

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.

CHAPTER

1. PEDDLERS, SOLICITORS, ETC.
2. YARD SALES.
3. CABLE TELEVISION.
4. ADULT-ORIENTED ESTABLISHMENTS.

CHAPTER 1

PEDDLERS, SOLICITORS, ETC.¹

SECTION

- 9-101. Definitions.
- 9-102. Exemptions.
- 9-103. Permit required.
- 9-104. Permit procedure.
- 9-105. Restrictions on peddlers, street barkers and solicitors.
- 9-106. Restrictions on transient vendors.
- 9-107. Display of permit.
- 9-108. Suspension or revocation of permit.
- 9-109. Expiration and renewal of permit.
- 9-110. Violation and penalty.

9-101. 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 city, who has no permanent regular place of business and who goes from dwelling to dwelling, business to business, place to place, or from street to street, carrying or transporting goods, wares or merchandise and offering or exposing the same for sale.

(2) "Solicitor" means any person, firm or corporation who goes from dwelling to dwelling, business to business, place to place, or from street to street, taking or attempting to take orders for any goods, wares or merchandise, or personal property of any nature whatever for future delivery, except that the

¹Municipal code references

Privilege taxes: title 5.

Trespass by peddlers, etc.: § 11-501.

term shall not include solicitors for charitable and religious purposes and solicitors for subscriptions as those terms are defined below.

(3) "Solicitor for charitable or religious purposes" means any person, firm, corporation or organization who or which solicits contributions from the public, either on the streets of the city or from door to door, business to business, place to place, or from street to street, for any charitable or religious organization, and who does not sell 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:

(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.

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

(c) Has been in continued existence as a charitable or religious organization in Polk 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 city, or from door to door, business to business, place to place, or from street to street, and who offers for sale subscriptions to magazines or other materials protected by provisions of the Constitution of the United States.

(5) "Transient 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

¹State law references

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

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

owned by a consumer, and "temporary premises" means any public or quasi-public place including a hotel, rooming house, storeroom, building or part of a building, tent, vacant lot, railroad car, or motor vehicle which is temporarily occupied for the purpose of exhibiting stocks of merchandise to the public. Premises are not temporary if the same person has conducted business at those premises for more than six (6) consecutive months or has occupied the premises as his or her permanent residence for more than six (6) consecutive months.

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

9-102. Exemptions. The terms of this chapter shall neither apply to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business.

9-103. 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 city unless the same has obtained a permit from the city in accordance with the provisions of this chapter.

9-104. Permit procedure. (1) Application form. A sworn application containing the following information shall be completed and filed with the city 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 and permanent address of the business or organization the applicant represents.

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

(c) The dates for which the applicant intends to do business or make solicitations.

(d) The names and permanent addresses of each person who will make sales or solicitations within the city.

(e) 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.

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

(2) Permit fee. Each applicant for a permit as a peddler, transient vendor, solicitor or street barker shall submit with his application a nonrefundable fee of twenty dollars (\$20.00). There shall be no fee for an

application for a permit as a solicitor for charitable purposes or as a solicitor for subscriptions.

(3) Permit issued. Upon the completion of the application form and the payment of the permit fee, where required, the recorder shall issue a permit and provide a copy of the same to the applicant.

(4) Submission of application form to chief of police. Immediately after the applicant obtains a permit from the city recorder, the city recorder shall submit to the chief of police a copy of the application form and the permit.

9-105. Restrictions on peddlers, street barkers and solicitors. No peddler, street barker, solicitor, 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 city.

(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 city.

(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.

9-106. Restrictions on transient vendors. 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.

9-107. 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.

9-108. Suspension or revocation of permit. (1) Suspension by the recorder. The permit issued to any person or organization under this chapter may be suspended by the city recorder for any of the following causes:

(a) Any false statement, material omission, or untrue or misleading information which is contained in or left out of the application; or

(b) Any violation of this chapter.

(2) Suspension or revocation by the board of mayor and aldermen. The permit issued to any person or organization under this chapter may be suspended or revoked by the board of mayor and aldermen, after notice and hearing, for the same causes set out in paragraph (1) above. Notice of the hearing for suspension or 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 the hearing. Such notice shall be mailed to the permit holder 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.

9-109. Expiration and renewal of permit. The permit of peddlers, solicitors and transient vendors shall expire on the same date that the permit holder's privilege license expires. The registration of any peddler, solicitor, or transient vendor who for any reason is not subject to the privilege tax shall be issued for six (6) months. The permit of street barkers shall be for a period corresponding to the dates of the recognized parade or festival days of the city. 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.

9-110. Violation and penalty. In addition to any other action the city may take against a permit holder in violation of this chapter, such violation shall be punishable under the general penalty provision of this code. Each day a violation occurs shall constitute a separate offense.

CHAPTER 2

YARD SALES

SECTION

- 9-201. Definitions.
- 9-202. Property permitted to be sold.
- 9-203. Permit required.
- 9-204. Permit procedure.
- 9-205. Permit conditions.
- 9-206. Hours of operation.
- 9-207. Exceptions.
- 9-208. Display of sale property.
- 9-209. Display of permit.
- 9-210. Advertising.
- 9-211. Persons exempted from chapter.
- 9-212. Violations and penalty.

9-201. Definitions. For the purpose of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein.

(1) "Yard sales" shall mean and include all general sales, open to the public, conducted from or on any premises in any residential or nonresidential zone, as defined by the zoning ordinance, for the purpose of disposing of personal property including, but not limited to, all sales entitled "garage," "lawn," "yard," "attic," "porch," "room," "backyard," "patio," "flea market," or "rummage" sale. This definition does not include the operation of such businesses carried on in a nonresidential zone where the person conducting the sale does so on a regular day-to-day basis. This definition shall not include a situation where no more than five (5) specific items or articles are held out for sale and all advertisements of such sale specifically names those items to be sold.

(2) "Personal property" shall mean property which is owned, utilized and maintained by an individual or members of his or her residence and acquired in the normal course of living in or maintaining a residence. It does not include merchandise which was purchased for resale or obtained on consignment.

9-202. Property permitted to be sold. It shall be unlawful for any person to sell or offer for sale, under authority granted by this chapter, property other than personal property.

9-203. Permit required. No yard sale shall be conducted unless and until the individuals desiring to conduct such sale obtains a permit therefore from the city recorder. Members of more than one residence may join in

obtaining a permit for a yard sale to be conducted at the residence of one of them. Permits may be obtained for any nonresidential location.

9-204. Permit procedure. (1) Application. The applicant or applicants for a yard sale permit shall file a written application with the city recorder at least three (3) days in advance of the proposed sale setting forth the following information:

- (a) Full name and address of applicant or applicants.
- (b) The location at which the proposed yard sale is to be held.
- (c) The date or dates upon which the sale shall be held.
- (d) The date or dates of any other yard sales by the same applicant or applicants within the current calendar year.
- (e) A statement that the property to be sold was owned by the applicant as his own personal property and was neither acquired nor consigned for the purpose of resale.
- (f) A statement that the applicant will fully comply with this and all other applicable ordinances and laws.

(2) Permit fee. An administrative processing fee of five dollars (\$5.00) for the issuance of such permit shall accompany the application.

(3) Issuance of permit. Upon the applicant complying with the terms of this chapter, the city recorder shall issue a permit.

9-205. Permit conditions. The permit shall set forth and restrict the time and location of such yard sale. No more than three (3) such permits may be issued to one residential location, residence and/or family household during any calendar year. If members of more than one residence join in requesting a permit, then such permit shall be considered as having been issued for each and all of such residences. No more than six (6) permits may be issued for any nonresidential location during any calendar year.

9-206. Hours of operation. Yard sales shall be limited in time to no more than 9:00 A.M. to 6:00 P.M. on three (3) consecutive days or on two (2) consecutive weekends (Saturday and Sunday).

9-207. Exceptions. (1) If sale not held because of inclement weather. If a yard sale is not held on the dates for which the permit is issued or is terminated during the first day of the sale because of inclement weather conditions, and an affidavit by the permit holder to this effect is submitted, the city recorder shall issue another permit to the applicant for a yard sale to be

conducted at the same location within thirty (30) days from the date when the first sale was to be held. No additional permit fee is required.

(2) Fourth sale permitted. A fourth yard sale shall be permitted in a calendar year if satisfactory proof of a bona fide change in ownership of the real property is first presented to the city recorder.

9-208. Display of sale property. Personal property offered for sale may be displayed within the residence, in a garage, carport, and/or in a front, side or rear yard, but only in such areas. No personal property offered for sale at a yard sale shall be displayed in any public right-of-way. A vehicle offered for sale may be displayed on a permanently constructed driveway within such front or side yard.

9-209. Display of permit. Any permit in possession of the holder or holders of a yard sale shall be posted on the premises in a conspicuous place so as to be seen by the public, or any city official.

9-210. Advertising. (1) Signs permitted. Only the following specified signs may be displayed in relation to a pending yard sale:

(a) Two signs permitted. Two (2) signs of not more than four (4) square feet shall be permitted to be displayed on the property of the residence or nonresidential site where the yard sale is being conducted.

(b) Directional signs. Two (2) signs of not more than two (2) square feet each are permitted, provided that the premises on which the yard sale is conducted is not on a major thoroughfare, and written permission to erect such signs is received from the property owners on whose property such signs are to be placed.

(2) Time limitations. No sign or other form of advertisement shall be exhibited for more than two (2) days prior to the day such sale is to commence.

(3) Removal of signs. Signs must be removed each day at the close of the yard sale activities.

9-211. Persons exempted from chapter. The provisions of this chapter shall not apply to or affect the following:

(1) Persons selling goods pursuant to an order of process of a court of competent jurisdiction.

(2) Persons acting in accordance with their powers and duties as public officials.

(3) Any sale conducted by any merchant or mercantile or other business establishment on a regular, day-to-day basis from or at the place of business wherein such sale would be permitted by zoning regulations of the City

of Ducktown, or under the protection of the nonconforming use section thereof, or any other sale conducted by a manufacturer, dealer or vendor in which sale would be conducted from properly zoned premises, and not otherwise prohibited by other ordinances.

9-212. Violations and penalty. Any person found guilty of violating the terms of this chapter shall be subject to a penalty under the general penalty provision of this code.

CHAPTER 3**CABLE TELEVISION****SECTION**

9-301. To be furnished under franchise.

9-301. To be furnished under franchise. Cable television shall be furnished to the City of Ducktown and its inhabitants under franchise granted by the board of commissioners of the City of Ducktown, Tennessee. The rights, powers, duties and obligations of the City of Ducktown and its inhabitants are clearly stated in the franchise agreement executed by, and which shall be binding upon the parties concerned.¹

¹Cable television franchise agreements are of record in the office of the city clerk.

CHAPTER 4

ADULT-ORIENTED ESTABLISHMENTS

- 9-401. Purpose.
- 9-402. Definitions.
- 9-403. License required.
- 9-404. Application for license.
- 9-405. Standards for issuance of license.
- 9-406. Permit required.
- 9-407. Application for permit.
- 9-408. Standards for issuance of permit.
- 9-409. Fees.
- 9-410. Display of license or permit.
- 9-411. Renewal of license or permit.
- 9-412. Revocation of license or permit.
- 9-413. Hours of operation.
- 9-414. Responsibilities of the operator.
- 9-415. Prohibitions and unlawful sexual acts.
- 9-416. Penalties and prosecution.

9-401. Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. It is not the intent nor effect of this ordinance 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.

9-402. 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) "Adult-oriented establishment" shall include, but not be limited to, "adult bookstore," "adult motion picture theaters," "adult mini-motion picture establishments," or "adult cabaret," and further means any premises to which the public patrons or members (regardless of whether or not the establishment is categorized as a private or members only club) are invited or admitted and/or which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for

a profit, direct or indirect. An "adult-oriented establishment" further includes, without being limited to, any "adult entertainment studio" or any premises that is physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.

(2) "Adult bookstore" means an establishment having as a substantial portion of its stock in trade ("substantial portion" meaning over 20% of floor area, or 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, compact discs, computer software, computer generated images or text, or magazines and other periodicals or publications or reproductions of any kind which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below, and in conjunction therewith have facilities for the presentation of adult entertainment, as defined below, and including adult-oriented films, movies, or live entertainment, for observation by patrons therein.

(3) "Adult motion picture theater" means an enclosed building with a capacity of fifty (50) or more persons regularly used for presenting materials having as a dominant theme or presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below, for observation by any means by patrons therein.

(4) "Adult mini-motion picture theater" means an enclosed building with a capacity of less than fifty (50) persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below, for observation by any means by patrons therein.

(5) "Adult cabaret" is defined to mean an establishment which features as a principle use of its business, entertainers and/or waiters and/or bartenders and/or any other employee or independent contractor, who expose to public view of the patrons within said establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material; including swim suits, lingerie or latex covering. Adult cabarets shall include commercial establishments which feature entertainment of an erotic nature including exotic dancers, table dancers, private dancers, strippers, male or female impersonators, or similar entertainers.

(6) "Board of Commissioners" means the Board of Commissioners of the City of Ducktown, Tennessee.

(7) "Employee" means any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of an adult-oriented establishment.

(8) "Entertainer" means any person who provides entertainment within an adult-oriented establishment as defined in this section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.

(9) "Adult-entertainment" means any exhibition of any adult-oriented: motion pictures, live performance, computer or CD Rom generated images, displays of adult-oriented images or performances derived or taken from the internet, displays or dance of any type, which has a substantial portion of such performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal or partial removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers.

(10) "Operator" means any person, partnership, corporation, or entity of any type or character operating, conducting or maintaining an adult-oriented establishment.

(11) "Specified sexual activities" means:

(a) Human genitals in a state of actual or simulated sexual stimulation or arousal;

(b) Acts or simulated acts of human masturbation, sexual intercourse or sodomy;

(c) Fondling or erotic touching of human genitals, pubic region, buttock or female breasts.

(12) "Specified anatomical areas" means:

(a) Less than completely and opaquely covered:

(i) Human genitals, pubic region;

(ii) Buttocks;

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

(b) Human male genitals in an actual or simulated discernibly turgid state, even if completely opaquely covered.

9-403. License required. (1) Except as provided in subsection (5) below, from and after the effective date of this chapter, no adult-oriented establishment shall be operated or maintained in the City of Ducktown without first obtaining a license to operate issued by the City of Ducktown.

(2) A license may be issued only for one (1) adult-oriented establishment located at a fixed and certain place. Any person, partnership, or corporation which desires to operate more than one (1) adult-oriented establishment must have a license for them.

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

(4) It shall be unlawful for any entertainer, employee or operator to knowingly work in or about, or to knowingly perform any service directly related to the operation of any unlicensed adult-oriented establishment.

(5) All existing adult-oriented establishments at the time of the passage of this chapter must submit an application for a license within on 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 day period, then such existing adult-oriented establishment shall cease operations.

(6) No license may be issued for any location unless the premises is lawfully zoned for adult-oriented establishments and unless all requirements of the zoning ordinance are complied with.

9-404. Application for license. (1) Any person, partnership, or corporation desiring to secure a license shall make application to the Police Chief of the City of Ducktown. 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.

(2) The application for a license shall be upon a form provided by the police chief. An applicant for a license including any partner or limited partner of the partnership applicant, and any officer or director of the corporate applicant and any stockholder holding more than five (5) percent of the stock of a corporate applicant, or any other person who is interested directly in the ownership or operation of the business (including but not limited to all holders of any interest in land of members of any limited liability company) shall furnish the following information under oath:

- (a) Name and addresses, including all aliases.
- (b) Written proof that the individual(s) is at least eighteen (18) years of age.
- (c) All residential addresses of the applicant(s) for the past three (3) years.
- (d) The applicants' height, weight, color of eyes and hair.
- (e) The business, occupation or employment of the applicant(s) for five (5) years immediately preceding the date of the application.
- (f) Whether the applicant(s) previously operated in this or any other county, city or state under an adult-oriented establishment license or similar business license; whether the applicant(s) has ever had such a license revoked or suspended, the reason therefore, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.
- (g) All criminal statutes, whether federal or state, or city ordinance violation convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations.
- (h) Fingerprints and two (2) portrait photographs at least two (2) inches by two (2) inches of each applicant.
- (i) The address of the adult-oriented establishment to be operated by the applicant(s).

(j) The names and addresses of all persons, partnerships, limited liability entities, or corporations holding any beneficial interest in the real estate upon which such adult-oriented establishment is to be operated, including but not limited to, contract purchasers or sellers, beneficiaries of land trust or lessees subletting to applicant.

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

(l) The length of time each applicant has been a resident of the City of Ducktown, or its environs, immediately preceding the date of the application.

(m) If the applicant is a limited liability entity, the applicant shall specify the name, the date and state of organization, the name and address of the registered agent and the name and address of each member of the limited liability entity.

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

(o) All inventory, equipment, or supplies which are to be leased, purchased, held in consignment or in any other fashion kept on the premises or any part or portion thereof for storage, display, any other use therein, or in connection with the operation of said establishment, or for resale, shall be identified in writing accompanying the application specifically designating the distributor business name, address phone number, and representative's name.

(p) Evidence in form deemed sufficient to the city manager that the location for the proposed adult-oriented establishment complies with all requirements of the zoning ordinances as now existing or hereafter amended.

(3) Within ten (10) days of receiving the results of the investigation conducted by the Ducktown 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 advise the applicant in writing whether the application is granted or denied. All licenses shall be further held pending consideration of the required special use zoning permit by the board of commissioners.

(4) 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. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held thereafter before the board of commissioners at which time the applicant may present evidence as to why his/her license should not be denied. The board shall hear evidence as to the basis of the denial and shall affirm or reject the denial of any application at the hearing. If any application for an adult-oriented establishment license is denied

by the board of commissioners and no agreement is reached with the applicant concerning the basis for denial, the city attorney shall institute suit for declaratory judgment in the Chancery Court of Polk County, Tennessee, within five (5) days of the date of any such denial and shall seek an immediate judicial determination of whether such license or permit may be properly denied under the law.

(5) Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the police chief.

9-405. Standards for issuance of license. (1) To receive a license to operate an adult-oriented establishment, an applicant must meet the following standards:

- (a) If the applicant is an individual:
 - (i) The applicant shall be at least eighteen (18) years of age.
 - (ii) The applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.
 - (iii) The applicant shall not have been found to have previously violated this chapter within five (5) years immediately preceding the date of the application.
- (b) If the applicant is a corporation:
 - (i) All officers, directors and stockholders required to be named under § 9-403 shall be at least eighteen (18) years of age.
 - (ii) No officer, director or stockholder required to be named under § 9-403 shall have been found to have previously violated this chapter within five (5) years immediately preceding the date of application.
- (c) If the applicant is a partnership, joint venture, limited liability entity, or any other type of organization where two (2) or more persons have a financial interest:
 - (i) All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen (18) years of age.
 - (ii) No persons having a financial interest in the partnership, joint venture or other type of organization shall have been convicted of or pleaded nolo contendere to a felony or any

crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.

(iii) No persons having a financial interest in the partnership, joint venture or other type of organization shall have been found to have previously violated this chapter within five (5) years immediately preceding the date of the application.

(2) No license shall be issued unless the Ducktown Police Department has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the police chief no later than twenty (20) days after the date of the application.

9-406. Permit required. In addition to the license requirements previously set forth for owners and operators of "adult-oriented establishments," no person shall be an employee or entertainer in an adult-oriented establishment without first obtaining a valid permit issued by the police chief.

9-407. Application for permit. (1) Any person desiring to secure an permit as an employee or entertainer shall make application to the police chief. 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.

(2) The application for a permit shall be upon a form provided by the police chief. An applicant for a permit shall furnish the following information under oath:

- (a) Name and address, including all aliases.
- (b) Written proof that the individual is at least eighteen (18) years of age.
- (c) All residential addresses of the applicant for the past three (3) years.
- (d) The applicant's height, weight, color of eyes, and hair.
- (e) The business, occupation or employment of the applicant for five (5) years immediately preceding the date of the application.
- (f) Whether the applicant, while previously operating in this or any other city or state under an adult-oriented establishment permit or similar business for whom applicant was employed or associated at the time, has ever had such a permit revoked or suspended, the reason therefore, and the business entity or trade name for whom the applicant was employed or associated at the time of such suspension or revocation.
- (g) All criminal statutes, whether federal, state or city ordinance violation, convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations.
- (h) Fingerprints and two (2) portrait photographs at least two (2) inches by two (2) inches of the applicant.

(i) The length of time the applicant has been a resident of the City of Ducktown, or its environs, immediately preceding the date of the application.

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

(3) Within ten (10) days of receiving the results of the investigation conducted by the Ducktown Police Department, the police chief shall notify the applicant that his application is granted, denied, or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigations, the police chief shall advise the applicant in writing whether the application is granted or denied.

(4) 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. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held thereafter before the board of commissioners at which time the applicant may present evidence bearing upon the question.

(5) Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the applicant that he or she is ineligible for such permit and shall be grounds for denial thereof by the police chief.

9-408. Standards for issuance of permit. (1) To receive a permit as an employee or entertainer, an applicant must meet the following standards:

(a) The applicant shall be at least eighteen (18) years of age.

(b) The applicant shall not have been convicted of or pleaded no contest to a felony or any crime involving moral turpitude or prostitution, obscenity or other crime of a sexual nature (including violation of similar adult-oriented establishment laws or ordinances) in any jurisdiction within five (5) years immediately preceding the date of the application.

(c) The applicant shall not have been found to violate any provision of this chapter within five (5) years immediately preceding the date of the application.

(2) No permit shall be issued until the Ducktown Police Department has investigated the applicant's qualifications to receive a permit. The results of that investigation shall be filed in writing with the police chief not later than twenty (20) days after the date of the application.

9-409. Fees. (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 ($\frac{1}{2}$) 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 ($\frac{1}{2}$) of the fee shall be returned.

9-410. Display of license or permit. (1) The license shall be displayed in a conspicuous public place in the adult-oriented establishment.

(2) The permit shall be carried by an employee and/or entertainer upon his or her person and shall be displayed upon request of a customer, any member of the Ducktown Police Department, or any person designated by the board of commissioners.

9-411. Renewal of license or permit. (1) Every license issued pursuant to this chapter will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. 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 commissioners.

(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 ($\frac{1}{2}$) of the total fees collected shall be returned.

(3) If the Ducktown Police Department is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the police chief.

(4) Every permit issued pursuant to this chapter will terminate at the expiration of one (1) year from the date of issuance unless sooner revoked, and must be renewed before an employee and/or entertainer is allowed to continue employment in an adult-oriented establishment in the following calendar year. Any employee and/or entertainer desiring to renew a permit shall make application to the police chief. The application for renewal must be filed not later than sixty (60) days before the permit 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 employee. The application for renewal shall be upon 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 commissioners.

(5) A permit renewal fee of one hundred dollars (\$100.00) shall be submitted with the application for renewal. In addition to said renewal fee, a late penalty of fifty dollars (\$50.00) shall be assessed against the applicant who files for renewal less than sixty (60) days before the license expires. If the application is denied one-half (½) of the fee shall be returned.

(6) If the Ducktown Police Department is aware of any information bearing on the employee's qualifications, that information shall be filed in writing with the police chief.

9-412. Revocation of license or permit. (1) The police chief shall revoke a license or permit for any of the following reasons:

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

(b) 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; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of thirty (30) days if the city council shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

(c) The operator or employee becomes ineligible to obtain a license or permit.

(d) Any cost or fee required to be paid by this chapter is not paid.

(e) An operator employs an employee who does not have a permit or provide space on the premises, whether by lease or otherwise, to an independent contractor who performs or works as an entertainer without a permit.

(f) Any intoxicating liquor, cereal malt beverage, narcotic or controlled substance is allowed to be sold or consumed on the licensed premises.

(g) Any operator, employee or entertainer sells, furnishes, gives or displays, or causes to be sold, furnished, given or displayed to any minor any adult-oriented entertainment or adult-oriented material.

(h) Any operator, employee or entertainer denies access of law enforcement personnel to any portion of the licensed premises wherein adult-oriented entertainment is permitted or to any portion of the licensed premises wherein adult-oriented material is displayed or sold.

(i) Any operator allows continuing violations of the rules and regulations of the Ducktown County Health Department.

(j) Any operator fails to maintain the licensed premises in a clean, sanitary and safe condition.

(k) Any minor is found to be loitering about or frequenting the premises.

(2) The police chief, before revoking or suspending any license or permit, shall give the operator or employee at least ten (10) days' written notice of the charges against him or her and the opportunity for a public hearing before the board of commissioners, at which time the operator or employee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing.

(3) The transfer of a license or any interest in a license shall automatically and immediately revoke the license. The transfer of any interest in a non-individual operator's license shall automatically and immediately revoke the license held by the operator. Such license shall thereby become null and void.

(4) Any operator or employee whose license or permit is revoked shall not be eligible to receive a license or permit for five (5) years from the date of revocation. No location or premises for which a license has been issued shall be used as an adult-oriented establishment for two (2) years from the date of revocation of the license.

9-413. Hours of operation. (1) No adult-oriented establishment shall be open between the hours of 1:00 A.M. and 8:00 A.M. Monday through Saturday, and between the hours of 1:00 A.M. and 12:00 P.M. on Sunday.

(2) All adult-oriented establishments shall be open to inspection at all reasonable times by the Ducktown Police Department, the Polk County Sheriff's Department, or such other persons as the board of commissioners may designate.

9-414. Responsibilities of the operator. (1) The operator shall maintain a register of all employees and/or entertainers showing the name, and aliases used by the employee, home address, age, birth date, sex, height, weight, color of hair and eyes, phone numbers, social security number, date of employment and termination, and duties of each employee and such other information as may be required by the board of commissioners. The above information on each employee shall be maintained in the register on the premises for a period of three (3) years following termination.

(2) The operator shall make the register of the employees available immediately for inspection by police upon demand of a member of the Ducktown Police Department at all reasonable times.

(3) Every act or omission by an employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator if

such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(4) An operator shall be responsible for the conduct of all employees and/or entertainers while on the licensed premises and any act or omission of any employees and/or entertainer constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.

(5) There shall be posted and conspicuously displayed in the common areas of each adult-oriented establishment a list of any and all entertainment provided on the premises. Such list shall further indicate the specific fee or charge in dollar amounts for each entertainment listed. Viewing adult-oriented motion pictures shall be considered as entertainment. The operator shall make the list available immediately upon demand of the Ducktown Police Department at all reasonable times.

(6) No employee of an adult-oriented establishment shall allow any minor to loiter around or to frequent an adult-oriented establishment or to allow any minor to view adult entertainment as defined herein.

(7) Every adult-oriented establishment shall be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls, wherein adult entertainment is provided, shall be visible from the common area of the premises. Visibility shall not be blocked or obscured by doors, curtains, partitions, drapes, or any other obstruction whatsoever. It shall be unlawful to install booths, cubicles, rooms or stalls within adult-oriented establishments for whatever purpose, but especially for the purpose of secluded viewing of adult-oriented motion pictures or other types of adult entertainment.

(8) The operator shall be responsible for and shall provide that any room or area used for the purpose of viewing adult-oriented motion pictures or other types of live adult entertainment shall be readily accessible at all times and shall be continuously opened to view in its entirety.

(9) No operator, entertainer, or employee of an adult-oriented establishment shall demand or collect all or any portion of a fee for entertainment before its completion.

(10) A sign shall be conspicuously displayed in the common area of the premises, and shall read as follows:

This Adult-Oriented Establishment is Regulated by the City of Ducktown Municipal Code. Entertainers are:

1. Not permitted to engage in any type of sexual conduct;
2. Not permitted to expose their sex organs;
3. Not permitted to demand or collect all or any portion of a fee for entertainment before its completion.

9-415. Prohibitions and unlawful sexual acts. (1) No operator, entertainer, or employee of an adult-oriented establishment shall permit to be performed, offer to perform, perform or allow customers, employees or entertainers to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia.

(2) No operator, entertainer, or employee shall encourage or permit any person upon the premises to touch, caress, or fondle the breasts, buttocks, anus or genitals of any other person.

(3) No operator, entertainer, or employee shall encourage or permit any other person upon the premises to touch, caress, or fondle his or her breasts, buttocks, anus or genitals.

(4) No operator, entertainer, employee, or customer shall be unclothed or in such attire, costume, or clothing so as to expose to view any portion of the sex organs, breasts or buttocks of said operator, entertainer, or employee with the intent to arouse or gratify the sexual desires of the operator, entertainer, employee or customer.

(5) No entertainer, employee or customer shall be permitted to have any physical contact with any other person on the premises during any performance and all performances shall only occur upon a stage at least eighteen (18") inches above the immediate floor level and removed six feet (6') from the nearest entertainer, employee and/or customer.

9-416. Penalties and prosecution. (1) Any person, partnership, corporation, or other business entity who 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.

(2) 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.