operation regulated. It shall be unlawful for any person to open, maintain, conduct, or operate any place where pool tables, billiard tables or pinball machines are kept for public use or hire at any time on Sunday or between the hours of 11:00 P.M. and 6:00 A.M. on other days. (1979 Code, § 5-502)

9-503. Minors to be kept out; exception. It shall be unlawful for any person engaged regularly, or otherwise, in keeping billiard, bagatelle, or pool rooms or tables or pinball machines, their employees, agents, servants, or other persons for them, knowingly to permit any person under the age of eighteen (18) years to play on said tables at any game of billiards, bagatelle, pool, or other games requiring the use of cue and balls or pinball machines, without first having obtained the written consent of the father and mother of such minor, if living; if the father is dead, then the mother, guardian, or other person having legal control of such minor; or if the minor be in attendance as a student at some literary institution, then the written consent of the principal or person in charge of such school; provided that this section shall not apply to the use of billiards, bagatelle, pool tables and pinball machines in private residences. (1979 Code, § 5-503)

9-504. Gambling, etc., not to be allowed. It shall be unlawful for any person operating, conducting, or maintaining any place where pool tables, billiard tables or pinball machines are kept for public use or hire to permit any

¹Municipal code reference
Privilege taxes: title 5, chapter 3.

gambling or other unlawful or immoral conduct on such premises. (1979 Code, § 5-504)

CHAPTER 6**SEXUALLY ORIENTED BUSINESSES****SECTION**

- 9-601. Purpose; findings and rationale.
- 9-602. Definitions.
- 9-603. License required.
- 9-604. Issuance of license.
- 9-605. Fees.
- 9-606. Inspection.
- 9-607. Expiration and renewal of license.
- 9-608. Suspension.
- 9-609. Revocation.
- 9-610. Hearing; license denial, suspension, revocation; appeal.
- 9-611. Transfer of license.
- 9-612. Hours of operation.
- 9-613. Regulations pertaining to exhibition of sexually explicit films on premises.
- 9-614. Loitering, exterior lighting and monitoring, and interior lighting requirements.
- 9-615. Penalties and enforcement.
- 9-616. Applicability of chapter to existing businesses.
- 9-617. Prohibited conduct.
- 9-618. Scierer required to prove violation or business licensee liability.
- 9-619. Failure of town to meet deadline not to risk applicant/licensee rights.
- 9-620. Severability.
- 9-621. Conflicting code provisions repealed.

9-601. Purpose; findings and rationale. (1) **Purpose.** It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the town. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

(2) **Findings and rationale.** Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the

board of mayor and aldermen, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *NY. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); and *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *729, Inc. v. Kenton County Fiscal Court*, 515 F.3d 485 (6th Cir. 2008); *Deja Vu of Nashville, Inc. v. Metropolitan Gov 't of Nashville & Davidson County*, 466 F.3d 391 (6th Cir. 2006); *Deja Vu of Cincinnati, L.L.C., v. Union Township Bd. of Trustees*, 411 F.3d 777 (6th Cir. 2005) (en banc); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Brandywine, Inc. v. City of Richmond*, 359 F.3d 830 (6th Cir. 2004); *Richland Bookmart v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County*, 274 F.3d 377 (6th Cir. 2001); *Currence v. City of Cincinnati*, 28 Fed. Appx. 438 (6th Cir. Jan. 24, 2002); *In re Tennessee Public Indecency Statute*, 172 F.3d 873 (6th Cir. Jan. 13, 1999)(table); *Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991); *Triplett Grille, Inc. v. City of Akron*, 40 F.3d 129 (6th Cir. 1994); *State ex rel. Gibbons v. Jackson*, 16 S.W.3d 797 (Tenn. Ct. App. 1999); *City of Cleveland v. Wade*, 206 S.W.3d 51 (Tenn. Ct. App. 2006); *State ex rel. Dossett v. Richland Bookmart, Inc.*, 1990 WL 209331 (Tenn. Ct. App. 1990); *Silver Video USA v. Summers*, 2006 WL 3114220 (Tenn. Ct. App. 2006); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990); *Z.J. Gifts D-2, LLC v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *World Wide Video of Spokane, Inc. v. City of Spokane*, 227 F. Supp. 2d 1143 (E.D. Wash. 2002); *Broadway Books v. Roberts*, 642 F. Supp. 486 (E.D. Tenn. 1986); *Bright Lights, Inc. v. City of Newport*, 830 F. Supp. 378 (E.D. Ky. 1993); *Threesome Entertainment v. Strittmather*, 4 F. Supp. 2d 710 (N.D. Ohio 1998); *Bigg Wolf Discount Video Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Kentucky Restaurant Concepts, Inc. v. City of Louisville and Jefferson County*, 209 F. Supp. 2d 672 (W.D. Ky. 2002); *World Wide Video of Washington, Inc. v. City of Spokane*, 368F.3d1186 (9th Cir. 2004); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *For the People Theatres of NY., Inc. v. City of New York*, 793

N.Y.S.2d 356 (N.Y. App. Div. 2005); Taylor v. State, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); Z.J. Gifts D-4, L.L.C. v. City of Littleton, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); People ex rel. Deters v. The Lion's Den, Inc., Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); Reliable Consultants, Inc. v. City of Kennedale, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Ft. Worth, Texas -2004; Kennedale, Texas-2005; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; Jackson County, Missouri - 2008; Louisville, Kentucky - 2004; New York, New York Times Square - 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas - 2007; and "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); the board of mayor and aldermen finds:

(a) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.

(b) Each of the foregoing negative secondary effects constitutes a harm which the town has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the town's rationale for this chapter, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the town's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the town. The town finds that the cases and documentation relied on in this chapter are reasonably believed to be relevant to said secondary effects.

The town hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects. (as added by Ord. #2005-04, Sept. 2005, amended by Ord. #2007-09, Nov. 2007, and replaced by Ord. #2009-06, Oct. 2009)

9-602. Definitions. For purposes of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

(1) "Adult bookstore" or "adult video store" means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas." A "principal business activity" exists where the commercial establishment meets any one (1) or more of the following criteria:

(a) At least thirty-five percent (35%) of the establishment's displayed merchandise consists of said items; or

(b) At least thirty-five percent (35%) of the wholesale value of the establishment's displayed merchandise consists of said items; or

(c) At least thirty-five percent (35%) of the retail value (defined as the price charged to customers) of the establishment's displayed merchandise consists of said items; or

(d) At least thirty-five percent (35%) of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items; or

(e) The establishment maintains at least thirty-five percent (35%) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items shall be included in "floor space" maintained for the display, sale, or rental of said items); or

(f) The establishment maintains at least five hundred (500) square feet of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items shall be included in "floor space" maintained for the display, sale, or rental of said items); or

(g) The establishment regularly offers for sale or rental at least two thousand (2,000) of said items; or

(h) The establishment regularly features said items and regularly advertises itself or holds itself out, by using "adult," "adults-only," "XXX," "sex," "erotic," "novelties," or substantially similar language, as an establishment that caters to adult sexual interests; or

(i) The establishment maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."

(2) "Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, regardless of whether alcoholic beverages are served, which regularly features live conduct characterized by semi-nudity. No establishment shall avoid classification as an adult cabaret by offering or featuring nudity.

(3) "Adult motion picture theater" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five (5) persons for any form of consideration.

(4) "Characterized by" means describing the essential character or quality of an item. As applied in this chapter, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

(5) "Employ, employee, and employment" describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

(6) "Establish or 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; or

(c) The addition of any sexually oriented business to any other existing sexually oriented business.

(7) "Floor space" means the floor area inside a sexually oriented business that is visible or accessible to patrons for any reason, excluding restrooms.

(8) "Hearing officer" means an attorney, not otherwise employed by the town, who is licensed to practice law in Tennessee, and retained to serve as an independent tribunal to conduct hearings under this chapter.

(9) "Influential interest" means any of the following:

(a) The actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business;

(b) Ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business; or

(c) Holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

(10) "Licensee" means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an "employee," it shall mean the person in whose name the sexually oriented business employee license has been issued.

(11) "Nudity" means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

(12) "Operator" means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

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

(14) "Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business license.

(15) "Regularly" means the consistent and repeated doing of an act on an ongoing basis.

(16) "Semi-nude" or "semi-nudity" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

(17) "Semi-nude model studio" means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a class operated:

(a) By a college, junior college, or university supported entirely or partly by taxation;

(b) 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

(c) In a structure:

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

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

(18) "Sexual device" means any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

(19) "Sexual device shop" means a commercial establishment that regularly features sexual devices. This definition shall not be construed to include any pharmacy, drug store, medical clinic, any establishment primarily dedicated to providing medical or healthcare products or services, or any establishment that does not limit access to its premises or a portion of its premises to adults only.

(20) "Sexually oriented business" means an adult bookstore or adult video store," an "adult cabaret," an "adult motion picture theater," a "semi-nude model studio," or a sexual device shop."

(21) "Specified anatomical areas" means and includes:

(a) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(22) "Specified criminal activity" means any of the following specified crimes for which less than five (5) years has elapsed since the date of conviction or the date of release from confinement for the conviction whichever is the later date:

(a) Rape, aggravated rape, aggravated sexual assault, public indecency, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure;

(b) Prostitution, patronizing prostitution, promoting prostitution;

(c) Assault;

(d) Obscenity;

(e) Dealing in controlled substances;

(f) Racketeering;

(g) Any attempt, solicitation, or conspiracy to commit one (1) of the foregoing offenses; or

(h) Any offense in another jurisdiction that, had the predicate act(s) been committed in Tennessee, would have constituted any of the foregoing offenses.

(23) "Specified sexual activity" means any of the following:

(a) Intercourse, oral copulation, masturbation or sodomy; or

(b) Excretory functions as a part of or in connection with any of the activities described in (a) above.

(24) "Town" means Caryville, Tennessee.

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

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

(b) The transfer of securities which constitute an influential 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.

(26) "Viewing room" means the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction. (as added by Ord. #2005-04, Sept. 2005, and replaced by Ord. #2009-06, Oct. 2009)

9-603. License required. (1) Business license. It shall be unlawful for any person to operate a sexually oriented business in the town without a valid sexually oriented business license.

(2) Employee license. It shall be unlawful for any person to be an "employee," as defined in this chapter, of a sexually oriented business in the town without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license.

(3) Application. An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the police chief a completed application made on a form provided by the police chief. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection (4) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (c), accompanied by the appropriate licensing fee:

(a) The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.

(b) Current business address or another mailing address for the applicant.

(c) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

(d) A set of fingerprint impressions of the fingers and thumbs taken by the Town of Caryville Police Department. The police department shall provide this service, upon payment of the nominal fee for such service, on business days between 9:00 A.M. and 5:00 P.M. upon request.

(e) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

(f) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

(g) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this chapter, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

(h) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- (i) Been declared by a court of law to be a nuisance; or
- (ii) Been subject to a court order of closure or padlocking.

(i) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6"). Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this chapter shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. The police chief may waive the requirements of this subsection (h) for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

The information provided pursuant to this subsection (3) shall be supplemented in writing by certified mail, return receipt requested, to the police

chief within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

(4) Signature. A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this chapter and each applicant shall be considered a licensee if a license is granted.

(5) The information provided by an applicant in connection with an application for a license under this chapter shall be maintained by the office of the police chief on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure. (as added by Ord. #2005-04, Sept. 2005, and replaced by Ord. #2009-06, Oct. 2009)

9-604. Issuance of license. (1) Business license. Upon the filing of a completed application for a sexually oriented business license, the police chief shall immediately issue a temporary license to the applicant if the completed application is from a preexisting sexually oriented business that is lawfully operating in the town and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The temporary license shall expire upon the final decision of the town to deny or grant an annual license. Within twenty (20) days of the filing of a completed sexually oriented business license application, the police chief shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The police chief shall issue a license unless:

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

(b) An applicant has failed to provide information required by this chapter for issuance of a license or has falsely answered a question or request for information on the application form.

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

(d) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this chapter or is not in compliance with the locational requirements of the Code of Ordinances of the Town of Caryville. A sexually oriented business that is operating as a lawful nonconforming use shall be deemed to be in compliance with the locational requirements of the code.

(e) Any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- (i) Been declared by a court of law to be a nuisance; or
- (ii) Been subject to an order of closure or padlocking.

(f) An applicant has been convicted of or pled nolo contendere to a specified criminal activity, as defined in this chapter.

(2) Employee license. Upon the filing of a completed application for a sexually oriented business employee license, the police chief shall immediately issue a temporary license to the applicant if the applicant seeks licensure to work in a licensed sexually oriented business and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee license. The temporary license shall expire upon the final decision of the town to deny or grant an annual license. Within twenty (20) days of the filing of a completed sexually oriented business employee license application, the police chief shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The police chief shall issue a license unless:

(a) The applicant is less than eighteen (18) years of age.

(b) The applicant has failed to provide information as required by this chapter for issuance of a license or has falsely answered a question or request for information on the application form.

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

(d) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- (i) Been declared by a court of law to be a nuisance; or
- (ii) Been subject to an order of closure or padlocking.

(e) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.

(3) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing. (as added by Ord. #2005-04, Sept. 2005, and replaced by Ord. #2009-06, Oct. 2009)

9-605. Fees. The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses

shall be as follows: one hundred dollars (\$100.00) for the initial fee for a sexually oriented business license and fifty dollars (\$50.00) for annual renewal; fifty dollars (\$50.00) for the initial sexually oriented business employee license and twenty-five dollars (\$25.00) for annual renewal. (as added by Ord. #2005-04, Sept. 2005, and replaced by Ord. #2009-06, Oct. 2009)

9-606. Inspection. Sexually oriented businesses and sexually oriented business employees shall permit the police chief and his or her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this chapter, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the town to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections. (as added by Ord. #2005-04, Sept. 2005, and replaced by Ord. #2009-06, Oct. 2009)

9-607. Expiration and renewal of license. (1) Each license shall remain valid for a period of one (1) calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this chapter.

(2) Application for renewal of an annual license should be made at least sixty (60) days before the expiration date of the current annual license, and when made less than sixty (60) days before the expiration date, the expiration of the current license will not be affected. (as added by Ord. #2005-04, Sept. 2005, and replaced by Ord. #2009-06, Oct. 2009)

9-608. Suspension. (1) The police chief shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly or recklessly violated this chapter or has knowingly or recklessly allowed an employee or any other person to violate this chapter.

(2) The police chief shall issue a written notice of intent to suspend a sexually oriented business employee license for a period not to exceed thirty (30) days if the employee licensee has knowingly or recklessly violated this chapter. (as added by Ord. #2005-04, Sept. 2005, and replaced by Ord. #2009-06, Oct. 2009)

9-609. Revocation. (1) The police chief shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly or recklessly violates this chapter or has knowingly or recklessly allowed an employee or any other person to violate this chapter and a suspension of the licensee's license has become effective within the previous twelve-month (12-mo.) period.

(2) The police chief shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable if:

(a) The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;

(b) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;

(c) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;

(d) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked;

(e) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the sexually oriented business; or

(f) The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to consume alcohol or appear in a state of semi-nudity or nudity on the premises of the sexually oriented business.

(3) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(4) When, after the notice and hearing procedure described in this chapter, the town revokes a license, the revocation shall continue for one (1) year and the license shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date revocation becomes effective. (as added by Ord. #2005-04, Sept. 2005, and replaced by Ord. #2009-06, Oct. 2009)

9-610. Hearing; license denial, suspension, revocation; appeal.

(1) When the police chief issues a written notice of intent to deny, suspend, or revoke a license, the police chief shall immediately send such notice, which shall include the specific grounds under this chapter for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the police chief for the respondent. The notice shall also set forth the following: the respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the police chief, a written request for a hearing. If the respondent does not request a hearing within said ten (10) days, the police chief's written notice shall become a final denial, suspension, or

revocation, as the case may be, on the thirtieth (30th) day after it is issued, and shall be subject to the provisions of subsection (2) of this section.

If the respondent does make a written request for a hearing within said ten (10) days, then the police chief shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The town shall provide for the hearing to be transcribed.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the police chief's witnesses. The police chief shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The hearing officer shall issue a final written decision, including specific reasons for the decision pursuant to this chapter, to the respondent within five (5) days after the hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall advise the respondent of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the thirtieth (30th) day after it is rendered. If the hearing officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the hearing officer shall, contemporaneously with the issuance of the decision, order the police chief to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the police chief shall contemporaneously therewith issue the license to the applicant.

(2) If any court action challenging a licensing decision is initiated, the town shall prepare and transmit to the court a transcript of the hearing within thirty (30) days after receiving written notice of the filing of the court action. The town shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the police chief: upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the town's enforcement of any denial, suspension, or revocation of a temporary license or annual license, the police chief shall immediately issue the respondent a provisional license. The provisional license shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the

court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the town's enforcement. (as added by Ord. #2005-04, Sept. 2005, and replaced by Ord. #2009-06, Oct. 2009)

9-611. Transfer of license. A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application. (as added by Ord. #2005-04, Sept. 2005, and replaced by Ord. #2009-06, Oct. 2009)

9-612. Hours of operation. No sexually oriented business shall open to do business before 8:00 A.M., Monday through Saturday; and no such establishment shall remain open after 12:00 midnight, Monday through Saturday. No sexually oriented business shall be open for business on any Sunday or a legal holiday as designated in Tennessee Code Annotated, § 15-1-101. (as added by Ord. #2005-04, Sept. 2005, and replaced by Ord. #2009-06, Oct. 2009)

9-613. Regulations pertaining to exhibition of sexually explicit films on premises. (1) A person who operates or causes to be operated a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic imageproducing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(a) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license 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 shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (6"). The police chief 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) It shall be the duty of the operator, and of any employees present on the premises, 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.

(c) The interior 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) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(d) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.

(e) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

(i) That the occupancy of viewing rooms less than one hundred fifty (150) square feet is limited to one (1) person.

(ii) That specified sexual activity on the premises is prohibited.

(iii) That the making of openings between viewing rooms is prohibited.

(iv) That violators will be required to leave the premises.

(v) That violations of these regulations are unlawful.

(f) It shall be the duty of the operator to enforce the regulations articulated in subsection (e)(i) through (iv) above.

(g) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator'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, excluding restrooms, from at least one of the operator's stations. The view required in this subsection must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one (1) employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this subsection remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(h) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.

(2) It shall be unlawful for a person having a duty under subsections (1)(a) through (1)h) to knowingly or recklessly fail to fulfill that duty.

(3) No patron shall knowingly or recklessly enter or remain in a viewing room less than one hundred fifty (150) square feet in area that is occupied by any other patron.

(4) No patron shall knowingly or recklessly by or remain within one foot (1') of any other patron while in a viewing room that is one hundred fifty (150) square feet or larger in area.

(5) No person shall knowingly or recklessly make any hole or opening between viewing rooms. (as added by Ord. #2005-04, Sept. 2005, and replaced by Ord. #2009-06, Oct. 2009)

9-614. Loitering, exterior lighting and monitoring, and interior lighting requirements. (1) It shall be the duty of the operator of a sexually oriented business to:

(a) Ensure that at least two (2) conspicuous signs stating that no loitering is permitted on the premises are posted on the premises;

(b) Designate one (1) or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and

(c) Provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(2) It shall be the duty of the operator of a sexually oriented business to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.

(3) No sexually oriented business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right-of-way.

(4) It shall be unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty. (as added by Ord. #2005-04, Sept. 2005, and replaced by Ord. #2009-06, Oct. 2009)

9-615. Penalties and enforcement. (1) A person who violates any of the provisions of this chapter shall be guilty of a violation, and, upon conviction, shall be punishable by a fine not to exceed fifty dollars (\$50.00). Each violation of this chapter shall be considered a separate offense, and any violation continuing more than one (1) hour of time shall be considered a separate offense for each hour of violation.

(2) The town's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this chapter to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the town, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this chapter, or any of the laws in force in the town or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

(3) Any premises, building, or other structure in which a sexually oriented business, as defined in this chapter, is repeatedly operated or maintained in violation of the provisions of this chapter shall constitute a public nuisance and shall be subject to civil abatement proceedings initiated by the town, in a court of competent jurisdiction. Any premises, building, or other structure declared by the court to be a public nuisance may be closed for up to one year and the property owner assessed the costs of abatement. Each day that a violation is permitted to exist or occur shall constitute a separate operation or maintenance of the violation. (as added by Ord. #2005-04, Sept. 2005, and replaced by Ord. #2009-06, Oct. 2009)

9-616. Applicability of chapter to existing business. All preexisting sexually oriented businesses lawfully operating in the town in compliance with all state and local laws prior to the effective date of this chapter, and all sexually oriented business employees working in the town prior to the effective date of this chapter, are hereby granted a de facto temporary license to continue operation or employment for a period of ninety (90) days following the effective date of this chapter. By the end of said ninety (90) days, all sexually oriented businesses and sexually oriented business employees must conform to and abide by the requirements of this chapter. (as added by Ord. #2005-04, Sept. 2005, and replaced by Ord. #2009-06, Oct. 2009)

9-617. Prohibited conduct. (1) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity.

(2) No person shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six feet (6') from all patrons and on a stage at least eighteen inches (18") from the floor in a room of at least six hundred (600) square feet.

(3) No employee who regularly appears semi-nude in a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

(4) No person shall possess, use, or consume alcoholic beverages on the premises of a sexually oriented business.

(5) No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of a sexually oriented business.

(6) No operator or licensee of a sexually oriented business shall knowingly violate the regulations in this section or knowingly allow an employee or any other person to violate the regulations in this section.

(7) A sign in a form to be prescribed by the police chief, and summarizing the provisions of subsections (1), (2), (3), (4), and (5), shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign. (as added by Ord. #2009-06, Oct. 2009)

9-618. Scienter required to prove violation or business licensee liability. This chapter does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this chapter. Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this chapter, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act. (as added by Ord. #2009-06, Oct. 2009)

9-619. Failure of town to meet deadline not to risk applicant/licensee rights. In the event that a town official is required to act or to do a thing pursuant to this chapter within a prescribed time, and fails to act or to do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the town official under this chapter, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the town of an applicant or licensee's application for a sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the town's action has passed. (as added by Ord. #2009-06, Oct. 2009)

9-620. Severability. This chapter and each section and provision of said chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this chapter be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this chapter. (as added by Ord. #2009-06, Oct. 2009)

9-621. Conflicting code provisions repealed. Any provision(s) in the Code of Ordinances of the Town of Caryville specifically in conflict with any provision in this chapter is hereby deemed inoperative and repealed. Specifically, ordinance No. 2005-04 and ordinance No. 2007-09 are hereby repealed. (as added by Ord. #2009-06, Oct. 2009)

CHAPTER 7

PAIN MANAGEMENT AND METHADONE CLINICS

SECTION

- 9-701. Definitions.
- 9-702. License required.
- 9-703. Application for license.
- 9-704. Standards for issuance of license.
- 9-705. Permit required.
- 9-706. Fees.
- 9-707. Display of certification, license and permit.
- 9-708. Renewal of license.
- 9-709. Revocation of license of permit.
- 9-710. Inspections.
- 9-711. Penalties and prosecution.
- 9-712. Invalidity of part.

9-701. Definitions. For the purpose of this chapter, the words and phrases used herein shall have the following meanings, unless otherwise clearly indicated by the context:

(1) "Applicant" owner of clinic who has submitted or is in the process of submitting an application.

(2) "Methadone treatment clinic or facility" means a licensed facility for counseling of patients and the distribution of methadone for out-patient, non-residential purposes only. A methadone treatment clinic or facility is not a medical clinic or substance abuse treatment facility as per the Caryville Zoning Ordinance.

(3) "Pain management clinic" means a privately owned facility in which a medical doctor, an osteopathic physician, an advanced practice nurse, and/or a physician assistant provides pain management services to patients, a majority of whom are issued a prescription for, or are dispensed, opioids, benzodiazepine, barbiturates, or carisoprodol, but not including suboxone, for more than ninety (90) days in a twelve (12) month period. A pain clinic does not include a hospital, medical or dental school, nursing school, physician assistant program, outpatient clinic or hospital or clinic operated by the federal government. (as added by Ord. #2012-03, April 2012)

9-702. License required. From and after the effective date of this chapter, no methadone clinic or pain management clinic shall be operated or maintained in the Town of Caryville without first obtaining a license to operate issued by the Town of Caryville.

(1) A license may be issued for one (1) methadone or pain management clinic located at a fixed and certain place.

(2) No license or interest in a license may be transferred to any person, partnership, or corporation.

(3) All existing methadone or pain management clinics at the time of the passage of this chapter must submit an application for a license within one hundred twenty (120) days of the passage of this chapter on second and final reading. If a license is not issued within said one hundred twenty (120) day period, then such existing methadone or pain management clinic shall cease operations.

(4) No license may be issued for any location unless the premises are lawfully zoned for methadone or pain management clinics and unless all requirements of the zoning ordinance are complied with. (as added by Ord. #2012-03, April 2012)

9-703. Application for license. Any person, partnership, or corporation desiring a license shall make application to the Police Chief of the Town of Caryville. The application shall be filed in triplicate with and dated by the police chief. A copy of the application shall be distributed promptly by the police chief to the city recorder and to the applicant.

(1) The application for a license shall be upon a form provided by the police chief. The application shall include the following information under oath:

(a) Name and addresses.

(b) Valid unrestricted license to operate such clinic.

(c) All residential addresses of the applicant(s) for the past three (3) years.

(d) Demonstrate that all applicable state requirements are met.

(e) A completed questionnaire that addresses the services offered, evaluation methods, treatment methods, the business, occupation or employment of the applicant(s) for five (5) years immediately preceding the date of the application, patient billing procedures, types of controlled substances that will be dispensed and standards implemented to ensure patient quality care.

(f) If the premises are leased or being purchased under contract, a copy of such lease or contract shall accompany the application.

(g) A statement by the applicant that he or she is familiar with the provisions of this chapter and is in compliance with them.

(h) When applicable, proof for a dispenser of controlled substances that compliance with the Tennessee Controlled Substance Database has been met.

(2) Within ten (10) days of receiving the results of the investigation conducted by the Caryville Police Department, the police chief shall notify the applicant that his/her application is conditionally granted, denied or held for further investigation. Such additional investigation shall not exceed thirty (30) days unless otherwise agreed to by the applicant. Upon conclusion of such additional investigation, the police chief shall make a formal recommendation

to the Town of Caryville Board of Mayor and Alderman for the granting of a permit or denial of the permit. The Town of Caryville Board of Mayor and Alderman shall then consider the application at their regular meeting and make a decision on the application. Following this decision, the police chief shall advise the applicant in writing whether the application was granted or denied and the basis for the decision. All licenses shall further be held pending review/action of the board of zoning appeals.

(3) Whenever an application is denied or held for further investigation, the police chief shall advise the applicant in writing of the reasons for such action.

(4) Failure or refusal of the applicant to give any information relevant to the investigation of the application, or refusal to submit required information and shall be grounds for denial thereof by the police chief. (as added by Ord. #2012-03, April 2012)

9-704. Standards for issuance of license. To receive a license to operate a methadone or pain management clinic, an applicant must meet all state licensing and certification requirements pertaining to such clinic. (as added by Ord. #2012-03, April 2012)

9-705. Permit required. In addition to the license requirements previously set forth for owners and operators of such clinics, no clinic shall begin operations without first obtaining a valid permit issued by the building inspector. (as added by Ord. #2012-03, April 2012)

9-706. Fees. The following fees shall apply to all methadone and pain management clinics within the corporate limits:

(1) A license fee of five hundred dollars (\$500.00) shall be submitted with the application for a license. If the application is denied, one-half (1/2) of the fee shall be returned.

(2) A permit fee of one hundred dollars (\$100.00) shall be submitted with the application for a permit. If the application is denied, one-half (1/2) of the fee shall be returned. (as added by Ord. #2012-03, April 2012)

9-707. Display of certification, license and permit. All applicable state certifications, medical licenses, city license and city permit shall be displayed in a conspicuous public place in the clinic. (as added by Ord. #2012-03, April 2012)

9-708. Renewal of license. Every license issued pursuant to this chapter will terminate at the expiration of one (1) year from date of issuance, unless revoked before such time, and must be renewed before operation is allowed in the following year.

(1) Any operator desiring to renew a license shall make application to the police chief. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed in triplicate with and dated by the police chief. A copy of the application for renewal shall be distributed promptly by the police chief to the city recorder and to the operator. The application for renewal shall be a form provided by the police chief and shall contain such information and data, given under oath or affirmation, as may be required by the board of mayor and aldermen.

(2) A license renewal fee of five hundred dollars (\$500.00) shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of one hundred dollars (\$100.00) shall be assessed against the applicant who files for a renewal less than sixty (60) days before the license expires. If the application is denied, one-half (1/2) of the total fees collected shall be returned. (as added by Ord. #2012-03, April 2012)

9-709. Revocation of license or permit. The Town of Caryville Board of Mayor and Alderman shall revoke a license or permit for any of the following reasons:

(1) Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.

(2) The operator, entertainer, or any employee of the operator, violates any provision of this chapter or any rule or regulation adopted by the city council pursuant to this chapter.

(3) The owner and/or operator becomes ineligible to obtain the required license from the applicable board.

(4) Applicable state certification is denied or revoked.

(5) Any cost or fee required to be paid by this chapter is not paid. (as added by Ord. #2012-03, April 2012)

9-710. Inspections. Any law enforcement or code enforcement officer is authorized access to inspect any facility registered under this chapter for proof of registration, at any reasonable hour, without notice. Nothing in this chapter shall be read to limit the authority of law enforcement in any matter as relates to their authority to conduct criminal investigations. (as added by Ord. #2012-03, April 2012)

9-711. Penalties and prosecution. Any person, partnership, corporation, or other business entity that is found to have violated this chapter shall be fined a definite sum not exceeding fifty dollars (\$50.00) for each violation and shall result in the suspension or revocation of any permit or license. Each violation of this chapter shall be considered a separate offense, and any violation continuing more than one (1) hour of time shall be considered a separate offense for each hour of violation. (as added by Ord. #2012-03, April 2012)

9-712. Invalidity of part. Should any court of competent jurisdiction declare any section, clause, or provision of this chapter to be unconstitutional, such decision shall affect only, such section, clause, or provision of this chapter to be unconstitutional, such decision shall affect only such section, clause, or provision so declared unconstitutional, and shall not affect any other section, clause or provision of this chapter. (as added by Ord. #2012-03, April 2012)