

## TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.<sup>1</sup>

## CHAPTER

1. GOING OUT OF BUSINESS SALES.
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4. TAXICABS.
5. POOL ROOMS.
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## CHAPTER 1

GOING OUT OF BUSINESS SALES

## SECTION

- 9-101. Going out of business sales restricted; closing out sale license.
- 9-102. Sale must be bona fide.
- 9-103. Statement, inventory and affidavit.
- 9-104. Record of articles sold.
- 9-105. Cancellation of license.
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9-101. Going out of business sales restricted; closing out sale license. It shall be unlawful for any person to advertise or conduct any sale of goods, wares or merchandise at retail that is represented as a bankrupt, insolvent, assignee's, adjuster's, trustee's, executor's administrator, receivers, manufacturer's, close-out, liquidation, fire or water damage, going out of business, or loss of lease sale or any other sale which, by representation or advertising, is intended to lead the public to believe that the person conducting such sale is selling out the merchandise at a sacrifice price without first obtaining from the city recorder a "Closing-Out Sale License." The fee for such license shall be \$25.00 for each day such sale is conducted. The license fee herein set out shall not be assessed against any bona fide merchant who has engaged in business in the City of

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<sup>1</sup>Municipal code references

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

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

Waverly, Tennessee, for at least two years prior to the time of such sale and who has paid his privilege and ad valorem taxes and business licenses during such time, provided such sale is not conducted for more than a period of sixty days in any one year. (1984 Code, § 5-101)

9-102. Sale must be bona fide. It shall be unlawful for any person to conduct a sale as set out in § 9-101 unless such goods, wares or merchandise is a bona fide stock in trade as represented, and the sale is being conducted for the purpose set out in the representation and advertisement. When any person, after advertising such a sale adds to his stock in trade it shall be deemed prima facie evidence that he has violated this section and such sale is not bona fide as represented. (1984 Code, § 5-102)

9-103. Statement, inventory and affidavit. As a condition precedent to the obtaining of the license required by § 9-101, there shall be filed in the office of the city recorder, with the application for the license, a statement showing all parties who have any interest in such sale and an accurate list of the stock of goods, wares and merchandise to be sold at such sale under such license, together with the wholesale price thereof and the prices paid by the seller, which inventory or list shall be signed by the person applying for the license under affidavit that the information there given is personally known by the affiant to be true. (1984 Code, § 5-103)

9-104. Record of articles sold. It shall be unlawful to sell at any sale regulated by this chapter or to list any inventory required by this chapter any goods, wares or merchandise which are not in the stock of the business at the time the affidavit is made as required by § 9-103. It shall be unlawful to make any additions or replacements to such stock during the time of the sale and to fail, neglect or refuse to keep in writing or typewriting a true copy of every article sold, which records shall be filed with the city recorder. (1984 Code, § 5-104)

9-105. Cancellation of license. If, at any time, the city, or any officer or agent thereof, shall find or determine that the seller at any sale regulated by this chapter has violated any of the provisions of this chapter, the license issued to such person shall be cancelled. Notice thereof shall be given to the holder of such license either by mail or in person by the city acting by and through any of its officers or agents. (1984 Code, § 5-105)

9-106. Trustees in bankruptcy and judicial sales excepted. The provisions of this chapter shall not be applicable to Trustees in Bankruptcy, court appointed receivers or any other public officers acting under judicial process, fiat, or order. (1984 Code, § 5-106)

## CHATTER 2

PEDDLERS, ETC.<sup>1</sup>

## SECTION

- 9-201. Permit required.
- 9-202. Definitions.
- 9-203. Application.
- 9-204. Investigation and issuance.
- 9-205. Bond.
- 9-206. Use of streets.
- 9-207. Exhibition of permit.
- 9-208. Location of premises.
- 9-209. Transfer.
- 9-210. Loud noises and speaking devices.
- 9-211. Duty of police to enforce.
- 9-212. Records.
- 9-213. Revocation of permit.
- 9-214. Reapplication.
- 9-215. Appeal.
- 9-216. Judicial review of board action.
- 9-217. Expiration of permit.

9-201. Permit required. It shall be unlawful for a canvasser, solicitor, peddler, transient merchant, itinerant merchant or itinerant vendor as defined in § 9-202 of this chapter to ply his trade or engage in business within the city without first obtaining a permit therefor in compliance with the provisions of this chapter; provided, however, that yard sales, sales of home grown fruits and vegetables, homemade items, sales made at wholesale to licensed dealers, and sales made by bona fide charitable, religious, patriotic or philanthropic organizations shall be exempt from the provisions of this chapter. (1984 Code, § 5-201)

9-202. Definitions. For the purpose of this chapter a canvasser, solicitor, peddler, transient merchant, itinerant merchant or itinerant vendor is defined as any person, firm or corporation, whether as owner, agent, consignee or employee, whether a resident of the city or not, who engages in a temporary, occasional business of selling and delivering goods, wares and merchandise at retail within the city, and who, in furtherance of such purpose hires, leases, uses

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<sup>1</sup>Municipal code references

Privilege taxes: title 5.

Trespass by peddlers, etc.: § 11-801.

or occupies any lot, space, building, structure, motor vehicle, tent, railroad box car, room in hotels, motels, lodging houses, apartments, shops, or of any street, alley, or other public place within the city, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction; provided that such definition shall not be construed to include any person, firm, or corporation who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. Provided that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this chapter shall be deemed to be subject to the provisions of this chapter. The person, firm, or corporation so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant, or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer. (1984 Code, § 5-202)

9-203. Application. (1) Applicants for a permit under this chapter, whether a person, firm or corporation, shall file a written sworn application signed by the applicant, if an individual, by all partners if a partnership, and by the president if a corporation, with the city recorder showing:

(a) The name or names of the person or persons having the management or supervision of applicant's business during the time it is proposed that it will be carried on in the city; the local address of such person or persons while engaged in such business; the permanent address or addresses of such person or persons; the capacity in which such person or persons will act (that is, whether as proprietor, agent or otherwise); the name and address of the person, firm or corporation for whose account the business will be carried on, if any; and if a corporation, under the laws of what state the same is incorporated; and

(b) Three references with addresses of individuals, firms or corporations having knowledge of the character and business reputation of applicant; and

(c) The place or places in the city where it is proposed to carry on applicant's business; and the length of time during which it is proposed that said business shall be conducted; and

(d) The most recent five (5) places, other than the permanent place of business of the applicant, where applicant has conducted a transient business, stating the nature thereof and giving the post office and street address of any building or office in which such business was conducted; and

(e) A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by applicant in the city; the invoice value and quality of such goods, wares and

merchandise, whether the same are proposed to be sold from stock in possession or from stock in possession and by sample; whether at auction, by direct sale and by taking orders for future delivery; where the goods or property proposed to be sold are manufactured or produced and where such goods or products are located at the time said application is filed; and

(f) A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers, and copies of all advertising, whether by handbills, circular, newspaper advertising, or otherwise, shall be attached to said application as exhibits thereto; and

(g) Whether or not the person or persons having the management or supervision of the applicant's business have been convicted of a crime, misdemeanor or the violation of any municipal ordinance, the nature of such offense and the punishment assessed therefor; and

(h) Credentials from the person, firm or corporation for which the applicant proposes to do business, authorizing the applicant to act as such representative.

(2) At the time of the filing of the application a fee of fifty dollars (\$50.00) shall be paid to the city to cover the cost of investigating the facts stated therein. (1984 Code, § 5-203)

9-204. Investigation and issuance. (1) Upon receipt of such application, within seventy-two (72) hours, the city recorder shall cause investigation of such person's or persons' business responsibility and moral character to be made as deemed necessary for the protection of the public good. If, as a result of such investigation, the applicant's character and business responsibility are found to be potentially detrimental to the public good the application shall be denied. If, as a result of the investigation, the character and business reputation appear to be satisfactory, the city recorder shall so certify in writing, and a permit shall be issued by the city recorder. The city recorder shall keep a full record of all permits issued. Such permit shall contain the number of the permit, the date the same is issued, the nature of the business authorized to be carried on, the expiration date of said permit, the place where said business may be carried on under said permit, and the name or names of the person or persons authorized to carry on the same. Prior to the issuance of a permit by the city recorder, the applicant shall comply with all requirements as may be mandated by the State of Tennessee, the County of Humphreys, and the city, including, but not limited to business tax licenses and sales tax registration.

(2) In connection with such investigation the city recorder shall have the help and assistance of any and all other officers and employees of the city as may be reasonably necessary. (1984 Code, § 5-204)

9-205. Bond. Before any permit, as provided by this chapter, shall be issued for engaging in a transient or itinerant business as defined in § 9-202 such applicant shall file with the city recorder a bond running to the city in the sum of \$1,000 executed by the applicant, as principal, and two solvent sureties upon which service of process may be made in the State of Tennessee or a surety bond written by a company licensed to do business in the State of Tennessee, conditioned that the said applicant shall comply fully with all of the provisions of the Waverly Municipal Code and the statutes of the State of Tennessee and will pay all judgments rendered against said applicant for any violation of said code or the statutes, or any of them, together with all judgments and costs that may be recovered against the applicant by any person or persons for damage growing out of any misrepresentation or deception practiced on any person transacting business with such applicant, whether said misrepresentations or deceptions were made or practiced by the owners or by their servants, agents, or employees, either at the time of making the sale or through any advertisement printed or circulated with reference to the goods, wares and merchandise sold or any part thereof. Action on the bond may be brought in the name of the city for the use of the aggrieved person. (1984 Code, § 5-205)

9-206. Use of streets. No permittee shall have any exclusive right to any location in the public streets, nor shall any be permitted to operate in a congested area where such operation might impede or inconvenience the public use of such streets. For the purpose of this chapter, the judgement of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (1984 Code, § 5-206)

9-207. Exhibition of permit. The permit issued under this chapter shall be posted conspicuously in the place of business named therein. In the event that such person or persons applying for said permit shall desire to do business in more than one place within the city, separate permits may be issued for each place of business, and shall be posted conspicuously in each place of business. (1984 Code, § 5-207)

9-208. Location of premises. Permittees under this chapter shall comply with the terms and conditions of the zoning ordinance of the city in all respects, both as to the uses permitted in a particular zone and the requirements for location of the business on the premises upon which business is to be conducted. In addition, the permittee shall provide to the city recorder a letter showing permission of the owner or manager of the premises upon which said business will be conducted, giving permission for the use of said premises by the permittee. (1984 Code, § 5-208)

9-209. Transfer. No permit shall be transferred without written consent from the city recorder as evidenced by an endorsement on the face of the permit by the city recorder showing to whom the permit is transferred and the date of the transfer. (1984 Code, § 5-209)

9-210. Loud noises and speaking devices. No permittee under this chapter, nor anyone in his behalf, shall shout, make any outcry, blow a horn, ring a bell or use any other sound device including any loud speaking radio or amplifying system upon any of the streets, alleys, parks or other public places of the city or upon any private premises in the city where sound of sufficient volume is emitted or produced therefrom capable of being plainly heard upon the streets, avenues, alleys or parks or other places, for the purpose of attracting attention to any goods, wares or merchandise which such permittee proposes to sell. (1984 Code, § 5-210)

9-211. Duty of police to enforce. It shall be the duty of the police officers of the city to examine all places of business and persons subject to the provisions of this chapter, to determine if this chapter has been complied with and to enforce the provisions of this chapter against any person found to be violating the same. (1984 Code, § 5-211)

9-212. Records. The city recorder shall deposit the record of a permit number with the chief of police who shall report to the city recorder any complaint against any person issued a permit under the provisions of this chapter and any conviction for violation of this chapter; the city recorder shall keep a record of all such permits and of such complaints and violations. (1984 Code, § 5-212)

9-213. Revocation of permit. (1) Permits issued under the provisions of this chapter may be revoked by the board of mayor and aldermen after notice and hearing, for any of the following causes:

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

(b) Any violation of or non-compliance with this chapter; or

(c) Conviction of any crime or misdemeanor; or

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

(2) When reasonably necessary in the public interest the city recorder may suspend a permit pending any revocation hearing. (1984 Code, § 5-213)

9-214. Reapplication. No permittee whose license has been revoked may make further application until a period of at least six (6) months shall have elapsed since the last revocation. (1984 Code, § 5-214)

9-215. Appeal. Any person aggrieved by the decision of the city recorder in regard to the denial of application for a permit as provided for in § 9-204 of this chapter or in connection with the revocation of a permit as provided for in § 9-213 of this chapter, shall have the right to appeal to the board of mayor and aldermen. Such appeal shall be taken by filing with the city manager within fourteen (14) days after notice of the decision by the city recorder has been given to such person a written statement setting forth the grounds for the appeal. The time and place for a hearing on such appeal and notice of such hearing shall be given to such person at least seven (7) days prior to the hearing date. (1984 Code, § 5-215)

9-216. Judicial review of board action. The action of the board in connection with the issuance of a permit of any kind, including any revocation, may be reviewed by statutory writ of certiorari from the Circuit or Chancery Courts of Humphreys County, Tennessee. (1984 Code, § 5-216)

9-217. Expiration of permit. All permits issued under the provisions of this chapter shall expire seventy-two (72) hours after the date of issuance thereof. Provided, however, such permits may be renewed or extended by the city recorder for additional seventy-two (72) hour periods upon satisfactory showing that there have been no changes in the application and facts stated therein. (1984 Code, § 5-217)

## CHAPTER 3

CHARITABLE SOLICITORS

## SECTION

- 9-301. Permit required.  
9-302. Prerequisites for a permit.  
9-303. Denial of a permit.  
9-304. Exhibition of permit.

9-301. Permit required. No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose without a permit from the recorder authorizing such solicitation. Provided, however, that this section shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes if the solicitations are conducted exclusively among the members thereof, voluntarily and without remuneration for making such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies of any such established organization or church. (1984 Code, § 5-301)

9-302. Prerequisites for a permit. The recorder shall issue a permit authorizing charitable or religious solicitations when, after a reasonable investigation, he finds the following facts to exist:

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

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

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

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

(5) The solicitation is prompted solely by a desire to finance the charitable cause described by the applicant. (1984 Code, § 5-302)

9-303. Denial of a permit. Any applicant for a permit to make charitable or religious solicitations may appeal to the board of mayor and aldermen if he has not been granted a permit within fifteen (15) days after he makes application therefor. (1984 Code, § 5-303)

9-304. Exhibition of permit. Any solicitor required by this chapter to have a permit shall exhibit such permit at the request of any policeman or person solicited. (1984 Code, § 5-304)

## CHAPTER 4

TAXICABS<sup>1</sup>

## SECTION

- 9-401. Taxicab franchise and privilege license required.
- 9-402. Requirements as to application and hearing.
- 9-403. Liability insurance required.
- 9-404. Revocation or suspension of franchise.
- 9-405. Mechanical condition of vehicles.
- 9-406. Cleanliness of vehicles.
- 9-407. Inspection of vehicles.
- 9-408. License and permit required for drivers.
- 9-409. Qualifications for driver's permit.
- 9-410. Revocation or suspension of driver's permit.
- 9-411. Drivers not to solicit business.
- 9-412. Place of business; parking restricted.
- 9-413. Drivers to use direct routes.
- 9-414. Taxicabs not to be used for illegal purposes.
- 9-415. Miscellaneous prohibited conduct by drivers.
- 9-416. Transportation of more than one passenger at the same time.
- 9-417. Meters and fares.

9-401. Taxicab franchise and privilege license required. It shall be unlawful for any person to engage in the taxicab business within the City of Waverly unless he has first obtained a taxicab franchise from the city and has a currently effective privilege license.

Taxicabs licensed by other incorporated cities and towns are excepted from the foregoing provisions when delivering a passenger into Waverly from outside the city. (194 Code, § 5-401)

9-402. Requirements as to application and hearing. No person shall be eligible to apply for a taxicab franchise if he has a bad character or has been convicted of a felony within the last ten (10) years. Applications for taxicab franchises shall be made under oath and in writing to the recorder and shall be accompanied by a five dollar (\$5.00) filing fee. The application shall state the name and address of the applicant, the name and address of the proposed place of business, the number of cabs the applicant desires to operate, the makes and models of said cabs, and such other pertinent information as the chief of police may require. The application shall be accompanied by at least two (2) affidavits

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

of reputable local citizens attesting to the good character and reputation of the applicant. Within ten (10) days after filing of an application the chief of police shall make a thorough investigation of the applicant; determine if there is a public need for additional taxicab service; present the application to the board of mayor and aldermen; and make a recommendation to either grant or refuse a franchise to the applicant. The board of mayor and aldermen shall thereupon hold a public hearing at which time witnesses for and against the granting of the franchise shall be heard. In deciding whether or not to grant the franchise the board of mayor and aldermen shall consider the public need for additional service, the increased traffic congestion, parking space requirements, and whether or not the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such an additional franchise. Those persons already operating taxicabs when this code is adopted shall not be required to make applications under this section but shall be required to comply with all of the other provisions hereof. (1984 Code, § 5-402)

9-403. Liability insurance required. No taxicab franchise shall be issued or continued in operation unless there is in full force and effect a liability insurance policy for each vehicle authorized in the amount equal to that required by the state's financial responsibility law as set out in Tennessee Code Annotated, title 55, chapter 12. The insurance policy or bond required by this section shall contain a provision that it shall not be cancelled except after at least twenty (20) days' written notice is given by the insurer to both the insured and the recorder of the city. (1984 Code, § 5-403)

9-404. Revocation or suspension of franchise. The board of mayor and aldermen, after five (5) day's notice and a public hearing, may revoke or suspend any taxicab franchise for misrepresentations or false statements made in the application therefor or for traffic violations or violations of this chapter by the taxicab owner or any driver. (1984 Code, § 5-404)

9-405. Mechanical condition of vehicles. It shall be unlawful for any taxicab to operate in the city unless it is equipped with four (4) wheel brakes, front and rear lights, safe tires, horn, muffler, windshield wipers, and rear vision mirror, all of which shall conform to the requirements of state law. Each taxicab shall be equipped with a handle or latch or other opening device attached to each door of the passenger compartment so that such doors may be operated by the passenger from the inside of the taxicab without the intervention or assistance of the driver. The motor and all mechanical parts shall be kept in such condition or repair as may be reasonably necessary to provide for the safety of the public and the continuous satisfactory operation of the taxicab. (1984 Code, § 5-405)

9-406. Cleanliness of vehicles. All taxicabs operated in the city shall, at all times, be kept in a reasonably clean and sanitary condition. They shall be thoroughly swept and dusted at least once each day. At least once every week they shall be thoroughly washed and the interior cleaned with a suitable antiseptic solution. (1984 Code, § 5-406)

9-407. Inspection of vehicles. All taxicabs shall be inspected at least semi-annually by the chief of police to insure that they comply with the requirements of this chapter with respect to mechanical condition, cleanliness, etc. (1984 Code, § 5-407)

9-408. License and permit required for drivers. No person shall drive a taxicab unless he is in possession of a state special chauffeur's license and a taxicab driver's permit issued by the chief of police. (1984 Code, § 5-408)

9-409. Qualifications for driver's permit. No person shall be issued a taxicab driver's permit unless he complies with the following to the satisfaction of the chief of police:

- (1) Makes written application to the chief of police.
- (2) Is at least eighteen (18) years of age and holds a state special chauffeur's license.
- (3) Undergoes an examination by a physician and is found to be of sound physique, with good eyesight and hearing and not subject to epilepsy, vertigo, heart trouble or any other infirmity of body or mind which might render him unfit for the safe operation of a public vehicle.
- (4) Is clean in dress and person and is not addicted to the use of intoxicating liquor or drugs.
- (5) Produces affidavits of good character from two (2) reputable citizens of the city who have known him personally and have observed his conduct for at least two (2) years next preceding the date of his application.
- (6) Has not been convicted of a felony, drunk driving, driving under the influence of an intoxicant or drug, or of frequent minor traffic offenses.
- (7) Is familiar with the state and local traffic laws. (1984 Code, § 5-409)

9-410. Revocation or suspension of driver's permit. The board of mayor and aldermen, after a public hearing, may revoke or suspend any taxicab driver's permit for traffic violations or violation of this chapter. (1984 Code, § 5-410)

9-411. Drivers not to solicit business. All taxicab drivers are expressly prohibited from indiscriminately soliciting passengers or from cruising upon the streets of the city for the purpose of obtaining patronage for their cabs. (1984 Code, § 5-411)

9-412. Place of business; parking restricted. The city will not issue or renew any taxicab permit unless the applicant has an established place of business from which to operate his taxicabs. An established place of business shall mean a building in which the applicant maintains his office and telephone and does not include any stairway entrance from the street, the side of a building, or a light or telephone pole. The applicant shall satisfy the recorder as to this requirement before the recorder accepts his application for a permit. The recorder will then present this evidence and application to the board for action.

It shall be unlawful to park any taxicab on any street except in such places as have been specifically designated and marked by the city for the use of taxicabs. It is provided, however, that taxicabs may stop upon any street for the purpose of picking up or discharging passengers if such stops are made in such manner as not to unreasonably interfere with or obstruct other traffic and provided the passenger loading or discharging is promptly accomplished. (1984 Code, § 5-412)

9-413. Drivers to use direct routes. Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route. (1984 Code, § 5-413)

9-414. Taxicabs not to be used for illegal purposes. No taxicab shall be used for or in the commission of any illegal act, business, or purpose. (1984 Code, § 5-414)

9-415. Miscellaneous prohibited conduct by drivers. It shall be unlawful for any taxicab driver, while on duty, to be under the influence of, or to drink any intoxicating beverage or beer; to use profane or obscene language; to shout or call to prospective passengers; to unnecessarily blow the automobile horn; or to otherwise disturb the peace, quiet and tranquility of the city in any way. (1984 Code, § 5-415)

9-416. 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. (1984 Code, § 5-416)

9-417. Meters and fares. Every person now owning, operating or controlling any motor vehicle operating as a taxicab within the limits of the City of Waverly shall be required to purchase and install in and upon each such vehicle a taximeter of standard type and nomenclature.

No person shall hereafter be issued a permit to operate any motor vehicle as a taxicab within the limits of the City of Waverly without first purchasing and installing in and upon every vehicle to be so operated a taximeter of standard type and nomenclature.

No person owning, operating or controlling any motor vehicle operating as a taxicab within the limits of the City of Waverly shall make charges exceeding the following rates, said rates to be determined by a taximeter, as follows, to wit: For the first mile or fraction thereof, forty (40) cents; for each succeeding one-fifth mile or fraction thereof, the sum of eight (8) cents; for each five (5) minutes of waiting time the sum of thirty (30) cents.

No person shall charge less than thirty-five (35) cents for the first mile or fraction thereof and seven (7) cents for each additional one-fifth mile or fraction thereof and twenty-five (25) cents for each five (5) minutes of waiting time.

No taximeter, although of a standard type, shall be used if it computes the fare to be charged on any basis other than the distance actually traveled; that is, the time consumed on any journey or trip shall not be considered in computing the fare to be charged. Waiting time shall be charged only for waits, stops, or delays caused solely by the passenger, and shall not apply to stops, delays or failures to move from other causes. The driver must inform the passenger of the time of his arrival and readiness to commence the journey before waiting time can be computed.

Every passenger of any taxicab shall be allowed to have conveyed with him in such vehicle, without charge therefor, his ordinary light traveling baggage, and as many guests as the seating capacity of the taxicab permits. A fee of thirty-five (35) cents may be charged for conveying a passenger's trunk that can be conveniently transported to the passenger's destination.

If demanded by the passenger, the driver in charge of the taxicab shall deliver to the person paying for the hiring of same, a receipt therefor in legible type or writing, containing the name of the owner and the license number of the cab, and showing the total amount paid and the date of payment. (1984 Code, § 5-417)

## CHAPTER 5

POOL ROOMS<sup>1</sup>

## SECTION

9-501. Hours of operation regulated.

9-502. Minors to be kept out; exception.

9-501. Hours of operation regulated. It shall be unlawful for any person to open, maintain, conduct, or operate any place where pool tables or billiard tables are kept for public use or hire at any time on Sunday or between the hours of 11:00 P.M. and 6:00 A.M. on other days. (1984 Code, § 5-5012)

9-502. Minors to be kept out; exception. It shall be unlawful for any person engaged regularly, or otherwise, in keeping billiard, bagatelle, or pool rooms or tables, their employees, agents, servants, or other persons for them, to permit any person under the age of sixteen (16) years to play on said tables at any game of billiards, bagatelle, pool, or other games requiring the use of cue and balls; or to permit any person from the age of sixteen (16) to eighteen (18) to engage in such activity without first having obtained the written consent of the father, mother of such minor, if living; if the father is dead, then the mother, guardian, or other person having legal control of such minor; provided that this section shall not apply to the use of billiards, bagatelle, and pool tables in private residences.

It shall be the duty of the owner, operator, manager or person in charge of such pool room to ascertain or determine the age of any such player and ignorance of the age or misinformation relative thereto shall not excuse any such owner, operator, manager or person in charge. (1984 Code, § 5-502)

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

CHAPTER 6

CABLE TELEVISION<sup>1</sup>

SECTION

- 9-601. Short title.
- 9-602. Definitions.
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9-601. Short title. This chapter shall be known as and may be cited as the "Comcast Cable Television Franchise 2009." (1984 Code, § 13-401, as replaced by Ord. #2009-7, June 2009)

9-602. Definitions. For the purposes hereof capitalized terms, phrases, words, and abbreviations have meanings as follows unless otherwise elsewhere specifically defined herein:

(1) "Cable Act" means the Federal Cable Communications Policy Act of 1984, as amended, codified in 47 United States Code.

(2) "Cable service" means cable-delivered retail video services offered by Comcast to subscribers in the franchise area.

(3) "Cable system" means the infrastructure and facilities for delivery of cable service.

(4) "City" means the City of Waverly, Tennessee, a municipal corporation and body politic, organized and existing under the laws of the State of Tennessee, having power and authority to grant permission to use its public ways, streets, alleys and sidewalks and its other publically owned lands and facilities to video service providers.

(5) "Comcast" means Comcast of Nashville I LLC, a Tennessee limited liability company.

(6) "Customer" means a person using the cable system who lawfully receives cable service.

(7) "Effective date" is September 12, 2008 at 12:01 A.M. prevailing Central Time.

(8) "FCC" means the Federal Communications Commission or the successor federal governmental entity thereto.

(9) "Franchise" means the authorization issued by the city to Comcast by this chapter whether designated as a franchise, agreement, permit, or license which authorizes construction and operation of the cable system.

(10) "Franchise area" means the present legal boundaries of the city as of the effective date and all areas incorporated thereto thereafter by annexation or other legal means.

(11) "Gross revenue" means cable service revenue derived from operation of the cable system calculated in accordance with generally accepted accounting principles. Gross revenue includes that billed and actually received from monthly basic, premium, and pay-per-view video fees, advertising and home shopping revenue, installation fees, and equipment rental fees. Gross revenue does not include revenue from refundable deposits, from investment income, from advertising sales commissions, from taxes, surcharges and governmental fees or assessments, from franchise fees, from exchange for supplying of goods and services, from refunds, rebates or discounts, from digital voice services, from information services, from Internet access services or from Internet advertising services, from returned check fees, from late fees, from interest, from sale or rental of property, from inside wiring plans, from reimbursement of costs, and from reimbursements by programmers of marketing costs incurred for promotion or introduction of video programming.

(12) "Person" means a natural person and any association, firm, partnership, trust, limited liability company, joint venture, corporation or other legally recognized entity, whether for-profit or not-for-profit, but does not include the city.

(13) "Public way" means the surface and the space above and below any public street, highway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the city in the franchise area which entitle city to use thereof for the purpose of installing, operating, repairing, and maintaining the cable system. Public way also means any easement now or hereafter held by city in the franchise area for the purpose of public travel or for utility or public service use dedicated for compatible uses and includes other easements or rights-of-way within their proper use and meaning which entitle city to use thereof for the purposes of installing, operating, and maintaining the cable system over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and appurtenant to the cable system. (1984 Code, § 13-402, as replaced by Ord. #2009-7, June 2009)

9-603. Grant of authority. Subject to all of the terms, provisions, conditions and obligations timely performed by Comcast, city grants to Comcast the non-exclusive franchise authorizing Comcast to construct and operate the cable system in the public ways within the franchise area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in any public way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the cable system

and to provide such services over the cable system as may be lawfully allowed. (Ord. #1991-5, Feb. 1991, as replaced by Ord. #2009-7, June 2009)

9-604. Term of franchise. The duration and continuation of the franchise is five (5) years commencing at the effective date and expiring September 10, 2013 at 12:00 midnight prevailing Central Time ("termination date") unless lawfully terminated in accordance with the terms of the franchise, by state law, or by the Cable Act. (1984 Code, § 13-404, as replaced by Ord. #2009-7, June 2009)

9-605. Renewal. A renewal of the franchise at the termination date is governed by and will comply with the provisions of the Cable Act. (1984 Code, § 13-405, as replaced by Ord. #2009-7, June 2009)

9-606. Reservation of authority. Nothing in the franchise abrogates the right of city to perform public works or improvements of any description. Nothing in the franchise shall be construed as a waiver of any codes or ordinances of general applicability promulgated by city nor as a waiver or release of the rights of city in and to the public ways. (1984 Code, § 13-406, as replaced by Ord. #2009-7, June 2009)

9-607. Permits and general obligations. Comcast is responsible for obtaining at its own cost and expense all generally applicable permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain or repair the cable system, or any part thereof, prior to commencement or continuation of any such activity. Construction, installation, and maintenance of the cable system shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, lines, and equipment installed by Comcast for use in the cable system shall be located so as to minimize interference with the proper use of the public ways and the rights and reasonable convenience of property owners who own property that adjoins such public way. (1984 Code, § 13-407, as replaced by Ord. #2009-7, June 2009)

9-608. New grades or lines. If the grades or lines of a public way are lawfully changed at any time during the term of the franchise then Comcast upon reasonable advance written notice from city shall at its own cost and expense protect or promptly alter or relocate the cable system, or any part thereof, to conform with any such new grades or lines. If public funds are available to any other user of the public way for the purpose of defraying the cost thereof city shall notify Comcast of such funding and make such funds available to Comcast to the extent that city may be able to do so. (1984 Code, § 13-408, as replaced by Ord. #2009-7, June 2009)

9-609. Relocation at request of third party. Upon reasonable prior written request of any person holding a permit issued by city to move any structure, Comcast shall temporarily move its wires to permit the moving of such structure; provided, Comcast may impose a reasonable charge on any person so requesting for the movement of the wires. Such charge may be required to be paid in advance of the movement of its wires. Comcast shall be given not less than ten (10) business days advance written notice to arrange for such temporary relocation. (1984 Code, § 13-409, as amended by Ord. #1991-5, Feb. 1991, and replaced by Ord. #2009-7, June 2009)

9-610. Restoration of public ways. If the construction, operation, maintenance or repair of the cable system disturbs, alters or damages any public way, Comcast shall at its own cost and expense replace and restore such public way to a condition reasonably comparable to the condition of the public way which existed immediately prior to the disturbance. (1984 Code, § 13-410, as amended by Ord. #1984-16, Nov. 1984, §§ 1 and 3, and Ord. #1991-5, Feb. 1991, and replaced by Ord. #2009-7, June 2009)

9-611. Safety requirements. Comcast at its own cost and expense shall undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. Work undertaken on the cable system shall be performed substantially in accordance with applicable FCC or other federal and state regulations. The cable system and the operation thereof shall not unreasonably endanger or interfere with safety of persons or property in the franchise area. (Ord. #1991-5, Feb. 1991, as replaced by Ord. #2009-7, June 2009)

9-612. Trimming of trees and shrubbery. Comcast may trim trees or other natural growth overhanging its cable system in public ways to prevent contact with the wires, cables or other equipment of the cable system. All such trimming shall be done at the sole cost and expense of Comcast. Comcast shall be responsible for any damage caused by such trimming. (1984 Code, § 13-412, as replaced by Ord. #2009-7, June 2009)

9-613. Aerial and underground construction. At the time of construction of any new or replacement portion of the cable system if all of the transmission and distribution facilities of respective public or municipal utilities in that area of the franchise area are underground, Comcast shall place the cable system transmission and distribution facilities so constructed underground; provided that such underground locations are actually capable of accommodating the cable and other equipment without technical degradation of the cable system signal quality. In any region of the franchise area where transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, Comcast shall have the discretion to construct, operate

and maintain its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing herein shall be construed to require Comcast to construct, operate or maintain underground configuration of any above ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals or other related equipment. (1984 Code, § 13-413, as amended by Ord. #1991-5, Feb. 1991, and replaced by Ord. #2009-7, June 2009)

9-614. Undergrounding and beautification projects. In the event all users of a public way relocate aerial facilities underground as part of undergrounding or as a neighborhood beautification project, upon reasonable prior written notice, Comcast shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Relocation costs associated therewith shall be included in any computation of necessary project funding by the city or by private parties. Comcast shall be entitled to reimbursement of its relocation costs from public or private funds raised for such project and made available to other users of the public ways. (1984 Code, § 13-414, as replaced by Ord. #2009-7, June 2009)

9-615. General service obligation. Comcast shall make cable service available to every residential dwelling unit within the franchise area where the minimum density is at least twenty-five (25) dwelling units per mile if within one (1) mile of the existing cable system as measured from the nearest point of connection to the existing distribution cable. Subject to such density requirement, Comcast shall offer cable service to all new homes or previously unserved homes located within one hundred twenty-five feet (125') of the distribution cable. Comcast may elect to provide cable service to areas not meeting the above density and distance standards. Comcast may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above. (1984 Code, § 13-415, as replaced by Ord. #2009-7, June 2009)

9-616. Programming. Comcast shall offer all customers a diversity of video programming services. (1984 Code, § 13-416, as replaced by Ord. #2009-7, June 2009)

9-617. No discrimination. Comcast shall not discriminate nor permit discrimination between or among any persons in the availability of cable services or other services provided in connection with the cable system in the franchise area. It shall be the right of all persons to receive all available services provided on the cable system so long as such financial or other obligations to Comcast are satisfied. Nothing contained herein shall prohibit Comcast from

offering bulk discounts, promotional discounts, package discounts or other such pricing strategies as part of its business practice. (1984 Code, § 13-417, as replaced by Ord. #2009-7, June 2009)

9-618. New developments. City shall provide Comcast written notice of issuance of building or development permits for planned developments within the franchise area requiring undergrounding of cable facilities. City will require developers, as a condition for issuing a permit, to give Comcast access to open trenches for deployment of cable facilities. A developer shall give Comcast at least sixty (60) business days' written notice of the date of availability of open trenches. In the event a developer or property owner fails to give the required notice the developer or property owner shall be responsible for the cost of new trenching for the installation of facilities and equipment by Comcast. (1984 Code, § 13-418, as replaced by Ord. #2009-7, June 2009)

9-619. Customer service standards. There is adopted by reference the customer service standards set forth in part 76, § 76.309 of FCC rules and regulations. Comcast shall comply in all respects with the customer service requirements established by the FCC. (1984 Code, § 13-419, as replaced by Ord. #2009-7, June 2009)

9-620. Customer bills. Customer bills shall be designed in such a way as clearly and comprehensively presents the information contained therein to customers and in a way that is not misleading and does not omit material intonation. Comcast may in its sole discretion consolidate costs on customer bills permitted by the Cable Act. (1984 Code, § 13-420, as replaced by Ord. #2009-7, June 2009)

9-621. Privacy protection. Comcast shall comply with all applicable federal and state privacy laws including the Cable Act and regulations adopted pursuant thereto. (1984 Code, § 13-421, as replaced by Ord. #2009-7, June 2009)

9-622. Franchise fees. Comcast shall pay to city a franchise fee in an amount equal to five percent (5%) of annual gross revenues; provided, however, Comcast shall not be compelled to pay a higher percentage rate for franchise fees than any other video service provider providing consumer video service utilizing facilities installed in the public ways in the franchise area. Payment of franchise fees shall be made on an annual basis and shall be due no later than forty-five (45) days after the close of each calendar year. Each franchise fee payment shall be accompanied by a report prepared by Comcast showing the basis for computation of the franchise fees paid during the covered remitting period. (1984 Code, § 13-422, as replaced by Ord. #2009-7, June 2009)

9-623. Inspection of records. Upon reasonable prior written notice, during normal business hours at the principal business office of Comcast in Nashville, Tennessee, city may inspect Comcast financial records used to audit the calculation of the franchise fees; provided, however, that any such inspection shall occur no more often than annually and shall take place within two (2) years from the date city receives a calendar year payment and after which period any such payment shall be considered final unless it shall appear that there was intentional and material miscalculation and remittance on the part of Comcast. (1984 Code, § 13-423, as replaced by Ord. #2009-7, June 2009)

9-624. Underpayment of franchise fees. Upon the completion of an audit city shall provide Comcast a final report setting forth the city's findings in detail including any and all substantiating documentation. In the event of an alleged underpayment, Comcast shall have thirty (30) days from receipt of the report to provide city a written response agreeing to or refuting the results of the audit including any substantiating documentation. Based on those reports and responses, city and Comcast shall endeavor in good faith to agree on a finally settled amount. For this purpose "finally settled amount" means the agreed amount of underpayment, if any, due to the city by Comcast as a result of any such audit. If city and Comcast cannot agree on a finally settled amount the dispute shall be submitted to a mutually agreed mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation either city or Comcast may bring an action to have the final settled amount determined by a court of law. For this purpose such action shall be limited to being filed in the Circuit or Chancery Courts of the State of Tennessee at Waverly, to the jurisdiction of which and at the venue thereof Comcast submits by acceptance of the franchise and operation of the cable system deriving gross revenue from the cable service. (1984 Code, § 13-424, as replaced by Ord. #2009-7, June 2009)

9-625. Payment of finally settled amounts. Any finally settled amount due city as a result of an audit shall be paid by Comcast within thirty (30) days from the date the parties agree on the finally settled amount or from the date the same is awarded by the court, whichever first occurs. Once a finally settled amount is paid, city shall have no further rights to audit or challenge the payment for that period. City shall bear the expense of its review of Comcast's books and records unless it is determined that Comcast intentionally and materially miscalculated its report and tender of franchise fees due and in which event Comcast shall be responsible for all thereof. (1984 Code, § 13-425, as replaced by Ord. #2009-7, June 2009)

9-626. Oversight of franchise. In accordance with applicable law, city has the right on reasonable prior written notice and in the presence of a Comcast employee to periodically inspect construction and maintenance of the cable

system in the franchise area as necessary to monitor compliance with the provisions of the franchise. (Ord. #1991-5, Feb. 1991, as replaced by Ord. #2009-7, June 2009)

9-627. Technical standards. Comcast shall comply with all applicable technical standards of the FCC as published in subpart K of 47 CFR § 76. To the extent those standards are altered, modified or amended during the term of the franchise, Comcast shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. Upon written request Comcast shall promptly furnish to city a copy of tests and records required to be performed by Comcast pursuant to FCC rules. (1984 Code, § 13-427, as replaced by Ord. #2009-7, June 2009)

9-628. Books and records. Throughout the term of the franchise, city may review Comcast's books and records regarding customer service performance levels in the franchise area to monitor compliance with the provisions of the franchise. City as a condition therefor shall give reasonable prior written notice to Comcast at its business office in Nashville, Tennessee, during normal business hours. Such review shall be performed without unreasonably interfering with Comcast business operations. All documents subject to an inspection by city shall be retained by Comcast for a minimum period of two (2) years. (1984 Code, § 13-428, as replaced by Ord. #2009-7, June 2009)

9-629. Proprietary information. Notwithstanding anything to the contrary set forth in the franchise, Comcast shall not be required to disclose information which is reasonably deemed to be proprietary or confidential in nature. Any information disclosed to city by Comcast shall be treated as confidential and only disclosed to employees, representatives and agents of city who have a need to know in order to enforce the terms of the franchise. City shall require those employees, agents and representatives to agree to maintain the confidentiality of such information. Comcast shall not be required to provide customer information in violation of the Cable Act nor any other applicable federal or state privacy law. For purposes of the franchise, the terms "trade secret," "proprietary" or "confidential" include, but are not limited to, information relating to cable system design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules and other information reasonably determined by Comcast to be competitively sensitive. Comcast may make proprietary or confidential information available for inspection, but not for copying or removal by the city. In the event the city has in its possession and receives a request under a state "sunshine," public records or similar law for disclosure of information that Comcast has designated as confidential, trade secret or proprietary, city shall notify Comcast of such request and cooperate with

Comcast in opposing such request. Comcast has the right to require employees, representatives, and agents of city to enter into a non-disclosure agreement with Comcast prior to conducting a review of Comcast books and records subject to this franchise. (1984 Code, § 13-429, as replaced by Ord. #2009-7, June 2009)

9-630. Transfer of cable system or control of Comcast. Neither Comcast nor any other person shall transfer the franchise without prior written consent of city and which consent shall not be unreasonably withheld or delayed. No such consent shall be required, however, for transfer in trust, mortgage, hypothecation or assignment of rights, title, or interest of Comcast in the franchise or in the cable system in order to secure an indebtedness owed by Comcast or a transfer to an entity directly or indirectly owned or controlled by Comcast Cable Communications LLC ("Comcast parent"). No such permitted transfer shall relieve Comcast of any obligation imposed on it by the terms of this chapter unless specifically released by city by formal action adopted by city. Within thirty (30) days of receiving a request for consent, in accordance with applicable FCC rules and regulations, city will notify Comcast in writing of additional information, if any, required to determine the legal, financial, and technical qualifications of the proposed transferee or new controlling party. If city does not taken final action on the request for consent within one hundred twenty (120) days after receiving such request then consent shall be deemed to have been granted by city. Any transferee shall be bound by the terms of the franchise. (1984 Code, § 13-430, as replaced by Ord. #2009-7, June 2009)

9-631. Insurance. Throughout the term of the franchise, Comcast shall maintain comprehensive general liability insurance and provide city copies of certificates of insurance designating city, the officers, boards, commissions, councils, elected officials, agents, attorneys, and employees of city, as additional insureds and which certificates demonstrate that Comcast has obtained the required insurance. Such policy or policies shall be in a minimum amount of one million dollars (\$1,000,000.00) for bodily injury or death to any one (1) person and one million dollars (\$1,000,000.00) for bodily injury or death of any two (2) or more persons resulting from one (1) occurrence, and one million dollars (\$1,000,000.00) for property damage resulting from any one (1) accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to city. Comcast shall furnish replacement coverage and furnish to city evidence thereof prior to the end of such notice of cancellation period and on failure to do so Comcast shall forfeit to city a penalty in the amount of five thousand dollars (\$5,000.00) in addition to forfeiture of the franchise. Comcast shall provide worker compensation coverage in accordance with applicable law. Comcast shall indemnify and hold city harmless from worker compensation claims for which Comcast may be subject during the term of the franchise. (1984 Code, § 13-431, as replaced by Ord. #2009-7, June 2009)

9-632. Indemnification. Comcast shall indemnify, defend, and hold city and its officers, employees, attorneys and agents harmless from and against liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of Comcast's construction, operation, maintenance or removal of the cable system, including, but not limited to, reasonable attorneys' fees and costs. If the city determines that it is necessary to employ separate counsel the cost for such separate counsel shall be the responsibility of city. (1984 Code, § 13-432, as replaced by Ord. #2009-7, June 2009)

9-633. Notice of violation or default. In the event city determines that Comcast has not complied with a material term of the franchise, unless otherwise herein provided, city shall notify Comcast in writing with specific details regarding the exact nature of the alleged noncompliance or default. Comcast shall have forty-five (45) days from receipt of the notice:

- (1) To respond contesting the assertion of noncompliance or default; or
- (2) To cure such default; or
- (3) If the nature of the default cannot be cured within the forty-five (45) day period then within such time initiate reasonable steps to remedy such default and notify city of the steps being taken and the projected date that the cure will be completed. If not cured within the projected cure date Comcast shall forfeit to city a penalty of five thousand dollars (\$5,000.00) in addition to forfeiture of franchise. (1984 Code, § 13-433, as replaced by Ord. #2009-7, June 2009)

9-634. Public hearings. In the event Comcast fails to respond to the city's notice or in the event the alleged default is not remedied within forty-five (45) days or by the date projected by Comcast, city shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the governing body of city not less than ten (10) business days therefrom. City shall notify Comcast in writing of the time and place of such meeting and provide Comcast reasonable opportunity to be heard. (as added by Ord. #2009-7, June 2009)

9-635. Enforcement. Subject to applicable federal and state law, after such public hearing, in the event city determines that Comcast is in default of a material provision of the franchise, city may:

- (1) Seek specific performance of a provision that reasonably lends itself to such remedy as an alternative to damages or seek other equitable relief;
- (2) Recover any applicable penalty amount provided in the franchise; and/or
- (3) In the case of a substantial default of a material provision declare the franchise forfeited and/or revoked in accordance with the following:

(a) Give written notice to Comcast of intent to revoke the franchise on the basis of the noncompliance. Notice shall set forth with specificity the exact nature of the noncompliance. Comcast shall have ninety (90) days from receipt of such notice to object in writing and state reasons for such objection. In the event the city does not receive a response from Comcast or if upon receipt of the response city does not agree with Comcast's proposed remedy, city may then seek termination and revocation of the franchise at a further public hearing. City shall serve on Comcast at least ten (10) days prior to such public hearing a written notice specifying the time and place thereof and stating an intent to revoke and terminate the franchise.

(b) At the termination hearing, city shall give Comcast opportunity to further state its position on the matter, present evidence, and question witnesses, after which the governing body of city shall determine whether or not the franchise is forfeited, revoked and terminated. The public hearing shall be on the record and a written transcript shall be made available to Comcast within ten (10) business days. The decision of the city shall be in writing and shall be delivered to Comcast by certified mail. In addition to termination the governing body may impose a civil penalty on Comcast in an amount not to exceed twenty-five thousand dollars (\$25,000.00). Comcast may appeal any determination to the Circuit or Chancery Court of the State of Tennessee at Waverly, Tennessee which courts shall have the jurisdiction and power exclusively to review the decision de novo and to modify or reverse such decision as justice may require. (as added by Ord. #2009-7, June 2009)

9-636. Technical violation. Comcast will not be assessed penalties or fines nor shall forfeitures or revocations of the franchise be imposed for technical breaches or violations of the franchise where the violation or breach was done in good faith and the error that resulted had no or minimal negative impact on customers within the franchise area; or where circumstances reasonably existed beyond the control of Comcast precipitating the breach or a violation prevented Comcast from complying with a term or condition of the franchise. (as added by Ord. #2009-7, June 2009)

9-637. Competing franchises. Notwithstanding any other provision of the franchise or any other provision of law, if another Video Service Provider (VSP):

(1) Obtains a competing franchise from city to provide video services to subscribers in city; or

(2) Otherwise provides video services to subscribers in city (with or without entering into a specific agreement with or obtaining a specific franchise from city) utilizing the public ways, regardless of the technology used to deliver such video services, Comcast shall be permitted to construct and operate the

cable system and provide video services to subscribers under the same terms of such competing franchise utilizing the public ways granted by the city for the services and/or under the same terms and conditions as apply to the competing VSP. To exercise such other appropriate authorization containing the same terms and conditions as are applicable to the competing VSP, Comcast must apply to city for an amendment to the franchise setting forth its request to amend the franchise. City shall promptly conduct such inquiry as necessary concerning the details thereof, but in all events must take appropriate action within ninety (90) days. During the ninety (90) day period city must develop and adopt an appropriate authorization that to the maximum extent possible contains provisions that insure competitive equity between Comcast and such competing VSP taking into consideration the terms and conditions under which the competing VSP is allowed to provide video services to subscribers in city utilizing the public ways. (as added by Ord. #2009-7, June 2009)

9-638. Subsequent change in law. If there is a change in federal, state or local law that provides a new or alternative form of authorization for a VSP to provide video services to subscribers utilizing the public ways in the city or that otherwise changes the nature or extent of the obligations that the city may require or impose on a VSP providing video services to subscribers utilizing the public ways in city; notwithstanding any other provision of law, upon Comcast's written request, city shall:

(1) Permit Comcast to provide video services to subscribers on the same terms and conditions as are applicable to a VSP under the changed law;

(2) Modify the franchise, as necessary, to comply with the changed law;

or

(3) Modify the franchise to insure competitive equity between Comcast and a competing VSP utilizing the public ways taking into consideration the conditions under which the competing VSP is permitted to provide video services to subscribers in city.

City shall implement the provisions of the change in law within sixty (60) days after Comcast submits written request to the city. Notwithstanding any provision of law that imposes a time or other limitation on the ability of Comcast to take advantage of a changed in the applicable law, Comcast may exercise the rights assured hereby at any time, but not sooner than thirty (30) days after the changed law goes into effect. (as added by Ord. #2009-7, June 2009)

9-639. Meaning of VSP. VSP shall mean any entity using the public ways to provide multiple video programming services to subscribers for purchase or at no cost, regardless of transmission method, facilities or technology used. VSP shall include, but is not limited to, any entity that

provides cable services over wired delivery of video service to residential customers in the franchise area. (as added by Ord. #2009-7, June 2009)

9-640. Entire franchise terms and conditions. This chapter embodies the entire terms and conditions of the franchise and supersedes all prior understandings, agreements, and communications, whether written or oral between city and Comcast. All ordinances or parts of ordinances in conflict with or which otherwise impose obligations different from the provisions of this franchise are superseded by the ordinance comprising this chapter. (as added by Ord. #2009-7, June 2009)

9-641. Severability. If any provision of this chapter for any reason is declared invalid in whole or in part by any court, agency, commission, legislative body or other authority having competent jurisdiction then such provision shall be deemed a separate, distinct, and independent portion hereof. Such declaration shall not affect the validity of the remaining portions hereof which other provision shall continue in full force and effect. (as added by Ord. #2009-7, June 2009)

9-642. Governing law. The franchise is granted and executed in the State of Tennessee and shall be governed in all respects, including validity, interpretation, construction and effect, in accordance with the laws of the State of Tennessee. (as added by Ord. #2009-7, June 2009)

9-643. Modification. Unless otherwise provided no provision of the franchise shall be deemed amended or otherwise modified, in whole or in part, except by further ordinance duly enacted by city. (as added by Ord. #2009-7, June 2009)

9-644. No third-party beneficiaries. Nothing in the franchise is intended to confer third-party beneficiary status on any member of the public to enforce the terms of the franchise. (as added by Ord. #2009-7, June 2009)

9-645. Acceptance of grant of franchise. In order to evidence its intention and agreement to accept the franchise as hereby granted and to operate and continue to operate the cable system in the franchise area, Comcast shall no later than thirty (30) days from and after final passage and approval of the ordinance comprising this chapter formally accept the franchise by appropriate written action by authorized officer or agent of Comcast delivered to city. Failure to do so shall be deemed rejection of the terms and conditions of the franchise and a refusal to accept the franchise. In such event all rights of

Comcast to operate the cable system in the franchise area shall immediately terminate and Comcast shall remove cable system from the public ways within sixty (60) days thereafter. Provided, however, during such time Comcast without affirmatively accepting in writing the franchise continues to operate the cable system and deliver cable services then until such removal it shall be liable for payment of franchise fees as provided in § 9-622. (as added by Ord. #2009-7, June 2009)

## CHAPTER 7

ADULT-ORIENTED BUSINESSES

## SECTION

9-701. Adult bookstore defined.

9-702. License to operate.

9-703. Application.

9-704. License to operate; qualifications.

9-705. Revocation, suspension or annulment of licenses.

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9-701. Adult bookstore defined. An adult bookstore is an establishment which has a substantial or significant portion of its stock in trade consisting of books, films, videos, or magazines which are distinguished or characterized by having an emphasis on matters depicting, describing or relating to sexual activities. (as added by Ord. #2000-5, April 2000)

9-702. License to operate. (1) No adult bookstore shall be operated in the municipal corporation without obtaining a license to operate from the board of mayor and aldermen.

(2) Only one adult bookstore license shall be issued in the municipal corporation at any given time.

(3) A license shall be for a fixed and certain location and may not be relocated, transferred or assigned by the licensee.

(4) No adult bookstore shall be operated within two thousand (2,000) feet, measured from property line to property line, of a school, church, public recreational facility, day-care facility, public or private park, playground, or picnic ground, or boundary of a residentially zoned lot devoted to single or multi-family residential use.

(5) No adult bookstore shall be licensed for a location in other than an industrially zoned, or classified, district. (as added by Ord. #2000-5, April 2000)

9-703. Application. (1) An applicant for a license shall furnish the following information in writing and under oath:

(a) Name and address of applicant including all aliases known by;

(b) Written proof that applicant, if an individual, is at least eighteen (18) years of age;

(c) All residential or business addresses of the applicant for the past three (3) years;

(d) Applicant's business, occupation, or employment for five (5) years immediately preceding the date of the application;

(e) A description of the adult bookstore or similar business history of applicant and whether a license issued to applicant has ever been revoked or suspended and the reason therefor;

(f) All criminal charges lodged against applicant for which a conviction, forfeiture of bond or plea of nolo contendere occurred except minor traffic violation;

(g) The address where the adult bookstore is proposed to be operated;

(h) The name and address of all persons holding a beneficial interest in the real estate where such establishment is to be operated, including, but not limited to, contract purchasers or sellers, beneficiaries of land trusts or lessees subletting to applicant;

(i) If the premises are leased or being purchased under contract a copy of the lease or contract shall accompany the application;

(j) If applicant is a corporation, the name of the corporation and the date and state of incorporation and the name and address of its registered agent.

(2) Failure or refusal of an applicant to give any information or refusal or failure to appear at any reasonable time and place for examination regarding the application constitutes an admission that applicant is ineligible for a license and shall be grounds for denial. (as added by Ord. #2000-5, April 2000)

9-704. License to operate; qualifications. To receive a license an applicant must meet the following standards:

(1) If an individual:

(a) Be at least eighteen (18) years of age;

(b) Not have been convicted nor plead nolo contendere to a felony or crime involving moral turpitude within ten (10) years immediately preceding the date of the application or the date of release from confinement or incarceration, whichever is later.

(2) If a corporation:

(a) Officers, directors and stockholders are at least eighteen (18) years of age;

(b) No officer, director or stockholder has been convicted of or plead nolo contendere to a felony or crime involving moral turpitude within ten (10) years immediately preceding the date of the application or the date of release from confinement or incarceration, whichever is later; and

(3) If a partnership, joint venture or other type of organization where two (2) or more persons have a financial interest:

(a) All persons having a financial interest are at least eighteen (18) years of age;

(b) No person having a financial interest has been convicted of or plead nolo contendere to a felony or crime involving moral turpitude within ten (10) years immediately preceding the date of the application or the date of release from confinement or incarceration, whichever is later. (as added by Ord. #2000-5, April 2000)

9-705. Revocation, suspension or annulment of licenses. (1) A license will be revoked, suspended or annulled for any of the following reasons:

(a) Discovery that false or misleading information or data was given on an application;

(b) A licensee or employee of a licensee violates an order, rule or regulation adopted by the city relative to adult bookstores;

(c) The licensee becomes ineligible to obtain a license;

(d) A fee required to be paid is not paid;

(e) Intoxicating liquor or malt beverages are used, served or consumed on the premises with knowledge or acquiescence of licensee.

(f) Narcotics or scheduled drugs are used, consumed or sold on the premises with knowledge or acquiescence of licensee.

(g) Prostitution or solicitations of prostitution is occurring at or from the licensed premises with knowledge or acquiescence of licensee.

(h) A licensee or an officer, director, member or employee of license has been convicted of violation of the pornography distribution, liquor, beer, or prostitution suppression laws of any jurisdiction.

(2) Before revoking or suspending a license, the licensee shall be given at least ten (10) days written notice of the charges and an opportunity for a public hearing before the board at which time the licensee may present evidence bearing upon the question. The charges shall be specified and in writing.

(3) A licensee or member, officer, director or stockholder of a licensee whose license is revoked will not be eligible to receive a license for five (5) years from the date of revocation.

(4) No premises at which a license has been revoked shall be licensed as an adult bookstore for two (2) years from the date of the revocation of the license. (as added by Ord. #2000-5, April 2000)

9-706. Termination and renewal of license: application and fees.

(1) Every license shall terminate at the expiration of one (1) year from the date of issuance unless sooner revoked and must be renewed before

operation may continue. A licensee desiring to continue a license shall make application not later than ninety (90) days before the current license expires.

(2) A license fee of \$1,000 shall be submitted with an application for a license or for renewal of a license. (as added by Ord. #2000-5, April 2000)

9-707. Prohibited hours of operation; inspection. (1) No adult bookstore shall be open on Sundays or between the hours of twelve o'clock (12:00 A.M.) and eight o'clock (8:00 A.M.) Mondays through Saturdays.

(2) An adult bookstore shall be open for inspection at all reasonable times by the board or its agents. (as added by Ord. #2000-5, April 2000)

9-708. Duties and responsibilities of licensees. (1) Licensees shall maintain a register of all employees, showing their names, aliases, home addresses, ages, birth dates, sex, height, weight, color of hair and eyes, telephone numbers, social security numbers, driver license numbers, dates of employment and termination and duties of each employee. The register shall be maintained on the licensed premises. Such information on an employee shall be maintained for a period of three (3) years following termination of employment.

(2) The employee register shall be available for inspection by the board or its agents at all reasonable times.

(3) Every act or omission by an employee constituting a violation of the provisions of this chapter shall be deemed an act or omission of the licensee if such act or omission occurs with the acquiescence, authorization, knowledge, or approval of the licensee or as a result of negligent failure of licensee to supervise employee conduct.

(4) No minors shall be permitted to loiter around or frequent an adult bookstore nor view merchandise therein.

(5) An adult bookstore shall be physically arranged in a manner that the entire interior portion shall be visible from the common area of the premises. Visibility shall not be blocked or obscured by doors, curtains, partitions, drapes or other obstruction whatsoever.

(6) A license shall be conspicuously displayed in the common area of the premises at all times.

(7) No licensee shall permit to be performed on the premises any acts of sexual intercourse, oral or anal copulation or other contact stimulation of human genitalia, or permit the offering to do the same. (as added by Ord. #2000-5, April 2000)