

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.¹

CHAPTER

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CHAPTER 1

PEDDLERS, SOLICITORS, ETC.

SECTION

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9-101. Definitions. Unless otherwise expressly stated, whenever used in this chapter, the following words shall have the meaning given to them in this section.

1. "Peddler" means any person, firm or corporation, either a resident or a nonresident of the city, who has no permanent regular place of business and who goes from dwelling, business, place to place, or from street to street,

¹Municipal code references

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

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

carrying or transporting goods, wares or merchandise and offering or exposing the same for sale.

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

3. "Solicitor for charitable or religious purposes" means any person, firm, corporation or organization who or which solicits contributions from the public, either on the streets of the city or from door to door, business to business, place to place, or from street to street, for any charitable or religious organization, and who does not sell or offer to sell any single item at a cost to the purchaser in excess of ten dollars (\$10.00). No organization shall qualify as a "charitable" or "religious" organization unless the organization meets one of the following conditions:

a. Has a current exemption certificate from the Internal Revenue Service issued under section 501(c)(3) of the Internal Revenue Service Code of 1954, as amended.

b. Is a member of a United Way or similar "umbrella" organization for charitable or religious organizations.

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

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

(5) "Transient vendor"¹ means any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of

¹State law references

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

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

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

(6) "Street barker" means any peddler who does business during recognized festival or parade days in the city and who limits his business to selling or offering to sell novelty items and similar goods in the area of the festival or parade. (1980 Code, § 5-101, as amended by Ord. #09-24, July 2009)

9-102. Exemptions. The terms of this chapter shall not apply to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to persons selling agricultural products, who, in fact, themselves produced the products being sold. (1980 Code, § 5-102)

9-103. Permit required. No person, firm or corporation shall operate a business as a peddler, transient vendor, solicitor or street barker, and no solicitor for charitable or religious purposes or solicitor for subscriptions shall solicit within the city unless the same has obtained a permit from the city in accordance with the provisions of this chapter. (1980 Code, § 5-103)

9-104. Permit procedure. (1) Application form. A sworn application containing the following information shall be completed and filed with the city recorder by each applicant for a permit as a peddler, transient vendor, solicitor, or street barker and by each applicant for a permit as a solicitor for charitable for religious purposes or as a solicitor for subscriptions:

(a) The complete name and permanent address of the business or organization the applicant represents.

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

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

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

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

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

(2) Permit fee. Each applicant for a permit as a peddler, transient vendor, solicitor or street barker shall submit with his application a non-refundable fee of one hundred dollars (\$100.00). There shall be no fee for an application for a permit as a solicitor for charitable purposes or as a solicitor for subscriptions.

(3) Bond. Every permittee shall file with the city recorder a surety bond running to the city in the amount of five hundred dollars (\$500.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of this 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.

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

(5) Submission of application form to the chief of police. Immediately after the applicant obtains a permit from the city recorder, the city recorder shall submit to the chief of police a copy of the application form and permit. (1980 Code, § 5-104, as amended by Ord. #02-32, Oct. 2002)

9-105. Restrictions on peddlers, street barkers and solicitors. No peddler, street barker, solicitor, solicitor for charitable purposes, or solicitor for subscriptions shall:

(1) Be permitted to set up and operate a booth or stand on any street or sidewalk, or in any other public area within the city except in locations designated by the chief of police and at prescribed times set by the chief of police.

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

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

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

(5) Enter in or upon any premises or attempt to enter in or upon any premises wherein a sign or placard bearing the notice "Peddlers or Solicitors Prohibited", or similar language carrying the same meaning, is located. (1980 Code, § 5-105)

9-106. Restrictions on transient vendors. A transient vendor shall not advertise, represent, or hold forth a sale of goods, wares or merchandise as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver's manufacturer's wholesale, cancelled order, or misfit sale, or closing-out sale, or a sale of any goods damaged by smoke, fire, water or otherwise, unless such advertisement, representation or holding forth is actually of the character it is advertised, represented or held forth. All permits granted to transient vendors shall be limited to the hours between 8:00 A.M. and 6:00 P.M. (1980 Code, § 5-106)

9-107. Display of permit. Each peddler, street barker, solicitor, solicitor for charitable purposes or solicitor for subscriptions is required to have in his possession a valid permit while making sales or solicitations, and shall be required to display the same to any police officer upon demand. (1980 Code, § 5-107)

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

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

(b) Any violation of this chapter.

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

given by the city recorder in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed to the permit holder at his last known address at least five (5) days prior to the date set for the 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. (1980 Code, § 5-108)

9-109. Expiration and renewal of permit. The permit of peddlers, solicitors and transient vendors shall expire on the same date that the permit holder's privilege license expires. The registration of any peddler, solicitor, or transient vendor who for any reason is not subject to the privilege tax shall be issued for six (6) months. The permit of street barkers shall be for a period corresponding to the dates of the recognized parade or festival days of the city. The permit of solicitors for religious or charitable purposes and solicitors for subscriptions shall expire on the date provided in the permit, not to exceed thirty (30) days. (1980 Code, § 5-109)

9-110. Violation and penalty. In addition to any other action the city may take against a permit holder in violation of this chapter, such violation shall be punishable according to the general penalty provision of this municipal code of ordinances. (1980 Code, § 5-110)

CHAPTER 2**STREET SHOWS & MEDICINE SHOWS****SECTION**

9-201. License required.

9-201. License required. It shall be unlawful for any kind of street show, medicine show, or circus or any other street amusement show to operate within the City of Portland without first obtaining a privilege license from the city recorder. (1980 Code, § 5-301)

CHAPTER 3

SLAUGHTER HOUSES

SECTION

9-301. Regulated.

9-301. Regulated. It shall be unlawful for any slaughter house to be located within 200 feet of any residence in the corporate limits of the City of Portland. (1980 Code, § 5-401)

CHAPTER 4

DELETED

(1980 Code, § 5-601, as deleted by Ord. #04-20, July 2004)

CHAPTER 5

TAXICABS

SECTION

- 9-501. Definitions.
- 9-502. Taxicab franchise required; application made to city recorder; issuance by the city council; and not applicable to busses, etc.
- 9-503. Limitation on number of taxicabs.
- 9-504. Requirement as to application.
- 9-505. Qualifications.
- 9-506. Conduct of drivers.
- 9-507. Transportation of more than one passenger at the same time.
- 9-508. Permit required of drivers.
- 9-509. Taxicabs to be kept clean and mechanically sound.
- 9-510. Drivers to comply with laws and ordinances.
- 9-511. Insurance required of franchisees.
- 9-512. Drivers prohibited from engaging in unlawful acts.
- 9-513. Public taxi stands authorized and regulated.
- 9-514. Transfer of franchise.
- 9-515. Suspension or revocation of franchise.

9-501. Definitions. (1) "Taxicab." The term "taxicab" as used in this chapter means any and all vehicles carrying passengers for hire, except busses and other common carriers operating over designated routes in and through the city.

(2) "Taxi franchise." Each individual taxicab shall constitute a single franchise separate and apart from all others. The City of Portland shall be the grantor while the person holding said franchise shall be the grantee.

(3) "Operate a taxi franchise." The term "operate a taxi franchise" as used in this chapter shall be held to mean the operating of one (1) taxicab within the corporate limits of Portland, Tennessee by the owner thereof, for the purpose of carrying passengers for hire, either by driving the same himself or having same driven by his agent or employee. Any grantee may operate one (1) or more taxicabs, but said grantee must secure a separate franchise for each and every taxicab in his fleet, and the grantee must otherwise comply with all the requirements of this chapter concerning each separate taxicab. (1980 Code, § 5-701)

9-502. Taxicab franchise required; application made to city recorder; issuance by the city council; and not applicable to busses, etc. No person shall operate any taxicab within the corporate limits of the city except under a franchise granted under this chapter.

The recorder shall take application from any person who gives satisfactory evidence of his compliance with the terms and conditions of this chapter, and shall present said application at the next regular or special called meeting of the Portland City Council, and upon a majority vote in favor thereof, the city recorder shall issue a franchise to the grantee to operate taxicabs within the corporate limits of the city, except as otherwise provided in this chapter.

This chapter shall not apply to busses or other passenger conveyances regulated by the State Public Service Commission. (1980 Code, § 5-702)

9-503. Limitation on number of taxicabs. Until conditions warrant otherwise, not more than six (6) vehicles shall be operated as taxicabs upon the public highways, streets, boulevards, or alleys of the city; provided that the number of taxicabs herein provided for may be increased or diminished as conditions may require, and upon the applications of interested parties when, in the discretion of the city council, the increase diminution of the number of taxicab vehicles is warranted by the safety and welfare requirements of the public. (1980 Code, § 5-703)

9-504. Requirement as to application. No person shall be eligible to apply for or to receive a taxicab franchise if he has been convicted of a felony within the past five (5) years. (1980 Code, § 5-704, modified)

9-505. Qualifications. No person shall be granted a franchise nor driver's permit to operate a taxicab unless he complies with the following to the satisfaction of the city recorder:

- (1) Makes written application to the city recorder.
- (2) Is at least eighteen (18) years of age and holds a state special chauffeur's license.
- (3) Is clean in dress and person and is not addicted to the use of intoxicating liquor or drugs.
- (4) Produces affidavits of good character from two reputable citizens of this city who have known him personally and have observed his conduct for at least two (2) years next preceding the date of his application.
 - (5) (a) Has not been convicted of any felony within the past five (5) years.
 - (b) Has not been convicted of driving under the influence of an intoxicant or drug during a period of five (5) years immediately preceding the date of his application.
 - (c) Has not been convicted of three (3) or more traffic violations during a period of three (3) years immediately preceding the date of his application. (1980 Code, § 5-705, modified)

9-506. Conduct of 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, use profane or obscene language, shout or call to prospective passengers, unnecessarily blow the automobile horn, or to otherwise disturb the peace and tranquility of the city in any manner. (1980 Code, § 5-706)

9-507. 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, § 5-707)

9-508. Permit required of drivers. No person shall drive a taxicab other than the franchise owner, or his agent or employee, without being in possession of a City of Portland taxicab driver's permit issued by the city recorder. Said permit shall cost twenty-five dollars (\$25.00) and shall be issued by the city recorder only after the applicant's driving history has been thoroughly investigated and the applicant has otherwise complied with the requirements of this chapter. Said permit shall be valid and in effect until suspended by the city council for violation of this chapter and shall be renewable every two (2) years. (1980 Code, § 5-708)

9-509. Taxicabs to be kept clean and mechanically sound. All taxicabs operated in the city shall be kept in a clean and sanitary condition inside and out. They shall also be kept in such mechanical condition as is reasonably necessary to provide for their satisfactory operation and the safety of the public. They shall be equipped with such lights, brakes, and other mechanical equipment and devices as are required by state law and this code for motor vehicles generally. (1980 Code, § 5-709)

9-510. Drivers to comply with laws and ordinances. All taxicabs shall be operated in strict compliance with the code and ordinances of the city and the laws of the state. (1980 Code, § 5-710)

9-511. Insurance required of franchisees. No taxicab franchise shall be issued or continued in operation unless there is in full force and effect, insurance for each vehicle authorized in the amount of twenty five thousand dollars (\$25,000.00) for bodily injury to any one person; in the amount of fifty thousand dollars (\$50,000.00) for injuries to more than one person which are sustained in the same accident; and ten thousand dollars (\$10,000.00) for property damage resulting from any one accident. Said insurance shall insure to the benefit of any person who shall be injured or who shall sustain damage to property proximately caused by the negligence of a franchise holder, his servants, or agents. Proof of said insurance shall be filed in the office of the city recorder and shall have as surety thereon a surety company authorized to do business in the State of Tennessee. (1980 Code, § 5-711)

9-512. Drivers prohibited from engaging in unlawful acts. No driver shall help, aid, assist, or use, or knowingly allow his taxicab to be used, or otherwise engage in, the commission of, or in the furtherance of, any unlawful act, nor to be used or driven in violation of any city ordinance of the City of Portland, or in violation of this chapter. (1980 Code, § 5-712)

9-513. Public taxi stands authorized and regulated. The city council may authorize public taxi stands in such place or places upon the streets of the city as it deems necessary for the use of taxicabs operated in the city. The city council shall not create a public taxi stand on the streets except when deemed necessary for the convenience of the general public. The city council shall prescribe the number of cabs that shall occupy such taxi stands. The city council shall not create a public taxi stand in front of any place of business where the abutting property owners object to the same or where such stand would tend to create a traffic hazard.

Public taxi stands shall be used by taxicab drivers on a first-come, first-served basis. Each driver shall pull on to the taxi stand from the rear shall advance forward as the cabs ahead pull off. Drivers shall stay within five feet (5') of their cabs. They shall not solicit passengers or engage in loud or boisterous talk while at the public taxi stand. Nothing in this chapter shall be construed as preventing a passenger from boarding any cab of his choice that is parked in a public taxi stand.

No vehicle other than a taxicab shall at any time occupy any space upon the streets that has been established as either a public taxi stand or a call box stand. (1980 Code, § 5-713)

9-514. Transfer of franchise. No franchise may be sold, assigned, mortgaged, or otherwise transferred without the consent of the city council. (1980 Code, § 5-714)

9-515. Suspension or revocation of franchise. The city council shall have the power to suspend a taxi franchise upon a public hearing, after which a ten (10) day notice has been given and when it has been established that such grantee has discontinued operation or has violated, refused, or neglected to observe any of the proper orders, rules, or regulations of this chapter, or willfully or persistently violated any of the laws of the State of Tennessee or ordinances of the City of Portland relative to the operation of such vehicles. If the city council should deem, after hearing that the offenses of the grantee have been so flagrant as to warrant such action, then it may revoke the franchise issued to the grantee. (1980 Code, § 5-715)

CHAPTER 6

CABLE TELEVISION¹

SECTION

9-601. Parts of Code of Federal Regulations adopted.

9-602. Definitions.

9-601. Parts of Code of Federal Regulations adopted. Pursuant to authority granted by the Cable Television and Consumer Protection Act of 1992 at 47 U.S.C. 543, and Federal Communications Commission action under the authority of said act certifying the city to regulate basic cable television service within the boundaries of the city; and for the purposes of regulating the rates charged to customers of any cable television operator franchised by the city, the regulations contained in Title 47 of the Code of Federal Regulations, Part 76, Subpart N, sections 76.900 through 76.985, are hereby adopted and incorporated by reference as a part of this code. (1980 Code, § 5-801)

9-602. Definitions. Whenever the regulations cited in § 9-601 refer to "franchising authority", it shall be deemed to be a reference to the city council of the city. (1980 Code, § 5-802)

¹For complete details relating to the cable television franchise agreement see Ord. #07-07, Feb. 2007, in the office of the recorder.

For the creation of a Cable TV Commission, see chapter 1 of title 2.

CHAPTER 7

GARAGE SALES AND YARD SALES

SECTION

- 7-101. Intent.
- 7-102. Definitions.
- 7-103. Exemptions from chapter.
- 7-104. Penalty for violation.
- 7-105. Right of entry--authority of inspector.
- 7-106. Property permitted to be sold.
- 7-107. Duration of sale.
- 7-108. Display of property.
- 7-109. Signs.
- 7-110. Responsibility for maintaining order.
- 7-111. Parking.
- 7-112. Yard and garage sales--registration required.
- 7-113. Means of advertisement of yard sales--obstructing traffic.

9-701. Intent. The council finds and declares that:

(1) The intrusion of non-regulated garage sales and yard sales is causing annoyance to the citizens in residential areas in the city and congestion of the streets in residential areas in the city.

(2) The provisions contained in this chapter are intended to prohibit the infringement of any businesses in any established residential areas by regulating the term and frequency of garage sales and yard sales, so as not to disturb or disrupt the residential environment of the area.

(3) The provisions of this chapter are designed to control the operation of garage sales and yard sales conducted in nonresidential areas where the sale is not carried on a daily basis but rather on an occasional basis.

(4) The provisions of this chapter do not seek to control sales by individuals selling a few of their household or personal items.

(5) The provisions and prohibitions contained in this chapter are enacted not to prevent garage sales or yard sales, but to regulate such sales for the safety and welfare of the city's citizens. (as added by Ord. #06-01, March 2006)

9-702. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. The word "shall" is always mandatory and not merely directory.

(1) "Community yard sale" means the inclusion of five (5) or more surrounding neighbors in combination for the sole purpose of the sale of goods, wares, merchandise, personal property of such kind as household articles,

utensils, jewelry, clothing, furniture, or other articles of this kind and may be also known as a garage sale.

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

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

(4) "Yard sales" A yard sale is defined as a sale of goods, wares, merchandise, personal property of such kind as household articles, utensils, jewelry, clothing, furniture, or other articles of this kind and may be also known as a garage sale. Such a sale is usually held by a private citizen or citizens on property owned by the citizen and/or property occupied as rental property, and may be held on a space rented for the sale. (as added by Ord. #06-01, March 2006)

9-703. Exemptions from chapter. The provisions of this chapter shall not apply to or affect the following:

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

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

(3) Any sale conducted by any merchant or mercantile or other business establishment on a regular, day-to-day basis from or at the place of business wherein such sale would be permitted by zoning regulations of the city or under the protection of the nonconforming use provisions thereof, or any other sale conducted by a manufacturer, dealer or vendor in which sale would be conducted from properly zoned premises and which is not otherwise prohibited by other ordinances.

(4) Any bona fide charitable, eleemosynary, educational, cultural or governmental institution or organization when the proceeds from the sale are used directly for the institution or organization and the goods or articles are not sold on a consignment basis. (as added by Ord. #06-01, March 2006)

9-704. Penalty for violation of chapter. (1) Every article sold and every day a sale is conducted in violation of this article shall constitute a separate offense.

(2) Any person found guilty of violating the terms of this chapter shall be subject to punishment by a fine not less than fifty dollars (\$50) per day. (as added by Ord. #06-01, March 2006)

9-705. Right of entry--authority of inspector. A police officer or any other public official designated by any city ordinance to make inspections under the licensing or regulating ordinance, or to enforce the licensing or regulating ordinance, shall have the right of entry to any premises showing evidence of a garage sale for the purpose of enforcement or inspection, and may close the premises from such a sale or arrest any individual who violates the provisions of this chapter. (as added by Ord. #06-01, March 2006)

9-706. Property permitted to be sold. It shall be unlawful for any person to sell or offer for sale, under authority granted by this chapter, property other than personal property. (as added by Ord. #06-01, March 2006)

9-707. Duration of sale. Garage sales and yard sales shall be registered with the building official as provided for in § 9-712 of this chapter at no cost and shall be limited as follows:

(1) A period during a week not greater than three (3) consecutive days.

(2) Each property address shall be limited to three (3) yards sales annually with persons holding more than three (3) yard sales per year being subject to application for a license for the commissioner of finance and revenue under the Business Tax Act, shall be subject to sales tax, and may be required to keep an inventory of items on hand for the sale for inspection by the commissioner of finance and revenue, or his authorized agent with the following exceptions:

(a) One (1) additional sale is permitted, provided the occupant of a specified address is moving to another specified address.

(b) One (1) additional "community yard sale," as defined by this chapter or the annual Highway 52 yard sale shall be permitted.

(3) The hours of operation for any such sales shall be from 6:00 A.M. to 6:00 P.M. (as added by Ord. #06-01, March 2006)

9-708. Display of property. Personal property offered for sale pursuant to this chapter may be displayed within the residence in a garage or carport or in a front, side or rear yard, but only in such areas. No personal property offered for sale at a garage sale or yard sale shall be displayed in any public right-of-way. A vehicle offered for sale may be displayed on a permanently constructed driveway within such front or side yard. (as added by Ord. #06-01, March 2006)

9-709. Signs. Signs permitted. Only the following specified signs may be displayed in relation to a pending garage sale or yard sale; provided however, that such signs shall be subject to any other applicable ordinance of the City of Portland relating to the placement of signs:

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

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

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

(b) Removal of signs. Signs must be removed at the conclusion of the garage sale or yard sale activities. (as added by Ord. #06-01, March 2006)

9-710. Responsibility for maintaining order. The individual to whom a permit is issued under this chapter and the owner or tenant of the premises on which such sale or activity is conducted shall be jointly and severally responsible for the maintenance of good order and decorum on the premises during all hours of such sale or activity. No such individual shall permit any loud or boisterous conduct on the premises or permit vehicles to impede the passage of traffic on any roads or streets in the area of such premises. All such individuals shall obey the reasonable orders of any member of the police or fire department of the city in order to maintain the public health, safety and welfare. (as added by Ord. #06-01, March 2006)

9-711. Parking. All parking of vehicles at sales regulated under this chapter shall be conducted in compliance with all applicable laws and ordinances. The police department may enforce such temporary controls as necessary to alleviate any special hazards and congestion created by any garage sale or yard sale. (as added by Ord. #06-01, March 2006)

9-712. Yard and garage sales--registration required. All persons who hold or engage in a garage sale or yard sale within the city limits of the City of Portland shall be residing at the time of the sale within the City of Portland either as a homeowner, renter of property, or both and shall register on a form provided by the Planning and Codes Department of the City of Portland which shall be approved by the building official. (as added by Ord. #06-01, March 2006)

9-713. Means of advertisement of yard sales--obstructing traffic.

It shall be unlawful for any person or persons holding or engaged in a garage sale or yard sale to cause congestion of traffic in the areas where the sale is being held. It shall be unlawful for any person or persons holding or intending to hold a garage sale or yard sale to post advertisement of the sale on telephone poles, utility poles, or in any manner anywhere except for temporary signs within the yard or space where the sale is being held or is to be held as set forth in other sections of this chapter. Advertising also may be given to the local news media for publication or other means of informing the public. (as added by Ord. #06-01, March 2006)

CHAPTER 8

MISCELLANEOUS

SECTION

9-801. Sales in city parks.

9-801. Sales in city parks. No person shall, in any park or to any person in any park, exhibit, sell or offer for sale, hire or lease any object or merchandise, or service of commercial nature, without prior approval from the parks department. (as added by Ord. #08-31, Aug. 2008)

CHAPTER 9

SEXUALLY ORIENTED BUSINESSES

SECTION

- 9-901. Title.
- 9-902. Definitions.
- 9-903. Prevention of sexual activity.
- 9-904. Involvement of minors.
- 9-905. Specified criminal activity by operators, employees, entertainers and others.
- 9-906. Prohibited hours of operation.
- 9-907. Duties and responsibilities of operators, employees and entertainers.
- 9-908. Prohibited activities.
- 9-909. Reports.
- 9-910. Inspections.
- 9-911. Applicability.
- 9-912. Violations.

9-901. Title. This chapter shall be known and may be cited as "The Sexually Oriented Business Ordinance." (as added by Ord. #17-75, Nov. 2017)

9-902. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(2) "Adult bookstore," "adult novelty store," or "adult video store" means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

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

(b) Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one (1) of the principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(3) "Adult cabaret" means an establishment that features as a principal use of its business, entertainers, waiters, or bartenders who expose to public view of the patrons within such establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material, including swim suits, lingerie, or latex covering. "Adult cabaret" includes a commercial establishment that features entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainers;

(4) "Adult entertainment" means any exhibition of any adult-oriented motion picture, live performance, display or dance of any type, that has as a principal or predominant theme, emphasis, or portion of such performance, any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers.

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

(6) "Adult theater" means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure or "specified anatomical areas" or by "specified sexual activities."

(7) "Codes department" means the department or division of the city which is authorized to enforce building codes and other provisions of this municipal code of ordinances.

(8) "Employee" means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, whether or not the person is denominated as an employee, independent contractor, agent, or otherwise and whether or not the person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the

premises or equipment on the premises or for the delivery of goods to the premises.

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

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

(11) "Family recreation center" means any facility, which is oriented principally toward meeting the athletic or recreational needs of families and whose targeted customer is a minor child, including, but not limited to, the provision of one (1) or more of the following:

- (a) Ice skating;
- (b) Roller skating;
- (c) Skateboarding;
- (d) Paintball;
- (e) Mini-golf;
- (f) Bowling;
- (g) Go-carts;
- (h) Climbing facilities;
- (i) Athletic fields or courts; or
- (j) Other similar athletic or recreation activities.

(12) "Massage parlor" means an establishment or place primarily in the business of providing massage or tanning services where one (1) or more of the employees exposes to public view of the patrons within said establishment, at any time, "specified anatomical areas."

(13) "Nude model studio" means a commercial establishment where a person appears semi-nude or in a state of nudity, or displays "specified anatomical areas," and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Nude model studio as defined herein shall not include a proprietary school licensed by the State of Tennessee or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or a structure:

- (a) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;
- (b) Where in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
- (c) Where no more than one (1) nude or semi-nude model is on the premises at any one (1) time.

(14) "Nudity" or "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

(15) "Operator" means a person operating, conducting, or maintaining a sexually oriented business or a person who is identified in any report filed with the city as the operator of a sexually oriented business.

(16) "Sauna" means an establishment or place primarily in the business of providing, for purposes of sexual stimulation:

- (a) A steam bath or dry heat sauna; or
- (b) Massage services.

(17) "Semi-nude" means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel, provided the areola is not exposed in whole or in part.

(18) "Sexual conduct" means the engaging in or the commission of an act of sexual intercourse, oral-genital contact, or the touching of the sexual organs, pubic region, buttocks, or female breast of a person for the purpose of arousing or gratifying the sexual desire of that person or another person.

(19) "Sexual encounter center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- (a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (b) Physical contact between male and female persons or persons of the same sex when one (1) or more of the persons is in a state of nudity or semi-nude or exposes to view of the persons within such establishment, at any time, "specified anatomical areas";

(20) "Sexually oriented business" includes, but is not limited to, an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude model studio, sexual encounter center, massage parlor, or sauna, and further means any premises to which patrons or members of the public are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures or other adult entertainment, or wherein an entertainer provides adult entertainment to a member of the public, a patron, or a member, when such is held, conducted, operated or maintained for a profit, direct or indirect.

(21) "Sexual stimulation" means to excite or arouse the prurient interest or to offer or solicit acts of "sexual conduct" as defined in this chapter.

(22) "Specified anatomical areas" means:

(a) Less than completely and opaquely covered:

(i) Human genitals;

(ii) Pubic region;

(iii) Buttocks; or

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

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

(23) "Specified criminal acts" means the following criminal offenses as defined by the Tennessee Code Annotated or the corresponding violation of another state or country:

(a) Aggravated rape;

(b) Rape;

(c) Rape of a child;

(d) Aggravated sexual battery;

(e) Sexual battery by an authority figure;

(f) Sexual battery;

(g) Statutory rape;

(h) Public indecency;

(i) Prostitution;

(j) Promoting prostitution;

(k) Distribution of obscene materials;

(l) Sale, loan or exhibition to a minor of material harmful to minors;

(m) The display for sale or rental of material harmful to minors;

(n) Sexual exploitation of a minor;

(o) Aggravated sexual exploitation of a minor; and

(p) Especially aggravated sexual exploitation of a minor;

The fact that a conviction is being appealed shall have no effect whatsoever on the provisions of this chapter.

(24) "Specified services" means massage services, private dances, private modeling, or acting as an "escort" as defined in this chapter, and any other live adult entertainment as defined in this section.

(25) "Specified sexual activities" means:

(a) Human genitals in a state of sexual arousal;

(b) Acts of human masturbation, oral copulation, sexual intercourse, or sodomy; or

(c) Fondling or erotic touching of human genitals, pubic region, buttocks, or female breasts. (as added by Ord. #17-75, Nov. 2017)

9-903. Prevention of sexual activity. No person who owns, operates or manages a sexually oriented business shall permit "specified sexual activities," as defined in this chapter, to occur on the premises. No commercial building, structure, premises or portion thereof shall be designed for or used to promote high-risk sexual conduct. No person who owns, operates, causes to be operated or manages a sexually oriented business, which exhibits on the premises in any one (1) or more viewing rooms or booths of less than one hundred fifty (150) square feet of floor space, a film, video cassette, other reproduction or live entertainment which depicts "specified sexual activities" or "specified anatomical areas," shall cause or allow any deviation from the following requirements:

(1) 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. No manager's station may exceed thirty two (32) square feet of floor area. If the premises has two (2) or more manager's stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one (1) of the manager's stations. Each such area shall remain unobstructed by doors, curtains, partitions, walls, merchandise, display racks or other materials. All viewing rooms and booths shall have at least one (1) side open so that the area inside is visible from a manager's station. The view required in this subsection must be by direct line of sight from the manager's station;

(2) No alteration in the configuration or location of a manager's station may be made without the prior approval of the codes department;

(3) At least one (1) employee shall be on duty and situated in each manager's station at all times that any patron is present inside the premises;

(4) No viewing room or booth may be occupied by more than one (1) person at any time;

(5) Each viewing room or booth shall be lighted in such a manner that persons within are visible from a manager's station. The illumination level of each viewing room or booth, when not in use, shall be a minimum of ten (10) footcandles at all times, as measured from the floor. The illumination level of all other portions of the premises open to the public shall be a minimum of ten (10) footcandles at all times;

(6) No patron shall be permitted access to any area which has been designated as an area in which patrons will not be allowed;

(7) Each viewing room or booth shall be totally separated from adjacent viewing rooms and booths and any nonpublic areas by walls. All such walls shall be solid and extended from the floor to a height of not less than six feet (6') and shall be of light colored, nonporous, nonabsorbent, smooth textured and easily cleanable material. No such wall may be constructed of plywood or

composition board. No opening or aperture of any kind shall be allowed to exist between viewing rooms or booths. No person shall make or attempt to make an opening or aperture of any kind between viewing rooms or booths;

(8) All floor coverings in viewing rooms or booths shall be light colored, nonporous, nonabsorbent, smooth textured, easily cleanable surfaces, with no rugs or carpeting;

(9) The premises shall be maintained in a clean and sanitary manner at all times; and

(10) No occupant of a viewing room or booth shall be allowed to damage or deface any portion therein, engage in any type of sexual activity, cause any bodily discharge, or litter while inside. (as added by Ord. #17-75, Nov. 2017)

9-904. Involvement of minors. An operator of a sexually oriented business is in violation of this chapter if:

(1) The operator is less than eighteen (18) years of age, if an individual;

(2) Any officer, director, partner, stockholder or other individual having a direct or beneficial financial interest in the operator is less than eighteen (18) years of age, if the operator is a corporation, partnership or other form of business organization;

(3) Any employee of the sexually oriented business is less than eighteen (18) years of age;

(4) Any entertainer at the sexually oriented business is less than eighteen (18) years of age; or

(5) Any patron, customer, visitor, vendor, or other person inside the premises is less than eighteen (18) years of age. (as added by Ord. #17-75, Nov. 2017)

9-905. Specified criminal activity by operators, employees, entertainers and others. (1) No person may own or operate a sexually oriented business within the city if:

(a) He has a record of "specified criminal activity," as defined in this chapter, if the owner or operator is an individual; or

(b) Any officer, director, partner or other individual having at least a ten percent (10%) direct or beneficial financial interest in the operator has a record of "specified criminal activity," as defined in this chapter, if the owner or operator is a corporation, partnership or other form of business organization.

(2) No operator of a sexually oriented business may allow any employee who has a record of "specified criminal activity," as defined in this chapter, to work on the premises of the business.

(3) No operator of a sexually oriented business may allow any entertainer who has a record of "specified criminal activity," as defined in this chapter, to perform on the premises of the business.

(4) No operator, employee, or entertainer of a sexually oriented business may knowingly allow any "specified criminal activity" to occur on the premises of the business.

(5) No operator or employee of a sexually oriented business may allow any patron or customer who has carried out any "specified criminal activity" on the premises of the business to re-enter the premises.

(6) The police department may at any time investigate the criminal record of any person identified pursuant to § 9-909(4) of this chapter or of any employee of a sexually oriented business or of any entertainer performing at a sexually oriented business. (as added by Ord. #17-75, Nov. 2017)

9-906. Prohibited hours of operation. No sexually oriented business shall open to do business before eight o'clock A.M. (8:00 A.M.), Monday through Saturday; and no such establishment shall remain open after twelve o'clock (12:00) midnight, Monday through Saturday. No sexually oriented business shall be open for business on any Sunday or a legal holiday as designated in Tennessee Code Annotated, § 15-1-101. (as added by Ord. #17-75, Nov. 2017)

9-907. Duties and responsibilities of operators, employees, and entertainers. (1) The operator of each sexually oriented business shall maintain a register of all employees, showing the name, all aliases, home address, age, birth date, sex, weight, color of hair and eyes, telephone number, social security number, driver license or other state identification number and state of issuance, date of employment and termination, and duties of each employee. The above information for each employee shall be maintained on the premises during his or her employment and for a period of three (3) years following termination.

(2) The operator shall make such information available for inspection immediately upon request by the mayor, the mayor's authorized representative, the police department, or the codes department. Alternatively, if the mayor, the mayor's authorized representative, the police department, or the codes department requests that copies of any such information be delivered to them, the operator shall have such copies delivered within three (3) days of the request.

(3) An operator shall be responsible for the conduct of all employees and entertainers on the premises of the sexually oriented business and any act or omission of any employee or entertainer constituting a violation of a provision of this chapter shall be deemed to be the act or omission of the operator.

(4) There shall be posted and conspicuously displayed in the common areas of each sexually oriented business a list of any and all entertainment and services provided on the premises. Viewing adult-oriented motion pictures shall be considered as entertainment. The operator shall make the list available immediately upon demand of the mayor, the mayor's authorized representative, the police department, or the codes department.

(5) No operator, employee, or entertainer of a sexually oriented business shall allow any person under the age of eighteen (18) years on the premises of a sexually oriented business.

(6) A sign shall be conspicuously displayed in the common area of the premises of each sexually oriented business, and shall read as follows:

This sexually oriented business is regulated by the City of Portland, Tennessee. Employees, entertainers, or customers are not permitted to engage in any type of sexual conduct.

(7) Operators of sexually oriented businesses that provide "specified services," as defined in this chapter, for customers or patrons shall comply with the following requirements:

(a) For each "specified service," such customers or patrons shall be provided with written receipts. Operators shall keep copies of such receipts for at least three years, showing:

- (i) "Specified service" provided;
- (ii) Cost of "specified service";
- (iii) Date and time of service provided;
- (iv) Name of person providing the "specified service"; and
- (v) Method of payment for service;

(b) Copies of all published advertisements for the business shall be kept for at least three (3) years; and

(c) Copies of the receipts and advertisements required under this section shall be made available immediately upon request by the mayor, the mayor's authorized representative, the police department, or the codes department.

(8) It shall be the duty of the operator and all employees on the premises of a sexually oriented business to ensure that the line of sight between the manager's station(s) and each viewing room or booth remains unobstructed by doors, curtains, partitions, walls, merchandise, display racks or other materials.

(9) It shall be the duty of the operator and all employees on the premises of a sexually oriented business to ensure that the illumination required by this chapter is maintained at all times during business hours.

(10) It shall be the duty of the operator and all employees on the premises of a sexually oriented business to ensure that no openings of any kind exist between viewing rooms or booths.

(11) The operator or his/her agent shall, during each business day, regularly inspect the walls of all viewing rooms and booths to determine if any openings or holes exist. If such openings exist, it is the duty of the operator to immediately repair the damage. No patron shall be permitted access to a viewing room or booth where such an opening exists. It shall be the duty of the operator and all employees on the premises to ensure that such rooms or booths are unoccupied by patrons until the opening is repaired and covered. (as added by Ord. #17-75, Nov. 2017)

9-908. Prohibited activities. (1) No operator, employee, or entertainer of a sexually oriented business shall perform or offer to perform any specified sexual activities on the premises of the business, or allow or encourage any person on the premises to perform or participate in any specified sexual activities.

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

(3) No business shall advertise that it offers or provides any entertainment or services which would fall under the definitions of "sexual conduct," "sexual stimulation" or "specified sexual activities" as defined in this chapter.

(4) No operator, employee, or entertainer shall serve or allow to be served or consumed any intoxicating liquor, wine, beer, or other malt beverage on the premises of a sexually oriented business.

(5) No operator, employee, or entertainer shall knowingly allow possession, use, or sale of controlled substances on the premises of a sexually oriented business.

(6) The possession of weapons by any patron or customer on the premises of a sexually oriented business shall be prohibited. Notice of such prohibition shall be posted on the premises. No operator, employee, or entertainer shall knowingly allow a patron or customer on the premises of a sexually oriented business to have a weapon in his possession. (as added by Ord. #17-75, Nov. 2017)

9-909. Reports. Any person operating or desiring to operate a sexually oriented business shall file a report with the codes department at least thirty (30) days prior to the opening of the business and no later than November 1 of each year thereafter. The report shall be filed in triplicate with and dated by the codes department upon receipt. One (1) copy of the dated report shall be returned to the operator and one (1) copy shall be promptly provided to the police department. The report shall be upon a form provided by the codes department and shall include the following information, which shall be sworn by the operator to be true and correct under oath:

(1) The name under which the sexually oriented business is or will be operated;

(2) The location and all telephone numbers for the sexually oriented business;

(3) The type of sexually oriented business which is being or will be operated, using the terms included in the definition of "sexually oriented business" provided in this chapter, if applicable, and a complete description of

all types of entertainment and services provided or to be provided by the business;

(4) If the operator is an individual, or for any individual who owns or will own at least a ten percent (10%) direct or beneficial interest in the business:

(a) Legal name and any other names or aliases used by the individual;

(b) Mailing address and residential address and telephone number;

(c) Business address and telephone number;

(d) A recent photograph of the individual;

(e) Age, date and place of birth;

(f) Height, weight, and hair and eye color;

(g) Date, issuing state and number of the individual's driver's license or other state identification card information;

(h) Social security number;

(i) Proof that the individual is at least eighteen (18) years of age; and

(j) The business, occupation or employment of the individual for five (5) years immediately preceding the date of the report.

(5) If the operator is a partnership:

(a) The partnership's complete name;

(b) The names of all partners and the information required above for all individuals who own or will own at least a ten percent (10%) direct or beneficial interest in the business;

(c) Whether the partnership is general or limited; and

(d) A copy of any printed partnership agreement.

(6) If the operator is a corporation:

(a) The corporation's complete name, address, and telephone number;

(b) The date and state of incorporation;

(c) The corporation's federal tax identification number;

(d) Evidence that the corporation is in good standing under the laws of the state of incorporation;

(e) The names and capacity of all officers, directors and principal stockholders and the information required above for all individuals who own or will own at least a ten percent (10%) direct or beneficial interest in the business; and

(f) The name and address of the registered corporate agent for service of process.

(7) The sexually oriented business or similar business history of the operator and of each individual listed under § 9-909(4) above, including:

(a) The name and location of each sexually oriented business or similar business currently or previously owned or operated by such operator or individual;

(b) If the operator or individual is or was a partner, officer, or director or holds or held at least a ten percent (10%) direct or beneficial interest in a partnership, corporation or other business entity which operates or operated or is or was majority owner of any sexually oriented business or similar business, the name and location of each such business and the owning or operating business entity;

(c) Whether such operator or individual, has had any license or permit issued to a sexually oriented business or similar business denied, suspended or revoked; and

(d) The name and location of each sexually oriented business or similar business for which the license or permit was denied, suspended or revoked, and the dates and reasons for each such suspension or revocation.

(8) Whether the operator or any of the operator's officers or directors or any individual listed under § 9-909(4) above has a record of any "specified criminal activity" as defined in this chapter, and, if so, the "specified criminal activity" or activities involved and the date, place and jurisdiction of each;

(9) If the premises are leased or being purchased under contract, a copy of such lease or contract;

(10) A sketch or diagram showing the configuration of the premises, including the total amount of 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 inches (6"). The codes department may waive this requirement if the report adopts a sketch or diagram that was previously submitted and the operator certifies that the configuration of the premises has not been altered since it was prepared. This requirement does not excuse the operator from compliance with all other applicable requirements for approval of building plans;

(11) For the initial report, a current certificate and straight-line drawing prepared within thirty (30) days prior to the filing of the report by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within one thousand feet (1,000') of the property of the business filing the report; the boundary lines of any residential zoning district within one thousand feet (1,000') of said property; and the property lines of any parcel which includes an established religious facility, child care or educational facility, public park or recreation area, family recreation center, liquor store or residence within one thousand feet (1,000') of said property. For purposes of this section, a use shall be considered existing or established if it is in existence at the time a report is submitted;

(12) A signed statement by the operator that the operator is familiar with the provisions of this chapter and is and will continue to be in compliance therewith, provided that if the operator is not an individual, such statement

shall be signed by each individual who owns or will own at least a ten percent (10%) direct or beneficial interest in the operator; and

(13) Any other reasonably available information necessary in determining whether the operator and the sexually oriented business meet the requirements of this chapter as determined by the mayor, the mayor's authorized representative, the police department, or the codes department. (as added by Ord. #17-75, Nov. 2017)

9-910. Inspections. In order to effectuate the provisions of this chapter, the mayor, the mayor's authorized representative, the police department, and the codes department are empowered to:

(1) Conduct investigations of the premises of any sexually oriented business or any business believed by any of them to be a sexually oriented business at any time such business is occupied or open for business;

(2) Inspect all licenses and records of any sexually oriented business and its operators and employees for compliance with this chapter at any time such business is occupied or open for business; and

(3) Conduct investigations of persons engaged or believed to be engaged in the operation of any sexually oriented business. (as added by Ord. #17-75, Nov. 2017)

9-911. Applicability. The provisions of this chapter are not intended to supersede any obligations or requirements of statutes, laws, rules, regulations, or ordinances, including licensing requirements and zoning restrictions, imposed by the State of Tennessee or the City of Portland and shall be in addition thereto. (as added by Ord. #17-75, Nov. 2017)

9-912. Violations. (1) Each of the following acts and omissions shall be considered a civil offense against the city:

(a) Failure to file any report required under this chapter at the time required or submittal of false or misleading information or omission of any material facts in any report required under this chapter;

(b) Any operator, employee, or entertainer violates any provision of this chapter;

(c) Any operator, employee, or entertainer denies access to the mayor, the mayor's authorized representative, the police department, or the codes department to any portion of the premises of the sexually oriented business at any time it is open for business; or

(d) Any operator fails to maintain the premises of a sexually oriented business in a clean, sanitary, and safe condition.

(2) Upon a second or subsequent violation by an operator, entertainer, or employee of a sexually oriented business, of any part of this chapter, or of any state statute regarding nudity, sexually oriented businesses, or adult entertainment, such business shall be deemed a nuisance and shall be subject

to an order of closure and/or to cease and desist by chancery court action seeking injunctive relief to enforce the provisions of this chapter, provided that such second or subsequent violation occurs after a conviction or plea of nolo contendere has been obtained for the previous such violation. (as added by Ord. #17-75, Nov. 2017)

CHAPTER 10

MOBILE FOOD VENDORS

SECTION

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9-1001. Purpose. The city has determined that regulation of Mobile Food Vendors (MFVs) is necessary in order to protect the health, safety, and welfare of the public, as well as to promote the public interest by regulating the areas and methods of operation. To meet these ends, the city has determined that all persons or entities that desire to vend from MFVs within the city must be issued a permit pursuant to the requirements of this chapter. (as added by Ord. #21-12, April 2021 *Ch12_12-06-21*)

9-1002. Definitions. The following words, terms and phrases, when used in this chapter, shall have the following meanings ascribed to them in this section:

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

(2) "Outside preparation." Any external preparation of food or drink using external appliances, grills, or smokers that can safely be operated outside the MFV unit.

(3) "Ice cream vending unit." A motor vehicle containing a commercial freezer from which a vendor sells or gives away frozen food products such as ice cream, frozen yogurt, frozen custard, flavored frozen water, and similar desserts, whether prepackaged, prepared, or prepared on-site typically known as an ice cream truck. Such frozen food products are typically sold on city streets at intermittent locations. A pedestrian vendor selling frozen desserts shall not be considered an "ice cream vending unit."

(4) "Mobile food vendor." Generally, a Mobile Food Vendor ("MFV") is an enclosed unit, truck, or trailer, or similar vehicle-mounted unit that:

- (a) Is mobile or capable of being moved by a licensed motor vehicle;

(b) Any unit, such as hotdog, ice cream, or food cart, that is unloaded or delivered to an area for the purpose of vending to walk up customers, and is not easily moved from location to location without motorized help;

(c) May or may not be independent with respect to water, waste water, and power utilities;

(d) Is used for the preparation and/or sale of food;

(e) Does not exceed thirty-five feet (35') in length and nine feet (9') in width;

(5) "Operate." To "operate" or "operation" shall mean all activities associated with the conduct of business, including, but not limited to, set up, take down, and actual hours where the MFV is open for business.

(6) "Prepackaged food." Any properly labeled and processed food or beverage, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an off-site approved source, and that may be purchased at the MFV for immediate or later consumption.

(7) "Prepared food." Any food or beverage that is served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared by persons off-site from a MFV that may be purchased at the MFV for immediate or later consumption.

(8) "Public property." Any property owned or maintained by the city.

(9) "Right-of-way." For the purposes of this chapter, "right-of-way" shall mean streets where public parking is allowed and includes marked or unmarked parking spaces thereon. (as added by Ord. #21-12, April 2021 *Ch12_12-06-21*)

9-1003. Applicability. The provisions of this chapter shall apply to mobile food vendors engaged in the business of preparing, cooking, and distributing food with or without charge on or in public or private property within the city limits. This chapter shall also apply to vendors selling prepared or prepackaged food if the vendor desires to exceed the exemption provided for the vendor herein. (as added by Ord. #21-12, April 2021 *Ch12_12-06-21*)

9-1004. Limited exemptions. (1) Ice cream vending units. This chapter shall not apply to an ice cream vending unit so long as the unit is stationary in the same location for no more than fifteen (15) minutes at a time. An ice cream vending unit may sell or attempt to sell items that are frozen only on local streets where the speed limit is thirty (30) miles per hour or less. An ice cream vending unit shall not stop within twenty feet (20') of an intersection when attempting a sale or making a sale; and must have lights that are visible to oncoming traffic.

(2) Food donations. Public food donations are exempted, as long as no product is being sold in conjunction with a food give-a-way. All edible food

products must still follow safe food handling guidelines as directed by the Tennessee State Health Department. Food donation vendors must still receive permission to set up and distribute, and must not hinder pedestrian, vehicular, or public safety traffic or access.

(3) Compliance with chapter. Any vendor who is granted an exemption under this section and who desires to operate beyond the terms of the limited exemption described in this section shall comply with the provisions of this chapter that are applicable to MFVs.

(4) Community events. Certain city and chamber events may be exempt. (as added by Ord. #21-12, April 2021 *Ch12_12-06-21*)

9-1005. Mobile food vendor permit. (1) Application and permit required. Unless exempted, every vendor desiring to engage in mobile food vending shall submit an application, along with all necessary information and inspections, to the business office along with the appropriate fees before a permit shall be issued. The permit application shall not be considered complete until a safety inspection is completed and the business office receives full payment for the type of permit desired. Permits are only valid during the calendar year in which they were issued; and each year the permitting process must be followed. Permits are non-transferrable.

(2) Applicable MFV permits. As with all MFV permits, if the MFV does not meet the requirements of the city, the MFV shall not receive a permit and it shall not be permitted to operate. The following MFV permit types are available:

(a) Special event permit. Vendors that wish to operate within the city during a single event may apply for a permit that is valid up to three (3) consecutive days; and this permit can only be issued three (3) times in a calendar year for the same MFV. City and chamber sponsored events may require additional fees and conditions.

(b) Test market permit. Vendors wishing to better understand the potential profitability of the area may apply. This permit can only be issued once in a calendar year and the permit has a duration of twenty-one (21) days; but it can be upgraded to either a limited access permit or a full access permit within the same calendar year by paying only the difference between the test market fee and the desired permit upgrade.

(c) Limited access permit. Vendors that wish to operate more frequently within the city may apply for the authorization to open their MFV business up to three (3) days per week during the year.

(d) Full access permit. Vendors wishing to maintain a constant presence in the city with their MFV business may apply for daily operation.

(3) Fees. A non-refundable application fee in the amount of twenty-five dollars (\$25.00) is required to receive an application for a MFV permit. There

shall be no proration of fees; and fees are non-refundable once a permit has been issued. The following fees apply:

- (a) Special event MFV permit fee - \$25.00
- (b) Test market MFV permit fee - \$50.00
- (c) Limited access MFV permit fee - \$275.00
- (d) Full access MFV permit fee - \$675.00

(4) Inspections after permitting. Permitted operations may be inspected periodically and without notice by representatives of various city departments to ensure compliance with this chapter.

(5) Operation without permit. Any MFV operating without a valid permit shall be deemed a public safety hazard and may be ticketed and impounded.

(6) Revocation of permit. The city may revoke a permit if it discovers that:

- (a) An applicant obtained the permit by knowingly providing false information on the application;
- (b) The continuation of the vendor's use of the permit presents a threat to public health or safety, or if the vendor otherwise presents a threat to public health or safety; or
- (c) The vendor violates regulations of this chapter or any other city ordinance.

(7) Revocation. Following the revocation of a permit, a vendor must wait six (6) months before reapplying for a new permit. Upon reapplication, the vendor must pay the full permit fee. (as added by Ord. #21-12, April 2021 *Ch12_12-06-21*)

9-1006. Operation of mobile food vendors. The following requirements apply to all MFVs and vendors operating at any location, whether on city property, the right-of-way, or on private property within the city. Private property owners may seek additional requirements for MFVs operating on their property.

(1) Additional structures. When vending on public property or right-of-way outside of a special event authorized by the city or chamber, vendors shall not provide any dining area. The term "additional structures" does not include the waste containers required by this section. When vending on private property or within a special event authorized by the city or chamber, permission from the property owner is required before the vendor provides or allows any dining area, including, but not limited to, tables, chairs, booths, bar stools, benches and standup counters. Under no circumstances shall these dining areas encroach into the public right-of-way. The vendor shall remove all additional structures when the vendor ends its operations for the day.

(2) Compliance with laws. Except as provided herein, MFV placement and operation must adhere to federal, state, and local laws, regulations, and policies. Local laws, regulations, and policies include, but are not limited to, the

city's zoning ordinances, noise ordinances, stormwater regulations, and fire code. The vendor must comply with all safe food handling rules as described by the Tennessee Department of Health.

(3) Distance between MFVs. While operating, MFVs shall be at least ten feet (10') from other MFVs; except for approved events.

(4) District restrictions. (a) Residential districts. MFVs are generally restricted in all areas zoned residential. MFVs in residential zones are allowed only as part of an event that is sponsored or hosted by a neighborhood association, by a homeowners' association, a non-profit corporation, by the city, the chamber, or another governmental entity and each event is limited to one (1) day per calendar year for that particular neighborhood.

(b) Commercial districts. Generally, mobile vending on private property is permitted only in commercially zoned districts with improved lots except for city and chamber approved events.

(c) City property. Use of city property is generally not available except for city and chamber events. Certain city parking lots may allow MFVs, but that permission will be granted by the parks department at their discretion according to policies dealing with the use of city property.

(d) Unimproved lots. MFVs are not allowed to operate on unimproved lots.

(5) Electrical requirements. Any MFV under this chapter shall comply with the requirements of the National Electrical Code, and any other rules and regulations which may apply.

(6) Electrical service. Any power required for a MFV on a public right-of-way or public property should be self-contained. MFVs operating on private property may use electrical power from the property being occupied or an adjacent property only when permission has been given by an operator of the property to hook-up to electricity from the property. No power cord, cable, or equipment shall be extended at or across any public right-of-way, alley, sidewalk, or other public property. For the purposes of this section, "operator" refers to either the property owner or tenant where there is one (1) occupant of the parcel, or refers to the property owner where there are multiple occupants or tenants on a parcel. The owner/operator of the MFV may be responsible for any damage caused to the electrical system.

(7) Fire safety and inspection. Any vendor operating a MFV under this chapter shall comply with requirements of the International Fire Code as adopted, along with any other regulatory fire code as adopted. An inspection by the fire department must be passed before any permit is issued; and random inspections by city staff may be made any time after a permit is issued. All MFV operators are to adhere to the following:

(a) Vendors must have the appropriate fire suppression and/or fire extinguishers available at all times for their type of combustibles; such as described in NFPA 10.

(b) All gasoline and propane must be properly stored and secured according to acceptable best practices, standards, and codes; such as that of the NFPA.

(c) Each mobile unit must contain a fire/carbon monoxide alarm.

(d) No trash or combustible material shall accumulate or be located within three feet (3') of an open flame or fuel supply.

(e) Gasoline generators shall only be filled when the generator is cool to the touch and not in operation.

(8) Hours of operation. Generally, MFVs are allowed to operate between the hours of 7:00 A.M. and 10:00 P.M.; but may be shortened by the property owner. Certain approved events may dictate longer or shorter hours of operation as well.

(9) Items for sale. Generally, only food and beverage items may be sold from MFVs; a vendor may sell or distribute merchandise from the MFV only if the merchandise bears the logo of the vendor or the MFV; all other merchandise sales are prohibited. The sale or distribution of alcoholic beverages is prohibited specifically.

(10) Letter of permission. Vendors operating on private property shall obtain a letter from an operator of the property stating that the vendor has permission to vend on the property and, if applicable, has permission to serve the operator's employees and/or customers. The vendor shall keep a copy of the permission letter on the MFV at all times and while operating, the vendor shall produce the letter upon the request of any city official acting in an enforcement capacity. For the purposes of this section, "operator" refers to either the property owner or tenant where there is one (1) occupant of the parcel, or refers to the property owner where there are multiple occupants or tenants on a parcel.

(11) Maximum number of units per parcel. While operating on private property, except for approved events by the city or chamber, the number of MFVs allowed is limited by the size of the parcel as follows: For a lot that is one-half (1/2) acre or smaller, a maximum of one (1) MFVs is allowed; for a lot that is one-half to one (1/2-1) acre, a maximum of two (2) MFVs is allowed; for a lot that is larger than one (1) acre in size, a maximum of three (3) MFVs is allowed.

(12) Methods of support. MFVs shall be free-standing and shall not use stakes, rods, or any method of support that must be drilled, driven, or otherwise fixed, into or onto asphalt, pavement, curbs, sidewalks, or buildings.

(13) Mobile vending on city property. MFVs wishing to operate on city property must schedule places and times through the park department. A minimum notice of fourteen (14) business days must be given to allow for scheduling; and schedules cannot be made for those who do not have an active permit. Scheduling times and places are limited, and are on a first come first serve basis. All city functions take precedence over MFVs; and MFVs may be asked at any time to move to another location on city property, or off of city

property all together. The use, marking, or designation of spaces for mobile food vending does not grant vendors a vested right, property interest, or privilege in any specific space. City space for MFVs may be adjusted, modified, or removed if such adjustment, modification, or removal is determined to be in the interest of the public health, safety, welfare, and operation of the city.

(14) Obstruction of vehicular and pedestrian traffic. Placement of MFVs and any devices related to the MFV shall not obstruct or impede pedestrian or vehicular traffic, access to driveways or any egress or ingress, alley way, sight distance for drivers, loading bays, handicap parking spaces or access, or block fire hydrants or fire lanes.

(15) Operation on unimproved lots. MFVs shall not operate on unimproved non-commercial lots. For the purposes of this chapter, an "unimproved lot" is a lot without the following: paved surface for the MFV and its customers, paved driveway access to a city street, and adequate lighting for the paved area. This prohibition regarding unimproved lots shall not be applicable to properties owned by the city or to events coordinated by the city and the chamber.

(16) Outside preparation. Any food and beverage preparation outside of the MFV shall not obstruct vehicular or pedestrian traffic, and such preparation shall not create safety hazards for the public. Vendors shall not serve food to customers directly from any outside preparation unit. Any barbecue, smoker, or cooking device that is external to the MFV shall be blocked by sufficient barriers so as to protect, and alert, pedestrians from possible injury.

(17) Parking direction. When allowed, MFVs operating on public streets shall park in the same direction as traffic, with no more than eighteen inches (18") between the curb face or edge of pavement and with the service window, and the service window of the MFV must be facing the curb.

(18) Service to pedestrians. MFVs shall serve pedestrians only; a drive-thru or drive-in service for vehicular customers is prohibited. MFVs should use traffic cones to prevent vehicles from driving through the area where pedestrians would line up for service.

(19) Signs and flashing lights. A MFV is limited to signs mounted to the exterior of the mobile food vendor's unit and one (1) detached sandwich board sign. Sandwich board signs shall not obstruct or impede pedestrian or vehicular traffic. MFVs signs shall not contain flashing lights or flashing light-emitting diodes (LED), nor shall the MFV use flashing lights or flashing LED as an embellishment on the MFV to attract attention.

(20) Sound amplification. MFVs or vendors shall not use sound amplification equipment in a way that may create a nuisance to others.

(21) Spills. To prevent discharges into the storm drain system, each MFV shall comply with the stormwater regulations of the city. In addition, each MFV should have a spill response plan and kit onboard to contain and remediate any discharge from the MFV.

(22) Waste storage and disposal. Vendors shall supply, in a prominent location, trash containers sufficient in size to collect all waste generated by customers and staff of the MFV. The vendor shall keep the area around the MFV clear of litter and debris at all times. All trash and debris generated by customers and staff shall be collected by the vendor and deposited in their trash or recycling container and removed from the site by the vendor. Vendors shall not pour waste water or grease on the ground. Vendors shall not place food waste or grease into city owned trash receptacles. Vendors shall not place food, waste, or grease into any part of city's sewer system. (as added by Ord. #21-12, April 2021 *Ch12_12-06-21*)

9-1007. Indemnity for benefit of the city and insurance. Any vendor operating under this chapter shall comply with all requirements of the city with regard to risk management, including the provision of insurance in accordance with the standards set by the city and the execution of an indemnity agreement in favor of the city when operating on city property. (as added by Ord. #21-12, April 2021 *Ch12_12-06-21*)