

**TITLE 9****BUSINESS, PEDDLERS, SOLICITORS, ETC.<sup>1</sup>****CHAPTER**

1. OUT OF BUSINESS SALES, STREET SOLICITATIONS.
2. PEDDLERS, ETC.
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4. CHARITABLE SOLICITORS.
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6. POOL ROOMS.
7. FOOD AND BEVERAGE ESTABLISHMENTS.
8. PERSONAL PROPERTY SALES IN RESIDENTIAL DISTRICTS.
9. CABLE TELEVISION.
10. SEXUALLY ORIENTED BUSINESSES.

**CHAPTER 1****OUT OF BUSINESS SALES, STREET SOLICITATIONS****SECTION**

- 9-101. "Going out of business" sales.  
9-102. Street solicitations prohibited.

**9-101. "Going out of business" sales.** It shall be unlawful for any person falsely to 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," a "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. (1980 Code, § 5-101)

**9-102. Street solicitations prohibited.** It shall be unlawful for any person, corporation, association or other organization to use the streets and

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<sup>1</sup>Municipal 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.

highways with the corporate limits of the City of Humboldt, Tennessee, for the purpose of soliciting sales of merchandise, whether or not such merchandise has value, or to solicit contributions from operators of or passengers in or on motor vehicles being operated or parked on any such streets or highways.

Each solicitation of any such sale or contribution shall constitute a separate offense. (1980 Code, § 5-102, as amended by Ord. # 83-1, Jan. 1983)

**CHAPTER 2****PEDDLERS, ETC.<sup>1</sup>****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 street and permitted locations.
- 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, 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. (1980 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. (1980 Code, § 5-202)

**9-203. Application for permit.** Applicants for a permit under this chapter must file with the mayor 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.

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<sup>1</sup>Municipal code reference  
Privilege taxes: title 5.

(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 properly to 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, and if so, 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 five dollars (\$5.00) shall be paid to the city to cover the cost of investigating the facts stated therein. (1980 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 mayor 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 mayor 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 mayor shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by § 9-206. The mayor shall keep a permanent record of all permits issued. (1980 Code, § 5-204)

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

delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1980 Code, § 5-205)

**9-206. Bond.** Every permittee shall file with the mayor a surety bond running to the city in the amount of one thousand dollars (\$1,000.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of the city 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 city 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 city 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. (1980 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 city 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. (1980 Code, § 5-207)

**9-208. Use of street and permitted locations.** No permittee shall have any right to locate in the public street or sidewalk nor shall any be permitted to operate in a congested area if such operation might impede or inconvenience the public use of such area. No more than one (1) permit shall be issued for each listed premise. A listed premise shall consist of a parcel of property that is assessed for property taxes by the City of Humboldt and show as such on the tax map of said city. (Ord. #95-3, April 1995)

**9-209. Exhibition of permit.** Permittees are required to exhibit their permits at the request of any policeman or citizen. (1980 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. (1980 Code, § 5-210)

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

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

(b) Any violation of this chapter.

(c) Conviction of any crime or misdemeanor.

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

(2) Notice of the hearing for revocation of a permit shall be given by the mayor 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 it is reasonably necessary in the public interest, the mayor may suspend a permit pending the revocation hearing. (1980 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. (1980 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. (1980 Code, § 5-213)

## CHAPTER 3

### AUCTIONS

#### SECTION

- 9-301. Types of auctions regulated by this chapter.
- 9-302. Permit and licensed auctioneer required.
- 9-303. Bond required; issuance of permit.
- 9-304. Right to bid on behalf of seller must be made public.
- 9-305. Identification of merchandise.
- 9-306. Sales must be recorded.
- 9-307. Auctions to be conducted by licensed auctioneer.

**9-301. Types of auctions regulated by this chapter.** This chapter shall apply to all sales by auction of personal property within the City of Humboldt, except auctions held pursuant to the order of courts of record, sales by executors or administrators, sales by trustees under recorded mortgages or deeds of trust, or by lien holders acting in accordance with law. (1980 Code, § 5-301)

**9-302. Permit and licensed auctioneer required.** No person, firm, or corporation shall, directly or indirectly, through agents or otherwise, conduct any sale by auction, with the exceptions set forth in § 9-301, except by a licensed auctioneer and without first having obtained a permit from the mayor of the City of Humboldt for conducting the same. The application for the permit shall be made in writing, giving the name and address of the owner and the description of the merchandise, goods, or wares or other personal property to be offered for sale at public auction, and the place the proposed auction sale is to be held.

The application shall state whether or not any other application for a permit by the owner or the auctioneer has been refused or rejected after having been issued. (1980 Code, § 5-302)

**9-303. Bond required; issuance of permit.** No person, firm, or corporation shall hold an auction sale, except as excluded in section 9-301 hereof, without first depositing with the mayor a good and sufficient bond, payable to the City of Humboldt and conditioned to pay the city, or anyone else suing in its name, for their use, for injuries or damages sustained on account of dishonest or fraudulent conduct in connection with an auction sale. The amount of said bond shall be in the penal sum of one thousand dollars (\$1,000.00). Said bond shall provide that any person or persons injured by the dishonest, fraudulent, or improper conduct or representations in connection with any auction sale may sue on said bond, and the recovery, if any, shall be payable to said person or persons.

The mayor of the City of Humboldt, upon consideration of said application and upon the payment of twenty-five dollars (\$25.00) by the applicant, may issue said permit for a period not longer than two weeks if in his opinion the proposed auction sale is for legitimate business purposes and will be conducted in a proper manner and at a suitable place. (1980 Code, § 5-303)

**9-304. Right to bid on behalf of seller must be made public.** At any auction sale where notice in the advertisements of the auction has not been given that the sale by auction is subject to right to bid on behalf of the seller, it shall not be lawful for the seller to bid for himself or to employ or induce any person to bid at such sale in his behalf or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller, or knowingly to take a bid from a seller or any person employed by him, and any sale contravening this rule may be treated as fraudulent by the buyer and shall be a misdemeanor.

At any auction sale permitted under this chapter, where any bid is made by or on behalf of the seller, it shall be so announced at the time the bid is made, including the starting price. (1980 Code, § 5-304)

**9-305. Identification of merchandise.** No used or secondhand merchandise shall be sold without so announcing when such article is to be sold. (1980 Code, § 5-305)

**9-306. Sales must be recorded.** In conducting an auction sale, the auctioneer will describe in writing the articles sold, the name of the purchaser, and the amount paid, and will require the purchaser to sign each such entry, and this written information shall each day be filed in the office of the mayor. (1980 Code, § 5-306)

**9-307. Auctions to be conducted by licensed auctioneer.** All auctions shall be conducted by a duly licensed auctioneer. (1980 Code, § 5-307)



## CHAPTER 4

### CHARITABLE SOLICITORS

#### SECTION

- 9-401. Permit required.
- 9-402. Prerequisites for a permit.
- 9-403. Denial of a permit.
- 9-404. Exhibition of permit.
- 9-405. Trespassing.
- 9-406. Violations.

**9-401. 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 mayor 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. (1980 Code, § 5-401)

**9-402. Prerequisites for a permit.** The mayor 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. (1980 Code, § 5-402)

**9-403. Denial of a permit.** Any applicant for a permit to make charitable or religious solicitations may appeal to the board of mayor and aldermen if he has not been granted a permit within fifteen (15) days after he makes application therefor. (1980 Code, § 5-403)

**9-404. 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. (1980 Code, § 5-404)

**9-405. 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. (1980 Code, § 5-405)

**9-406. 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. (1980 Code, § 5-406)

## CHAPTER 5

### TAXICABS<sup>1</sup>

#### SECTION

- 9-501. Taxicab franchise and privilege license required.
- 9-502. Requirements as to application and hearing.
- 9-503. Liability insurance required.
- 9-504. Revocation or suspension of franchise.
- 9-505. Mechanical condition of vehicles.
- 9-506. Cleanliness of vehicles.
- 9-507. Inspection of vehicles.
- 9-508. License and permit required for drivers.
- 9-509. Qualifications for driver's permit.
- 9-510. Revocation or suspension of driver's permit.
- 9-511. Drivers not to solicit business.
- 9-512. Parking restricted.
- 9-513. Drivers to use direct routes.
- 9-514. Taxicabs not to be used for illegal purposes.
- 9-515. Miscellaneous prohibited conduct by drivers.
- 9-516. Transportation of more than one passenger at the same time.

**9-501. 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 city and has a currently effective privilege license. (1980 Code, § 5-501)

**9-502. Requirements as to application and hearing.** No person shall be eligible 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 service; present the application to the board of mayor and aldermen; and make

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<sup>1</sup>Municipal code reference  
Privilege taxes: title 5.

a recommendation either to grant or refuse a franchise to the applicant. The board shall thereupon hold a public hearing at which time witnesses for and against the granting of the franchise shall be heard. In deciding whether or not to grant the franchise, the board of mayor and aldermen 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<sup>1</sup> shall not be required to make applications under this section but shall be required to comply with all of the other provisions hereof. (1980 Code, § 5-502)

**9-503. Liability insurance required.** No taxicab franchise shall be issued or continued in operation unless there is in full force and effect a liability insurance policy for each vehicle authorized in the amount of ten thousand dollars (\$10,000.00) for bodily injury or death to any one person, twenty thousand dollars (\$20,000.00) for bodily injuries or death to more than one person which are sustained in the same accident, and five thousand dollars (\$5,000.00) for property damage resulting from any one accident. (1980 Code, § 5-503)

**9-504. Revocation or suspension of franchise.** The board of mayor and aldermen, after a public hearing, may revoke or suspend any taxicab franchise for misrepresentations or false statements made in the application therefor or for traffic violations or violations of this chapter by the taxicab owner or any driver. (1980 Code, § 5-504)

**9-505. Mechanical condition of vehicles.** It shall be unlawful for any person to operate any taxicab in the city unless such taxicab is equipped with four (4) wheel brakes, front and rear lights, safe tires, horn, muffler, windshield wipers, and rear vision mirror, all of which shall conform to the requirements of the state motor vehicle law. Each taxicab shall be equipped with a handle or latch or other opening device attached to each door of the passenger compartment so that such doors may be operated by the passenger from the inside of the taxicab without the intervention or assistance of the driver. The motor and all mechanical parts shall be kept in such condition or repair as may be reasonably necessary to provide for the safety of the public and the continuous satisfactory operation of the taxicab. (1980 Code, § 5-505)

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<sup>1</sup>This refers to the 1968 Code which was adopted and became effective on October 8, 1968.

**9-506. Cleanliness of vehicles.** All taxicabs operated in the city 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. (1980 Code, § 5-506)

**9-507. 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. (1980 Code, § 5-507)

**9-508. 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. (1980 Code, § 5-508)

**9-509. 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 city 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 minor traffic offenses.
- (7) Is familiar with the state and local traffic laws. (1980 Code, § 5-509)

**9-510. Revocation or suspension of driver's permit.** The board of mayor and aldermen, after a public hearing, may revoke or suspend any taxicab driver's permit for violation of traffic regulations, for violation of this chapter, or when the driver ceases to possess the qualifications as prescribed in § 9-509. (1980 Code, § 5-510)

**9-511. Drivers not to solicit business.** All taxicab drivers are expressly prohibited from indiscriminately soliciting passengers or from cruising

upon the streets of the city for the purpose of obtaining patronage for their cabs. (1980 Code, § 5-511)

**9-512. 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 city 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 unreasonably to interfere with or obstruct other traffic and provided the passenger loading or discharging is promptly accomplished. (1980 Code, § 5-512)

**9-513. Drivers to use direct routes.** Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route. (1980 Code, § 5-513)

**9-514. 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. (1980 Code, § 5-514)

**9-515. 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; unnecessarily to blow the automobile horn; or otherwise unreasonably to disturb the peace, quiet, and tranquility of the city in any way. (1980 Code, § 5-515)

**9-516. 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. (1980 Code, § 5-516)

## CHAPTER 6

### POOL ROOMS<sup>1</sup>

#### SECTION

9-601. Hours of operation regulated.

9-602. Minors to be kept out; exception.

9-603. Gambling, etc., not to be allowed.

**9-601. Hours of operation regulated.** It shall be unlawful for any person to open, maintain, conduct, or operate any place where pool tables or billiard tables are kept for public use or hire at any time on Sunday or between the hours of 12:00 P.M. and 6:00 A.M. on other days. (1980 Code, § 5-601)

**9-602. 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 for 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, without first having obtained the written consent of the father and mother of such minor, if living. If the father is dead, then written consent must be obtained from 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 must be obtained; provided that this section shall not apply to the use of billiards, bagatelle, and pool tables in private residences. (1980 Code, § 5-602)

**9-603. Gambling, etc., not to be allowed.** It shall be unlawful for any person operating, conducting, or maintaining any place where pool tables or billiard tables are kept for public use or hire to permit any gambling or other unlawful or immoral conduct on such premises. (1980 Code, § 5-603)

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<sup>1</sup>Municipal code reference  
Privilege taxes: title 5.

**CHAPTER 7****FOOD AND BEVERAGE ESTABLISHMENTS****SECTION**

9-701. Hours regulated.

**9-701. Hours regulated.** No person, firm, partnership, association, or corporation selling or otherwise dispensing prepared or processed food or beverages, except beer, shall be open for business between the hours of twelve (12) midnight and six (6) o'clock A.M. or cause or permit its servants, agents, or employees to do so.

There shall be excepted from this section any such business whose location abuts a highway which is designated a U.S. Highway. (1980 Code, § 5-701)



## CHAPTER 8

### PERSONAL PROPERTY SALES IN RESIDENTIAL DISTRICTS

#### SECTION

- 9-801. Intent and purpose.
- 9-802. Permit required.
- 9-803. Term of permit.
- 9-804. Application for permit.
- 9-805. Exceptions.
- 9-806. Conditions to be met.
- 9-807. Signs.

**9-801. Intent and purpose.** It is the intent of these regulations to prohibit infringement of any businesses in any established residential areas and in so doing to regulate the term and frequency of a personal property sale (such as garage sales, porch sales, yard sales, and other similar types of sales) so as not to disturb or disrupt the residential environment of the area. It is not the intent of this chapter to seek control of sales by individuals selling a few of their household or personal items. (Ord. #84-11, Oct. 1984)

**9-802. Permit required.** It shall be unlawful for any person desirous of holding a personal property sale (such as, but not limited to, garage sale, porch sale, or yard sale), of clothing or any personal property items which are owned by the residents of the premises to hold such sale without first obtaining a permit therefor from the Police Department of the City of Humboldt. (Ord. #84-11, Oct. 1984)

**9-803. Term of permit.** Any such permit issued shall be for a term not exceeding three consecutive calendar days.

Permits shall be limited to four per calendar year, per residential dwelling. (Ord. #84-11, Oct. 1984)

**9-804. Application for permit.** Application for permit shall be made to the Humboldt Police Department upon forms furnished by the city, along with a permit fee of \$1.00.

The form shall contain at least the following information:

- (1) Full name and address of applicant.
- (2) The location at which the proposed sale is to be held.
- (3) The date or dates upon which the personal property sale shall be held.
- (4) The date or dates of any other personal property sales within the current calendar year.

(5) An affirmative statement that the property to be sold was owned by the applicant as his own personal property and was neither acquired or consigned for the purpose of resale. (Ord. # 84-11, Oct. 1984)

**9-805. Exceptions.** The provisions of this chapter shall not apply to or affect the following persons or sales:

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

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

(3) Any bona fide charitable, eleemosynary, educational, cultural, or government institution or organization, provided, however, that the burden of establishing the exemption shall be on the organization or institution claiming such exemption. (Ord. #84-11, Oct. 1984)

**9-806. Conditions to be met.** The permit shall be posted on the premises in a conspicuous place so as to be seen by the public and city inspectors. (Ord. #84-11, Oct. 1984)

**9-807. Signs.** No signs shall be posted anywhere in the City of Humboldt advertising such sales, except that the property owner may install on the residential lot on which the sale is held one sign not larger than 2' x 3' advertising such sale. Such sign shall not be erected more than three days prior to the date of the sale, and shall be removed at the end of the last day upon which the sale is held. (Ord. #84-11, Oct. 1984)

**CHAPTER 9**

**CABLE TELEVISION**

**SECTION**

9-901. To be furnished under franchise.

**9-901. To be furnished under franchise.** Cable television service shall be furnished to the City of Humboldt and its inhabitants under franchise as the board of mayor and aldermen shall grant. The rights, powers, duties, and obligations of the City of Humboldt 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.<sup>1</sup>

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<sup>1</sup>For complete details relating to the cable television franchise agreement see Ord. #96-6 dated June 3, 1996 and Ord. #2009-01, Feb. 2009, in the office of the city recorder.

**CHAPTER 10****SEXUALLY ORIENTED BUSINESSES****SECTION**

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**9-1001. Purpose and intent.** It is the purpose and intent of this chapter to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the city and to establish reasonable and uniform regulations to prevent any deleterious location and concentration of sexually oriented businesses within the city, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. 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 the chapter to condone or legitimize the distribution of obscene material. (Ord. #97-7, Dec. 1997)

**9-1002. Definitions.** For the purposes of this division, certain terms and words are defined as follows:

(1) "Sexually oriented businesses" are those businesses defined as follows:

(a) "Adult arcade" means an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons each, are regularly used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(b) "Adult bookstore," "adult novelty store" or "adult video store" means a commercial establishment which has a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale, rental for any form of consideration, of any one or more of the following:

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

(ii) An establishment may have other principal business purposes that do not involve the offering for sale rental or viewing of materials depicting or describing "specified sexual activities" or "specified anatomical areas," and still be categorized as adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe "specified anatomical areas" or "specified sexual activities."

(c) "Adult cabaret" means a nightclub, bar, restaurant, "bottle club," or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

- (i) Persons who appear nude or in a state of nudity;
- (ii) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities," or
- (iii) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

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

- (i) Offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, or
- (ii) Offers a sleeping room for rent for a period of time less than ten (10) hours; or
- (iii) Allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten (10) hours.

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

(f) "Adult theatre" means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of "specified anatomical areas" or by "specified sexual activities."

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

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

(i) "Massage parlor" means and place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment manipulation of the human body which occurs as a part of or in connection with "specified sexual activities," or where any person providing such treatment, manipulation, or service related thereto, exposes his or her "specified anatomical areas." The definition of sexually oriented businesses shall not include the practice of massage in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program.

(j) "Nude model studio" means any place where a person, who regularly appears in a state of nudity is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

(k) "Sexual encounter establishment" means a business or commercial establishment, that as one of its primary business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or the exposure of "specified anatomical areas" or activities when one or more of the persons is in a state of nudity. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

(2) "Employee" means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

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

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

(b) The conversion of an existing business, whether or not a sexually oriented business, to any of the sexually oriented businesses defined in this chapter;

(c) The addition of any of the sexually oriented businesses defined in this chapter to any other existing sexually oriented business; or

(d) The relocation of any such sexually oriented business.

(4) "Nudity" or "state of nudity" means:

(a) The appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or

(b) A state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

(5) "Operator" means and includes the owner, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.

(6) "Permitted or licensed premises" means any premises that requires a license and/or permit and that is classified as a sexually oriented business.

(7) "Permittee" and/or "licensee" means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

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

(9) "Public building" means any building owned, leased or held by the United States, the state, the county, the city, any special district, school district, or any other agency or political subdivision of the state or the United States, which building is used for governmental purposes.

(10) "Public park" or "recreation area" means public land which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, open space, wilderness areas, or similar public land within the city which is under the control, operation, or management of the city park and recreation authorities.

(11) "Religious institution" means any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.

(12) "Residential district" or "use" means a single family, duplex, townhouse, multiple family, or mobile park or subdivision and campground as defined in the and/or Humboldt Zoning Ordinances.

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

(14) "Semi-nude" means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

(15) "Sexually oriented business" means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theatre, adult theatre, massage parlor, sexual encounter establishment, escort agency or nude model studio.



(16) "Specified anatomical areas," as used in this division means and includes any of the following:

- (a) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae; or
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(17) "Specified sexual activities," as used in this division, means and includes any of the following:

- (a) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (c) Masturbation, actual or simulated; or
- (d) Human genitals in a state of sexual stimulation, arousal or tumescence;
- (e) Excretory functions as part of or in connection with any of the activities set forth in subdivisions (a) through (d) of this subsection.

(18) "Substantial enlargement of a sexually oriented business" means increase in the floor areas occupied by the business by more than 15%, as the floor areas exist on date ordinance becomes effective.

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

- (a) The sale, lease or sublease of the business;
- (b) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means;
- (c) The establishment of a trust, gift or other similar legal devise which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control. (Ord. #97-7, Dec. 1997)

**9-1003. Establishment and classification of businesses regulated.**

(1) The establishment of a sexually oriented business shall be permitted only in the areas available as established by the following restrictions and shall be subject to the following restrictions. No person shall cause or permit the establishment of any of the following sexually oriented businesses, as defined above, within 1200 feet of another such business or within 1200 feet of any religious institution, school, boys' club, girls' club, or similar existing youth organization, or public park or public building, or within 1200 feet of any property zoned for residential use or used for residential purposes and are classified as follows:

- (a) Adult arcade
- (b) Adult bookstore, adult novelty store or adult video store
- (c) Adult cabaret

- (d) Adult motel
- (e) Adult motion picture theater
- (f) Adult theater
- (g) Massage parlor
- (h) Sexual encounter establishment
- (i) Escort agency, or
- (j) Nude model studio. (Ord. #97-7, Dec. 1997)

**9-1004. Measurement of distance.** As regarding § 9-1003(1), distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural walls of each business. The distance between any sexually oriented business and any religious institution, public or private elementary or secondary school, boys club, girls club, or similar existing youth organization, or public park or public building or any properties zoned for residential use or used for residential purposes shall also be measured in a straight line, without regard to intervening structures or objects from the nearest point of the property line of the premises where the sexually oriented business is conducted, to the nearest point of the property line of the premises of a religious institution, public or private elementary or secondary school, boys club, girls club, or similar existing youth organization, or public park or public building or any properties zoned for residential use or used for residential purposes. (Ord. #97-7, Dec. 1997)

**9-1005. Location of sexually oriented businesses.** The City of Humboldt's Zoning Ordinance hereby requires that sexually oriented businesses shall be permitted only as provided in § 9-1003 in which such use is listed as permissible. Permits for sexually oriented businesses shall be required and governed by the procedures and policies specified in § 9-1008 et seq. of this division. In addition, any sexually oriented business shall be subject to the following restrictions:

- (1) The person commits a misdemeanor, if he operates or causes to be operated a sexually oriented business except as provided in § 9-1003.
- (2) The person commits a misdemeanor if he operates or causes to be operated a sexually oriented business within 1200 feet of:
  - (a) Any religious institution;
  - (b) Any school;
  - (c) The boundary of any residential district;
  - (d) A public park adjacent to any residential district;
  - (e) A property line of a lot devoted to residential use; or
  - (f) A boys club, girls club, or similar existing youth organization,
- (3) A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business within 1200 feet of another such business, which will include, any adult arcade, adult book store, adult video store, adult

cabaret, adult motel, adult motion picture theater, adult theater, massage parlor or any sexual encounter establishment,

(4) A person commits a misdemeanor if he causes or permits the operation, establishment, or maintenance of more than one sexually oriented business within the same building, structure, or portion thereof, or causes the substantial enlargement of any sexually oriented business in any building, structure or portion thereof containing another sexually oriented business.

(5) It is a defense to prosecution under this section if a person appearing in a state of nudity did so in a modeling class operated:

(a) By a proprietary school, licensed by the State of Tennessee; 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 nude person is available for viewing; and

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

(iii) Where no more than one nude model is on the premises at any one time. (Ord. #97-7, Dec. 1997)

**9-1006. Regulations governing existing sexually oriented businesses.** (1) A sexually oriented business lawfully operating as conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of a sexually oriented business permit and/or license, of a church, public or private elementary or secondary school, public park, public building, residential district, or residential lot within 1200 feet of the sexually oriented business. This provision applies only to the renewal of a valid permit and/or license and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.

(2) Any establishment subject to the provision of this section shall apply for the permit provided for by § 9-1010 within thirty (30) days of the effective day of this chapter. Any establishment, existing prior to the effective date of this chapter, shall comply with the regulations pertaining to §§ 9-1020, 9-1022, and 9-1030 within sixty (60) days of the effective date of this chapter and all other applicable permit regulations within 30 days of the effective date of this chapter. (Ord. #97-7, Dec. 1997)

**9-1007. Injunction.** A person who operates or causes to be operated a sexually oriented business without having a valid permit due to locational restrictions is subject to a suit for injunction as well as prosecution for the criminal violation. Such violation shall be punishable by a fine of up to \$500.00 for each calendar day of the violation, and if an injunction must be sought, attorneys fees and costs will be assessed at the discretion of the court against the sexually oriented business. (Ord. #97-7, Dec. 1997)

**9-1008. Sexually oriented business permit: purpose and intent.** It is the purpose of this chapter to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent deleterious effects 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 or effect of this chapter to in any way condone or legitimize the distribution of obscene or harmful to minors' material. (Ord. #97-7, Dec. 1997)

**9-1009. Permit required.** (1) No sexually oriented business shall be permitted to operate without a valid sexually oriented business permit issued by the city for the particular type of business. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business without said permit.

(2) The Mayor of the City of Humboldt and the Board of Aldermen is responsible for granting, denying, revoking, renewing, suspending, and canceling sexually oriented business permits for proposed or existing sexually oriented businesses. The Mayor of the City of Humboldt or his/her designee is also responsible for ascertaining whether a proposed sexually oriented business for which a permit is being applied for complies with all locational requirements of §§ 9-1003, 9-1005, and 9-1006 of this chapter, all applicable zoning laws and/or regulations now in effect or as amended or enacted subsequent to the effective date of this chapter in the city and the city comprehensive plan.

(3) The Humboldt Police Department is responsible for providing information on whether an applicant has been convicted of a specified criminal act during the time period set forth.

(4) The city's code enforcement office is responsible for inspecting a proposed, permitted or non-permitted sexually oriented business in order to ascertain whether it is in compliance with applicable statutes and ordinances.

(5) An application for a permit must be made on a form provided by the city. Any person desiring to operate a sexually oriented business shall file

with the city an original and two copies of a sworn permit application on the standard application form supplied by the city or designee.

(6) The completed application shall contain the following information and shall be accompanied by the following documents:

(a) If the applicant is:

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

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

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

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

(i) The sexually oriented business's fictitious name and

(ii) Submit the required Tennessee registration documents.

(c) Whether the applicant or any of the other individuals listed pursuant to § 9-1009 of this chapter has, within the two (2) or five (5) year period as specified in § 9-1011 immediately preceding the date of the application, been convicted of a specified criminal act, and, if so, the specified criminal act involved, the date of conviction and the place of conviction.

(d) Whether the applicant or any of the other individuals pursuant to § 9-1009 and or licenses of this chapter has had a previous permit under ordinance or other similar sexually oriented business ordinances from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or any other individuals listed pursuant to § 9-1009 has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is permitted under this chapter whose permit has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(e) Whether the applicant or any other individual listed pursuant to § 9-1009 holds any other permits and/or licenses under this

chapter or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other permitted businesses.

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

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

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

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

(j) The applicant's driver's permit number, social security number, and or his/her state or federally issued tax identification number.

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

(l) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a Tennessee registered land surveyor depicting the property lines and the structures containing any established existing uses regulated by this chapter within 1200 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, or public park or recreation area within 1200 feet of the property to be certified; and the property lines of any residentially zoned area or residential property within 1200 feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(m) If a person who wishes to operate a sexually oriented business is an individual, he/she must sign the application for a permit as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten percent (10%) or greater interest in the business must sign the application for a permit as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity which wishes to operate such a business, each individual having a ten percent (10%) or greater interest in the corporation must sign the application for a permit as applicant.

(n) If a person wishes to operate a sexually oriented business which shall exhibit on the premises films, video cassettes, or other video reproductions which depict specified sexual activities or specified

anatomical areas, then said person shall comply with the application requirements stated at § 9-1020 et seq.

(7) Applicants for a permit under this section shall have a continuing duty to promptly supplement application information required by this section in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within thirty (30) days from the date of such change, by supplementing the application on file with the Mayor of the City of Humboldt or his/her designee, shall be grounds for suspension of a permit.

(8) In the event that the Mayor of the City of Humboldt or his/her designee determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, he/she shall promptly notify the applicant of such fact and allow the applicant ten (10) days to properly complete the application. (The time period for granting or denying a permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.)

(9) The applicant must be qualified according to the provisions of this chapter and the premises must be inspected and found to be in compliance with health, fire and building codes and laws.

(10) The applicant shall be required to pay non-refundable application fee of one hundred dollars (\$100.00) at the time of filing an application under this section of this chapter.

(11) Prior to obtaining any permit or license to operate any sexually oriented business defined in this chapter, and as part of any application for a permit under this section, the applicant shall obtain from the city or its designee a certification that the proposed location of such business complies with the locational requirements of §§ 9-1005 and 9-1006 of this chapter.

(12) The fact that a person possesses other types of state or city permits and/or licenses does not exempt him/her from the requirement of obtaining a sexually oriented business permit.

(13) By applying for a permit under this chapter, the applicant shall be deemed to have consented to the provisions of this chapter and to the exercise by the Mayor of the City of Humboldt or his/her designee, the Humboldt Police Department and all other city agencies charged with the enforcing the laws, ordinances and codes applicable in the city of their respective responsibilities under this chapter.

(14) The applicant shall be required to provide the city with the names of any and all employees who are required to be licensed pursuant to § 9-1019 of this chapter. This shall be a continuing requirement even after a permit is granted or renewed. (Ord. #97-7, Dec. 1997)

**9-1010. Investigation and application.** (1) Upon receipt of an application properly filed with the city and upon payment of the non-refundable application fee, the city or its designee, shall immediately stamp the application

as received and shall immediately thereafter send photocopies of the application to the Humboldt Police Department and any other city agencies responsible for enforcement of health, fire and building codes and laws. Each department or agency shall promptly conduct an investigation of the applicant, application and the proposed sexually oriented business in accordance with its responsibilities under law and as set forth in this chapter. Said investigation shall be completed within twenty (20) days of receipt of the application by the city or its designee. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its approval or disapproval of the application, date it, sign it, and in the event it disapproves, state the reasons therefor. The Humboldt Police Department shall only be required to certify the NCIC records request check mentioned at § 9-1011. The Humboldt Police Department shall not be required to approve or disapprove applications.

(2) A department or agency shall disapprove an application if it finds that the proposed sexually oriented business will be in violation of any provision of any statute, code, ordinance, regulation or other law in effect in the city. After its indication of approval or disapproval, each department or agency shall immediately return the photocopy of the application to the city or its designee. (Ord. #97-7, Dec. 1997)

**9-1011. Issuance of permit.** (1) The Mayor of the City of Humboldt or his/her designee, shall grant or deny an application for a permit within thirty (30) days from the date of its proper filing. Upon the expiration of the thirtieth (30<sup>th</sup>) day, unless the applicant requests and is granted a reasonable extension of time, the applicant shall be permitted to begin operating the business for which the permit is sought, unless and until the city or its designee, notifies the applicant of a denial of the application and states the reason(s) for that denial.

(2) **Grant of application for permit.** (a) The Mayor of the City of Humboldt or his/her designee, shall grant the application unless one or more of the criteria set forth in (3) below is present.

(b) The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit shall also indicate that the sexually oriented business whether permitted or not may be subject to prohibitions against public nudity and indecency pursuant to the United States Supreme Court decision in Barns v. Glen Theatre, Inc., 501 U.S. 560 (1991). The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be read easily at any time.

(3) **Denial of application for permit.** (a) The Mayor of the City of Humboldt or his/her designee, shall deny the application for any of the following reasons:

(i) An applicant is under eighteen years of age.



(ii) An applicant or an applicant's spouse is overdue on his/her payment to the city of taxes, fees, fines, or penalties assessed against him/her or imposed upon him/her in relation to a sexually oriented business.

(iii) An applicant is residing with a person who has been denied a permit by the city to operate a sexually oriented business within the preceding twelve (12) months, or residing with a person whose permit to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

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

(v) The premises to be used for the sexually oriented business have not been approved as being in compliance with health, fire and building codes by the department or agency responsible under law for investigating said compliance.

(vi) The application or permit fees required by this chapter have not been paid.

(vii) An applicant of the proposed business is in violation of, or is not in compliance with, any of the provisions of this chapter including but not limited to the zoning locational requirements for a sexually oriented business under §§ 9-1003, 9-1005, and 9-1006.

(viii) The granting of the application would violate a statute, ordinance, or court order.

(ix) The applicant has a permit under this chapter which has been suspended or revoked.

(x) An applicant has been convicted of a "specified criminal" act for which:

(A) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense for the "specified criminal" acts which are sexual crimes against children, sexual abuse, rape or crimes connected with another sexually oriented business including but not limited to distribution of obscenity or material harmful to minors, prostitution, pandering, or tax violations;

(B) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense; for the "specified criminal" acts which are sexual crimes against children, sexual abuse, rape or crimes

connected with another sexually oriented business including but not limited to distribution of obscenity or material harmful to minors, prostitution, pandering, or tax violations;

(C) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two or more misdemeanor offenses for "specified criminal" acts which are sexual crimes against children, sexual abuse, rape or crimes connected with another sexually oriented business including but not limited to distribution of obscenity or materials harmful to minors, prostitution, pandering or tax violations; offenses occurring within any twenty-four month period;

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

(E) An applicant who has been convicted of the above described "specified criminal acts" may qualify for a sexually oriented business permit only when the time period required above in § 9-1011(3)(a)(x) has elapsed.

(xi) An applicant knowingly has in his or her employ, an employee who does not have a valid license as required in § 9-1019 of this chapter.

(b) If the Mayor of the City of Humboldt or his/her designee, denies the application, he/she shall notify the applicant of the denial and state the reason(s) for the denial.

(c) If a person applies for a permit for a particular location within a period of twelve (12) months from the date of denial of a previous application for a permit at the location, and there has not been an intervening change in the circumstances which could reasonably be expected to lead to a different decision regarding the former reasons for denial, the application shall be denied. (Ord. #97-7, Dec. 1997)

**9-1012. Annual permit fee.** The annual fee for a sexually oriented business permit is eight hundred fifty dollars (\$850.00). (Ord. #97-7, Dec. 1997)

**9-1013. Inspection.** (1) An applicant or permittee shall permit representatives of the code enforcement office, the county health department, and the fire department to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

(2) It shall be unlawful and a person who operates a sexually oriented business, regardless of whether or not a permit has been issued for said business under this chapter, or his/her agent or employee commits a misdemeanor if

he/she refuses to permit such lawful inspection of the premises at any time that it is occupied or open for business. (Ord. #97-7, Dec. 1997)

**9-1014. Expiration of permit.** (1) Each permit shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in § 9-1011 (for renewals, filing of original survey shall be sufficient) of this chapter. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the permit will not be affected.

(2) When the Mayor of the City of Humboldt or his/her designee, denies renewal of the permit, the applicant shall not be issued a permit under this chapter for one (1) year from the date of denial. If, subsequent to denial, the city or its designee, finds that the basis for denial of the renewal of the permit has been corrected, the applicant shall be granted a permit if at least ninety (90) days have elapsed since the date denial became final. (Ord. #97-7, Dec. 1997)

**9-1015. Suspension of permit.** (1) The Mayor of the City of Humboldt or his/her designee, shall suspend a permit for a period not to exceed thirty (30) days if he/she determines that a permittee, or an employee of a permittee, has:

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

(b) Been under the influence of alcoholic beverages while working in the sexually oriented business premises; or

(c) Refused to allow an inspection of sexually oriented business premises as authorized by this chapter; or

(d) Knowingly permitted gambling by any person on the sexually oriented business premises; or

(e) Operated the sexually oriented business in violation of a building, fire, health, or zoning statute, code, ordinance or regulation, whether federal, state or local, said determination being based on investigation by the division, department or agency charged with enforcing said rules or laws. In the event of such statute, code, ordinance or regulation violation, the city or its designee, shall promptly notify the permittee of the violation and shall allow the permittee a seven (7) day period in which to correct the violation. If the permittee fails to correct the violation before the expiration of the seven (7) day period, the city or its designee, shall forthwith suspend the permit and shall notify the permittee of the suspension.

(f) Engaged in permit transfer contrary to § 9-1018 of this chapter. In the event that the city or its designee, suspends a permit on the ground that a permittee engaged in a permit transfer contrary to § 9-1018 of this chapter, the Mayor of the City of Humboldt or his/her designee shall forthwith notify the permittee of the suspension. The

suspension shall remain in effect until the applicable section of this chapter has been satisfied.

(g) Operated the sexually oriented business in violation of the hours of operation § 9-1023.

(h) Knowingly employs a person who does not have a valid license as required in § 9-1019 of this chapter.

(2) The suspension shall remain in effect until the violation of the statute, code, ordinance or regulation in question has been corrected. (Ord. #97-7, Dec. 1997)

**9-1016. Revocation of permit.** (1) The Mayor of the City of Humboldt or his/her designee shall revoke a permit if a cause of suspension in § 9-1015 of this chapter occurs and the permit has been suspended within the preceding twelve (12) months.

(2) The Mayor of the City of Humboldt or his/her designee, shall revoke a permit upon determining that:

(a) A permittee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a permit; or

(b) A permittee or an employee has knowingly allowed possession, use or sale of controlled substances in or on the premise; or

(c) A permittee or an employee has knowingly allowed prostitution on the premises; or

(d) A permittee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's permit was suspended; or

(e) A permittee has been convicted of a "specified criminal act" for which the time period required in § 9-1011 of this chapter has not elapsed; or

(f) On two or more occasions within a twelve (12) month period, a person or persons committed an offense, occurring in or on the permitted premises, constituting a specified criminal act for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the permit; or

(g) A permittee is convicted of tax violations for any taxes or fees related to a sexually oriented business; or

(h) A permittee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or any other specified sexual activities to occur in or on the permitted premises.

(i) A permittee has been operating more than one sexually oriented business under a single roof except as provided in § 9-1003.

(3) When the Mayor of the City of Humboldt or his/her designee, revokes a permit, the revocation shall continue for one (1) year and the permittee shall not be issued a sexually oriented business permit for one (1) year from the date revocation became effective. If, subsequent to revocation, the Mayor of the City of Humboldt or his/her designee finds that the basis for revocation under § 9-1016 of this chapter has been corrected, the applicant shall be granted a permit if at least ninety (90) days have elapsed since the date revocation became effective. If the permit was revoked under § 9-1016 of this chapter, an applicant may not be granted another permit until the number of years required under § 9-1016 have elapsed. (Ord. #97-7, Dec. 1997)

**9-1017. Judicial review of permit denial, suspension or revocation.** After denial of an application, or denial of a renewal of an application, or suspension or revocation of a permit, the applicant or permittee may seek prompt review of such administrative action through the city council or special city review board if one is established by the city. If the denial, suspension or revocation is affirmed upon review, the administrative action shall be promptly reviewed by the court. (Ord. #97-7, Dec. 1997)

**9-1018. Transfer of permit.** (1) A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application for permit.

(2) A permittee shall not transfer his/her permit to another person unless and until such other person satisfies the following requirements:

(a) Obtains an amendment to the permit from the Mayor of the City of Humboldt or his/her designee, which provides that he/she is now the permittee, which amendment may be obtained only if he/she has completed and properly filed an application with the Mayor of the City of Humboldt or his/her designee, setting forth the information called for under § 9-1011 of this chapter in the application; and

(b) Pays a transfer fee of twenty percent (20%) of the annual permit fee set by this chapter.

(3) No permit may be transferred when the Mayor of the City of Humboldt or his/her designee has notified the permittee that suspension or revocation proceedings have been or will be brought against the permittee.

(4) A permittee shall not transfer his permit to another location.

(5) Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void and the permit shall be deemed revoked. (Ord. #97-7, Dec. 1997)

**9-1019. Sexually oriented business employee license.** (1) Each individual to be employed in a sexually oriented business, as defined in § 9-1002 of this chapter, who engages in the services rendered by a semi-nude model studio, escort or escort agency, sexual encounter establishment, massage parlor,

or a live performer or entertainer shall be required to obtain a sexually oriented business employee license. Each applicant shall pay a permit fee of twenty five dollars (\$25.00). Said fee to cover reasonable administrative costs of the licensing application process.

(2) Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the Mayor of the City of Humboldt or his or her designee the following information:

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

(i) Attached to the application form as provided above, a color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the Humboldt Police Department. Any fees for the photographs and fingerprints shall be paid by the applicant.

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

(k) Whether the applicant has been convicted of a "special criminal" act as defined in § 9-1011(3)(a)(x) of this chapter. This information shall include the date, place, nature of each conviction or plea of nolo contendere and identifying the convicting jurisdiction.

(l) The Mayor of the City of Humboldt or his or her designee shall refer the sexually oriented business employee license application to the Humboldt Police Department for an investigation to be made of such information as is contained on the application. The application process shall be completed within ten (10) days from the date the completed application is filed. After the investigation, the Mayor of the City of Humboldt or his or her designee shall issue a license unless the report

from the sheriff's department finds that one or more of the following findings is true:

(i) That the applicant has knowingly made any false, misleading, or fraudulent statement of a material fact in the application for a license, or in any report or record required to be filed with the sheriff's department or other department of the city;

(ii) That the applicant is under eighteen (18) years of age;

(iii) That the applicant has been convicted of a "specified criminal act" as defined in § 9-1011(3)(a)(x) of this chapter;

(iv) That the sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by particular provisions of this chapter.

(v) That the applicant has had a sexually oriented business employee license revoked by the city within two (2) years of the date of the current application;

(3) Renewal of license:

(a) A license granted pursuant to this section shall be subject to annual renewal by the Mayor of the City of Humboldt or his or her designee upon the written application of the applicant and a finding by the Mayor of the City of Humboldt or his or her designee and the Humboldt Police Department that the applicant has not been convicted of any "specified criminal act" as defined in § 9-1011(3)(a)(x) of this chapter or committed any act during the existence of the previous license period which would be grounds to deny the initial permit application.

(b) The renewal of the license shall be subject to payment of a fee as set by a resolution of the city council. (Ord. #97-7, Dec. 1997)

**9-1020. Regulations pertaining to exhibition of sexually explicit films or videos in video booths.** (1) A person who operates or causes to be operated a sexually oriented business, other than a sexually oriented motel/hotel and regardless of whether or not a permit has been issued to said business under this chapter, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(a) Upon application for a sexually oriented business permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations, the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area with no dimension greater than eight (8) feet. The diagram shall also designate the place at which this permit will be conspicuously posted, if granted.

A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimension of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Mayor of the City of Humboldt or his/her designee, may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

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

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

(d) It is the duty of the owners and operator of the premises to insure that at least one employee is on duty and situated at each manager's station at all times that any patron is present inside the premises.

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

(f) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present on the premises to insure that the view area specified in subsection (e) remains unobstructed by any doors, walls, merchandise, display racks or other materials or person at all times and to insure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (a) of this section.

(g) No viewing room may be occupied by more than one person at any one time. No holes, commonly known as "glory holes," shall be allowed in the walls or partitions which separate each viewing room from an adjoining viewing room or restroom.

(h) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access and an illumination of not less than two (2.0) foot candle as measured at the floor level.



(i) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present on the premises to insure that the illumination described above is maintained at all times that any patron is present on the premises.

(2) A person having a duty under § 9-1020(1)(a)(i) commits a misdemeanor if he/she knowingly fails to fulfill that duty. (Ord. #97-7, Dec. 1997)

**9-1021. Prohibitions regarding minors and sexually oriented businesses.** A person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this chapter, and knowingly or with reasonable cause to know, permit, suffer, or allow:

(1) Admittance of a person under eighteen (18) years of age to the business premises unless accompanied by a parent or guardian;

(2) A person under eighteen (18) years of age to remain at the business premises unless accompanied by a parent or guardian;

(3) A person under eighteen (18) years of age to purchase goods or services at the business premises without the specific consent of a parent or guardian; or

(4) A person who is under eighteen (18) years of age to work at the business premises as an employee. (Ord. #97-7, Dec. 1997)

**9-1022. Advertising and lighting regulations.** (1) It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this chapter, and advertises the presentation of any activity prohibited by any applicable state statute or local ordinance.

(2) It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this chapter, and displays or otherwise exhibits the materials and/or performances at such sexually oriented business in any advertising which is visible outside the premises. This prohibition shall not extend to advertising of the existence or location of such sexually oriented business.

(3) The permittee shall not allow any portion of the interior premises to be visible from outside the premises.

(4) All off-street parking areas and premise entries of the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1.0) foot candle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually

oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premise.

(5) Nothing contained in this section of the chapter shall relieve the operator(s) of a sexually oriented business from complying with the requirements of the City of Humboldt, commonly known as the Sexually Oriented Business Ordinance, as it may be amended from time to time, or any subsequently enacted city ordinances or regulations. (Ord. #97-7, Dec. 1997)

**9-1023. Hours of operation.** (6) It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this chapter, and allows such business to remain open for business, or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 12:00 A.M. and 9:00 A.M. of any particular day.

(7) It shall be unlawful and a person commits a misdemeanor if, working as an employee of a sexually oriented business, regardless of whether or not a permit has been issued for said business under this chapter, said employee engages in a performance, solicits a performance, makes a sale, solicits a sale, provides a service, or solicits a service between the hours of 12:00 A.M. and 9:00 A.M. of any particular day. (Ord. #97-7, Dec. 1997)

**9-1024. Nudity at sexually oriented businesses prohibited.** (1) The United States Supreme Court decision in Barnes v. Glen Theatre, Inc., 501 U.S. 560, 111 (1991) which upheld the rights of cities to prohibit live public exposure of a person(s) private parts, specifically applies to sexually oriented businesses (regardless of whether or not a permit has been issued to said businesses under this chapter), including said businesses where no alcoholic beverages are sold, served, or consumed at the premises.

(2) Public nudity is prohibited within the City of Humboldt, including any sexually oriented business. Any sexually oriented business which is found in violation of this section shall have its permit suspended pursuant to the provisions of § 9-1015. (Ord. #97-7, Dec. 1997)

**9-1025. Regulations pertaining to live entertainment.** (1) For purposes of this section, "live entertainment" is defined as a person who appears nude, semi-nude, or a performance which is characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(2) No person shall perform live entertainment for patron(s) of a sexually oriented business establishment except upon a stage at least eighteen (18) inches above the level of the floor which is separated by a distance of at least ten (10) feet from the nearest area occupied by patron(s). No patron shall

be permitted within ten (10) feet of the stage while the stage is occupied by a performer.

(3) The sexually oriented business establishment shall provide separate dressing room facilities for female and male performers which shall not be occupied or used in any way by any one other than performers.

(4) The sexually oriented business establishment shall provide access for performers between the stage and the dressing rooms which is completely separated from the patrons. If such separate access is not physically feasible, the establishment shall provide a minimum four (4) foot wide walk aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers which prevents any physical contact between patrons and performers.

(5) No entertainer, either before, during, or after a performance, shall have physical contact with any patron and no patron shall have physical contact with any entertainer either before, during or after a performance. This subsection shall only apply to physical contact while in or on the premises of the establishment.

(6) Fixed rail(s) at least thirty (30) inches in height shall be maintained establishing the separations between performers and patrons required by this section.

(7) No patron shall directly pay or give any gratuity to any entertainer. A patron who wishes to pay or give a gratuity to a performer shall place the gratuity in a container that is at all times located separately from the performers for the purpose of preventing any physical contact between a patron and a performer. No performer shall solicit any gratuity from any patron.

(8) No operator of a sexually oriented business establishment shall cause or allow a performer to contract or engage in any entertainment such as a "couch" or a "straddle" dance with a patron while in or on the establishment premises. No performer shall contract to or engage in a "couch" or "straddle" dance with a patron while in or on the establishment premises. For purposes of this subsection, "couch" or "straddle" dance is defined as an employee of the establishment intentionally touching or coming within ten (10) feet of any patron while engaged in the display or exposure of any "specified anatomical area," or any "specified sexual activity." For purposes of this subsection, employee is defined as it is in § 9-1002(2).

(9) Section 9-1025 shall not apply to an employee of an establishment who, while acting as a waiter, waitress, host, hostess, or bar tender, comes within ten (10) feet of a patron. No employee shall engage in any "specified sexual activity" or display or expose any "specified anatomical area" while acting as a waiter, waitress, host, hostess, or bar tender.

(10) Compliance with this section:

(a) For purposes of this section, establishment is defined as it is in § 9-1002(3) of this chapter. No establishment shall be in compliance with this section until the city's designated agent(s) have inspected and

approved of the establishment's compliance. The city shall have ten (10) days from the date it receives written notice from the operator that the establishment is ready for inspection to approve or disapprove of compliance required by this section. Failure to approve or disapprove of compliance within ten (10) days shall constitute a finding of compliance under this section.

(b) The operator of an establishment, that has been providing live entertainment under a valid sexually oriented business permit, shall have the time periods listed below in which to bring the establishment into compliance with this section. Failure to do so while continuing to provide live entertainment shall cause the establishment's permit to be suspended under § 9-1015 of this chapter. The permit shall remain suspended until the establishment is approved by the city's designated agent(s) as being in full compliance with this section.

(c) The operator of establishment, that has been operating under a valid permit for another classification of sexually oriented business and who wishes to provide live entertainment at that establishment, shall apply for and receive a sexually oriented business permit for the operation of an establishment providing live entertainment before any live entertainment is provided at that establishment. No live entertainment permit shall be issued until the establishment is approved as being in full compliance with this section and all other applicable requirements of this chapter.

(d) The applicant for a permit to operate a new establishment, who wishes to provide live entertainment, shall apply for and receive a sexually oriented business permit for the operation of an establishment providing live entertainment before any live entertainment is provided. No live entertainment permit shall be issued until the establishment is approved as being in full compliance with this section and all other applicable requirements of this chapter.

(e) Subsection B: Sixty (60) days from the date this section becomes effective.

(f) Subsection C: Ninety (90) days from the date this section becomes effective.

(g) Subsection D: Ninety (90) days from the date this section becomes effective.

(h) Subsection E: Upon the date this section becomes effective.

(i) Subsection F: Sixty days (60) days from the date this section becomes effective.

(j) Subsection G: Upon the date this section becomes effective.

(k) Subsection H: Upon the date this section becomes effective.

(Ord. #97-7, Dec. 1997)

**9-1026. Additional criminal prohibitions for the operation of a sexually oriented business without a valid permit.** (1) In addition to the criminal provisions found at other sections of this chapter, the following additional criminal provisions shall also apply to sexually oriented businesses.

(2) It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this chapter, and said person knows or should know that:

- (a) The business does not have a sexually oriented business permit under this chapter for any applicable classification;
- (b) The business has a permit which is under suspension;
- (c) The business has a permit which has been revoked; or
- (d) The business has a permit which has expired. (Ord. #97-7, Dec. 1997)

**9-1027. Exemptions.** (1) it is a defense to prosecution for any violation of this chapter that a person appearing in a state of nudity did so in a modeling 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 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; and
  - (iii) Where no more than one nude model is on the premises at any one time.

(2) It is a defense to prosecution for a violation of this chapter that an employee of a sexually oriented business, regardless of whether or not it is permitted under this chapter, exposed any specified anatomical area during the employee's bona fide use a restroom, or during the employees bona fide use of a dressing room which is accessible only to employees. (Ord. #97-7, Dec. 1997)

**9-1028. Criminal penalties and additional legal, equitable, and injunctive relief.** (1) In addition to whatever penalties are applicable under the Tennessee Penal Code, if any person fails or refuses to obey or comply with or violates any of the criminal provisions of this chapter, such person upon conviction of such offense, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed five hundred dollars (\$500.00). Each violation

or non-compliance shall be considered a separate and distinct offense. Further, each day of continued violation or non-compliance shall be considered as a separate offense.

(2) Nothing herein contained shall prevent or restrict the city from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or non-compliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

(3) Further, nothing in this section shall be construed to prohibit the city from prosecuting any violation of this chapter by means of a code enforcement board established pursuant to the authority as provided by the laws of Tennessee.

(4) All remedies and penalties provided for in this section shall be cumulative and independently available to the city and the city shall be authorized to pursue any and all remedies set forth in this section to the full extent allowed by law. (Ord. #97-7, Dec. 1997)

**9-1029. Immunity from prosecution.** The city and its designee, the Humboldt Police Department and all other departments and agencies, and all other city officers, agents and employees, charged with enforcement of state and local laws and codes shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon a sexually oriented business while acting within the scope of authority conferred by this chapter. (Ord. #97-7, Dec. 1997)

**9-1030. Prohibition of distribution of sexual devices.** (1) It is unlawful for anyone to distribute, for commercial purposes, sell or offer for sale any device, instrument or paraphernalia designed or marketed primarily for stimulation of human genital organs or for sado-masochistic use or abuse of themselves or others.

(2) Such devices, instruments or paraphernalia include but are not limited to; phallic shaped vibrators, dildo's, muzzles, whips, chains, bather restraints, racks, non-medical enema kits, body piercing implements (excluding earrings or other decorative jewelry) or other tools or sado-masochistic abuse.

(3) A violation of this section is a misdemeanor punishable by a fine of up to five hundred dollars (\$500). (Ord. #97-7, Dec. 1997)