

TITLE 9**BUSINESS, PEDDLERS, SOLICITORS, ETC.¹****CHAPTER**

1. MISCELLANEOUS.
2. PEDDLERS, ETC.
3. CHARITABLE SOLICITORS.
4. CABLE TELEVISION.
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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.

CHAPTER 2

PEDDLERS, ETC.¹

SECTION

- 9-201. Definitions.
- 9-202. Exemptions.
- 9-203. Permit required.
- 9-204. Permit procedure.
- 9-205. Restrictions on peddlers, street barkers and solicitors.
- 9-206. Restrictions on transient vendors.
- 9-207. Display of permit.
- 9-208. Suspension or revocations of permit.
- 9-209. Expirations and renewal of permit.
- 9-210. Violation and penalty.

9-201. Definitions. Unless otherwise expressly stated, whenever used in this chapter, the following words shall have the meaning given to them in this section:

(1) "Peddler," means any person, firm or corporation, either a resident or a nonresident of the town, 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 town 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 or offer to sell any single item at a cost to the purchaser in excess of ten dollars (\$10.00). No organization shall qualify as a "charitable" or "religious" organization unless the organization meets one of the following conditions:

¹Municipal code references
Privilege taxes: title 5.

(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; or

(b) Is a member of United Way, Community Chest or similar "umbrella" organization for charitable or religious organizations; or

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

(4) "Solicitor for subscriptions," means any person who solicits subscriptions from the public, either on the streets of the town, 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 vendor¹," means any person who brings into temporary premises and exhibits stocks of 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 quasipublic 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 town and who limits his business to selling or offering to sell novelty items and similar goods in the area of the festival or parade. (1979 Code, § 5-201, as replaced by Ord. #3-2007, March 2007)

¹State law reference

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, § 67-4-702(a)(24). Note also that Tennessee Code Annotated, § 67-4-710(2) prescribes that transient vendors "shall pay a fee of fifty dollars (\$50.00) for each fourteen-day period in each county or municipality, or both, in which such vendors sell or offer to sell merchandise or for which they are issued a license. Notwithstanding any law to the contrary, the fee shall not be liable for the tax levied under" Tennessee Code Annotated, § 67-4-709.

9-202. Exemptions. The terms of this chapter shall not apply to persons selling at wholesale to dealers, nor to newsboys delivering newspaper subscriptions, 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, or vendors at Cumberland Gap Business Association or town sponsored or co-sponsored events. (1979 Code, § 5-202, as replaced by Ord. #3-2007, March 2007)

9-203. Permit required. No person, firm or corporation 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 town unless the same has obtained a permit from the town in accordance with the provisions of this chapter. (1979 Code, § 5-203, as replaced by Ord. #3-2007, March 2007)

9-204. Permit procedure. (1) Application form. A sworn application containing the following shall be completed and filed with the town recorder by each applicant for a permit as a peddler, transient 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, and telephone number of the business or organization the applicant represents.

(b) The applicants complete name, social security number, permanent address and telephone number.

(c) A brief description of the type of business and the goods to be sold.

(d) The date(s) for which the applicant intends to do business or make solicitations.

(e) The location(s) for which the applicant intends to do business or make solicitations.

(f) The complete names, social security numbers, permanent addresses, and driver's license (or other acceptable photo identification) for all persons who will make sales or solicitations with the town.

(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.

(h) A statement as to whether or not the applicant (and all persons associated with the permit) has been convicted of any crime or misdemeanor or for any municipal ordinance: the nature of the offense, and the punishment or penalty assessed.

(i) A list of the last three (3) cities or towns (if that many) where the applicant has engaged in business immediately preceding the date of this application.

(j) Tennessee State sales tax number, if applicable.

(2) Permit fee. Each applicant for a permit as a peddler, transient vendor, solicitor or street baker shall submit with application a nonrefundable fee of fifteen dollars (\$15.00). This fee shall apply to transient vendors, peddlers, and street barkers. There is no fee for an application for a permit as a solicitor for charitable or religious purposes and for solicitors of subscriptions.

In addition to the permit fee, transient vendors shall pay a tax of fifty dollars (\$50.00) for each fourteen (14) day period in which such vendors sell or offer to sell merchandise or for which they are issued a business license. Such tax shall be paid prior to the first day of engaging in business.

(3) Issuance or refusal of permit. (a) Upon receipt of such application and fee prescribed in § 9-204, the recorder shall cause the same to be examined and investigated.

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

(c) If as a result of such investigation the applicant's moral reputation and business responsibility are satisfactory, the town recorder shall issue the permit. (1979 Code, § 5-204, as replaced by Ord. #3-2007, March 2007, and Ord. #8-2015, Aug. 2015)

9-205. Restrictions on peddlers, street barkers and solicitors. No peddler, street barker, solicitor for charitable purposes, or solicitor for subscriptions shall:

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

(2) Stand or sit in or near the entrance to any dwelling or place of business, or in any other place which may disrupt or impede pedestrian or vehicular traffic.

(3) Offer to sell goods or services or solicit in vehicular traffic lanes, or operate a "road block" of any kind.

(4) Call attention to his business or merchandise or to his solicitation efforts by crying out, by blowing a horn, by ringing a bell, or creating other noise, except that the street barker shall be allowed to cry out to call attention to his business or merchandise during recognized parade or festival days of the town.

(5) Enter in or upon any premises or attempt to enter in or upon any premises wherein a sign or placard bearing the notice "Peddlers or Solicitors Prohibited," or similar language carrying the same meaning, is located. (1979, Code, § 5-205, as replaced by Ord. #3-2007, March 2007)

9-206. Restrictions on transit vendors. (1) A transient 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 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.

(2) No transient vendor shall be permitted to exhibit and/or sell his merchandise upon any street, or public way and place in the town. (1979 Code, § 5-206, as replaced by Ord. #3-2007, March 2007, and amended by Ord. #8-2015, Aug. 2015)

9-207. Display of permit. Each peddler, street barker, 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 upon demand. (1979 Code, § 5-207, as replaced by Ord. #3-2007, March 2007)

9-208. Suspension or revocation of permit. (1) Suspension or revocation by the recorder. The permit issued to any person or organization under this chapter may be suspended by the town recorder for any of the following causes:

- (a) Fraud, misrepresentation, or incorrect statement contained or omitted in the application for permit, or made in the course of carrying out the business as defined in the permit application.
- (b) Any violation of this chapter.
- (c) Conviction of any crime or misdemeanor.
- (d) Conducting the business as defined in the permit application in an unlawful manner or in such 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) Appeal of suspension or revocation. Any applicant whose permit has been issued in accordance with the requirements under this chapter which has been suspended or revoked by the town recorder may appeal such suspension or revocation to the board of mayor and alderman. Upon such appeal and after notice thereof, board of mayor and alderman shall schedule a hearing to hear testimony on behalf of the permit holder and the town in regards to said suspension or revocation. Notice of the hearing shall include the grounds for which the permit application, at least five (5) business days prior to the date set for the hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) business days prior to the date set for the hearing.

(3) Action of board of mayor and alderman. The board of mayor and alderman, at the hearing as defined in § 9-208(2) shall have the authority to uphold the actions of the town recorder, or reinstate the suspended or revoked

permit as deemed appropriate by a majority vote of board. Such action of board of mayor and alderman shall be final. (1979 Code, § 5-208, as replaced by Ord. #3-2007, March 2007, and amended by Ord. #8-2015, Aug. 2015)

9-209. Expiration and renewal of permit. (1) The permit of peddlers, solicitors and transient vendors expires at the end of six (6) months. While transient vendors may be issued a permit for six (6) months, they are still required to pay the fifty dollars (\$50.00) privilege tax for each fourteen (14) day period as described in § 9-204(2).

(2) The permit of street barkers shall be for a period corresponding to the dates of the recognized parade or festival days of the town.

(3) The permit 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. (1979 Code, § 5-209, as replaced by Ord. #3-2007, March 2007, and amended by Ord. #8-2015, Aug. 2015)

9-210. Violation and penalty. In addition to any other action the town may take against a permit holder in violation of this chapter, such violation shall be punishable according to the general penalty provision of this municipal code of ordinances. Each day a violation occurs shall constitute a separate offense. (1979 Code, § 5-210, as replaced by Ord. #3-2007, March 2007, and amended by Ord. #8-2015, Aug. 2015)

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.
- 9-305. Trespassing.
- 9-306. Violations.

9-301. Permit required. No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose without a permit from the recorder and treasurer 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 and treasurer shall issue a permit authorizing charitable or religious solicitations when, after a reasonable investigation, he finds the following facts to exist:

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

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

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

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

(5) The solicitation is prompted solely by a desire to finance the charitable cause described by the applicant. (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)

9-305. Trespassing. It shall be unlawful and deemed to be a trespass for any permittee acting under this chapter to fail to leave promptly the private premises of any person who requests or directs him to leave. (1979 Code, § 5-305)

9-306. Violations. Any person violating any provision of this chapter or making a false or fraudulent statement either in his application for a permit or in the process of making a solicitation shall be subject to the penalty provided for violations of this municipal code. In addition to or in lieu of any pecuniary penalty, if a violator has been issued a permit, his permit shall be cancelled and revoked by the court. (1979 Code, § 5-306)

CHAPTER 4

CABLE TELEVISION

SECTION

9-401. To be furnished under franchise.

9-401. To be furnished under franchise. Cable television service shall be furnished to the Town of Cumberland Gap and its inhabitants under franchise as the board of mayor and aldermen shall grant. The rights, powers, duties and obligations of the Town of Cumberland Gap and its inhabitants and the grantee of the franchise shall be clearly stated in the franchise agreement which shall be binding upon the parties concerned.¹ (as renumbered by Ord. #8-2015, Aug. 2015)

¹For complete details relating to the cable television franchise agreement see Ord. #_____ dated March 1, 1993 in the office of the recorder and treasurer.

CHAPTER 5

ADULT-ORIENTED ESTABLISHMENTS

SECTION

- 9-501. Purpose.
- 9-502. Definitions.
- 9-503. Tennessee Code Annotated requirements.
- 9-504. Unlawful acts.
- 9-505. Locations.
- 9-506. Fines.
- 9-507.--9-516. [Deleted.]

9-501. Purpose. It is the purpose of this chapter to regulate sexually oriented businesses and related activities 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 chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene materials. (Ord. #9-2002, Aug. 2002, as renumbered and replaced by Ord. #8-2015, Aug. 2015)

9-502. Definitions. (1) "Adult bookstore" means an establishment having as a substantial or significant portion its stock and trade, "substantial portion" meaning over 20% of floor area, over 20% of inventory by units or value, or over 20% of revenues, or an inventory of 200 or more units, in books, films, video cassettes, magazines, computer software, other periodicals, sex novelties or other objects of a sexual nature which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities;" or "specified anatomical area."

(2) "Adult cabaret" means a cabaret which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers.

(3) "Adult oriented businesses" shall include but not limited to: adult cabaret, massage parlor, adult bookstore, and adult video store.

(4) "Adult oriented video store" means a commercial establishment having a majority of its stock or a majority of its floor space dedicated to "sexually oriented videos," which are rented or sold. "Sexually oriented videos"

means a video, CD, laser disk or similar medium with a cover that depicts "specified sexual activities" or "specified anatomical areas" or a transparent or less than opaque cover through which "specified sexual activities" or "specified anatomical areas" can be viewed.

(5) 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 any existing business, whether or not a sexually oriented business, to any sexually oriented business;

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

(d) The relocation of any sexually oriented business; or

(e) A sexually oriented business or premises on which the sexually oriented business is located.

(6) "Massage parlor" means an establishment or place primarily in the business of providing massage or tanning services for purposes of sexual stimulation or where one or more of the employees exposes to public view of the patrons within said establishment, at any time, "specified anatomical areas."

(7) "Sexually oriented" means any exhibition of any motion pictures, films or videos depicting "specified sexual activities" or "specified anatomical area" or any live performance, display or dance of any type, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers a significant or substantial portion of which depicts any actual or simulated performance of "specified sexual activities" or exhibition and viewing of "specified anatomical areas."

(8) "Sexually oriented business/establishment" means any commercial establishment which for a fee or incidentally to another service, regularly presents material or exhibitions distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in this section for observation by patrons therein. "Sexually oriented business/establishment" also means any commercial establishment to which the public, patrons or members are invited or admitted and where are so physically arranged as to provide booths, separate from the common areas of the premises for the purpose of viewing sexually oriented motion pictures, sexually oriented movies, sexually oriented films or sexually oriented videos.

(9) "Specified anatomical areas" means:

(a) Less than completely and opaquely covered:

(i) Human genitals;

(ii) Pubic region;

(iii) Buttocks; and

(iv) Female breasts below a point immediately above the top of the areola; and

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

(10) "Specified sexual activities" means and includes any of the following:

- (a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, female breasts;
- (b) Sex acts, normal or perverted, actual or simulated; or
- (c) Masturbation, actual or simulated; or
- (d) Human genitals in a state of sexual arousal. (Ord. #9-2002, Aug. 2002, as renumbered and replaced by Ord. #8-2015, Aug. 2015)

9-503. Tennessee Code Annotated requirements. (1) All persons, operators, or owners of an adult-oriented establishments, as defined herein, or by applicable state law, shall comply to the requirements of Tennessee Code Annotated, §§ 39-17-901 through 39-17-908 and Tennessee Code Annotated, § 39-17-911, and Tennessee Code Annotated, § 39-17-914, and Tennessee Code Annotated, §§ 39-17-918 through 39-17-920, or be subject to prosecution under said state law.

(2) All persons, operators or owners of an adult-oriented establishment, as defined herein, or by applicable state law, shall comply with the requirements of Tennessee Code Annotated, § 39-13-511 or be subject to prosecution under the provisions of said statute. (Ord. #9-2002, Aug. 2002, as renumbered and replaced by Ord. #8-2015, Aug. 2015)

9-504. Unlawful acts. No person who maintains, owns or operates an adult-oriented establishment shall permit "specified sexual activities" as defined in this chapter to occur on the premises. (Ord. #9-2002, Aug. 2002, as renumbered and replaced by Ord. #8-2015, Aug. 2015)

9-505. Locations. No adult-oriented establishment may begin to operate except within the confines of a C-3 zoning district as defined under the zoning laws of the Town of Cumberland Gap. (Ord. #9-2002, Aug. 2002, as renumbered and replaced by Ord. #8-2015, Aug. 2015)

9-506. Fines. Any person violating this chapter shall commit an offense against the Town of Cumberland Gap, Tennessee, and upon conviction shall be fined under appropriate state law, or shall be fined for a conviction with the Town Court of Cumberland Gap, Tennessee, with the maximum fine allowed by law. Each day such violation shall continue shall constitute a separate offense and be subject to the maximum fine. Nothing in this chapter shall be construed to infringe upon or to violate the First Amendment of the United States Constitution or any provisions of the Constitution of the State of Tennessee. (Ord. #9-2002, Aug. 2002, as renumbered and replaced by Ord. #8-2015, Aug. 2015)

9-507.--9-516. [Deleted]. (Ord. #9-2002, Aug. 2002, as renumbered and deleted by Ord. #8-2015, Aug. 2015)

CHAPTERS 6 & 7

These chapters were deleted by Ord. #8-2015, Aug. 2015