

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

1. MISCELLANEOUS.
2. PEDDLERS, SOLICITORS, ETC.
3. POOL ROOMS.
4. CABLE TELEVISION.
5. SEXUALLY ORIENTED ESTABLISHMENTS.
6. MASSAGE PARLORS.

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

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

9-101. "Going out of business" sales. Pursuant to Tennessee Code Annotated, § 47-18-104 it shall be unlawful for any person to falsely 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. (2001 Code, § 9-101, modified)

¹Municipal code references

Building, plumbing, and housing regulations: title 12.

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

CHAPTER 2

PEDDLERS, SOLICITORS, ETC.¹

SECTION

- 9-201. Definitions.
- 9-202. Exemptions.
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- 9-205. Restrictions on peddlers, street barkers and solicitors.
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- 9-208. Display of permit.
- 9-209. Suspension or revocation of permit.
- 9-210. Expiration and renewal of permit.
- 9-211. Violations and penalty.

9-201. Definitions. Unless otherwise expressly stated, whenever used in this chapter, the following words shall have the meaning given to them in this section:

(1) "Peddler" means any person, firm or corporation, either a resident or a nonresident of the city, who has no permanent regular place of business and who goes from dwelling to dwelling, business to business, place to place, or from street to street, carrying or transporting goods, wares or merchandise and offering or exposing the same for sale.

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

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

¹Municipal code references
Privilege taxes: title 5.

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

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

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

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

(5) "Transient vendor"¹ means any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of selling or offering to sell the merchandise to the public. Transient vendor does not include any person selling goods by sample, brochure, or sales catalog for future delivery; or to sales resulting from the prior invitation to the seller by the owner or occupant of a residence. For purposes of this definition, "merchandise" means any consumer item that is or is represented to be new or not previously owned by a consumer, and "temporary premises" means any public or quasi-public place including a hotel, rooming house, storeroom, building or part of a building, tent, vacant lot, railroad car, or motor vehicle which is temporarily occupied for the purpose of exhibiting stocks of merchandise to the public. Premises are not temporary if the same person has conducted business at those premises for more than six (6) consecutive months or has occupied the premises as his or her permanent residence for more than six (6) consecutive months.

(6) "Street barker" means any peddler who does business during recognized festival or parade days in the city and who limits his business to

¹State law references

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

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

selling or offering to sell novelty items and similar goods in the area of the festival or parade.

9-202. Exemptions. The terms of this chapter shall neither apply to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business.

9-203. Permit required. No person, firm or corporation shall operate a business as a peddler, transient vendor, solicitor or street barker, and no solicitor for charitable or religious purposes or solicitor for subscriptions shall solicit within the city unless the same has obtained a permit from the city in accordance with the provisions of this chapter.

9-204. Permit procedure. (1) Application form. A sworn application containing the following information shall be completed and filed with the city recorder by each applicant for a permit as a peddler, transient vendor, solicitor, or street barker and by each applicant for a permit as a solicitor for charitable or religious purposes or as a solicitor for subscriptions:

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

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

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

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

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

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

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

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

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

9-205. Restrictions on peddlers, street barkers and solicitors. No peddler, street barker, solicitor, solicitor for charitable purposes, or solicitor for subscriptions shall:

- (1) Be permitted to set up and operate a booth or stand on any street or sidewalk, or in any other public area within the city.
- (2) Stand or sit in or near the entrance to any dwelling or place of business, or in any other place which may disrupt or impede pedestrian or vehicular traffic.
- (3) Offer to sell goods or services or solicit in vehicular traffic lanes, or operate a "road block" of any kind.
- (4) Call attention to his business or merchandise or to his solicitation efforts by crying out, by blowing a horn, by ringing a bell, or creating other noise, except that the street barker shall be allowed to cry out to call attention to his business or merchandise during recognized parade or festival days of the city.
- (5) Enter in or upon any premises or attempt to enter in or upon any premises wherein a sign or placard bearing the notice "Peddlers or Solicitors Prohibited," or similar language carrying the same meaning, is located.

9-206. Restrictions on transient vendors. A transient vendor shall not advertise, represent, or hold forth a sale of goods, wares or merchandise as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver's manufacturer's wholesale, cancelled order, or misfit sale, or closing-out sale, or a sale of any goods damaged by smoke, fire, water or otherwise, unless such advertisement, representation or holding forth is actually of the character it is advertised, represented or held forth.

9-207. Fundraising roadblocks. (1) Fundraising roadblocks may be conducted within the city limits of Maynardville, Tennessee provided that there is full compliance with all of the terms and provisions contained in this section.

(2) Before any fundraising roadblock is conducted in the City of Maynardville, the participants allowed by this section must first apply for and receive written permission to conduct said fundraising roadblock within the city limits of Maynardville. The City of Maynardville shall provide the proper form to be used for application for permission to conduct said fundraising roadblock and said application must be completed in full before being considered. Permission to conduct said fundraising roadblock shall be granted by the Maynardville City Manager or such designee which the city manager may designate from time to time. All allowed participants applying for permission to conduct a fundraising roadblock must provide a copy of said participant's current liability insurance with detailed coverage limits. Permission to conduct said fundraising roadblock shall not be granted until sufficient proof of current and in effect liability insurance with detailed coverage limits is presented to the City of Maynardville and approved as proper.

(3) No more than two (2) fundraising roadblocks shall be conducted within the City of Maynardville during any month. Applications shall be processed on a first come first served basis and the City of Maynardville reserves the right to not grant permission for the conducting of a fundraising roadblock during any given month if the city so chooses.

(4) Once proper permission to conduct said fundraising roadblock has been granted, the following procedures must all be followed at all times during the time which said roadblock is conducted:

(a) Said fundraising roadblock shall be conducted between the hours of 8:00 A.M. and 2:00 P.M. on that Saturday or Sunday which permission is granted for and shall take place at the traffic control lights located at the intersection of Tennessee State Highway 33 and Hickory Star Road. No other locations are allowed for the conducting of fundraising roadblocks within the city limits of Maynardville. No vehicles shall be approached during said roadblock until the traffic control light has turned red and the flow of traffic has stopped. No fundraising shall take place during anytime that traffic is proceeding in its normal and customary flow. Said fundraising roadblock shall yield at all times to emergency and law enforcement vehicles.

(b) The organizer of said fundraising roadblock shall designate on the application for said fundraising roadblock the name of that individual who shall be in charge of said fundraising roadblock and said individual must be present at all times while said roadblock is being conducted.

(c) All individuals who participate in said fundraising roadblock must at all times wear proper orange, yellow or other colored reflective safety vests while said roadblock is being conducted. Any individual who does not have on the proper reflective safety vest shall be required to leave and not participate in said roadblock. Failure to comply shall result in the immediate termination of said fundraising roadblock and the Maynardville City Police Department is authorized to take such steps as are reasonable and proper to terminate said roadblock in such event.

(d) All participants granted permission to conduct said fundraising roadblock shall give the time and schedule of said roadblock to the City of Maynardville Police Department.

(5) The participants allowed to conduct fundraising roadblocks within the city limits of the City of Maynardville, provided that proper compliance with all terms and provisions of this section have been met and accomplished, are designated as follows:

- (a) The Union County Rescue Squad;
- (b) The Paulette Volunteer Fire Department;
- (c) The Northeast Union Volunteer Fire Department;
- (d) The Union County VFW;

- (e) The Union County Children's Center; and
- (f) The Shriner's Organization.

The allowed participants listed above can conduct only one (1) fundraising roadblock per year unless permission is granted by the board of commissioners of the City of Maynardville to conduct an additional roadblock within the year. The City of Maynardville specifically reserves the right to designate additional participants allowed to conduct fundraising roadblocks within the City of Maynardville at any time in the future. All allowed participants must conform to and are subject to the terms and provisions contained within this section. The list of allowed participants and all applications under this section shall be retained on file in the office of the Maynardville City Recorder.

(6) The City of Maynardville specifically reserves the right at all times to terminate the right of any allowed participant to conduct future fundraising roadblocks within the City of Maynardville. If such right is terminated, written notice of the termination of said right shall be provided by the city to the participant whose rights are terminated. (Ord. #0-2013-7, Dec. 2013)

9-208. Display of permit. Each peddler, street barker, solicitor, solicitor for charitable purposes or solicitor for subscriptions is required to have in his possession a valid permit while making sales or solicitations, and shall be required to display the same to any police officer upon demand.

9-209. Suspension or revocation of permit. (1) Suspension by the recorder. The permit issued to any person or organization under this chapter may be suspended by the city recorder for any of the following causes:

- (a) Any false statement, material omission, or untrue or misleading information which is contained in or left out of the application; or
- (b) Any violation of this chapter.

(2) Suspension or revocation by the board of commissioners. The permit issued to any person or organization under this chapter may be suspended or revoked by the board of commissioners, after notice and hearing, for the same causes set out in paragraph (1) above. Notice of the hearing for suspension or revocation of a permit shall be given by the city recorder in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed to the permit holder at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing.

9-210. Expiration and renewal of permit. The permit of peddlers, solicitors and transient vendors shall expire on the same date that the permit holder's privilege license expires. The registration of any peddler, solicitor, or transient vendor who for any reason is not subject to the privilege tax shall be

issued for six (6) months. The permit of street barkers shall be for a period corresponding to the dates of the recognized parade or festival days of the city. The permit of solicitors for religious or charitable purposes and solicitors for subscriptions shall expire on the date provided in the permit, not to exceed thirty (30) days.

9-211. Violations and penalty. In addition to any other action the city may take against a permit holder in violation of this chapter, such violation shall be punishable under the general penalty provision of this code. Each day a violation occurs shall constitute a separate offense.

CHAPTER 3**POOL ROOMS****SECTION**

9-301. Hours of operation regulated.

9-302. Gambling etc., not to be allowed.

9-301. 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 6:00 A.M. on other days. (2001 Code, § 9-401)

9-302. Gambling, etc., not to be allowed. It shall be unlawful for any person operating, conducting, or maintaining any place where pool tables or billiard tables are kept for public use or hire to permit any illegal gambling or other unlawful or immoral conduct on such premises. (2001 Code, § 9-403)

CHAPTER 4

CABLE TELEVISION

SECTION

9-401. To be furnished under franchise.

9-401. To be furnished under franchise. Cable television shall be furnished to the City of Maynardville and its inhabitants under franchise granted by the board of commissioners of the City of Maynardville, Tennessee. The rights, powers, duties and obligations of the City of Maynardville and its inhabitants are clearly stated in the franchise agreement executed by, and which shall be binding upon the parties concerned.¹

¹The cable television franchise agreement is available in the office of the city recorder.

CHAPTER 5

SEXUALLY ORIENTED ESTABLISHMENTS

SECTION

- 9-501. Purpose and findings.
- 9-502. Findings and rationale.
- 9-503. Definitions.
- 9-504. Classification.
- 9-505. License required.
- 9-506. Issuance of license.
- 9-507. Fees.
- 9-508. Inspection.
- 9-509. Expiration of license.
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- 9-511. Revocation.
- 9-512. Hearing; license denial; suspension; revocation; appeal.
- 9-513. Transfer of license.
- 9-514. Location of sexually oriented businesses.
- 9-515. Alcoholic beverages prohibited.
- 9-516. Regulations pertaining to exhibition or sexually explicit films, videos, or live entertainment in viewing rooms.
- 9-517. Additional regulations for escort agencies.
- 9-518. Additional regulations concerning public nudity.
- 9-519. Display for sale or rental of material harmful to minors.
- 9-520. Prohibition against children in a sexually oriented business.
- 9-521. Hours of operations.
- 9-522. Exemptions.
- 9-523. Injunction.
- 9-524. Violations and penalty.

9-501. Purpose and findings. It is the purpose of this chapter is to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material. (Ord. #0-2005-12, Dec. 2005)

9-502. Findings and rationale. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z. J. Gifts D-4, L.L.C.*, 124 S. Ct. 2219 (June 7, 2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playmate Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *DLS, Inc. v. City of Chattanooga*, 107 F. 3d 403 (6th Cir. 1997); *Brandywine, Inc., v. City of Richmond*, 359 F.3d 830 (6th Cir. 2004); *Currence v. City of Cincinnati*, 2002 U.S. App. LEXIS 1258; *Broadway Books v. Roberts*, 642 F. Supp. 486 (E.D. Tenn 1986); *Bright Lights, Inc. v. City of Newport*, 830 F. Supp. 378 (E.D. Ky. 1993); *Richland Bookmart v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Deja vu Metro Government*, 1999 U.S. App. LEXIS 535 (6th Cir. 1999); *Bamon Corp. v. City of Dayton*, 7923 F.2d 470 (6th Cir.1991); *Triplett Grille, Inc. v. City of Akron*, 40 F.3d 129 (6th Cir. 1994); *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990); *Deja vu of Nashville. Inc., et al. v. Metropolitan Government of Nashville and Davidson County*, 274 F.3d 377 (6th Cir. 2001); *Z. J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *ILO Investments, v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Threesome Entertainment v. Strittmather*, 4 F. Supp. 2d 710 (N.D. Ohio 1998); *Bigg World Discount Video Sales, Inc. v. Montgomery County*; 256 F. Supp. 2d 385 (D. Md. 2003); *Kentucky Restaurant Concepts, Inc. v. City of Louisville and Jefferson County*, 209 F. Supp. 2d 672 (W.D. Ky. 2002); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th C ir. 1999); *Restaurant Ventures v. Lexington-Fayette Urban County Gov't.*, 60 S.W. 3d 572 (City of Tullahoma. App. Ky. 2001); *World Wide Video of Washington. Inc., v. City of Spokane*. 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc., v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garen Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Minneapolis, Minnesota - 1980; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the board of commissioners finds:

(1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanisms to make the owners

of these establishments responsible for the activities that occur on their premises.

(2) Certain employees of sexually oriented businesses, defined in this chapter as adult theaters and adult cabarets, engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

(4) Offering and providing such space encourages such activities, which creates unhealthy conditions.

(5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

(6) At least fifty (50) communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, non A, non B amegiasis, salmonella infections and shigella infections.

(7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS (acquired immunodeficiency syndrome) caused by the human immunodeficiency virus (HIV) in the United States; 600 in 1982; 2,200 in 1983; 4,600 in 1984; 8,555 in 1985, and 253,448 through December 31, 1992.

(8) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982, and 45,200 through November, 1990.

(9) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.

(10) In his report of October 22, 1986, the Surgeon General of the United States has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

(11) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(12) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(13) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.

(14) The findings noted in subsections (1) through (13) raise substantial governmental concerns.

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

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

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

(18) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

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

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

(21) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this chapter.

(22) The barring of such individuals from the management of adult uses for a period of years serves as deterrent to, and prevents conduct which leads to, the transmission of sexually transmitted diseases.

(23) The general welfare, health, morals, and safety of the citizens of the city will be promoted by the enactment of this chapter. (Ord. #0-2005-12, Dec. 2005)

9-503. Definitions. Words, terms and phrases in this chapter shall be defined as follows:

(1) "Adult arcade" means any place to which the public is permitted or invited, wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matters exhibiting "specified sexual activities" or "specified anatomical areas."

(2) "Adult bookstore" or "adult video store" means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas."

A business purpose shall be a principal business purpose if any one of the following applies:

(a) A principal portion of the business' displayed merchandise consists of the foregoing enumerated items, or

(b) A principal portion of the wholesale value of the business' displayed merchandise consists of the foregoing enumerated items, or

(c) A principal portion of the retail value of the business' displayed merchandise consists of the foregoing enumerated items, or

(d) A principal portion of the business' revenues derive from the sale or rental, for any form of consideration of the foregoing enumerated items, or

(e) A principal portion of business' interior display space is used for the display, sale, or rental of the foregoing enumerated items, or

(f) A substantial or significant portion of the business' stock and trade is books, magazines and other periodicals, videotapes or other electronic media which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, or

(g) The business is an adult arcade, which is any place to which the public is permitted or invited where coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas." For the purposes of this chapter, substantive or significant shall mean more than one-third ($\frac{1}{3}$).

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

(a) Persons who appear semi-nude; or

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

(c) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of "specified sexual activities" or "specified anatomical areas."

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

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

(b) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

(c) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

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

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

(7) "City" means the City of Maynardville, Tennessee.

(8) "Distinguished or characterized by and emphasis upon" means the dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or display of "specified anatomical areas" or "specified sexual activities." As applied in this section, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

(9) "Employee," "employ" and "employment" describe and pertain to any person who performs any service on the premises of a sexually oriented business on a full-time, part time, or contract basis, regardless of whether the person is denominated as an employee, independent contractor, agent, or by

another status. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises, or for the delivery of goods to the premises.

(10) "Enforcement officer" shall mean the code enforcement or police officer or such person as may be designed by the board of commissioners.

(11) "Escort" means a person who, for consideration, and for another person, agrees or offers:

- (a) To act as a companion, guide, or date, or
- (b) To privately model lingerie, or
- (c) To privately perform a striptease.

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

(13) "Establish" or "establishment" means and includes any of the following:

- (a) The opening or commencement of any sexually oriented business as a new business;
- (b) The conversion of an existing business, whether or not a sexually oriented business to any sexually oriented business;
- (c) The addition of any sexually oriented business to any other existing sexually oriented business; or
- (d) The relocation of any sexually oriented business.

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

(15) "Licensee" means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

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

(17) "Operate" or "cause to be operated" means to cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who is authorized to exercise operational control of the business, or who causes to function or who puts or keeps in operation, the business. A person may be found to be operating or

causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

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

(19) "Regularly features" or "regularly shown" means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

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

(21) "Semi-nude model studio" means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity do so in a modeling class operated:

(a) By a college, junior college, or university supported entirely or partly by taxation;

(b) By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or

(c) In a structure:

(i) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and

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

(22) "Sexual device" means any three-dimensional object primarily designed and marketed for the stimulation of the male or female human genital organs or anus, and shall include three-dimensional reproductions or representations of the human genital organs or anus. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

(23) "Sexual device shop" means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

(24) "Sexual encounter center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of "specified sexual activities." The definition of sexual encounter center or any sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

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

(26) "Specified anatomical area" means:

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

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

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

(a) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child, distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

(b) For which:

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

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

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

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

(28) "Specified sexual activities" means any of the following:

(a) The fondling of another person's genitals, pubic region, anus or female breasts;

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

(c) Excretory functions as a part of or in connection with any of the activities set forth in subsections (1) through (2) above.

(29) "Substantial enlargement" of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this chapter takes effect.

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

(a) The sale, lease, or sublease of the business;

(b) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control. (Ord. #0-2005-12, Dec. 2005, modified)

9-504. Classification. Sexually oriented businesses are classified as follows:

(1) Adult arcades;

(2) Adult bookstores, adult novelty stores, or adult video stores;

(3) Adult cabarets;

(4) Adult motels;

(5) Adult motion picture theaters;

(6) Adult theaters;

(7) Escort agencies;

(8) Semi-nude model studios; and

(9) Sexual encounter centers. (Ord. #0-2005-12, Dec. 2005)

9-505. License required. (1) It is unlawful:

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

(b) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the city pursuant to this chapter.

(c) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this chapter.

(2) An application for a license must be made on a form provided by the city. All applicants must be qualified according to the provisions of this chapter.

(3) An applicant for a sexually oriented business license or a sexually oriented business employee licensed shall file with the enforcement officer a completed application made on a form prescribed and provided by the city recorder. An application shall be considered complete if it includes the information required in this section. The applicant shall be qualified according to the provisions of this chapter. The application shall be notarized. The application shall include the information called for in subsections (a) through (h), and where applicable, subsection (i), as follows:

(a) The full true name and any other names used in the preceding five (5) years.

(b) The current business address and any other mailing address of the applicant.

(c) Either a set of fingerprints suitable for conducting necessary background checks pursuant to this chapter, or the applicant's Social Security number, to be used for the same purpose.

(d) Two (2) portrait photographs at least two (2) inches by two (2) inches of each applicant.

(e) The names and addresses of all persons, partnerships, limited liability, entities, or corporations holding any beneficial in the real estate upon which such adult oriented establishment is to be operated, including but not limited to, contract purchasers or sellers, beneficiaries of land trust or lessees submitting to applicant.

(f) If the application is for a sexually oriented business license, the name, business location, legal description, business mailing address and phone number of the proposed sexually oriented business.

(g) Written proof of age, in the form of either

(i) A copy of the birth certificate and current photo,

(ii) A current driver's license with picture, or

(iii) Other picture identification document issued by a governmental agency.

(h) The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, and whether any such license or permit has been denied, revoked, or suspended, and if so, the reason or reasons therefor.

(i) If the application is for a sexually oriented business license, the name and address of the statutory agent or other agent authorized to receive service of process.

The information provided pursuant to subsections (a) through (i) shall be supplemented in writing by certified mail, return receipt requested, to the enforcement officer within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

(4) The application for a sexually oriented business license shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(5) If the person who wishes to operate a sexually oriented business is an individual, he or she shall sign the application for a license as applicant. If the person that wishes to operate a sexually oriented business is other than an individual (such as a corporation), each officer, director, general partner, or other person who will participate directly in decisions relating to management of the business shall sign the application for a license as the applicant. Each applicant must be qualified under § 9-605, and each applicant shall be considered as a licensee if a license is granted.

(6) A person who possesses a valid business license is not exempt from the requirement of obtaining any required sexually oriented business license. A person who operates a sexually oriented business and possesses a business license shall comply with the requirements and provisions of this chapter, where applicable.

(7) The applicant shall state that he or she is familiar with the provisions of this chapter and is in compliance with and will continue to comply with the provisions of this chapter. The applicant shall further acknowledge that he or she understands that his or her failure to comply with the chapter shall result in the denial, suspension or revocation of a license. (Ord. #0-2005-12, Dec. 2005)

9-506. Issuance of license. (1) Upon the filing of a completed application for a sexually oriented business license or a sexually oriented business employee license, the city recorder shall issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the city recorder to deny or grant the license. Within twenty (20) days after the receipt of a completed application, the city recorder shall either issue a license, or issue a written notice of intent to deny a license, to the applicant. The city recorder shall approve the issuance of a license unless one or more of the following is found to be true:

- (a) An applicant is less than eighteen (18) years of age.
- (b) An applicant is delinquent in the payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to a sexually oriented business.

(c) An applicant has failed to provide information as required by § 9-605 for issuance of the license.

(d) An applicant has been convicted of a specified criminal activity. The fact that a conviction is being appealed shall have no effect under this subsection. For the purpose of this subsection, "conviction" means:

(i) A conviction, a guilty plea, or a plea of nolo contendere;

(ii) Includes a conviction of any business entity for which the application had, at the time of the offense leading to the conviction for a specified criminal activity, a management responsibility or a controlling interest.

(e) The license application fee required by this chapter has not been paid.

(f) An applicant has falsely answered a question or request for information on the application form.

(g) The proposed sexually oriented business is located in a zoning district other than a district in which sexually oriented businesses are allowed to operate under the Maynardville Zoning Ordinance, or is not in compliance with the location restrictions established for sexually oriented businesses in the appropriate zoning district(s).

(2) An applicant that is ineligible for a license due to subsection (1)(d) of this section may qualify for a sexually oriented business license only when the time period required by the applicable subsection in § 9-502 has elapsed.

(3) The license, if granted, shall state on its fact the name of the person or persons to whom it is granted, the number of the license issued to that applicant, the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. A sexually oriented business employee license shall contain a photograph of the licensee. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing, and shall produce such license for inspection upon request by a law enforcement officer or other authorized city official. (Ord. #0-2005-12, Dec. 2005, modified)

9-507. Fees. Each applicant shall pay a non-refundable initial application, license fee of two hundred fifty dollars (\$250.00) and annual renewal fee of one hundred twenty-five dollars (\$125.00) for a sexually oriented business license. Each applicant for a sexually oriented business employee license shall pay the fee of one hundred dollars (\$100.00) for the initial license, and fifty dollars (\$50.00) for the renewal fee, for a sexually oriented business employee license. (Ord. #0-2005-12, Dec. 2005)

9-508. Inspection. (1) For the purpose of ensuring compliance with this chapter, an applicant, operator or licensee shall permit law enforcement officers and any other federal, state, county or city agency in the performance of any function connected with the enforcement of this chapter, normally and regularly conducted by such agencies, to inspect, at any time the business is occupied or open for business, those portions of the premises of a sexually oriented business which patrons or customers are permitted to occupy.

(2) The provisions of this section do not apply to areas of an adult motel which re currently being rented by a customer for use as a permanent or temporary habitation. (Ord. #0-2005-12, Dec. 2005)

9-509. Expiration of license. (1) Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in § 9-505. An application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.

(2) When the city denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial. If, subsequent to the denial, the city finds that the basis for denial of the renewal license has been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date that the denial became final. (Ord. #0-2005-12, Dec. 2005)

9-510. Suspension. The city shall issue a written intent to suspend a license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:

- (1) Violated or is not in compliance with any section of this chapter; or
- (2) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter. (Ord. #0-2005-12, Dec. 2005)

9-511. Revocation. (1) The enforcement officer shall issue a written statement of intent to revoke a sexually oriented business license if a cause of suspension in § 9-510 occurs and the license has been suspended within the preceding twelve (12) months.

(2) The enforcement officer shall issue a written statement of intent to revoke a sexually oriented business license if the enforcement officer determines that:

- (a) A licensee gave false or misleading information in the material submitted during the application process;
- (b) A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- (c) A licensee has knowingly allowed prostitution on the premises;

(d) A licensee has knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(e) A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises. This subsection will not apply to an adult motel, unless the licensee knowingly allowed sexual activities to occur either

(i) In exchange for money, or

(ii) In a public place or within public view.

(3) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(4) When, after the notice and hearing procedure described in § 9-512, the enforcement officer revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation becomes effective, provided that, if the conditions of § 9-512(2) are met, a provisional license will be granted pursuant to that section. If, subsequent to revocation, the enforcement officer finds that the basis for the revocation found in subsections (2)(a) and (2)(d) of this section has been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. (Ord. #0-2005-12, Dec. 2005)

9-512. Hearing; license denial; suspension, revocation; appeal.

(1) If the enforcement officer determines that facts exist for denial, suspension, or revocation of a license under this chapter, the enforcement officer shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend, or revoke the license, including the grounds thereof, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the enforcement officer. Within five (5) working days of receipt of such notice, the respondent may provide to the city manager, in writing, a response that shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked. Within three (3) days of the receipt of respondent's written response, the city manager shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding.

Within ten (10) working days of the receipt of respondent's written response, the city manager shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the city manager in the time stated or, if after the hearing, the city manager finds that grounds as specified in this chapter exist for denial, suspension, or revocation, then such denial, suspension, or revocation shall become final five (5) days after the city manager sends, by certified mail, written notice that the license has been

denied, suspended, or revoked. Such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.

If the city manager finds that no grounds exist for denial, suspension, or revocation of a license, then within five (5) days after the hearing, the city manager shall withdraw the intent to deny, suspend, or revoke the license, and shall so notify the respondent in writing by certified mail of such action and shall contemporaneously issue the license.

(2) When a decision to deny, suspend, or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied, or whose license has been suspended or revoked, shall have the right to appeal such action to a court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement of the denial, suspension or revocation, the city shall immediately issue the aggrieved party a provisional license. The provisional license shall allow the aggrieved party to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee, as the case may be, and will expire upon the court's entry of a judgment on the aggrieved party's action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement. (Ord. #0-2005-12, Dec. 2005)

9-513. Transfer of license. A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application. (Ord. #0-2005-12, Dec. 2005)

9-514. Location of sexually oriented businesses. (1) A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business in any zoning district other than commercial, business or industrial, as defined and described in the Maynardville Zoning Ordinance.

(2) A person commits an offense if the person operates or causes to be operated a sexually oriented business within one thousand feet (1,000') of:

(a) A church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities;

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

(c) A boundary of a residential district as defined in the Maynardville Zoning Ordinance;

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

(e) The property line of a lot devoted to a residential use as defined in the Maynardville Zoning Ordinance;

(f) An entertainment business which is oriented primarily towards children or family entertainment; or

(g) Any premises licensed pursuant to the alcoholic beverage control regulations of the state.

(3) A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within two thousand feet (2,000') of another sexually oriented business.

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

(5) For the purpose of subsection (2) of this section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection (2). The presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

(6) For purposes of subsection (3) of this section, the distance between any two (2) sexually oriented business shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

(7) Any sexually oriented business lawfully operating on December 13, 2005, that is in violation of subsection (1) through (6) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one (1) year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within two thousand (2,000) feet of one another and otherwise in a permissible location, the sexually oriented business which was

first established and continually operating at a particular location is the conforming use and the later established business(es) is/are nonconforming.

(8) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a use listed in subsection (2) of this section within two thousand (2,000) feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application is made for a license after the applicant's previous license has expired or been revoked. (Ord. #0-2005-12, Dec. 2005)

9-515. Alcoholic beverages prohibited. The sale, furnishing or use of any alcoholic beverages as defined in Tennessee Code Annotated, § 57-3-101(a)(1) or beer as defined in Tennessee Code Annotated, § 57-5-101(a) and (b) in any sexually oriented business specified in § 9-504 is prohibited. (Ord. #0-2005-12, Dec. 2005)

9-516. Regulations pertaining to exhibition of sexually explicit films, videos or live entertainment in viewing rooms. (1) A person who operates or causes to be operated a sexually oriented business (other than an adult motel) which exhibits on the premises, in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(a) Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit, if granted, will be conspicuously posted. A professionally prepared diagram the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The city may waive the foregoing diagram for renewal application if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

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

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

(d) It is the duty of the licensee of the premises to ensure that at least one (1) licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be direct line of sight from the manager's station.

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

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

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

(i) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(j) No licensee shall allow openings of any kind to exist between viewing rooms or booths.

(k) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(l) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(m) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

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

(2) A person having a duty under subsections (a) through (n) of subsection (1) herein commits a misdemeanor if he or she knowingly fails to fulfill that duty. (Ord. #0-2005-12, Dec. 2005)

9-517. Additional regulations for escort agencies. (1) An escort agency shall not employ any person under the age of eighteen (18) years.

(2) A person commits an offense if the person acts as an escort, or agrees to act as an escort, for any person under the age of eighteen (18) years. (Ord. #0-2005-12, Dec. 2005)

9-518. Additional regulations concerning public nudity. (1) It shall be a misdemeanor for a person to knowingly and intentionally, in a sexually oriented business, appear in a state of nudity or engage in specified sexual activities.

(2) It shall be a misdemeanor for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition, unless the person is an employee who, while semi-nude, is at least six (6) feet from any patron or customer and on a stage at least two (2) feet from the floor.

(3) It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to receive directly any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity directly to any employee, while that employee is semi-nude in a sexually oriented business.

(4) It shall be a misdemeanor for an employee, while semi-nude, to knowingly and intentionally touch a customer or the clothing of a customer. (Ord. #0-2005-12, Dec. 2005)

9-519. Display for sale or rental of material harmful to minors.¹

(1) It is unlawful for a person to display for sale or rental a visual depiction, including a videocassette tape or film, video game, computer software game, or a written representation, including a book, magazine or pamphlet, that contains material harmful to minors anywhere minors are lawfully admitted.

(2) The state has the burden of proving that the material is displayed. Material is not considered display under this section if:

- (a) The material is:
 - (i) Placed in "binder racks" that cover the lower two thirds (2/3) of the material and the viewable one third (1/3) is not harmful to minors;
 - (ii) Located at a height of not less than five and one half feet (5 1/2') from the floor; and

¹State law reference

Tennessee Code Annotated, § 39-17-914.

(iii) Reasonable steps are taken to prevent minors from perusing the material.

(b) The material is sealed, and, if it contains material on its cover that is harmful to minors, it must also be opaquely wrapped;

(c) The material is placed out of sight underneath the counter;
or

(d) The material is located so that the material is not open to view by minors and is located in an area restricted to adults;

(e) Unless its cover contains material which is harmful to minors, a video cassette tape or film is not considered displayed if it is in a form that cannot be viewed without electrical or mechanical equipment and the equipment is not being used to produce a visual depiction; or

(f) In a situation if the minor is accompanied by the minor's parents or guardian, unless the area is restricted to adults as provided in subsection (2)(d).

(3) A violation of this section is a Class C misdemeanor for each day the person is in violation of this section.

9-520. Prohibition against children in a sexually oriented business. A person commits a misdemeanor if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business. (Ord. #0-2005-12, Dec. 2005)

9-521. Hours of operation. No sexually oriented business, except for an adult motel, may remain open at any time between the hours of eleven o'clock (11:00) P.M. and ten o'clock (10:00) A.M. on weekdays and Saturdays, and eleven o'clock (11:00) A.M. and noon (12:00) P.M. on Sundays. (Ord. #0-2005-12, Dec. 2005)

9-522. Exemptions. It is a defense to prosecution under § 9-517 that a person appearing in a state of nudity did so in a modeling class operated:

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

(2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

(3) In a structure:

(a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

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

(c) Where no more than one (1) nude model is on the premises at any one time. (Ord. #0-2005-12, Dec. 2005)

9-523. Injunction. A person who operates or causes to be operated a sexually oriented business without a valid license or otherwise in violation of this chapter is subject to a suit for injunction as well as prosecution for criminal violations. Such violations shall be punishable by a fine of fifty dollars (\$50.00). (Ord. #0-2005-12, Dec. 2005, modified)

9-524. Violations and penalty. Any person who violates any provision of this chapter shall, upon conviction or upon a plea of guilty or nolo contendere shall be fined fifty dollars (\$50.00). Each day of any activity prohibited by this chapter which takes place constitutes a separate offense or violation. (Ord. #0-2005-12, Dec. 2005, modified)

CHAPTER 6

MASSAGE PARLORS

SECTION

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9-601. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Employee" means any person over eighteen (18) years of age other than a massagist, masseurs, and masseuses who renders any service in connection with the operation of a massage business or establishment and receives compensation from the operator of such business for its patrons.

(2) "Licensee" means the person to whom a license has been issued to own and operate a massage establishment.

(3) "Massage " means any method of pressure on or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating

external parts of the human body with the hands or with the aid of any mechanical electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotion, ointment or other similar preparations commonly used in the practice of massage under such certain circumstances that it is reasonably expected that the person to whom the treatment is provided, or some third person on his or her behalf, will pay money or give any other consideration or any gratuity therefor.

(4) "Massage parlor" means any establishment having a source of income or compensation derived from the practice of massage and which has a fixed place of business where any person engages in or carries on any of the activities listed under the definition of massage in this section.

(5) "Massagist" means a massagist, masseur, masseuse or any person who, for any consideration whatsoever engages in the practice of massage.

(6) "Outcall massage service" means any business, the function of which is to engage in or carry on massages at a location designated by the customer or client, rather than at a massage establishment.

(7) "Patron" means any person over eighteen (18) years of age who receives a massage under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefor.

(8) "Permittee" means any person to whom a permit has been issued to act in the capacity of a massagist, masseur or masseuse.

(9) "Person" means any individual, partnership, firm, association, joint stock company, limited liability company, corporation or combination of individuals of whatever form or character.

(10) "Recognized school" means any school or education or educational institution licensed to do business as a school or educational institution in the state in which it is located or any school recognized by or approved by or affiliated with the American Massage and Therapy Association, Inc., and which has for its purpose the teaching of the theory, method, profession or work of massage, which school requires a resident course of study of not less than seventy (70) hours before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning following the successful completion of a course of study or learning.

(11) "Sexual or genital area" means the genitals, pubic area, buttocks, anus or perineum of any person, or the vulva or breasts of a female. (Ord. #0-2005-14, Dec. 2005)

9-602. Exemptions. This chapter shall not apply to the following individuals while engaged in the personal performance of the duties of their respective professions:

(1) Physicians, surgeons, chiropractors, osteopaths or physical therapists who are duly licensed to practice their respective professions in the state.

- (2) Nurses who are registered under the laws of this state.
- (3) Barbers and beauticians who are duly licensed under the laws of this state, except that this exemption shall apply solely to the massaging of the neck, face, scalp and hair of the customer or client for cosmetic or beautifying purposes. (Ord. #0-2005-14, Dec. 2005)

9-603. Establishment license required. No person shall engage in or carry out the business of massage parlor unless such person has a valid massage establishment license issued by the city pursuant to the provisions of this chapter for each and every separate office or place of business conducted by such person. (Ord. #0-2005-14, Dec. 2005)

9-604. Application for massage establishment license. Every applicant for a license to maintain, operate or conduct a massage parlor establishment shall file an application under oath with the city upon a form provided by the city recorder and pay a nonrefundable annual license fee, which shall be two hundred fifty dollars (\$250.00) per year or any part thereof. The application, once accepted, shall be referred to the police department for investigation. Copies of the application shall within five (5) days also be referred to the compliance officer and the county health department. The departments shall within thirty (30) days inspect the premises proposed to be operated as a massage establishment, and shall make written verification to the city recorder concerning compliance with the codes of the city that they administer. The police department shall make investigation of the applicant's character and qualifications. Each application shall contain the following information:

- (1) A definition of service to be provided.
- (2) The location, mailing address and all telephone numbers where the business is to be conducted.
- (3) The name and residence address of the applicant, including the following if the applicant is other than a natural person.
 - (a) If the applicant is a corporation, the names and residence addresses of each of the officers and directors of the corporation and of each stockholder owning more than ten percent (10%) of the stock of the corporation, and the address of the corporation itself if different from the address of the massage establishment.
 - (b) If the applicant is a partnership or limited liability company, the names and residence addresses of each of the partners or members, including limited partners, and the address of the partnership or limited liability company itself if different from the address of the massage establishment.
- (4) The two (2) previous addresses immediately prior to the present address of the applicant.
- (5) Proof that the applicant is at least eighteen (18) years of age.

(6) Individual or partnership applicant's height, weight, color of eyes and hair, and sex.

(7) A copy of identification such as a driver's license and social security card.

(8) One (1) portrait photograph of the applicant at least two inches (2") by two inches (2") in size, and a complete set of the applicant's fingerprints, which shall be taken by the chief of police or his agent. If the applicant is a corporation, limited liability company or partnership, this shall include the following:

(a) If the applicant is a corporation, one (1) portrait photograph at least two inches by two inches (2" x 2") in size of all officers and managing agents of the corporation, and a complete set of the same officers' and agents' fingerprints, which shall be taken by the chief of police or his agent.

(b) If the applicant is a partnership or limited liability company, one (1) front-face portrait photograph at least two inches (2") by two inches (2") in size of each partner or member, including limited partners in the partnership, and a complete set of each partner, member or limited partner's fingerprints, which shall be taken by the chief of police or his agent.

(9) Business, occupation or employment of the applicant for the three (3) years immediately preceding the date of application.

(10) The massage or similar business license history of the applicant; and whether such person, in previously operating in this or another city or state, has had a business license revoked or suspended, the reason thereof, and the business activity or occupation subsequent to such action of suspension or revocation.

(11) All criminal convictions other than misdemeanor traffic violations, including the dates of convictions, nature of the crimes and place convicted.

(12) The name and address of each massagist who is or will be employed in the establishment.

(13) A diploma or certificate of graduation from a recognized school or other institution of learning wherein the method, profession and work of massage is taught; provided, however, that if the applicant will not personally engage in the practice of massage, the applicant need not possess such diploma or certificate of graduation from a recognized school or other institution of learning wherein the method, profession and work of massage is taught.

(14) The name and address of any massage business or other establishment owned or operated by any person whose name is required to be given in subsection (3) of this section wherein the business or profession of massage is carried on.

(15) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.

(16) Authorization for the city and its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application, and the qualifications of the applicant for the license.

(17) Such other identification and information necessary to discover the truth of the matters specified in this section as required to be set forth in the application.

(18) The names, current addresses and written statements of at least three (3) bona fide permanent residents of the United States that the applicant is of good moral character. If the applicant is able, the statement must first be furnished from residents of the city, then the county, then the state and lastly from the rest of the United States. These references must be persons other than relatives and business associates.

Upon completion of such form and the furnishing of all information required in this section, the city recorder shall accept the application for the necessary investigations. The holder of a massage parlor establishment license shall notify the police department of each change in any of the data required to be furnished by this section within ten (10) days after such change occurs. (Ord. #0-2005-14, Dec. 2005)

9-605. Massagist's permit required. No person shall practice massage as a massagist, employee or otherwise unless he has a valid and subsisting massagist's permit issued to him by the city pursuant to the provisions of this chapter. (Ord. #0-2005-14, Dec. 2005)

9-606. Application. Application for a massagist's permit shall be made to the city recorder in the same manner as provided in this chapter for massage establishment licenses, accompanied by the annual nonrefundable massagist's permit fee of one hundred dollars (\$100.00) per year or part thereof. The application shall contain but not be limited to the following:

(1) The business address and all telephone numbers where the massage is to be practiced;

(2) Name and residence address, and all names, nicknames and aliases by which the applicant has been known, including the two (2) previous addresses immediately prior to the present address of the applicant;

(3) Social security number, driver's license number, if any, and date of birth;

(4) The applicant's weight, height, color of hair and eyes, and sex;

(5) Written evidence that the applicant is at least eighteen (18) years of age;

(6) A complete statement of all convictions of the applicant for any felony or misdemeanor or violation of a local ordinance, except misdemeanor traffic violations;

(7) Fingerprints of the applicant taken by the police department;

(8) Two (2) front-face portrait photographs taken within thirty (30) days of the date of application, at least two (2) inches by two (2) inches in size;

(9) The name and address of the recognized school attended, the date attended, and a copy of the diploma or certificate of graduation awarded the applicant showing the applicant has completed not less than seventy (70) hours of instruction;

(10) The massage or similar business history and experience ten (10) years prior to the date of application, including but not limited to whether or not such person, in previously operating in this or another city or state under license or permit, has had such license or permit denied, revoked or suspended, and the reasons therefor, and the business activities or occupations subsequent to such action of denial, suspension or revocation;

(11) The names, current addresses and written statements of at least five (5) bona fide permanent residents of the United States, other than relatives, that the applicant is of good moral character. If the applicant is able, the statement must first be furnished from residents of the city, then the county, then the state, and lastly from the rest of the United States;

(12) A medical certificate signed by a physician licensed to practice in the state within seven (7) days of the date of the application. The certificate shall state that the applicant was examined by the certifying physician and that the appellant is free of any communicable disease. The information required by this subsection shall be provided at the applicant's expense;

(13) Such other information, identification and physical examination of the person deemed necessary by the city recorder in order to discover the truth of the matters required in this section to be set forth in the application;

(14) Authorization for the city and its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit;

(15) A written declaration by the applicant, under penalty of perjury, that the information contained in the application is true and correct, the declaration being duly dated and signed in the city. (Ord. #0-2005-14, Dec. 2005)

9-607. Approval or denial of license or permit application; term of license or permit. The city shall act to approve or deny an application for a license or permit under this chapter within a reasonable period of time, and in no event shall the city act to approve or deny the license or permit later than ninety (90) days from the date that the application was accepted by the city recorder. Every license or permit issued pursuant to this chapter will terminate at the expiration of one (1) year from the date of its issuance, unless sooner suspended or revoked. (Ord. #0-2005-14, Dec. 2005)

9-608. Establishment license--revocation or suspension. Any license issued for a massage establishment may be revoked or suspended by the

city recorder after notice and a hearing, for good cause, or in any case where any of the provisions of this chapter are violated, or where any employee of the licensee, including a masseur or masseuse, is engaged in any conduct which violates any of the state or local laws or ordinances at the licensee's place of business and the licensee has actual or constructive knowledge by due diligence. Such license may also be revoked or suspended by the city, after notice and hearing, upon the recommendation of the county health department that such business is being managed, conducted or maintained without regard to proper sanitation and hygiene. (Ord. #0-2005-14, Dec. 2005, modified)

9-609. Massagist's permit--revocation or suspension. A massagist's permit issued by the city recorder shall be revoked or suspended where it appears that the massagist has been convicted of any offense which would be cause for denial of a permit upon an original application, has made a false statement on an application for a permit, or has committed an act in violation of this chapter. (Ord. #0-2005-14, Dec. 2005, modified)

9-610. Inspections. (1) Required. The chief of police or his authorized representative shall from time to time make inspection of each massage business establishment for the purpose of determining that the provisions of this chapter are fully complied with. It shall be unlawful for any permittee to fail to allow such inspection officers access to the premises or hinder such officer in any manner.

(2) To be permitted; application for search warrant. If in the opinion of the chief of police or his authorized representative, there is probable cause to enter a massage establishment for the purpose of making inspections and examinations pursuant to this chapter, he shall request the owner or occupant thereof to grant permission for such entry, and if refused he shall inform the chief of police, and he, or his designee, a police officer, shall make application to a judge of the circuit court for a search warrant showing the judge why the search warrant should be issued for the purposes set forth in this chapter. (Ord. #0-2005-14, Dec. 2005)

9-611. Grounds for denial of license or permit. The city shall issue a license for a massage establishment or a permit for a massagist if all requirements for a massage establishment license or massagist permit described in this chapter are met, unless it finds that:

(1) The correct permit or license fee has not been tendered to the city and, in the case of a check or bank draft, honored with payment upon presentation.

(2) The operation, as proposed by the applicant, if permitted, would not comply with all applicable laws, including but not limited to the city's building, zoning, fire and health regulations.

(3) The applicant, if an individual; or any of the stockholders holding more than ten (10) percent of the stock of the corporation or any of the officers and directors, if the applicant is a corporation; or any of the partners or members, including limited partners, if the applicant is a partnership or limited liability company; or the holder of any lien of any nature upon the business or the equipment used therein; and the manager or other person principally in charge of the operation of the business have been convicted of any of the following offenses or convicted of an offense without the state that would have constituted any of the following offenses if committed within the state:

- (a) An offense involving the use of force and violence upon the person of another that amounts to a felony.
- (b) An offense involving sexual misconduct.
- (c) An offense involving narcotics, dangerous drugs or dangerous weapons that amounts to a felony.

The city may issue a license or permit to any person convicted of any of the crimes described in this subsection (3) if it finds that such conviction occurred at least five (5) years prior to the date of the application and the applicant has had no subsequent felony convictions for crimes mentioned in this section.

(4) The applicant has knowingly made any false, misleading or fraudulent statement of fact in the permit application or in any document required by the city in conjunction therewith.

(5) The applicant has had a massage business, masseur other similar permit or license denied, revoked or suspended by the city or any other state or local agency within five (5) years prior to the date of the application.

(6) The applicant, if an individual; or any of the officers and directors, if the applicant is a corporation; or any of the partners or members, including limited partners, if the applicant is a partnership or limited liability company; and the manager or other person principally in charge of the operation of the business is not over the age of eighteen (18) years. (Ord. #0-2005-14, Dec. 2005)

9-612. Waiver of license or permit application requirements. The city shall waive the requirements of subsections 9-606(13) and 9-609(9) if the applicant furnishes satisfactory evidence that he attended not less than seventy (70) hours of instruction in a school within or without this state or in any foreign country that provides education substantially equal to or in excess of the educational requirements of this chapter. (Ord. #0-2005-14, Dec. 2005)

9-613. Licenses for multiple locations. Should any massage business have more than one (1) location where the business of massage is pursued, then a license stating both the address of the principal place of business and of the other locations shall be issued by the city recorder upon the tender of a license fee of two hundred dollars (\$200.00) for each additional location. Licenses issued for other locations shall terminate on the same date as that of the principal

place of business, regardless of the date of issuance. (Ord. #0-2005-14, Dec. 2005)

9-614. Posting of permits and licenses. (1) Every massagist shall post the permit required by this chapter in his work area.

(2) Every person licensed under this chapter shall display such license in a prominent place. (Ord. #0-2005-14, Dec. 2005)

9-615. Sale or relocation of business. Upon sale, transfer or relocation of massage establishment, the license therefore shall be null and void.; provided, however, that upon the death or incapacity of the licensee or any co-licensee of the establishment, any heir or devisee of a deceased licensee may continue the business of the massage establishment for a reasonable period of time not to exceed sixty (60) days to allow for an orderly transfer of the license. (Ord. #0-2005-14, Dec. 2005)

9-616. Business to be operated under name and at location specified in license. No person granted a license pursuant to this chapter shall operate the massage establishment under a name not specified in his license, nor shall he conduct business under any designation or location not specified in his license. (Ord. #0-2005-14, Dec. 2005)

9-617. Transfer of license or permit. No license or permit shall be transferable. An application for such transfer shall be in writing and shall be accompanied by the fees prescribed in §§ 9-606 and 9-609. The written application for such transfer shall contain the same information as requested in this chapter for initial application for the license or permit. (Ord. #0-2005-14, Dec. 2005, modified)

9-618. Register of employees. The licensee or person designated by the licensee of a massage establishment shall maintain a register of all persons employed at any time as masseurs or masseuses, and their permit numbers. Such register shall be available at the massage establishment to representatives of the city during regular business hours. (Ord. #0-2005-14, Dec. 2005)

9-619. Facilities. No license to conduct a massage establishment shall be issued unless an inspection by the city reveals that the establishment complies with each of the following minimum requirements:

(1) Construction of rooms used for toilets, tubs, steamboats and showers shall be made waterproof with approved waterproofed materials, and shall be installed in accordance with the city building code. Plumbing fixtures shall be installed in accordance with the city plumbing code.

(a) Steam rooms and shower compartments shall have waterproof floors, walls and ceilings approved by the city.

(b) Floors of wet and dry heat rooms shall be adequately pitched to one (1) or more floor drains properly connected to the sewer, except that dry heat rooms with wooden floors need not be provided with pitched floors and floor drains.

(c) A source of hot water must be available within the immediate vicinity of dry and wet heat rooms to facilitate cleaning.

(2) 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.

(3) 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.

(4) Toilet facilities shall be provided in convenient locations. When employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided for each sex. A single water closet per sex shall be provided for each twenty (20) or more employees or patrons of that sex on the premises at any one (1) time. Urinals may be substituted for water closets after one (1) water closet has been provided. Toilets shall be designated as to the sex accommodated therein.

(5) Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or washbasins shall be provided with soap and a dispenser and with sanitary towels.

(6) All electrical equipment shall be installed in accordance with the requirements of the city electrical code. (Ord. #0-2005-14, Dec. 2005)

9-620. Operation generally. (1) Cleanliness and sanitation. Every portion of the massage establishment, including appliances and apparatus, shall be kept clean and operated in a sanitary condition.

(2) Posting of prices. Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.

(3) Clothing of employees; dressing rooms. All employees, including masseurs and masseuses, shall be clean and wear clean, nontransparent outer garments covering the sexual and genital areas, whose use is restricted to the massage establishment. A separate dressing room for each sex must be available on the premises with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.

(4) Sheets and towels. All massage establishments shall be provided with clean, laundered sheets and towels in sufficient quantity, which shall be laundered after each use thereof and stored in a sanitary manner.

(5) **False advertising.** No massage establishment granted a license under the provisions of this chapter shall place, publish or distribute or cause to be placed, published or distributed any advertisement, picture, or statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce any person to purchase or utilize any professional massage services. (Ord. #0-2005-14, Dec. 2005)

9-621. Permitting under age person on premises. No person shall permit any person under the age of eighteen (18) years to come or remain on the premises of any massage business establishment as masseur, employee or patron, unless such person is on the premises on lawful business. (Ord. #0-2005-14, Dec. 2005)

9-622. Sale or possession of alcoholic beverages on premises. No person shall sell, give, dispense, provide or keep, or cause to be sold, given, dispensed; provided or kept, any alcoholic beverage on the premises of any massage business. (Ord. #0-2005-14, Dec. 2005)

9-623. Hours. No massage business shall be kept open for any purpose between the hours of 10:00 P.M. and 8:00 A.M. (Ord. #0-2005-14, Dec. 2005)

9-624. Employment of massagists not holding permit prohibited. No person shall employ as a massagist any person unless the employee has obtained and has in effect a permit issued pursuant to this chapter. (Ord. #0-2005-14, Dec. 2005)

9-625. Unlawful acts. (1) It shall be unlawful for any person holding a permit under this chapter to treat a person of the opposite sex, except upon the signed order of a licensed physician, osteopath, chiropractor, or registered physical therapist, which order shall be dated and shall specifically state the number of treatments, not to exceed ten (10). The date and hour of each treatment given and the name of the operator shall be entered on such order by the establishment where such treatments are given, and shall be subject to inspection by the police pursuant to § 9-604(3)(b). The requirements of this subsection shall not apply to treatments given in the residence of a patient, in the office of a licensed physician or osteopath or registered physical therapist or chiropractor, or in a regularly established and licensed hospital or sanitarium.

(2) It shall be unlawful for any person in a massage parlor to place his or her hands upon, to touch with any part of his or her body, 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 breasts of a female.

(3) 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 a massage parlor to expose the sexual or genital parts or any portions thereof of any other person.

(4) 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 body.

(5) 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 an agent, employee or any other person under his control or supervision to perform such acts prohibited in subsections (1), (2), or (3) of this section.

(6) It shall be further unlawful for any permittee under this chapter to administer massage on an outcall basis. Such person shall administer massage solely within an establishment licensed to carry on such business under this chapter. Any violation of these provisions shall be deemed grounds for revocation of the permit granted under this chapter. The restriction on outcall massage shall not apply to a permittee who performs outcall massage upon a customer or client who, because of reasons of physical defects or incapacities, or due to illness, is physically unable to travel to the massage establishment. If any outcall massage is performed under this exception, a record of the date and hour of each treatment, the name and address of the customer or client, and the name of the employee administering such treatment and the type of treatment administered, as well as the nature of the physical defect, incapacity or illness of the client or customer, shall be kept by the licensee or person or employee designated by the licensee. Such records shall be open to inspection by officials charged with the enforcement of public health laws. The information furnished or secured as a result of any such inspection shall be confidential. Any unauthorized disclosure or use of such information by an employee of the business or the city shall be unlawful.

(7) It shall be unlawful for any massage service to be carried on within any cubicle, room, booth or any area within a massage establishment which is fitted with a door capable of being locked. All doors or doorway coverings within a massage establishment shall have an unobstructed opening six (6) inches by six (6) inches in size capable of clear two-way viewing into and out of all cubicles, rooms or booths. The opening shall be not less than four and one-half (4 ^{1/2}) feet from the floor of the establishment, nor more than five and one-half (5 ^{1/2}) feet from the floor. Toilets and cubicles used solely for the application of liquid and vapor baths shall have no such opening in the covering door or curtain, but shall be clearly marked as to purpose on the exterior door or curtain of the cubicle, room or booth. Nothing contained in this subsection shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof, whenever such inspection is deemed necessary by the police or health departments. (Ord. #0-2005-14, Dec. 2005)

9-626. Violations and penalty. Every person, except those persons who are specifically exempted by this chapter, whether acting as an individual owner, employee of the owner, operator or employee of the operator, or whether acting as a mere agent or independent contractor for the owner, employee or operator or acting as a participant or worker, who in any way directly or indirectly gives massages or operates a massage establishment or any of the services defined in this chapter without first obtaining a license or permit from and paying a fee to do so to the city, or who violates any provisions of this chapter, shall be guilty of a misdemeanor, and upon conviction such person shall be fined fifty dollars (\$50.00) for each. (Ord. #0-2005-14, Dec. 2005)