

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.¹

CHAPTER

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CHAPTER 1

MISCELLANEOUS

SECTION

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

9-101. "Going out of business" sales. It shall be unlawful for any person falsely to represent a sale as being a "going out of business" sale. A "going out of business" sale, for the purposes of this section, shall be a "fire sale," "bankrupt sale," "loss of lease sale," or any other sale made in anticipation of the termination of a business at its present location. When any person, after advertising a "going out of business" sale, adds to his stock or fails to go out of business within ninety (90) days he shall prima facie be deemed to have violated this section. (1984 Code, § 5-101)

¹Municipal code references
Building, plumbing, wiring and housing regulations: title 12.
Junkyards: title 13.
Liquor and beer regulations: title 8.
Noise reductions: title 11.
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CHAPTER 2

PEDDLERS, ETC.¹

SECTION

9-201. Registration required.

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9-201. Registration required. It shall be unlawful for any peddler, canvasser or solicitor, or transient merchant to ply his trade within the corporate limits without first registering therefor in compliance with the provisions of this chapter. (1984 Code, § 5-201)

9-202. Exemptions. The terms of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to bona fide charitable, religious, patriotic or philanthropic organizations. (1984 Code, § 5-202)

9-203. Registration process. Every peddler, canvasser, solicitor or transient merchant shall register with the city recorder and treasurer on forms provided for that purpose by the city, and shall give the following information:

- (1) Name.
- (2) Complete permanent home and business address, the address at which the registrant is staying, and the local address from which sales will be made.
- (3) The license number of any vehicle being or to be used by the registrant whether used or to be used as the registrant's transportation or from which sales are to be made.
- (4) A brief description of the nature of the business and the goods to be sold.
- (5) The name and address of the employer including the registrant's immediate supervisor.
- (6) The length of time for which the right to do business is desired.

¹Municipal code reference
Privilege taxes: title 5.

(7) At the time of registering the registrant shall pay to the City of Munford a fee of fifty dollars (\$50.00) to cover the cost of registration.¹ (1984 Code, § 5-203, as amended by Ord. #2012-04-01, May 2012)

9-204. Exhibition of registration. Registrants are required to exhibit their registration certificates issued by the city recorder and treasurer at the request of any policeman or citizen. (1984 Code, § 5-204)

9-205. Use of streets. No registrant shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon, nor shall any be permitted to operate in a congested area where the operation might impede or inconvenience the public use of the streets. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (1984 Code, § 5-205)

9-206. Loud noises and speaking devices. No registrant, nor any person in his behalf, shall shout, cry out, blow a horn, ring a bell or use any sound amplifying device upon any of the sidewalks, streets, alleys, parks or other public places of the city or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the adjacent sidewalks, streets, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such registrant proposes to sell. (1984 Code, § 5-206)

9-207. Expiration and renewal of registration. Registration under the provisions of this chapter shall expire on the same date that the registrants privilege license expires and shall be renewed without cost if the registrant applies for and obtains a new privilege license within thirty (30) days thereafter. Registration certificates issued to registrants who are not subject to a privilege tax shall be issued for one (1) year. An application for a renewal shall be made substantially in the same form as an original application. However, only so much of the application shall be completed as is necessary to reflect conditions which have changed since the last application was filed. (1984 Code, § 5-207)

¹State law reference

Tennessee Code Annotated, §§ 62-30-101(3) and 67-4-709(a).

CHAPTER 3

CHARITABLE SOLICITORS

SECTION

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

9-301. Permit required. (1) No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose without a permit from the city recorder and treasurer authorizing such solicitation. Provided, however, that this section shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes if the solicitations are conducted exclusively among the members thereof, voluntarily and without remuneration for making such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies of any such established organization or church.

(2) "Street" shall include the paved or unpaved surface of any street, road, highway or public place, the entire width of the public right-of-way extending laterally therefrom, dividers, medians, and abutting or adjoining sidewalks or other pedestrian pathways generally open to the public for pedestrian traffic. (1984 Code, § 5-301, as amended by Ord. #2007-08-01, Aug. 2007)

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

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

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

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

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

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

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

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

CHAPTER 4**TAXICABS¹****SECTION**

- 9-401. Taxicab permit and business license required.
- 9-402. Requirements as to application and hearing.
- 9-403. Permit issued to owners only.
- 9-404. Granting of additional taxi service discretionary.
- 9-405. Hearing required for transfer of certificate.
- 9-406. Liability insurance or bond required.
- 9-407. Revocation or suspension of permit.
- 9-408. Mechanical condition of vehicles.
- 9-409. Cleanliness of vehicles.
- 9-410. Rates to be posted in cab.
- 9-411. Inspection of vehicles.
- 9-412. License and permit required for drivers.
- 9-413. Qualifications for driver's permit.
- 9-414. Revocation or suspension of driver's permit.
- 9-415. Drivers not to solicit business.
- 9-416. Parking restricted.
- 9-417. Drivers to use direct routes.
- 9-418. Taxicabs not to be used for illegal purposes.
- 9-419. Miscellaneous prohibited conduct by drivers.
- 9-420. Transportation of more than one passenger at the same time.
- 9-421. Board may amend rules and regulations.

9-401. Taxicab permit and business license required. It shall be unlawful for any person to engage in the taxicab business unless he has first obtained a taxicab permit from the recorder and has a currently effective business license. (Ord. #95-10, May 1995)

9-402. Requirements as to application and hearing. No person shall be eligible to apply for a taxicab franchise if he has a bad character or has been convicted of a felony within the last ten (10) years. Applications for taxicab franchises shall be made under oath and in writing to the recorder. The application shall state the name and address of the applicant, the name and address of the proposed taxicab stand (which must be located off the public streets and alleys), the number of cabs the applicant desires to operate, the make and models of said cabs, and such other pertinent information as the

¹Municipal code reference
Privilege taxes: title 5.

recorder may require. The application shall be accompanied by at least two (2) affidavits of reputable local citizens attesting to the good character and reputation of the applicant. The recorder will immediately refer the application to the chief of police who will, within ten (10) days after receipt of such application, make a thorough investigation of the applicant; return the application to the recorder; and make a recommendation to either grant or refuse a permit to the applicant. The City of Munford shall thereupon hold a public hearing at which time witnesses for and against the granting of the permit shall be heard. In deciding whether or not to grant the permit the city shall consider the public need for the service, the increased traffic congestion, and whether or not the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such taxicab permit. Those persons already operating taxicabs when these provisions are adopted shall not be required to make applications under this section but shall be required to comply with all of the other provisions hereof. (Ord. #95-10, May 1995)

9-403. Permit issued to owners only. No permit for the operation of such vehicle under the provisions of this chapter shall be granted to any person unless such person shall be the bona fide owner of such vehicle and, at the time of the issuance of such permit, such person so applying shall deposit with the city clerk a photostatic or true copy of the certificate of title. (Ord. #95-10, May 1995)

9-404. Granting of additional taxi service discretionary. (1) In determining whether public convenience and necessity require the licensing of any additional companies or additional vehicles for companies now operating, the board of mayor and aldermen will take into consideration whether the demands of the public require such proposed or additional service and, in addition to the other requirements of this chapter, there shall be taken into consideration the increased traffic congestion and demand for increased parking space upon the streets of the city which may result, and whether the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such additional permits.

(2) No person who may be granted a permit shall be allowed to increase the number of vehicles therein designated or to enlarge upon the authority granted to him by such permit, but every increase in the number of vehicles operated shall be subject to the approval of the board of mayor and aldermen in the same manner and to the same extent as is herein provided for the original issuance of the permit.

(3) In case any vehicle licensed under the provisions of this chapter should be retired by the owner because it is worn out or damaged, or not worthy of repair, no other vehicle shall be put in its place by the owner without compliance with § 9-403 hereof, but a public hearing in this event shall be dispensed with. (Ord. #95-10, May 1995)

9-405. Hearing required for transfer of certificate. No permit of public convenience and necessity granted under the provisions of this chapter shall be assigned, transferred or alienated to any person except after public hearing before the board of mayor and aldermen as herein before prescribed, and if at such hearing it is found that public convenience and necessity warrants the transfer, the transferee shall be issued a permit of public convenience and necessity as in case of original application, and the transferor's permit voided. (Ord. #95-10, May 1995)

9-406. Liability insurance or bond required. No taxicab franchise shall be issued or continued in operation unless there is in full force and effect a liability insurance policy or bond for each vehicle authorized in an amount equal to that required by the state's Tort Liability Law as set out in Tennessee Code Annotated, § 29-20-311, 403. The following caps, or minimum coverage amounts, apply to actions arising after July 1, 1987:

- (1) Minimum limits of not less than \$130,000 for bodily injury or death of any one person in any one accident, occurrence, or act;
- (2) Not less than \$350,000 for bodily injury or death of all persons in any one accident, occurrence, or act;
- (3) In cases arising out of owning, maintaining, and using automobiles, to a limit of not less than \$50,000 for injury to or destruction of property of others in any one accident, occurrence, or act; and
- (4) A minimum limit of \$50,000, except as provided above, for injury to or destruction of property of others in any one accident.) The insurance policy or bond required by this section shall contain a provision that it shall not be cancelled except after at least twenty (20) days' written notice is given by the insurer to both the insured and the recorder of the city. (Ord. #95-10, May 1995)

9-407. Revocation or suspension of permit. The City of Munford may revoke or suspend any taxicab franchise for misrepresentations or false statements made in the application therefor or for traffic violations or violations of this chapter by the taxicab owner or any driver. (Ord. #95-10, May 1995)

9-408. Mechanical condition of vehicles. It shall be unlawful for any person to operate any taxicab in the city unless such taxicab is equipped with four (4) wheel brakes, front and rear lights, safe tires, horn, muffler, windshield wipers, and rear vision mirror, all of which shall conform to the requirements of state motor vehicle law. Each taxicab shall be equipped with a handle or latch or other opening device attached to each door of the passenger compartment so that such doors may be operated by the passenger from the inside of the taxicab without the intervention or assistance of the driver. The motor and all mechanical parts shall be kept in such condition or repair as may be reasonably necessary to provide for the safety of the public and the continuous satisfactory operation of the taxicab. (Ord. #95-10, May 1995)

9-409. Cleanliness of vehicles. All taxicabs operated in the city shall, at all times, be kept in a reasonably clean and sanitary condition. They shall be thoroughly swept and dusted at least once each day. At least once every week they shall be thoroughly washed and the interior cleaned with a suitable antiseptic solution. (Ord. #95-10, May 1995)

9-410. Rates to be posted in cab. Rates shall be conspicuously posted in each and every cab so as to be readily seen by passengers riding in the rear seat thereof, and the name of the person or company owning the cab shall be clearly designated on the outside of the cab. Taxicab owner shall furnish to the city a schedule of rates and how rates are to be computed. (Ord. #95-10, May 1995)

9-411. Inspection of vehicles. All taxicabs shall be inspected at least semiannually by the chief of police to insure that they comply with the requirements of this chapter with respect to mechanical condition, cleanliness, etc. If deemed necessary by the chief of police, taxicab owner shall be required to have vehicle inspected by a local reputable mechanic. (Ord. #95-10, May 1995)

9-412. License and permit required for drivers. No person shall drive a taxicab unless he is in possession of a state special chauffeur's license (Class D with F endorsement) and a taxicab driver's permit issued by the recorder. (Ord. #95-10, May 1995)

9-413. Qualifications for driver's permit. No person shall be issued a taxicab driver's permit unless he complies with the following to the satisfaction of the recorder:

- (1) Makes written application to the recorder.
- (2) Is at least eighteen (18) years of age and holds a state special chauffeur's license.
- (3) Undergoes an examination by a physician and is found to be of sound physique, with good eyesight and hearing and not subject to epilepsy, vertigo, heart trouble, or any other infirmity of body or mind which might render him unfit for the safe operation of a public vehicle.
- (4) Is clean in dress and person and is not addicted to the use of intoxicating liquor or drugs.
- (5) Produces affidavits of good character from two (2) reputable citizens of the city who have known him personally and have observed his conduct for at least two (2) years next preceding the date of his application.
- (6) Has not been convicted of a felony, drunk driving, driving under the influence of an intoxicant or drug, or of frequent minor traffic offenses.
- (7) Is familiar with the state and local traffic laws. (Ord. #95-10, May 1995)

9-414. Revocation or suspension of driver's permit. The City of Munford may revoke or suspend any taxicab driver's permit for violation of traffic regulations, for violation of this chapter, or when the driver ceases to possess the qualifications as prescribed in § 9-413. (Ord. #95-10, May 1995)

9-415. Drivers not to solicit business. All taxicab drivers are expressly prohibited from indiscriminately soliciting passengers or from cruising upon the streets of the city for the purpose of obtaining patronage for their cabs. (Ord. #95-10, May 1995)

9-416. Parking restricted. It shall be unlawful to park any taxicab on any street except in such places as have been specifically designated and marked by the city for the use of taxicabs. It is provided, however, that taxicabs may stop upon any street for the purpose of picking up or discharging passengers if such stops are made in such manner as not to unreasonable interfere with or obstruct other traffic and provided the passenger loading or discharging is promptly accomplished. (Ord. #95-10, May 1995)

9-417. Drivers to use direct routes. Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route. (Ord. #95-10, May 1995)

9-418. Taxicabs not to be used for illegal purposes. No taxicab shall be used for or in the commission of any illegal act, business, or purpose. (Ord. #95-10, May 1995)

9-419. Miscellaneous prohibited conduct by drivers. It shall be unlawful for any taxicab driver, while on duty, to be under the influence of, or to drink any intoxicating beverage or beer; to use illegal drugs; to use profane or obscene language; to shout or call to prospective passengers; to unnecessarily blow the automobile horn; or to otherwise unreasonably disturb the peace, quiet, and tranquility of the city in any way. (Ord. #95-10, May 1995)

9-420. Transportation of more than one passenger at the same time. No person shall be admitted to a taxicab already occupied by a passenger without the consent of such other passenger. (Ord. #95-10, May 1995)

9-421. Board may amend rules and regulations. The board of mayor and aldermen is entitled to make and enforce such additional rules as that body deems proper to regulate the operation of motor vehicles transporting persons for compensation, provided no regulation shall be made or enforced in conflict with this or any other chapter of the Munford Municipal Code. (Ord. #95-10, May 1995)

CHAPTER 5

CABLE TELEVISION

SECTION

9-501. To be furnished under franchise.

9-501. To be furnished under franchise. Cable television shall be furnished to the city and its inhabitants under franchise as the board of mayor and aldermen shall grant. The rights, powers, duties and obligations of the city and its inhabitants and the grantees of the franchise shall be clearly stated in the franchise agreement which shall be binding upon the parties concerned.¹ (1984 Code, § 13-301)

¹For complete details relating to the cable television franchise agreement see Ord. #83-1 in the office of the city recorder.

CHAPTER 6

SEXUALLY ORIENTED BUSINESS ORDINANCE

SECTION

- 9-601. Purpose and findings.
- 9-602. Definitions.
- 9-603. Classification.
- 9-604. License required.
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- 9-615. Additional regulations for adult motels.
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- 9-618. Additional regulations concerning public nudity.
- 9-619. Regulations pertaining to exhibition of sexually explicit films and videos.
- 9-620. Exterior portions of sexually oriented businesses.
- 9-621. Signage.
- 9-622. Sale, use, or consumption of alcoholic beverages prohibited.
- 9-623. Persons younger than eighteen prohibited from entry; attendant required.
- 9-624. Massage or baths administered by person of opposite sex.
- 9-625. Hours of operation.
- 9-626. Exemptions.
- 9-627. Notices.
- 9-628. Injunction.

9-601. Purpose and findings. (1) Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the city. The provisions of this ordinance 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 ordinance 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 ordinance to condone or legitimize the distribution of obscene materials.

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

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

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

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

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

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

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

(g) For the period 1985 through 1995, the total number of reported cases of AIDS in the United States caused by the immunodeficiency virus (HIV) was 523,056. *See, e.g., Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.*

(h) As of February, 1999, there have been 8203 reported cases of AIDS in the State of Tennessee.

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

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

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

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

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

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

those activities and maintain those facilities. *See, e.g.*, Final Report of the Attorney General's Commission on Pornography (1986) at 377.

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

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

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

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

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

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

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

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

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

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

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

(z) The general welfare, health, morals, and safety of the citizens of this city will be promoted by the enactment of this ordinance.

9-602. Definitions. (1) "Arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

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

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas"; or

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

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as "adult bookstore" or "adult video store." Such other business purposes will not serve to exempt such commercial establishments from being categorized as an "adult bookstore" or "adult video store" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas." A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

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

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

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

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

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

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

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

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

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

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

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

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

(8) "Employee" means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) "Semi-nude" or "semi-nudity" means the appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female

breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

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

(a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

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

(21) "Specified anatomical areas" means:

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

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

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

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

(b) For which:

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

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

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

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

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

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

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

(c) Masturbation, actual or simulated; or

(d) Excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.

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

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

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

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

(c) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

9-603. Classification. Sexually oriented businesses are classified as follows:

- (1) Adult arcades;
- (2) Adult bookstores or adult video stores;
- (3) Adult cabarets;
- (4) Adult motels;
- (5) Adult motion picture theaters;
- (6) Adult theaters;
- (7) Escort agencies;
- (8) Nude model studios; and
- (9) Sexual encounter centers.

9-604. License required. (1) It shall be unlawful:

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

(b) For any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the

sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license issued to such employee by the director pursuant to this ordinance;

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

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

(2) An application for a sexually oriented business license must be made on a form provided by the city. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Prior to issuance of a license, the premises must be inspected by the health department, fire department, building department, and zoning department.

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

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

(5) If a person who wishes to own operate a sexually oriented business is an individual, he must sign the application for a business license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10%) percent or greater interest in the business must sign the application for a business license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, each individual having a ten (10%) percent or greater interest in the corporation must sign the application for a business license as applicant.

(6) Applications for a business license, whether original or renewal, must be made to the director by the intended operator of the enterprise. Applications must be submitted to the office of the director or the director's designee during regular working hours. Application forms shall be supplied by the director. The following information shall be provided on the application form:

- (a) The name, street address (and mailing address if different) of the applicant(s);
- (b) A recent photograph of the applicant(s);
- (c) The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number;
- (d) The name under which the establishment is to be operated and a general description of the services to be provided;
 - (i) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state
 - (A) The sexually oriented business's fictitious name and
 - (B) Submit the required registration documents;
- (e) Whether the applicant, or a person residing with the applicant, has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in § 9-602 subsection (22), and, if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each;
- (f) Whether the applicant, or a person residing with the applicant, has had a previous license under this ordinance or other similar sexually oriented business ordinance from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant is or has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is or was licensed under a sexually oriented business ordinance whose business license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation;
- (g) Whether the applicant or a person residing with the applicant holds any other licenses under this ordinance or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses;
- (h) The single classification of license, as found in § 9-603, for which the applicant is filing;
 - (i) The telephone number of the establishment;
 - (j) The address and legal description of the tract of land on which the establishment is to be located;
 - (k) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is

sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;

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

(m) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in § 9-619.

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

(a) Payment of the application fee in full;

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

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

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

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

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

(g) If the persons identified as the fee owner(s) of the tract of land in item (f) is not also the owner of the sexually oriented business, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owner(s) or proposed owner(s) of the sexually oriented business to have or obtain the use and possession of the tract or portion thereof that is to be used for the sexually oriented business;

(h) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor

depicting the property lines and the structures containing any existing sexually oriented businesses within 1,000 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, public park or recreation area, or family-oriented entertainment business within 1,500 feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted;

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

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

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

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

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

(d) Present residence address and telephone number;

(e) Present business address and telephone number;

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

(g) Social Security Number; and

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

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

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

(b) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant, in this or any other city, county, state, or country, has ever had any license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name(s) under which the license was sought and/or issued, the name(s) of the issuing or denying jurisdiction, and describe in full the

reason(s) for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(c) A statement whether the applicant has been convicted, or is awaiting trial on pending charges, of a “specified criminal activity” as defined in § 9-602, subsection (22) and, if so, the “specified criminal activity” involved, the date, place and jurisdiction of each.

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

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

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

(11) A separate application and business license shall be required for each sexually oriented business classification as set forth in § 9-603.

(12) The fact that a person possesses other types of state or city permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business or employee license.

9-605. Issuance of license. (1) Upon the filing of an application for a sexually oriented business employee license, the director shall issue a temporary license to said applicant. The application shall then be referred to the appropriate city departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date of the completed application. After the investigation, the director shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

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

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

(c) The applicant has been convicted of a “specified criminal activity” as defined in § 9-602, subsection (22) of this ordinance;

(d) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule, or regulation, or prohibited by a particular provision of this ordinance; or

(e) The applicant has had a sexually oriented business employee license revoked by the city within two (2) years of the date of the current application.

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

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

(3) A license issued pursuant to subsection (1) of this section shall be subject to annual renewal upon the written application of the applicant and a finding by the Director that the applicant has not been convicted of any “specified criminal activity” as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in § 9-606. Non-renewal of a license shall be subject to appeal as set forth in subsection (9) of this section.

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

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

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

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

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

(e) An applicant or a person with whom the applicant is residing has been convicted of a “specified criminal activity” as defined in § 9-602, subsection (22);

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

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

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

(5) A license issued pursuant to subsection (4) of this section, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the § 9-603 classification for which the license is issued. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

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

(7) A sexually oriented business license shall issue for only one classification, as set forth in § 9-603.

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

(9) An applicant may appeal the decision of the director regarding a denial to the city board by filing a written notice of appeal with the city secretary within fifteen (15) days after service of notice upon the applicant of the director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The director may, within fifteen (15) days of service upon him of the applicant's memorandum, submit a memorandum in response to the memorandum filed by the applicant on appeal to the city board. After reviewing such memoranda, as well as the director's written decision, if any, and exhibits submitted to the director, the city board shall vote either to uphold or overrule the director's decision. Such vote shall be taken within twenty-one (21) calendar days after the date on which the city secretary receives the notice of appeal. However, all parties shall be required to comply with the director's decision during the pendency of the appeal. Judicial review of a denial by the director and city board may be made pursuant to § 9-611 of this ordinance.

(10) A license issued pursuant to subsection (4) of this section shall be subject to annual renewal upon the written application of the applicant and a finding by the director that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the

initial license application. The decision whether to renew a license shall be made within thirty (45) days of the completed application. The renewal of a license shall be subject to the fee as set forth in § 9-606.

9-607. Fees. The annual fee for a sexually oriented business license, whether new or renewal, is five hundred (\$500.00) dollars. The annual fee for a sexually oriented business employee license, whether new or renewal, is fifty dollars (\$50.00). These fees are to be used to pay for the cost of the administration and enforcement of this chapter.

9-608. Inspection. (1) An applicant or licensee shall permit representatives of the police department, sheriffs department, health department, fire department, building department, or other city or state departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is open for business.

(2) A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he/she refuses to promptly permit such lawful inspection of the premises.

9-608. Expiration of license. (1) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in § 9-604. Application for renewal should be made at least forty-five (45) days before the expiration date. When application is made less than forty-five (45) days before the expiration date, the expiration of the license will not be affected.

(2) When the director denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial.

9-609. Suspension. The director shall suspend a license for a period not to exceed thirty (30) days if he determines that licensee or an employee of licensee has:

- (1) Violated or is not in compliance with any section of this ordinance;
- (2) Operated or performed services in a sexually oriented business while intoxicated by the use of alcoholic beverages or controlled substances;
- (3) Refused to allow prompt inspection of the sexually oriented business premises as authorized by this ordinance;
- (4) With knowledge, permitted gambling by any person on the sexually oriented business premises.

9-610. Revocation. (1) The director shall revoke a license if a cause of suspension in § 9-609 occurs and the license has been suspended within the proceeding twelve (12) months.

(2) The director shall revoke a license if he determines that:

(a) A licensee gave false or misleading information in the material submitted during the application process;

(b) A licensee, or a person with whom the licensee is residing, was convicted of a “specified criminal activity” on a charge that was pending prior to the issuance of the license;

(c) A licensee has, with knowledge, permitted the possession, use, or sale of controlled substances on the premises;

(d) A licensee has, with knowledge, permitted the sale, use, or consumption of alcoholic beverages on the premises;

(e) A licensee has, with knowledge, permitted prostitution on the premises;

(f) A licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;

(g) A licensee has, with knowledge, permitted any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the licensed premises;

(h) A licensee is delinquent in payment to the city or state for any taxes or fees;

(i) A licensee has, with knowledge, permitted a person under eighteen (18) years of age to enter the establishment; or

(j) A licensee has attempted to sell his business license, or has sold, assigned, or transferred ownership or control of the sexually oriented business to a non-licensee of the establishment;

(k) A licensee has, with knowledge, permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business.

(3) When the director revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation became effective.

9-611. Judicial review. After denial of an initial or renewal application by the director and city board, or suspension or revocation of a license by the director, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

9-612. No transfer of license. A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

9-613. Location restrictions. Sexually oriented businesses shall be permitted in any commercial district provided that:

- (1) The sexually oriented business may not be operated within:
- (a) 1,000 feet of a church, synagogue or regular place of religious worship;
 - (b) 1,000 feet of a public or private elementary or secondary school;
 - (c) 1,000 feet of a boundary of any residential district;
 - (d) 1,000 feet of a public park;
 - (e) 1,000 feet of a licensed day-care center;
 - (f) 1,000 feet of an entertainment business that is oriented primarily towards children or family entertainment; or
 - (g) 1,000 feet of another sexually oriented business.

(2) A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business that is classified in accordance with § 9-603.

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

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

9-614. Non-conforming uses; amortization. (1) Any business lawfully operating on the effective date of this ordinance that is in violation of the locational or structural configuration requirements of this ordinance shall be deemed a non-conforming use. The non-conforming use will be permitted to continue for a period not to exceed two years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operated at a particular location is the conforming use and the later-established business(es) is non-conforming.

(2) A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church, synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed day-care center, public park, residential district,

or child or family entertainment business within one thousand, five hundred (1,500) feet of the sexually oriented business. This provision applies only to the renewal of a valid business license, and does not apply when an application for a business license is submitted after a business license has expired or has been revoked.

9-615. Additional regulations for adult motels. (1) Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this chapter.

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

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

(4) Violation of subsection (2) of this section shall constitute a misdemeanor.

9-616. Additional regulations for escort agencies. (1) An escort agency shall not employ any person under the age of 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 18 years.

(3) Violation of this section shall constitute a misdemeanor.

9-617. Additional regulations for nude model studios. (1) A nude model studio shall not employ any person under the age of 18 years.

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

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

(4) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

9-618. Additional regulations concerning public nudity. (1) It shall be a misdemeanor for a person who, with knowledge and intent, appears in person in a state of nudity in a sexually oriented business, or depicts specified sexual activities in a sexually oriented business.

(2) It shall be a misdemeanor for a person who, with knowledge and intent, appears in person in a semi-nude condition on the sexually oriented business premises, unless the person is an employee who, while semi-nude, is at least ten (10) 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 on the sexually oriented business premises, to solicit any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude.

(4) It shall be a misdemeanor for an employee, while semi-nude, to touch a patron or the clothing of a patron, or for a patron to touch a semi-nude employee or the clothing of a semi-nude employee, while said employee is on the premises of the sexually oriented business.

9-619. Regulations pertaining to exhibition of sexually explicit films and videos. (1) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction, that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(a) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one 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 business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since said diagram was prepared.

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

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

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

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

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

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

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

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

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

(k) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no more than one person at a time occupies a viewing booths or rooms,

and to ensure that no person attempts to make an opening of any kind between the viewing booths or rooms.

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

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

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

(2) A person having a duty under subsections (a) through (n) of this section commits a misdemeanor if he/she, with knowledge, fails to fulfill that duty.

9-620. Exterior portions of sexually oriented businesses. (1) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

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

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

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

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

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

(5) A violation of any provision of this section shall constitute a misdemeanor.

9-621. Signage. (1) Notwithstanding any other city ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any sexually

oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

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

- (a) Not contain any flashing lights;
- (b) Be a flat plane, rectangular in shape;
- (c) Not exceed seventy-five (75) square feet in area;
- (d) Not exceed ten (10) feet in height or ten (10) feet in length.

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

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

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

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

and

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

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

(7) Violation of any provision of this section shall constitute a misdemeanor.

9-622. Sale, use, or consumption of alcoholic beverages prohibited. (1) The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.

(2) Any violation of this section shall constitute a misdemeanor.

9-623. Persons younger than eighteen prohibited from entry; attendant required. (1) It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business is open for business.

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

business. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished:

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

9-624. Massages or baths administered by person of opposite sex.

It shall be unlawful for any sexually oriented business, regardless of whether in a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex. Violation of this section shall constitute a misdemeanor.

9-625. Hours of operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and twelve o'clock (12:00) P.M. on Sundays.

9-626. Exemptions.

It is a defense to prosecution under this ordinance that a person appearing in a state of nudity did so in a modeling class operated:

- (1) By a proprietary school, licensed by the State of Tennessee, a college, junior college, or university supported entirely or partly by taxation;
- (2) By a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

9-627. Notices.

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

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

(3) It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the director in writing of any change of residence or mailing address.

9-628. Injunction. A person who operates or causes to be operated a sexually oriented business without a valid business license, or in violation of § 9-613 of this chapter, is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation.

CHAPTER 7

YARD SALES

SECTION

- 9-701. Definitions.
- 9-702. Property permitted to be sold.
- 9-703. Permit required.
- 9-704. Permit procedure.
- 9-705. Permit conditions.
- 9-706. Hours of operation.
- 9-707. Exceptions.
- 9-708. Display of sale property.
- 9-709. Display of permit.
- 9-710. Advertising.
- 9-711. Persons exempted from chapter.
- 9-712. Violations and penalty.

9-701. Definitions. For the purpose of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein.

(1) "Garage sales" shall mean and include all general sales, open to the public, conducted from or on any premises in any residential or nonresidential zone, as defined by the zoning ordinance,¹ for the purpose of disposing of personal property including, but not limited to, all sales entitled "garage," "lawn," "yard," "attic," "porch," "room," "backyard," "patio," "flea market," or "rummage" sale. This definition does not include the operation of such businesses carried on in a nonresidential zone where the person conducting the sale does so on a regular day-to-day basis. This definition shall not include a situation where no more than five (5) specific items or articles are held out for sale and all advertisements of such sale specifically names those items to be sold.

(2) "Personal property" shall mean property which is owned, utilized and maintained by an individual or members of his or her residence and acquired in the normal course of living in or maintaining a residence. It does not include merchandise which was purchased for resale or obtained on consignment. (as added by Ord. #2002-08-02, Aug. 2002)

9-702. Property permitted to be sold. It shall be unlawful for any person to sell or offer for sale, under authority granted by this chapter, property other than personal property. (as added by Ord. #2002-08-02, Aug. 2002)

¹Municipal code reference

Zoning ordinance: title 14, chapter 2.

9-703. Permit required. No garage sale shall be conducted unless and until the individuals desiring to conduct such sale obtains a permit therefore from the police department. Members of more than one residence may join in obtaining a permit for a garage sale to be conducted at the residence of one of them. Permits may be obtained for any nonresidential location. (as added by Ord. #2002-08-02, Aug. 2002)

9-704. Permit procedure. (1) Application. The applicant or applicants for a garage sale permit shall file a written application with the police department at least three (3) days in advance of the proposed sale setting forth the following information:

- (a) Full name and address of applicant or applicants.
- (b) The location at which the proposed garage sale is to be held.
- (c) The date or dates upon which the sale shall be held.
- (d) The date or dates of any other garage sales by the same applicant or applicants within the current calendar year.

(e) A statement that the property to be sold was owned by the applicant as his own personal property and was neither acquired nor consigned for the purpose of resale.

(f) A statement that the applicant will fully comply with this and all other applicable ordinances and laws.

(2) Issuance of permit. Upon the applicant complying with the terms of this chapter, the police department shall issue a permit. (as added by Ord. #2002-08-02, Aug. 2002)

9-705. Permit conditions. The permit shall set forth and restrict the time and location of such garage/yard sale. No more than four (4) such permits may be issued to one (1) residential location, residence and/or family household during any calendar year. If members of more than one (1) residence join in requesting a permit, then such permit shall be considered as having been issued for each and all of such residences. No more than six (6) permits may be issued for any nonresidential location during any calendar year. (as added by Ord. #2002-08-02, Aug. 2002, and replaced by Ord. #2017-08-02, Sept. 2018)

9-706. Hours of operation. Garage sales shall be limited to no more than 6:00 A.M. to 6:00 P.M. on three (3) consecutive days. (as added by Ord. #2002-08-02, Aug. 2002)

9-707. Exceptions. (1) If sale not held because of inclement weather. If a garage sale is not held on the dates for which the permit is issued or is terminated during the first day of the sale because of inclement weather conditions, and an affidavit by the permit holder to this effect is submitted, the police department shall issue another permit to the applicant for a garage sale

to be conducted at the same location within thirty (30) days from the date when the first sale was to be held.

(2) Fourth sale permitted. A fourth garage sale shall be permitted in a calendar year if satisfactory proof of a bona fide change in ownership of the real property is first presented to the police department.

(3) Community subdivision, and/or block sales. There shall be at least 10 homeowners participating. Only one permit is required. There shall be a limit of only two per year. (as added by Ord. #2002-08-02, Aug. 2002)

9-708. Display of sale property. Personal property offered for sale may be displayed within the residence, in a garage, carport, and/or in a front, side or rear yard, but only in such areas. No personal property offered for sale at a garage sale shall be displayed in any public right-of-way. A vehicle offered for sale may be displayed on a permanently constructed driveway within such front or side yard. (as added by Ord. #2002-08-02, Aug. 2002)

9-709. Display of permit. Any permit in possession of the holder or holders of a garage sale shall be posted on the premises in a conspicuous place so as to be seen by the public, or any city official. (as added by Ord. #2002-08-02, Aug. 2002)

9-710. Advertising. (1) Signs permitted. Only the following specified signs may be displayed in relation to a pending garage sale:

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

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

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

(3) Removal of signs. Signs must be removed each day at the close of the garage sale activities. (as added by Ord. #2002-08-02, Aug. 2002)

9-711. Persons exempted from chapter. The provisions of this chapter shall not apply to or affect the following:

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

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

(3) Any sale conducted by any merchant or mercantile or other business establishment on a regular, day-to-day basis from or at the place of

business wherein such sale would be permitted by zoning regulations of the City of Munford, or under the protection of the nonconforming use section thereof, or any other sale conducted by a manufacturer, dealer, or vendor in which sale would be conducted from properly zoned premises, and not otherwise prohibited by other ordinances. (as added by Ord. #2002-08-02, Aug. 2002)

9-712. Violations and penalty. Any person found guilty of violating the terms of this chapter shall be subject to the maximum penalty allowance by the laws of the State of Tennessee. (as added by Ord. #2002-08-02, Aug. 2002)