

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.¹

CHAPTER

1. PEDDLERS, SOLICITORS, ETC.
2. CABLE TELEVISION.
3. ADULT ENTERTAINMENT CENTERS.
4. SEXUALLY ORIENTED BUSINESSES.

CHAPTER 1

PEDDLERS, SOLICITORS, ETC.²

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 to dwelling, business to business, place to place, or from street to street, carrying or transporting goods, wares or merchandise and offering or exposing the same for sale.

(2) "Solicitor" means any person, firm or corporation who goes from dwelling to dwelling, business to business, place to place, or from street to

¹Municipal code references

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

²Municipal code references

Privilege taxes: title 5.

Trespass by peddlers, etc.: § 11-701.

street, taking or attempting to take orders for any goods, wares or merchandise, or personal property of any nature whatever for future delivery, except that the term shall not include solicitors for charitable and religious purposes and solicitors for subscriptions as those terms are defined below.

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

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

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

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

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

(5) "Transient vendor¹" means any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of selling or offering to sell the merchandise to the public. Transient vendor does not include any person selling goods by sample, brochure, or sales catalog for future delivery; or to sales resulting from the prior invitation to the seller by the

¹State law references

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

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

owner or occupant of a residence. For purposes of this definition, "merchandise" means any consumer item that is or is represented to be new or not previously owned by a consumer, and "temporary premises" means any public or 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. (1989 Code, § 5-101)

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. (1989 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. (1989 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 or religious purposes or as a solicitor for subscriptions:

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

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

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

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

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

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

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

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

(4) Submission of application form to chief of police. Immediately after the applicant obtains a permit from the city recorder, the city recorder shall submit to the chief of police a copy of the application form and the permit. (1989 Code, § 5-104)

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

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

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

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

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

(5) Enter in or upon any premises or attempt to enter in or upon any premises wherein a sign or placard bearing the notice "Peddlers or Solicitors Prohibited," or similar language carrying the same meaning, is located. (1989 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. (1989 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. (1989 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 board of mayor and aldermen. The permit issued to any person or organization under this chapter may be suspended or revoked by the board of mayor and aldermen, after notice and hearing, for the same causes set out in paragraph (1) above. Notice of the hearing for suspension or revocation of a permit shall be given by the city recorder in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed to the permit holder at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1989 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. (1989 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 provisions of this municipal code of ordinances. (1989 Code, § 5-110)

CHAPTER 2**CABLE TELEVISION****SECTION**

9-201. To be furnished under franchise.

9-201. To be furnished under franchise. Cable television shall be furnished under franchise granted to Galaxy Cable T.V. by the board of mayor and aldermen. The rights, powers, duties and obligations of the city and the franchise are clearly stated in the franchise agreement executed by, and which shall be binding upon the parties concerned.¹ (1989 Code, § 13-401)

¹Complete details relating to the cable television franchise agreement, and any amendments, are of record in the office of the city recorder.

CHAPTER 3

ADULT ENTERTAINMENT CENTERS

SECTION

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- 9-302. Prohibited acts.
- 9-303. Prohibited locations.
- 9-304. Minors prohibited as patrons.
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- 9-306. Outside advertisement restricted.
- 9-307. Hours of business.
- 9-308. Violations-misdemeanors-penalties.
- 9-309. Repeated violations authorizing closing of business.
- 9-310. Judicial review of actions under this chapter.

9-301. Definition of adult entertainment center. "Adult entertainment center" shall be defined for the purpose of this chapter as any business located within the corporate city limits of the City of Puryear that generates its primary source of income from live entertainment featuring "topless" dancing or other types of dancing or modeling by either sex where the entertainers sexually touch the patrons or exhibit themselves to the patrons in a manner intended to stimulate sexual passions and desires and exhibit the body and body parts in various degrees of nudity. (Ord. # ____, Jan. 1996, as replaced by Ord. #27-98, June 1998)

9-302. Prohibited acts. (1) No person while in such establishment shall expose to public view his or her genitals, pubic areas, vulva, anus, or anal cleft thereof without the covering of a least a G-string;

(2) No person maintaining, owning, or operating such establishment shall suffer or permit any person to expose to public view his or her genitals, pubic areas, vulva, anus, or anal cleft thereof without the covering of at least a G-string;

(3) No person shall engage in and no person maintaining, owning, or operating such an establishment shall suffer or permit any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellating, any sexual act which is prohibited by law, touching, caressing, or fondling of the breasts, buttocks, anus or genitals or the simulation thereof within such an establishment. (Ord. # ____, Jan. 1996, as replaced by Ord. #27-98, June 1998)

9-303. Prohibited locations. No adult entertainment center shall be operated from the front door less than 2000 feet from any school, private residence or church or any other location or where any religious body normally

worships or convenes. (Ord. # __, Jan. 1996, as replaced by Ord. #27-98, June 1998)

9-304. Minors prohibited as patrons. It shall be unlawful for any adult entertainment center to allow any minors of less than eighteen (18) years of age to attend or be seen on the premises during any open hours of said business. (Ord. # __, Jan. 1996, as replaced by Ord. #27-98, June 1998)

9-305. Minors prohibited as employees. No minors less than eighteen (18) years of age shall be allowed to work in any business defined as an adult entertainment center. (Ord. # __, Jan. 1996, as replaced by Ord. #27-98, June 1998)

9-306. Outside advertisement restricted. No outside advertisement of any kind shall be permitted by an adult entertainment center that shall show or depict any of its patrons or employees in less than full dress attire. (Ord. # __, Jan. 1996, as replaced by Ord. #27-98, June 1998)

9-307. Hours of business. If such an establishment allows the use or consumption of any alcoholic beverage having an alcoholic content of five percent (5%) of weight or less, expressly including all beers, then said establishment shall not allow the consumption of any alcoholic beverage after midnight and shall, in all cases, close its doors for patrons at 1:30 A.M. (as added by Ord. #27-98, June 1998)

9-308. Violations-misdemeanors-penalties. Any violation of any section of this chapter upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) appear at each individual violation and each occasion shall constitute a separate misdemeanor. (Ord. # __, Jan. 1996, as replaced by Ord. #27-98, June 1998)

9-309. Repeated violations authorizing closing of business. If any business known as an adult entertainment center shall end a period of one (1) year and receive more than five (5) violations of this code section of the municipal code of the City of Puryear or any violations in excess of this code section or any other code section of the State of Tennessee shall be the basis of authorizing the Board of Aldermen of the City of Puryear to declare said business a public nuisance and order its closing for a limited period of time or for a total closure as determined by the board of aldermen. Upon proper hearing and notice given to the adult entertainment center that shall be noticed of at least thirty (30) days prior to hearing to be determined an open hearing before the board of aldermen. (Ord. # __, Jan. 1996, as replaced by Ord. #27-98, June 1998)

9-310. Judicial review of actions under this chapter. The action of board of aldermen in connection with the withdrawal of the right to conduct business within the City of Puryear as defined herein may be reviewed by the statutory writ of certiorari, said writ of certiorari to be addressed to the Circuit or Chancery Court of Henry County, Tennessee. Immediately upon the ground of the writ of certiorari, the board of aldermen shall cause to be made, certified and forwarded to said court, a complete transcript of proceedings before the board.

Said provisions of this section shall be the sole and exclusive remedy and method of review of any action or order that may have been issued by the board, including the refusal or failure to grant any license or permit. (Ord. #__, Jan. 1996, as replaced by Ord. #27-98, June 1998)

CHAPTER 4

SEXUALLY ORIENTED BUSINESSES

SECTION

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9-401. Purpose and findings. (1) Purpose. It is the purpose of this chapter to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented

materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene materials.

(2) Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the city commission, and on findings incorporated in the cases of City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); Young v. American Mini Theatres, 426 U.S. 50 (1976); and Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); Arcara v. Cloud Books, Inc., 478 U.S. 697, (1986); California v. LaRue, 409 U.S. 109 (1972); Iacobucci v. City of Newport, Ky, 479 U.S. 92 (1986); United States v. O'Brien, 391 U.S. 367 (1968); DLS, Inc. v. City of Chattanooga, 107 F.3d 403 (6th Cir. 1997); Kev, Inc. v. Kitsap County, 793 F.2d 1053 (9th Cir. 1986); Hang On, Inc. v. City of Arlington, 65 F.3d 1248 (5th Cir. 1995); and South Florida Free Beaches, Inc. v. City of Miami, 734 F.2d 608 (11th Cir. 1984), as well as studies conducted in other cities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and findings reported in the Final Report of the Attorney General's Commission on Pornography (1986), the Report of the Attorney General's Working Group On the Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the city commission finds that:

(a) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make owners of these establishments responsible for the activities that occur on their premises.

(b) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located. See, e.g., studies of the cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.

(c) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. See, e.g., California v. LaRue, 409 U.S. 109, 111 (1972); see also Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(d) Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.

(e) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses. See, e.g., Arcara v. Cloud Books, Inc., 478 U.S. 697, 698 (1986); see also Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.

(f) At least fifty (50) communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, Human Immunodeficiency Virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections. See, e.g., Study of Fort Meyers, Florida.

(g) For the period 1985 through 1995, the total number of reported cases of AIDS in the United States caused by the Human Immunodeficiency Virus (HIV) was five hundred twenty-three thousand fifty-six (523,056). See, e.g., Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(h) As of February, 1999, there have been eight thousand two hundred three (8,203) reported cases of AIDS in the State of Tennessee.

(i) Since 1981 and to the present, there has been an increasing cumulative number of persons testing positive for HIV antibody test in [state of] Tennessee.

(j) The total number of cases of early (less than one (1) year) syphilis in the United States reported during the ten (10) year period 1985-1995 was three hundred sixty-seven thousand seven hundred ninety-six (367,796). See, e.g., Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(k) The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of one million two hundred fifty thousand five hundred eighty-one (1,250,581) cases reported during the period 1993-1995. See, e.g., Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(l) The surgeon general of the United States in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.

(m) According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. See, e.g., Findings of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(n) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the

failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(o) Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(p) Nude dancing in adult establishments encourages prostitution, increases sexual assaults, and attracts other criminal activity. See, e.g., Barnes v. Glen Theatre, 501 U.S. 560, 583 (1991).

(q) Nude dancing in adult establishments increases the likelihood of drug-dealing and drug use. See, e.g., Kev, Inc. v. Kitsap County, 793 F.2d 1053, 1056 (9th Cir. 1986).

(r) The findings noted in subsections numbered (a) through (q) raise substantial governmental concerns.

(s) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(t) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of the sexually oriented businesses. Further, such licensing procedure will place a heretofore non-existent incentive on operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the city. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(u) Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult establishments.

(v) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.

(w) It is desirable, in the prevention of the spread of communicable diseases, to obtain a limited amount of information regarding certain employees who may engage in the conduct this chapter is designed to prevent, or who are likely to be witnesses to such activity.

(x) The fact that an applicant for a sexually oriented business license has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention to this chapter.

(y) The barring of such individuals from operation or employment in sexually oriented businesses for a period of five (5) years for a previous felony conviction serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

(z) The general welfare, health, morals, and safety of the citizens of this city will be promoted by the enactment of this chapter. (as added by Ord. #49-06, March 2006)

9-402. Definitions. (1) "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are 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" or "adult video store" means a commercial establishment that, as one (1) of its principal business 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 picture, video cassettes or video reproductions, slides, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas"; or

(b) Instruments, devices, or paraphernalia that 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 or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore or adult video store so long as one (1) of its principal business purposes is the offering for sale or rental for consideration of the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas." A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

(3) "Adult cabaret" means a nightclub, bar, restaurant, or similar commercial establishment that regularly features:

(a) Persons who appear in a state of nudity or semi-nudity; or

(b) Live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(c) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

(d) Persons who engage in erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

(4) "Adult motel" means a hotel, motel or similar commercial establishment that:

(a) Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way that advertises the availability of this adult type of photographic reproductions; or

(b) Offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or

(c) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twenty-four (24) hours.

(5) "Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown that 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 that regularly features persons who appear, in person, in a state of nudity and/or semi-nudity, and/or live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(7) "Director" means the city manager or such persons as he may designate to perform the duties of the director under this chapter.

(8) "Employee" means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said 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, nor does "employee" include a person exclusively on the premises as a patron or customer.

(9) "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.

(10) "Escort agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one (1) of its primary business purposes for a fee, tip, or other consideration.

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

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

(b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

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

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

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

(12) "Licensed day-care center" means a facility licensed by the State of Tennessee, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

(13) "Licensee" means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

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

(15) "Nudity" or a "state of nudity" means the appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the areola; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

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

(17) "Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to § 9-404 of this chapter.

(18) "Semi-nude" or "semi-nudity" means the appearance of the female breast below a horizontal line across the top of the areola at its highest point. 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.

(19) "Sexual encounter center" means a business or commercial enterprise that, as one (1) 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) Activities between male and female persons and/or persons of the same sex when one (1) or more of the persons is in a state of nudity or semi-nudity.

(20) "Sexually oriented business" means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

(21) "Specified anatomical areas" means:

(a) The human male genitals in a discernibly turgid state, even if fully and opaquely covered;

(b) Less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

(22) "Specified criminal activity" means any of the following offenses:

(a) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the criminal or penal code of this state, other states, or other countries.

(b) For which:

(i) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(ii) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense;

(iii) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

(c) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

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

(a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;

(b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

(c) Masturbation, actual or simulated; or

(d) Excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

(24) "Substantial enlargement" of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%) as the floor areas exist on May 1, 1999.

(25) "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 that form a controlling interest in the business, whether by sale, exchange, or similar means; or

(c) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control. (as added by Ord. #49-06, March 2006)

9-403. Classification. Sexually oriented businesses are classified as follows:

(1) Adult arcades;

(2) Adult bookstores or adult video stores;

(3) Adult cabarets;

(4) Adult motels;

(5) Adult motion picture theaters;

(6) Adult theaters;

(7) Escort agencies;

(8) Nude model studios; and

(9) Sexual encounter centers. (as added by Ord. #49-06, March 2006)

9-404. License required. (1) It shall be unlawful:

(a) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the director pursuant to this chapter;

(b) For any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business if such employee is not in possession of a valid sexually oriented business employee license issued to such employee by the director pursuant to this chapter;

(c) For any person to obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the director pursuant to this chapter.

(d) It shall be a defense to subsections (b) and (c) of this section if the employment is of limited duration and for the sole purpose of repair and/or maintenance of machinery, equipment, or the premises.

Violation of any provision within this subsection shall constitute a misdemeanor.

(2) An application for a sexually oriented business license must be made on a form provided by the city. The application must be accompanied by a sketch or a 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 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"). Prior to issuance of a license, the premises must be inspected by the health department, fire department, building department, and zoning department.

(3) An application for a sexually oriented business employee license must be made on a form provided by the city.

(4) All applicants for a license must be qualified according to the provisions of this chapter. The application may request, and the applicant shall provide, such information (including fingerprints) as to enable the city to determine whether the applicant meets the qualifications established under this chapter. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.

(5) If a person who wishes to own or operate a sexually oriented business is an individual, he must sign the application for a business license 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 business license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that 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 business license as applicant.

(6) Applications for a business license, whether original or renewal, must be made to the director by the intended operator of the enterprise. Applications must be submitted to the office of the director or the director's

designee during regular working hours. Application forms shall be supplied by the director. The following information shall be provided on the application form:

- (a) The name, street address (and mailing address if different) of the applicant(s);
- (b) A recent photograph of the applicant(s);
- (c) The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number;
- (d) The name under which the establishment is to be operated and a general description of the services to be provided:
 - (i) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state:
 - (A) The sexually oriented business's fictitious name; and
 - (B) Submit the required registration documents.
- (e) Whether the applicant, or a person residing with the applicant, has been convicted, or is awaiting trial on pending charges of a "specified criminal activity" as defined in § 9-402(22), and, if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each;
- (f) Whether the applicant, or a person residing with the applicant, has had a previous license under this chapter or other similar sexually oriented business ordinance from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant is or has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is or was licensed under a sexually oriented business ordinance whose business license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation;
- (g) Whether the applicant or a person residing with the applicant holds any other 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 licensed businesses;
- (h) The single classification of license, as found in § 9-403, for which the applicant is filing;
- (i) The telephone number of the establishment;

(j) The address and legal description of the tract of land on which the establishment is to be located;

(k) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;

(l) If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the business license). If the expected startup date is to be more than ten (10) days following the date of issuance of the business license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same;

(m) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in § 9-419 hereunder.

(7) Each application for a business license shall be accompanied by the following:

(a) Payment of the application fee in full;

(b) If the establishment is a State of Tennessee corporation, a certified copy of the articles of incorporation, together with all amendments thereto;

(c) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;

(d) If the establishment is a limited partnership formed under the laws of the State of Tennessee, a certified copy of the certificate of limited partnership, together with all amendments thereto;

(e) If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;

(f) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed;

(g) If the person(s) identified as the fee owner(s) of the tract of land in subsection (f) is not also the owner of the sexually oriented business, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owner(s) or proposed owner(s) of the sexually

oriented business to have or obtain the use and possession of the tract or portion thereof that is to be used for the sexually oriented business;

(h) A current certificate and straight-line drawing prepared within thirty (30) days prior to application 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 to be certified; the property lines of any established religious institution/synagogue, school, public park or recreation area, or family-oriented entertainment business within one thousand five hundred feet (1,500') 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;

(i) Any of items (b) through (h) above shall not be required for a renewal application if the applicant states that the documents previously furnished to the director with the original application or previous renewals thereof remain correct and current.

(8) Applications for an employee license to work and/or perform services in a sexually oriented business, whether original or renewal, must be made to the director by the person to whom the employee license shall issue. Each application for an employee license shall be accompanied by payment of the application fee in full. Application forms shall be supplied by the director. Applications must be submitted to the office of the director or the director's designee during regular working hours. Each applicant shall be required to give the following information on the application form:

(a) The applicant's given name, and any other names by which the applicant is or has been known, including "stage" names and/or aliases;

(b) Age, and date and place of birth;

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

(d) Present residence address and telephone number;

(e) Present business address and telephone number;

(f) Date, issuing state, and number of photo driver's license, or other state issued identification card information;

(g) Social Security number; and

(h) Proof that the individual is at least eighteen (18) years old.

(9) Attached to the application form for a license shall be the following:

(a) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police or sheriff's department. Any fees for the photographs and fingerprints shall be paid by the applicant.

(b) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant, in this or any other city, county, state, or country, has ever had any 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 name(s) under which the license was sought and/or issued, the name(s) of the issuing or denying jurisdiction, and describe in full the reason(s) for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(c) A statement whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in § 9-402(22) and, if so, the "specified criminal activity" involved, the date, place and jurisdiction of each.

(10) Every application for a license shall contain a statement under oath that:

(a) The applicant has personal knowledge of the information contained in the application, and that the information contained therein and furnished therewith is true and correct; and

(b) The applicant has read the provisions of this section.

(11) A separate application and business license shall be required for each sexually oriented business classification as set forth in § 9-403.

(12) The fact that a person possesses other types of state or city permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business or employee license. (as added by Ord. #49-06, March 2006)

9-405. Issuance of license. (1) Upon the filing of an application for a sexually oriented business employee license, the director shall issue a temporary license to said applicant. The application shall then be referred to the appropriate city departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date of the completed application. After the investigation, the director shall issue an employee license, unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:

(a) The applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(b) The applicant is under the age of eighteen (18) years;

(c) The applicant has been convicted of a "specified criminal activity" as defined in § 9-402(22) of this chapter;

(d) 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 a particular provision of this chapter; or

(e) 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.

If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as forth in subsection (9) of this section.

(2) A license issued pursuant to subsection (1) of this section, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. The employee shall keep the license on his or her person at all times while engaged in employment or performing services on the sexually oriented business premises so that said license may be available for inspection upon lawful request.

(3) A license issued pursuant to subsection (1) of this section shall be subject to annual renewal upon the written application of the applicant and a finding by the director that the applicant has not been convicted of any "specified criminal activity" as defined in this chapter or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in § 9-406. Non-renewal of a license shall be subject to appeal as set forth in subsection (9) of this section.

(4) If application is made for a sexually oriented business license, the director shall approve or deny issuance of the license within forty-five (45) days of receipt of the completed application. The director shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:

(a) An applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(b) An applicant is under the age of eighteen (18) years;

(c) An applicant or a person with whom the applicant is residing has been denied a license by the city to operate a sexually oriented business within the preceding twelve (12) months, or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months;

(d) An applicant or a person with whom the applicant is residing is overdue in payment to the city in taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business;

(e) An applicant or a person with whom the applicant is residing has been convicted of a "specified criminal activity" as defined in § 9-402(22);

(f) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building department as being in compliance with applicable laws and ordinances;

(g) The license fee required under this chapter has not been paid;

(h) An applicant of the proposed establishment is in violation of or is not in compliance with one (1) or more of the provisions of this chapter.

(5) A license issued pursuant to subsection (4) of this section, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the § 9-403 classification for which the license is issued. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(6) The health department, fire department, building department and zoning department shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of receipt of the completed application by the director. The certification shall be promptly presented to the director.

(7) A sexually oriented business license shall issue for only one (1) classification, as set forth in § 9-403.

(8) In the event that the director determines that an applicant is not eligible for a sexually oriented business license, the applicant shall be given notice in writing of the reasons for the denial within forty-five (45) days of the receipt of the completed application by the director, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten (10) days in order to make modifications necessary to comply with this chapter.

(9) An applicant may appeal the decision of the director regarding a denial to the city commission by filing a written notice of appeal with the city secretary within fifteen (15) days after service of notice upon the applicant of the director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The director may, within fifteen (15) days of service upon him of the applicant's memorandum, submit a memorandum in response to the memorandum filed by the applicant on appeal to the city commission. After reviewing such memoranda, as well as the director's written decision, if any, and exhibits submitted to the director, the city commission shall vote either to uphold or overrule the director's decision. Such vote shall be taken within twenty-one (21) calendar days after the date on which the city secretary receives the notice of appeal. However, all parties shall be required to comply with the director's decision during the pendency of the appeal. Judicial review of a denial

by the director and city commission may be made pursuant to § 9-411 of this chapter.

(10) A license issued pursuant to subsection (4) of this section shall be subject to annual renewal upon the written application of the applicant and a finding by the director that the applicant has not been convicted of any "specified criminal activity" as defined in this chapter, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within forty-five (45) days of the completed application. The renewal of a license shall be subject to the fee as set forth in § 9-406. (as added by Ord. #49-06, March 2006)

9-406. Fees. The annual fee for a sexually oriented business license, whether new or renewal, is five hundred dollars (\$500.00). The annual fee for a sexually oriented business employee license, whether new or renewal, is fifty dollars (\$50.00). These fees are to be used to pay for the cost of the administration and enforcement of this chapter. (as added by Ord. #49-06, March 2006)

9-407. Inspection. (1) An applicant or licensee shall permit representatives of the police department, sheriff's department, health department, fire department, building department, or other city or state departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law at any time it is open for business.

(2) A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he/she refuses to promptly permit such lawful inspection of the premises. (as added by Ord. #49-06, March 2006)

9-408. Expiration of license. (1) Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in § 9-404. Application for renewal should be made at least forty-five (45) days before the expiration date. When application is made less than forty-five (45) days before the expiration date, the expiration of the license will not be affected.

(2) When the director denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial. (as added by Ord. #49-06, March 2006)

9-409. Suspension. The director shall suspend a license for a period not to exceed thirty (30) days if he determines that licensee or an employee of licensee has:

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

- (2) Operated or performed services in a sexually oriented business while intoxicated by the use of alcoholic beverages or controlled substances;
- (3) Refused to allow prompt inspection of the sexually oriented business premises as authorized by this chapter;
- (4) With knowledge, permitted gambling by any person on the sexually oriented business premises. (as added by Ord. #49-06, March 2006)

9-410. Revocation. (1) The director shall revoke a license if a cause of suspension in § 9-409 occurs and the license has been suspended within the proceeding twelve (12) months.

- (2) The director shall revoke a license if he determines that:
 - (a) A licensee gave false or misleading information in the material submitted during the application process;
 - (b) A licensee, or a person with whom the licensee is residing, was convicted of a "specified criminal activity" on a charge that was pending prior to the issuance of the license;
 - (c) A licensee has, with knowledge, permitted the possession, use, or sale of controlled substances on the premises;
 - (d) A licensee has, with knowledge, permitted the sale, use, or consumption of alcoholic beverages on the premises;
 - (e) A licensee has, with knowledge, permitted prostitution on the premises;
 - (f) A licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - (g) A licensee has, with knowledge, permitted any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the licensed premises;
 - (h) A licensee is delinquent in payment to the city or state for any taxes or fees;
 - (i) A licensee has, with knowledge, permitted a person under eighteen (18) years of age to enter the establishment; or
 - (j) A licensee has attempted to sell his business license, or has sold, assigned, or transferred ownership or control of the sexually oriented business to a non-licensee of the establishment;
 - (k) A licensee has, with knowledge, permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business.

(3) When the director revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation became effective. (as added by Ord. #49-06, March 2006)

9-411. Judicial review. After denial of an initial or renewal application by the director and city commission, or suspension or revocation of a license by the director, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court. (as added by Ord. #49-06, March 2006)

9-412. No transfer of license. A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application. (as added by Ord. #49-06, March 2006)

9-413. Location restrictions. Sexually oriented businesses shall be permitted in any commercial district provided that:

(1) The sexually oriented business may not be operated within:

(a) One thousand feet (1,000') of a church, synagogue or regular place of religious worship;

(b) One thousand feet (1,000') of a public or private elementary or secondary school;

(c) One thousand feet (1,000') of a boundary of any residential district;

(d) One thousand feet (1,000') of a public park;

(e) One thousand feet (1,000') of a licensed day-care center;

(f) One thousand feet (1,000') of an entertainment business that is oriented primarily towards children or family entertainment; or

(g) One thousand feet (1,000') of another sexually oriented business.

(2) A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business that is classified in accordance with § 9-403.

(3) For the purpose of this chapter, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot, or licensed day-care center, or child or family entertainment business.

(4) For purposes of subsection (3) of this section, the distance between any two (2) sexually oriented business uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located. (as added by Ord. #49-06, March 2006)

9-414. Non-conforming uses; amortization. (1) Any business lawfully operating on the effective date of this chapter that is in violation of the locational or structural configuration requirements of this chapter shall be deemed a non-conforming use. The non-conforming use will be permitted to continue for a period not to exceed two (2) years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within one thousand feet (1,000') of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operated at a particular location is the conforming use and the later-established business(es) is non-conforming.

(2) A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church, synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed day-care center, public park, residential district, or child or family entertainment business within one thousand five hundred feet (1,500') of the sexually oriented business. This provision applies only to the renewal of a valid business license, and does not apply when an application for a business license is submitted after a business license has expired or has been revoked. (as added by Ord. #49-06, March 2006)

9-415. Additional regulations for adult motels. (1) Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this chapter.

(2) It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial enterprise that does not have a sexually oriented business license, rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

(3) For purposes of subsection (2) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(4) Violation of subsection (2) of this section shall constitute a misdemeanor. (as added by Ord. #49-06, March 2006)

9-416. Additional regulations for escort agencies. (1) An escort agency shall not employ any person under the age of eighteen (18) years.

(2) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of eighteen (18) years.

(3) Violation of this section shall constitute a misdemeanor. (as added by Ord. #49-06, March 2006)

9-417. Additional regulations for nude model studios. (1) A nude model studio shall not employ any person under the age of eighteen (18) years.

(2) A person under the age of eighteen (18) years commits a misdemeanor if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen (18) years was in a restroom not open to the public view or visible by any other person.

(3) A person commits a misdemeanor if the person appears in a state of nudity, or with knowledge, allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.

(4) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public. (as added by Ord. #49-06, March 2006)

9-418. Additional regulations concerning public nudity. The language contained in this subsection presumes the absence of a state statute or local ordinance that prohibits public nudity. If a statute or ordinance prohibiting public nudity is in existence prior to the adoption of a sexually oriented business ordinance, or if a statute or ordinance prohibiting public nudity is enacted simultaneously with a sexually oriented business ordinance, this section must be modified to reflect such prohibition of nudity. The following language is a sample of the type of language that may be adopted when a general prohibition of public nudity is in effect:

(1) It shall be a misdemeanor for a person who, with knowledge and intent, appears in person in a state of nudity in a sexually oriented business, or depicts specified sexual activities in a sexually oriented business.

(2) It shall be a misdemeanor for a person who, with knowledge and intent, appears in person in a semi-nude condition on the sexually oriented business premises, unless the person is an employee who, while semi-nude, is at least ten feet (10') from any patron or customer and on a stage at least two feet (2') from the floor.

(3) It shall be a misdemeanor for an employee, while semi-nude on the sexually oriented business premises, to solicit any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude.

(4) It shall be a misdemeanor for an employee, while semi-nude, to touch a patron or the clothing of a patron, or for a patron to touch a semi-nude employee or the clothing of a semi-nude employee, while said employee is on the premises of the sexually oriented business. (as added by Ord. #49-06, March 2006)

9-419. Regulations pertaining to exhibition of sexually explicit films and videos. (1) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, 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 that depicts specified sexual activities or specified anatomical areas shall comply with the following requirements:

(a) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations and 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. The diagram shall also designate the plaque at which the business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (6"). The director 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 said diagram 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 director or his designee.

(d) It is the duty of the owners and operator of the premises to ensure that at least one (1) employee is on duty and situated in 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 the entire 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 has two (2) 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 the entire area of the premises to which any patron is permitted access for any purpose from at least one (1) 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 operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (e) of this section remains unobstructed at all times. No doors, walls, partitions, curtains, merchandise, display racks, or other object(s) shall obstruct from view of the manager's station any portion of the premises to which patrons have access. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted, as designated in the application filed pursuant to subsection (a) of this section.

(g) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candle as measured at the floor level.

(h) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

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

(j) No opening of any kind shall exist between viewing rooms or booths.

(k) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no more than one (1) person at a time occupies a viewing booth or room, and to ensure that no person attempts to make an opening of any kind between the viewing booths or rooms.

(l) The operator of the sexually oriented business shall, each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.

(m) The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(n) The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight inches (48") of the floor.

(2) A person having a duty under subsections (a) through (n) of this section commits a misdemeanor if he/she, with knowledge, fails to fulfill that duty. (as added by Ord. #49-06, March 2006)

9-420. Exterior portions of sexually oriented businesses. (1) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(2) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this chapter.

(3) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

(a) The establishment is a part of a commercial multi-unit center; and

(b) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(4) Nothing in this section shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

(5) A violation of any provision of this section shall constitute a misdemeanor. (as added by Ord. #49-06, March 2006)

9-421. Signage. (1) Notwithstanding any other city ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

(2) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

(a) Not contain any flashing lights;

(b) Be a flat plane, rectangular in shape;

(c) Not exceed seventy-five (75) square feet in area; and

(d) Not exceed ten feet (10') in height or ten feet (10') in length.

(3) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

(4) Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

(5) Secondary signs shall have only one (1) display surface. Such display surface shall:

- (a) Be a flat plane, rectangular in shape;
- (b) Not exceed twenty (20) square feet in area;
- (c) Not exceed five feet (5') in height and four feet (4') in width;

and

- (d) Be affixed or attached to any wall or door of the enterprise.

(6) The provisions of item (a) of subsection (2) and subsections (3) and (4) shall also apply to secondary signs.

(7) Violation of any provision of this section shall constitute a misdemeanor. (as added by Ord. #49-06, March 2006)

9-422. Sale, use, or consumption of alcoholic beverages prohibited. (1) The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.

(2) Any violation of this section shall constitute a misdemeanor. (as added by Ord. #49-06, March 2006)

9-423. Persons younger than eighteen prohibited from entry; attendant required. (1) It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business is open for business.

(2) It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented business's regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished:

- (a) A valid operator's, commercial operator's, or chauffeur's driver's license; or
- (b) A valid personal identification certificate issued by the State of Tennessee reflecting that such person is eighteen (18) years of age or older.

(3) Violation of this section shall constitute a misdemeanor. (as added by Ord. #49-06, March 2006)

9-424. Massages or baths administered by person of opposite sex. It shall be unlawful for any sexually oriented business, regardless of whether in a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex. Violation of this section shall constitute a misdemeanor. (as added by Ord. #49-06, March 2006)

9-425. Hours of operation. No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 1:00 A.M. and 8:00 A.M. on weekdays and Saturdays, and 1:00 A.M. and 12:00 P.M. on Sundays. (as added by Ord. #49-06, March 2006)

9-426. Exemptions. It is a defense to prosecution under this chapter that a person appearing in a state of nudity did so in a modeling class operated:

(1) By a proprietary school, licensed by the State of Tennessee, a college, junior college, or university supported entirely or partly by taxation;

(2) By a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation. (as added by Ord. #49-06, March 2006)

9-427. Notices. (1) Any notice required or permitted to be given by the director or any other city office, division, department or other agency under this chapter to any applicant, operator or owner of a sexually oriented business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or any notice of address change that has been received by the director. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the director or his designee shall cause it to be posted at the principal entrance to the establishment.

(2) Any notice required or permitted to be given to the director by any person under this chapter shall not be deemed given until and unless it is received in the office of the director.

(3) It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the director in writing of any change of residence or mailing address. (as added by Ord. #49-06, March 2006)

9-428. Injunction. A person who operates or causes to be operated a sexually oriented business without a valid business license, or in violation of § 9-413 of this chapter, is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation. (as added by Ord. #49-06, March 2006)