

TITLE 9**BUSINESS, PEDDLERS, SOLICITORS, ETC.¹****CHAPTER**

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CHAPTER 1**MISCELLANEOUS****SECTION**

9-101. "Going out of business" sales.

9-101. "Going out of business" sales. It shall be unlawful for any person falsely to represent a sale as being a "going out of business" sale. A "going out of business" sale, for the purposes of this section, shall be a "fire sale," "bankrupt sale," "loss of lease sale," or any other sale made in anticipation of the termination of a business at its present location. When any person, after advertising a "going out of business" sale, adds to his stock or fails to go out of business within ninety (90) days he shall prima facie be deemed to have violated this section. (1995 Code, § 9-101)

¹Municipal code references

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

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

CHAPTER 2

PEDDLERS, ETC.¹

SECTION

- 9-201. Permit required.
- 9-202. Exemptions.
- 9-203. Application for permit.
- 9-204. Issuance or refusal of permit.
- 9-205. Appeal.
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- 9-208. Exhibition of permit.
- 9-209. Police officers to enforce.
- 9-210. Revocation or suspension of permit.
- 9-211. Reapplication.
- 9-212. Expiration and renewal of permit.

9-201. Permit required. It shall be unlawful for any peddler, canvasser, solicitor, or transient merchant to ply his trade within the corporate limits without first obtaining a permit in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one to whom it is issued. (1995 Code, § 9-201)

9-202. Exemptions. The terms of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to street vendors, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to bona fide charitable, religious, patriotic or philanthropic organizations. (1995 Code, § 9-202, modified)

9-203. Application for permit. Applicants for a permit under this chapter must file with the city clerk a sworn written application containing the following:

- (1) Name and physical description of applicant.
- (2) Complete permanent home address and local address of the applicant and, in the case of transient merchants, the local address from which proposed sales will be made.
- (3) A brief description of the nature of the business and the goods to be sold.

¹Municipal code reference
Privilege taxes: title 5.

(4) If employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship.

(5) The length of time for which the right to do business is desired.

(6) Government issued identification that has a photo such as a driver's license.

(7) The names of at least two (2) reputable local property owners who will certify as to the applicant's good moral reputation and business responsibility, or in lieu of the names of references, such other available evidence as will enable an investigator to properly evaluate the applicant's moral reputation and business responsibility.

(8) A statement as to whether or not the applicant has been convicted of any crime or misdemeanor or for violating any municipal ordinance; the nature of the offense; and, the punishment or penalty assessed therefor.

(9) The last three (3) cities or towns, if that many, where applicant carried on business immediately preceding the date of application and, in the case of transient merchants, the addresses from which such business was conducted in those municipalities.

(10) At the time of filing the application, a fee of twenty dollars (\$20.00) shall be paid to the municipality to cover the cost of investigating the facts stated therein. (1995 Code, § 9-203, modified)

9-204. Issuance or refusal of permit. (1) Each application shall be referred to the chief of police for investigation. The chief shall report his findings to the city clerk within seventy-two (72) hours.

(2) If as a result of such investigation the chief reports the applicant's moral reputation and/or business responsibility to be unsatisfactory the city clerk shall notify the applicant that his application is disapproved and that no permit will be issued.

(3) If, on the other hand, the chief's report indicates that the moral reputation and business responsibility of the applicant are satisfactory the city clerk shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by § 9-206. The city clerk shall keep a permanent record of all permits issued. (1995 Code, § 9-204)

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

police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1995 Code, § 9-205)

9-206. Loud noises and speaking devices. No permittee, nor any person in his behalf, shall make unreasonably loud noise upon any of the sidewalks, streets, alleys, parks or other public places of the municipality or upon private premises for the purpose of attracting attention to any goods, wares or merchandise which such permittee proposes to sell. (1995 Code, § 9-207, modified)

9-207. Use of streets and sidewalks. No permittee shall have any exclusive right to any location in the public streets or sidewalks, nor shall any be permitted a stationary location thereon, nor shall any be permitted to operate in a congested area where the operation might impede or inconvenience the public use of the streets or sidewalks. For the purpose of this chapter, the judgment 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. (1995 Code, § 9-208, modified)

9-208. Exhibition of permit. Permittees are required to exhibit their permits at the request of any police officer or citizen. (1995 Code, § 9-209)

9-209. Police officers to enforce. It shall be the duty of all police officers to see that the provisions of this chapter are enforced. (1995 Code, § 9-210)

9-210. Revocation or suspension of permit. (1) Permits issued under the provisions of this chapter may be revoked by the governing body after notice and hearing, for any of the following causes:

- (a) Fraud, misrepresentation, or incorrect statement contained in the application for permit, or made in the course of carrying on the business of solicitor, canvasser, peddler, transient merchant, itinerant merchant, or itinerant vendor.
- (b) Any violation of this chapter.
- (c) Conviction of any crime or misdemeanor.
- (d) Conducting the business of peddler, canvasser, solicitor, transient merchant, itinerant merchant, or itinerant vendor, as the case may be, in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

(2) Notice of the hearing for revocation of a permit shall be given by the city clerk, in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed to the permittee at his last known address at least five (5) days prior to the date set for hearing, or

it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing.

(3) When reasonably necessary in the public interest the chief of police may suspend a permit pending the revocation hearing. (1995 Code, § 9-211, modified)

9-211. Reapplication. No permittee whose permit has been revoked shall make further application until a period of at least six (6) months has elapsed since the last revocation. (1995 Code, § 9-212)

9-212. Expiration and renewal of permit. Permits issued under the provisions of this chapter shall expire on the same date that the permittee's privilege license expires and shall be renewed without cost if the permittee applies for and obtains a new privilege license within thirty (30) days thereafter. Permits issued to permittees who are not subject to a privilege tax shall be issued for one (1) year. An application for a renewal shall be made substantially in the same form as an original application. However, only so much of the application shall be completed as is necessary to reflect conditions which have changed since the last application was filed. (1995 Code, § 9-213)

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 city clerk authorizing such solicitation. Provided, however, that this section shall not apply to any established organization or church located in the City of Fayetteville or Lincoln County 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. (1995 Code, § 9-301, modified)

9-302. Prerequisites for a permit. The city clerk 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. (1995 Code, § 9-302)

9-303. Denial of a permit. Any applicant for a permit to make charitable or religious solicitations may appeal to the governing body if he has not been granted a permit within fifteen (15) days after he makes application therefor. (1995 Code, § 9-303)

9-304. Exhibition of permit. Any solicitor required by this chapter to have a permit shall exhibit such permit at the request of any police officer or person solicited. (1995 Code, § 9-304)

CHAPTER 4

TAXICABS¹

SECTION

- 9-401. Taxicab permit and privilege license required.
- 9-402. Solicitation of passengers on streets.
- 9-403. Parking restricted.
- 9-404. Drivers to use direct routes.
- 9-405. Taxicabs not to be used for illegal purposes.
- 9-406. Miscellaneous prohibited conduct by drivers.
- 9-407. Transportation of more than one passenger at the same time.
- 9-408. Mechanical condition of vehicles.
- 9-409. Cleanliness of vehicles.
- 9-410. Liability insurance required.
- 9-411. Vehicles exempt from the provisions of this chapter.
- 9-412. License and permit required for drivers.

9-401. Taxicab permit and privilege license required. Terminals to be provided. It shall be unlawful for any taxicab company to operate within the city unless it maintains a terminal station or depot.

9-402. Solicitation of passengers on streets. No driver or agency of any taxicab company shall be allowed to solicit passengers upon the streets of the city.

9-403. Parking restricted. It shall be unlawful to park any taxicab on any street except in such places as have been specifically designated and marked by the City of Fayetteville for the use of taxicabs. It is provided, however, that taxicabs may stop upon any street for the purpose of picking up or discharging passengers if such stops are made in such manner as not unreasonably to interfere with or obstruct other traffic and provided the passenger loading or discharging is promptly accomplished.

9-404. Drivers to use direct routes. Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route.

9-405. 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.

¹Municipal code reference
Privilege taxes: title 5.

9-406. Miscellaneous prohibited conduct by drivers. It shall be unlawful or any taxicab driver, while on duty, to be under the influence of drugs, 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 unreasonably disturb the peace, quiet, and tranquility of the municipality in any way.

9-407. 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. (1979 code, § 5-107)

9-408. Mechanical condition of vehicles. It shall be unlawful for any person to operate any taxicab in the City of Fayetteville unless such taxicab is equipped with four (4) wheel brakes, front and rear lights, safe tires, horn, muffler, windshield wipers, and rear vision mirror, all of which shall conform to the requirements of 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 maybe reasonably necessary to provide for the safety of the public and the continuous satisfactory operation of the taxicab.

9-409. 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.

9-410. Liability insurance required. No taxicab franchise shall be issued or continued in operation unless there is in full force and effect a liability insurance policy for each vehicle authorized in the amount of one hundred thousand dollars (\$100,000.00) for bodily injury or death to any one person, three hundred thousand dollars (\$300,000.00) for bodily injuries or death to more than one person which are sustained in the same accident, and one hundred thousand dollars (\$100,000.00) for property damage resulting from anyone accident. The insurance policy required by this section shall contain a provision that it shall not be cancelled except after at least five (5) days' written notice is given by the insurer to both the insured and the city recorder.

The insurance policy shall be filed with the city recorder who shall issue a receipt therefor. The receipt shall show the policy number, the name of the insurance company, the name of the insured, and the make, color, style, and motor or manufacturer's serial number of each vehicle covered by the policy. A copy of such receipt shall be kept in each insured taxicab and shall be exhibited

by the driver to any police officer upon request and to any person or such person's agent, who is injured or damaged by such vehicle.

9-411. Vehicles exempt from the provisions of this chapter. The provisions of this chapter shall not be applicable to motor busses or other motor vehicles engaged in the carriage of passengers or their luggage for hire that are subject to the jurisdiction of the Public Service Commission of the state, nor to motor busses operated in the city under franchises granted by the City of Fayetteville where other provisions are made by ordinance or otherwise for the carrying of liability insurance or the filing of bonds against liability for death, personal injuries, or property damage.

9-412. License and permit required for drivers. No person shall drive a taxicab unless he is in possession of a state special chauffeur's license.

CHAPTER 5**POOL ROOMS¹****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 12:00 midnight and 4:00 A.M. on other days. (1995 Code, § 9-501, modified)

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, knowingly to permit any person under the age of eighteen (18) years to play on said tables at any game of billiards, bagatelle, pool, or other games requiring the use of cue and balls, without first having obtained the written consent of a parent or guardian; provided that this section shall not apply to the use of billiards, bagatelle, and pool tables in private residences. (1995 Code, § 9-502, modified)

¹Municipal code reference
Privilege taxes: title 5.

CHAPTER 6**DRUGS****SECTION**

- 9-601. Definitions.
- 9-602. Distribution regulated.
- 9-603. Possession regulated.
- 9-604. Exceptions.

9-601. Definitions. For the purposes of this chapter the following words and phrases shall have the following meanings, unless the context otherwise requires:

(1) "Amidone" shall mean any substance identified chemically as (4-4-Diphenyl-6-Dimethylamine-Heptanone-3), or any salt thereof, by whatever trade name designated.

(2) "Barbital" shall be held to mean and include the salts of barbituric acid, also known as maloylurea, or any derivative or compounds or any preparations or mixtures thereof possessing hypnotic properties or effects.

(3) "Cannabis" includes all parts of the plant cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plants, fiber produced from such stalks, oil, or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, (except the resin extracted therefrom) fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(4) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.

(5) "Dentist" means a person authorized by the State of Tennessee to practice dentistry in this state.

(6) "Isoamidone" shall mean any substance identified chemically as (4,4-Diphenyl-5-Nethyl-6-Dimethylaminohexanone-3-), or any salt thereof, by whatever trade name designated.

(7) "Isonipecaine" shall mean any substance identified chemically as 1-Nethyl-4 phenyl-piperidine-4-carboxylic acid ethyl ester, or any salt thereof, by whatever trade name designated.

(8) "Keto-Bemidone" shall mean any substance identified chemically as (4-(3-Hydroxyphenyl)-I-Methyl-4-piperidyl ethyl ketone hydrochloride) or any salt thereof, by whatever trade name designated.

(9) "Legend drugs" means those drugs carrying the "caution label" or "warning label," "caution: may be habit forming" or any drugs carrying the prescription legend, "to be dispensed only on a physician's prescription," as defined by the federal food and drug administration.

(10) "Licensed physician" means a person authorized by the laws of the State of Tennessee to practice medicine in this state.

(11) "Narcotic drugs" means coca leaves, opium, isonipecaine, amidone, isoamidone, and keto-bemidone and every substance neither chemically or physically distinguishable from them.

(12) "Opium" includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture, or preparation of opium, but does not include apomorphine or any of its salts.

(13) "Registered pharmacist" means a person registered under the laws of the State of Tennessee to practice pharmacy in this state.

(14) "Veterinarian" means a person authorized by the laws of the State of Tennessee to practice veterinary medicine in this state. (1995 Code, § 9-601)

9-602. Distribution regulated. It shall be unlawful for any person, firm or corporation to possess, sell, barter or give away any drug known as barbital, coca leaves, opium, narcotic drugs, cannabis, isonipecaine, amidone, isoamidone, keto-bemidone and legend drugs, as defined in § 9-601 hereof, except upon the written prescription of a duly licensed physician, dentist or veterinarian, and compounded or dispensed by a duly registered pharmacist. (1995 Code, § 9-602)

9-603. Possession regulated. It shall be unlawful for any person to have in his possession any drug defined or enumerated in § 9-601 hereof without the same having been prescribed by a duly licensed physician, dentist, or a veterinarian, and having been dispensed by a duly registered pharmacist. Provided, however, that this section shall not apply to authorized agents and representatives of pharmaceutical manufacturers, firms, or wholesalers. (1995 Code, § 9-603)

9-604. Exceptions. There are exempted from the provisions of this chapter the sale of barbital, coca leaves, opium, narcotic drugs, cannabis, isonipecaine, amidone, isoamidone, keto-bemidone, and legend drugs by legitimate wholesale druggists to registered pharmacists and the sale by registered pharmacists to duly licensed physicians, dentists, and veterinarians. (1995 Code, § 9-604)

CHAPTER 7

PINBALL MACHINES

SECTION

9-701. Operation by minors prohibited.

9-702. Responsibility for determining age of players.

9-701. Operation by minors prohibited. No owner, operator, manager or person in charge of any restaurant, cafe, filling station, beer tavern, hotel, motel, drug store, or any other store, establishment, place of business, or otherwise, or any employee therein, shall allow any person under the age of eighteen (18) years to play or operate on such premises any pinball machine or any game of miniature football, golf, baseball, or any other miniature game where there is a payoff to the player or operator of any kind whatsoever, whether made playable by a mechanical device or otherwise, or whether the charge for playing is collected by mechanical device or otherwise. (1995 Code, § 9-701)

9-702. Responsibility for determining age of players. It shall be the duty of such owner, operator, manager, person in charge, or employee to ascertain or determine the age of any such player, and ignorance of the age or mis-information relative thereto shall not excuse any such owner, operator, manager, person in charge or employee. (1995 Code, § 9-702)

CHAPTER 8

MASSAGE PARLORS

SECTION

- 9-801. Definitions.
- 9-802. Permits required for massage parlors and massagers.
- 9-803. Application for massage parlor permit; fee; investigation of applicant; hearing on application; issuance or refusal of permit.
- 9-804. Application for massager's permit; fee; physical examinations; investigation of applicant; hearing on application; issuance or refusal of permit.
- 9-805. Authority of chief of police to enter massage parlors.
- 9-806. Authority of chief of police to suspend massage parlor permits.
- 9-807. Authority of board to revoke permits.
- 9-808. Register of patrons to be kept.
- 9-809. Minimum standards for massage parlors.
- 9-810. Precautions against spreading contagious diseases.
- 9-811. Permits to be displayed and not to be altered.
- 9-812. Prohibited conduct.
- 9-813. Expiration and renewal of permits.
- 9-814. Permits not transferable.

9-801. Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Employee" means any and all persons, other than massagers, who render any service to patrons of massage parlors.

(2) "Massage" means the administration by any person of any method of exerting or applying pressure, friction, moisture, heat, or cold to the human body and/or the rubbing, stroking, kneading, pounding, tapping, or otherwise manipulating a part or the whole of the human body or the muscles or joints thereof, by any physical or mechanical means, for any form of consideration.

(3) "Massage parlor" means any establishment having a fixed place of business where the administering of massages is the principal or main business purpose or activity that is conducted on the premises. This definition shall not be construed to include a hospital, nursing home, medical clinic, or the office of a duly licensed physician, surgeon, physical therapist, chiropractor or osteopath.

(4) "Massager" means any person who administers a massage to another person at a massage parlor.

(5) "Permittee" means the individual, partnership, association, joint stock company, corporation, or combination of individuals of whatever form or character, which is the legal holder of a massage parlor permit as provided by this chapter. (1995 Code, § 9-901)

9-802. Permits required for massage parlors and massagers. It shall be unlawful for any person to establish, maintain, or operate a massage parlor in the city without a valid permit issued pursuant to this chapter. It shall likewise be unlawful for any person to perform the services of a massager at a massage parlor in the city without a valid permit issued pursuant to this chapter. (1995 Code, § 9-902)

9-803. Application for massage parlor permit; fee; investigation of applicant; hearing on application; issuance or refusal of permit.

(1) Any person desiring a massage parlor permit to establish, maintain, or operate a massage parlor in the city shall make application to the chief of police on an application form provided by the City of Fayetteville, which application form shall contain the name and address of the place where the applicant proposes to operate, maintain, or establish a massage parlor in the city. Each massage parlor permit application shall be accompanied by an investigation fee of fifty dollars (\$50.00).

The application shall state thereon that: "It is unlawful for any person to make a false statement on this application. The making of a false statement shall constitute grounds for denial of an application or revocation of a permit."

The application shall include a business, occupation, or employment history of the applicant for the five (5) years immediately preceding the date of the application. It shall also include a detailed statement of any and all convictions, pleas of nolo contendere, or forfeitures suffered by the applicant (if the applicant is a partnership or association, any partner or member thereof; or if the applicant is a corporation, any officer, director, or manager thereof, or any shareholder thereof) on any charge of prostitution, assignation, pandering, obscenity, lewdness, crimes against nature, or any provision of this chapter, or any provision of a similar law or ordinance in any other jurisdiction.

The chief of police shall arrange to have the fingerprints of each applicant taken, which fingerprints shall constitute a part of the application. There shall be filed with the application at least two portrait photographs of the applicant taken within sixty (60) days immediately prior to the date of application. Such photographs shall not be less than two inches by two inches (2" x 2") and shall show the head and shoulders of the applicant in a clear and distinguishable manner.

(2) Upon receipt of the application and investigation fee, the chief of police shall make or cause to be made an investigation of the applicant, which shall include:

- (a) The criminal record of the applicant.
- (b) Communication with the employers, business associates, or fellow employees of the applicant during the five (5) years preceding the investigation.
- (c) Determination of whether the premises proposed to be utilized by the applicant comply with the provisions of this chapter, and

all other zoning ordinances, and all other building, fire, plumbing, and electrical codes.

(d) Any and all other matters which the chief of police deems to be material to a reasonable consideration of the applicant.

(3) The chief of police shall file his investigative report, with all supporting material and documentation, with the city attorney not later than twenty-one (21) days following the date of application; however, the chief of police may file an amended report at any time additional material information concerning the applicant comes to his attention.

(4) Upon receipt of the report of the chief of police, the city attorney shall docket the application on the agenda of the next regular meeting of the board of mayor and aldermen, at which time a hearing shall be conducted on the application. The board, after a consideration of the application and investigative report, after an open examination of the applicant, after opportunity has been given for the introduction of additional information by any interested party, and after a full and complete consideration of all relevant facts and circumstances, shall authorize the issuance of a massage parlor permit at the premises designated in the application within one week following the hearing, unless it finds that the application is deficient, the application contains false information, the applicant has not complied with all applicable laws and ordinances, the applicant has been convicted, pleaded nolo contendere, or suffered a forfeiture on a charge of prostitution, assignation, pandering, obscenity, lewdness, crime against nature, or any provision of this chapter or any provision of a similar law or ordinance in any other jurisdiction. Notice of the time and place of the hearing before the board shall be posted in a conspicuous place upon the premises specified in the application at least five (5) days prior thereto, and the applicant shall maintain the said notice until after the hearing.

(5) The board may not authorize the issuance of a permit to an applicant whose proposed premises for the establishment, maintenance, or operation of a massage parlor is within one thousand feet (1,000'), measured from property line to property line, of any church, school, hospital, funeral parlor, library, museum, playground, or any other public or private building or premises likely to be utilized by persons under the age of eighteen (18) years. (1995 Code, § 9-903)

9-804. Application for massager's permit; fee; physical examinations; investigation of applicant; hearing on application; issuance or refusal of permit. (1) Any person desiring a permit to act as a massager in a massage parlor in the city shall make application to the chief of police on an application form provided by the City of Fayetteville, which application shall contain spaces for the applicant's name, address, telephone number, all previous addresses within the year immediately preceding the date of the application, date of birth, place of birth, height, weight, massage training,

and current employment. Each massager permit application shall be accompanied by an investigation fee of twenty-five dollars (\$25.00).

The application shall state thereon that: "It is unlawful for any person to make a false statement on this application. The making of a false statement shall constitute grounds for a denial of an application or revocation of a permit."

The application shall also include a detailed statement of any and all convictions, pleas of nolo contendere, or forfeitures suffered by the applicant on any charge of prostitution, assignation, pandering, obscenity, lewdness, crimes against nature, or any provision of this chapter or any provision of a similar law or ordinance in any other jurisdiction.

The chief of police shall arrange to have the fingerprints of each applicant taken, which fingerprints shall constitute a part of the application. There shall be filed with the application at least two portrait photographs of the applicant taken within sixty (60) days immediately prior to the date of application. Such photographs shall be not less than two inches by two inches (2" x 2") and shall show the head and shoulders of the applicant in a clear and distinguishable manner.

(2) All persons who desire to act as a massager at a massage parlor in the City of Fayetteville shall attach to their applications a certification from a physician licensed by the State of Tennessee that the applicant has submitted to a physical examination for contagious and communicable diseases, and that the applicant is either free from any contagious or communicable diseases or is incapable of communicating any such diseases to others. The physical examination shall include a recognized blood test for syphilis, a culture for gonorrhea, and a chest X-ray which shall be made and interpreted by a trained radiologist.

(3) Upon receipt of the application and investigation fee, the chief of police shall make or cause to be made an investigation of the application, which shall include:

- (a) The criminal record of the applicant.
- (b) Communication with the employers, business associates, or fellow employees of the applicant during the five (5) years preceding the investigation.
- (c) Any and all other matters which the chief of police deems to be material to a reasonable consideration of the applicant.

(4) The chief of police shall file his investigative report, with all supporting material and documentation, with the city attorney not later than twenty-one (21) days following the date of application; however, the chief of police may file an amended report at any time additional material information concerning the applicant comes to his attention.

(5) Upon receipt of the report of the chief of police, the city attorney shall docket the application on the agenda of the next regular meeting of the board of mayor and aldermen, at which time a hearing shall be conducted on the application. The board, after a consideration of the application and investigative

report, after an open examination of the applicant, after opportunity has been given for the introduction of additional information by any interested party, and after a full and complete consideration of all relevant facts and circumstances, shall authorize the issuance of a massager's permit within one week following the hearing, unless it finds that the application is deficient, the application contains false information, the applicant has not complied with all applicable laws and ordinances, the applicant has been convicted, pleaded nolo contendere, or suffered a forfeiture on a charge of prostitution, assignation, pandering, obscenity, lewdness, crime against nature, or any provision of this chapter or any provision of a similar law or ordinance in any other jurisdiction.

(6) All massagers who possess valid permits for administering massages in a massage parlor in the City of Fayetteville shall undergo a physical examination, including the aforementioned tests for contagious and communicable diseases, at least once every six (6) months following the issuance of their massager permits. When the chief of police or his duly authorized representative has cause to believe that the massager is capable of communicating any contagious diseases to others, he may at any time require an immediate physical examination of any such person. (1995 Code, § 9-904)

9-805. Authority of chief of police to enter massage parlors. To enforce the provisions of this chapter, the chief of police or his duly authorized representative is hereby authorized during business hours to enter, examine, and survey any premises in the city for which a massage parlor permit has been issued pursuant to this chapter. (1995 Code, § 9-905)

9-806. Authority of chief of police to suspend massage parlor permits. If the chief of police finds that the massage parlor, for which the massage parlor permit was issued, does not conform to this chapter or if the permittee has refused the chief of police or his duly authorized representative the right to enter the premises to enforce the provisions of this chapter, the chief of police may temporarily suspend the massage parlor permit, pending a hearing before the board of mayor and aldermen. A copy of the temporary suspension which shall set forth the reason for said suspension shall be sent to the city attorney for docketing on the next regular agenda of the board of mayor and aldermen and sent to the permittee at his place of business by certified mail. No person shall operate a massage parlor when subject to an order of suspension. The board of mayor and aldermen may, after an open hearing, reinstate a suspended massage parlor permit when no fact or condition exists which would otherwise warrant the refusal to grant a massage parlor permit under the terms of this chapter. (1995 Code, § 9-906)

9-807. Authority of board to revoke permits. Any massage parlor permit or any massager permit granted under this chapter shall be revoked by the board of mayor and aldermen, after notice and hearing, if the permittee or

massager has been convicted, pleaded nolo contendere, or suffered a forfeiture on any charge of prostitution, assignation, pandering, obscenity, lewdness, crime against nature, or any provision of this chapter, or any provision of a similar law or ordinance in any other jurisdiction.

The notice required by this section shall be sent by certified mail to the permittee or massager at his last known address at least five (5) days prior to the date set for the hearing before the board of mayor and aldermen.

If any massager or other employee of any permittee violates any provision of this chapter, it shall be presumed that such violation was with the knowledge and consent of the permittee; if any permittee fails to overcome the said presumption, the massage parlor permit issued to him shall be subject to permanent revocation in the manner set out in this section. (1995 Code, § 9-907)

9-808. Register of patrons to be kept. Every permittee shall maintain a daily register, showing the names and addresses of all patrons, along with the name of the massagers assigned and the fee charged. The daily register shall be kept in a permanent, well-bound book; it shall be kept on file for at least one (1) year. (1995 Code, § 9-908)

9-809. Minimum standards for massage parlors. No massage parlor shall be operated, established or maintained in the city that does not comply with the following minimum standards:

(1) The premises shall have adequate equipment for disinfecting and sterilizing nondisposable instruments and materials used in administering massages. Such nondisposable instruments and materials shall be disinfected after use on each patron.

(2) Closed cabinets shall be provided and used for the storage of clean linen, towels, and other materials used in connection with administering massages. All soiled linens, towels, and other materials shall be kept in properly covered containers or cabinets, which containers or cabinets shall be kept separate from the clean storage areas.

(3) Clean linen and towels shall be provided for each massage patron. No common use of towels or linens shall be permitted.

(4) All massage tables, bathtubs, shower stalls, steam or bath areas, and floors shall have surfaces which may be readily disinfected.

(5) Oils, creams, lotions, or other preparations used in administering massages shall be kept in clean, closed containers or cabinets.

(6) Adequate bathing, dressing, locker, and toilet facilities shall be provided for the patrons to be served at any given time. Separate bathing, dressing, locker, toilet, and massage room facilities shall be provided for male and female patrons.

(7) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities shall be in good repair and maintained in a clean

and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs and showers shall be thoroughly cleaned after each use. When carpeting is used on the floors, it shall be kept dry.

(8) The premises shall be equipped with a service sink for custodial services.

(9) Eating in the massage work areas shall not be permitted.

(10) Animals, except for seeing-eye dogs, shall not be permitted in the massage work areas. (1995 Code, § 9-909)

9-810. Precautions against spreading contagious diseases. No massager shall administer a massage at a massage parlor if the massager knows or should know that he or she is not free of any contagious or communicable disease; nor shall a massager administer a massage at a massage parlor to any patron exhibiting any skin fungus, skin infection, skin inflammation, or skin eruption, unless the patron presents a statement from a physician licensed by the State of Tennessee certifying that the patron may be safely massaged and prescribing the conditions therefor. All massagers shall wash his or her hands in hot running water, using a proper soap or disinfectant, before and after the administration of each massage. (1995 Code, § 9-910)

9-811. Permits to be displayed and not to be altered. Every permittee to whom a massage parlor permit shall have been granted shall display said massage parlor permit in a conspicuous place in the massage parlor or establishment so that it may be readily seen by persons entering the premises.

Every person to whom a massager permit shall have been granted shall, while in a massage parlor, openly display the said permit by pinning or clasping it to his or her outer garments so that it may be readily seen by patrons and other interested persons.

No permit shall be altered or defaced in any manner by any permittee or massager. (1995 Code, § 9-911)

9-812. Prohibited conduct. (1) It shall be unlawful for any person in a massage parlor to place his or her hand or hands upon or to touch with any part of his or her body, or to fondle in any manner, or to massage, a sexual or genital part of any other person. Sexual or genital parts shall include the genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breast of a female.

(2) It shall be unlawful for any person in a massage parlor to expose his or her sexual or genital parts, or any portion thereof, to any other person. It shall also be unlawful for any person in the massage parlor to expose the sexual or genital parts, or any portion thereof, of any other person.

(3) It shall be unlawful for any person while in the presence of any other person in a massage parlor to fail to conceal with a fully opaque covering the sexual or genital parts of his or her body.

(4) It shall be unlawful for any person owning, operating, or managing a massage parlor knowingly to cause, allow, or permit in or about such massage parlor, any agent, employee, or any other person under his control or supervision to perform such acts prohibited in this chapter.

(5) Massagers issued a permit under this chapter may not administer massages at any place other than at a massage parlor which has also been issued a permit hereunder.

(6) Every person owning, operating or managing a massage parlor shall post a copy of this chapter in a conspicuous place in the massage parlor so that it may be readily seen by persons entering the premises.

(7) It shall be unlawful for any massage parlor to remain open or provide services at any time between the hours of 10:00 P.M. and 10:00 A.M. or at any time on Sundays.

(8) The administering of massages shall not be conducted in private rooms or areas but shall be conducted in separate general areas for males and females. (1995 Code, § 9-912)

9-813. Expiration and renewal of permits. Each massage parlor permit shall expire one (1) year from the date of issue. Each massager shall permit shall also expire one (1) year from the date of issue. The application for renewal of either a massage parlor permit or a massager permit shall be accompanied by an investigative fee of ten dollars (\$10.00). (1995 Code, § 9-913)

9-814. Permits not transferrable. No permit issued hereunder shall be transferrable. (1995 Code, § 9-914)

CHAPTER 9

ADULT BOOK STORES AND MOTION PICTURE THEATERS

SECTION

9-901. Definitions.

9-902. Location near other such businesses, churches, etc., prohibited.

9-903. Location near residence zones prohibited without a waiver.

9-901. Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Adult book store" means an establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" (as described below) or an establishment with a segment or section devoted to the sale or display of such material.

(2) "Adult motion picture theater" is an enclosure or enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" (as defined below) for observation by patrons therein.

(3) For the purpose of this chapter, "specified anatomical areas" is defined as:

(a) Less than completely and opaquely covered:

(i) Human genitals, pubic region,

(ii) Buttock, and

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

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

(4) For the purpose of this chapter, "specified sexual activities" is defined as:

(a) Human genitals in a state of sexual stimulation or arousal.

(b) Acts of human masturbation, sexual intercourse, or sodomy.

(c) Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast. (1995 Code, § 9-1001)

9-902. Location near other such businesses, churches, etc., prohibited. It shall be unlawful to establish, maintain, or operate an adult book store or adult motion picture theater when the same shall be located:

(1) Within one thousand feet (1,000') of another adult book store or adult motion picture theater, measured by the most direct method from building to building or, in the case of an enclosure, from enclosure to enclosure.

(2) Within one thousand feet (1,000') of any church, school, hospital, library, museum or public playground, measured by the most direct method from building or enclosure to building or enclosure or, in the case of a playground, from the building or enclosure to the edge of the lot line of the playground. (1995 Code, § 9-1002)

9-903. Location near residence zones prohibited without a waiver. It shall be unlawful to establish, maintain, or operate an adult movie theater or an adult book store in the City of Fayetteville within five hundred feet (500') of any area zoned for residential uses unless a waiver has been obtained from the board of mayor and aldermen upon the following conditions:

(1) A petition has been presented to the board of mayor and aldermen signed by fifty-one percent (51%) of those persons owning, residing, or doing business within five hundred feet (500') of the proposed location and the board of mayor and aldermen after a public hearing duly called has made an affirmative finding of the following conditions:

(a) That the establishment, maintenance, location, and operation of the adult book store or adult motion picture theater use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare; and

(b) That the adult book store or adult motion picture theater use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes permitted, nor substantially diminish or impair property values within the neighborhood; and

(c) That the establishment of the adult book store or adult motion picture theater use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in that district; and

(d) That adequate utilities, access roads, drainage, and other necessary facilities have been or will be provided; and

(e) That adequate measures have been or will be taken to provide ingress and egress designed so as to minimize traffic congestion in the public streets; and

(f) That the adult book store or adult motion picture theater use will, in all other respects, conform to the applicable regulations and/or ordinances of the district in which it is located, including, but not limited to, zoning, building, and fire.

(2) Said petition above mentioned shall be accompanied by an affidavit stating that the one circulating the petition personally witnessed the signatures on the petition and that the same were affixed to the petition by the persons whose names appear thereon. (1995 Code, § 9-1003)

CHAPTER 10

PORTABLE STANDS

SECTION

- 9-1001. Definitions.
- 9-1002. Set back lines.
- 9-1003. Permits.
- 9-1004. Signs.
- 9-1005. Merchandise.
- 9-1006. Existing portable stands.
- 9-1007. Violations and penalty.

9-1001. Definitions. (1) "Building official" shall mean the building official of the City of Fayetteville.

(2) "Portable stands" means a vehicle, truck, trailer or a temporary stand or building which has no permanent foundation and from which merchandise is displayed, sold or given away.

(3) "Zoning ordinance" shall mean the zoning ordinance in effect in the City of Fayetteville. (1995 Code, § 9-1101)

9-1002. Set back lines. All portable stands shall be set back from the property lines no less than five (5) feet but in no event shall the stand constitute an obstruction to vision at street intersections as set out in the zoning ordinance, art. IV, paragraph 6. (1995 Code, § 9-1102)

9-1003. Permits. Prior to any portable stand being set a permit shall be obtained from the building official for the placement of the stand. No permit fee shall be charged if the items displayed, sold or given away are in the general line of the principal business on the lot, otherwise an annual fee of two hundred dollars (\$200.00) shall be charged for the permit provided the permit is obtained prior to the placement of the stand and an annual fee of four hundred dollars (\$400.00) provided the permit is obtained after the placement of the stand. A permit shall only be valid for one (1) year from the date of issuance and no portable stand shall be located in any one (1) location for more than sixty (60) days during said one (1) year period. In the event that a permit holder chooses to locate said stand in a new location, permit holder shall obtain a new permit at no charge if within original one (1) year period. The stand shall be moved from the location at the expiration of the sixty (60) day period.

Non-profit groups and vendors with portable stands at non-profit and/or civic events shall be exempt from this section. (1995 Code, § 9-1103)

9-1004. Signs. Any signs in connection with said portable stand shall be located on the stands or otherwise be in full conformity with other sign ordinances. (1995 Code, § 9-1104)

9-1005. Merchandise. Except in the C-1 (Central Business) Zone, merchandise shall not be displayed or located within five (5) feet of the street right-of-way. (1995 Code, § 9-1105)

9-1006. Existing portable stands. All portable stands now located in violation of this chapter shall be moved or a permit obtained within thirty (30) days after being notified to do so by the building official. (1995 Code, § 9-1106)

9-1007. Violations and penalty. Any violations of this chapter shall be a misdemeanor and each day of any violation shall constitute a separate offense. (1995 Code, § 9-1107)

CHAPTER 11

CABLE TELEVISION

SECTION

9-1101. To be furnished under franchise.

9-1101. To be furnished under franchise. Cable television service shall be furnished to the City of Fayetteville and its inhabitants by Ord. #2005-10, Aug. 2005 under franchise granted by the board of mayor and aldermen of the City of Fayetteville, Tennessee, or by the state.¹ (1995 Code, § 9-1201, modified)

¹Complete details relating to the cable television franchise agreement are available in the office of the city clerk.