

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.¹

CHAPTER

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CHAPTER 1

MISCELLANEOUS

SECTION

- 9-101. Sunday business.
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9-101. Sunday business. All businesses, except for the sale of beer as governed by § 8-213(2), shall be permitted to remain open on Sunday. (Ord. #1995-01, March 1995)

9-102. "Going out of business" sales. It shall be unlawful for any person to falsely represent a sale as being a "going out of business" sale. A "going out of business" sale, for the purposes of this section, shall be a "fire sale," "bankrupt sale," "loss of lease sale," or any other sale made in anticipation of the termination of a business at its present location. When any person, after advertising a "going out of business" sale, adds to his stock or fails to go out of business within ninety (90) days he shall prima facie be deemed to have violated this section. (1973 Code, § 5-102)

¹Municipal code references

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

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

9-103. Non-resident contractors to be bonded. Every person, partnership, or corporation engaged in the business of making improvements to real property who has not been a resident of the City of Milan, Tennessee, for at least one (1) year, before making any such improvement to real property within said city, shall file with the city evidence of a reliable corporate bond, or cash bond, in at least the amount of the proposed improvements, guaranteeing the faithful performance by such person, partnership, or corporation, of such improvement. (1973 Code, § 5-103)

9-104. Closing time for businesses having pinball machines. All places of business having or operating pinball machines therein are required to close at 12:00 Midnight and are to remain closed until 5:00 A.M. and are prohibited from making sales from midnight until 5:00 A.M. and such places are allowed fifteen minutes past midnight in which to clear their places of customers. (1973 Code, § 5-104)

CHAPTER 2

PEDDLERS, ETC.¹

SECTION

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9-201. Permit required. It shall be unlawful for any peddler, canvasser or solicitor, or transient merchant to ply his trade within the corporate limits without first obtaining a permit in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one to whom it is issued. (1973 Code, § 5-201)

9-202. Definition. The terms "peddler," "canvasser," "solicitor," and "transient merchant," includes any person or business entity engaged in the temporary business of selling and/or delivering goods, wares or merchandise within the City of Milan, subject to the exemptions set forth in this chapter. (as added by Ord. #03-1, Jan. 2003, and amended by Ord. #2014-2, Nov. 2014)

9-203. Exemptions. The terms of this chapter shall not be applicable, unless a specific section indicates otherwise, to persons selling at wholesale to dealers, sellers of farm products, bona fide merchants who merely deliver goods

¹Municipal code reference
Privilege taxes: title 5.

in the regular course of business, bona fide charitable, religious, patriotic or philanthropic organizations, or to mobile food vendors as defined in § 9-219. (1973 Code, § 5-202, as replaced by Ord. #03-1, Jan. 2003, and Ord. #2014-2, Nov. 2014)

9-204. Application for permit. Applicants for a permit under this chapter must file with the city recorder a sworn written application containing the following:

- (1) State of Tennessee sales tax number.
- (2) Name and physical description of applicant and permanent address of the applicant.
- (3) The local address from which proposed sales will be made.
- (4) A brief description of the nature of the business and the goods to be sold.
- (5) If employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship.
- (6) The length of time for which the right to do business is desired.
- (7) A recent clear photograph approximately two (2) inches square showing the head and shoulders of the applicant.
- (8) The names of at least two (2) reputable local property owners who will certify as to the applicant's good moral reputation and business responsibility, or in lieu of the names of references, such other available evidence as will enable an investigator to properly evaluate the applicant's moral reputation and business responsibility.
- (9) A statement as to whether or not the applicant has been convicted of any crime or misdemeanor or for violating any municipal ordinance; the nature of the offense; and, the punishment or penalty assessed therefor.
- (10) The last three (3) cities or towns, if that many, where applicant carried on business immediately preceding the date of application and, in the case of transient merchants, the addresses from which such business was conducted in those municipalities.
- (11) At the time of filing the application, a fee established by the mayor and board of aldermen shall be paid to the city to cover the cost of investigating the facts stated therein. (1973 Code, § 5-203, as replaced by Ord. #03-1, Jan. 2003)

9-205. Issuance or refusal of permit. (1) Each application shall be referred to the chief of police for investigation. The chief shall report his findings to the city recorder within seventy-two (72) hours.

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

(3) If, on the other hand, the chief's report indicates that the moral reputation and business responsibility of the applicant are satisfactory the city recorder shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by § 9-210. The city recorder shall keep a permanent record of all permits issued. (1973 Code, § 5-204, as renumbered by Ord. #03-1, Jan. 2003)

9-206. Location. The permit will be good for only one location. (as added by Ord. #03-1, Jan. 2003)

9-207. Length of time. Each permit issued is for a period of 14 days. (as added by Ord. #03-1, Jan. 2003)

9-208. Number of permits per year. No more than 2 permits per year shall be issued to a permit holder (as defined in § 9-202 of this chapter). (as added by Ord. #03-1, Jan. 2003)

9-209. Appeal. Any person aggrieved by the action of the chief of police and/or the city recorder in the denial of a permit shall have the right to appeal to the board of mayor and aldermen. Such appeal shall be taken by filing with the mayor within fourteen (14) days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The mayor shall set a time and place for a hearing on such appeal and notice of the time and place of such hearing shall be given to the appellant. The notice shall be in writing and shall be mailed, postage prepaid, to the applicant at his last known address at least five (5) days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1973 Code, § 5-205, as renumbered by Ord. #03-1, Jan. 2003)

9-210. Bond. Every permittee shall file with the city recorder a surety bond running to the city in the amount of one thousand dollars (\$1,000). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of this city and the statutes of the state regulating peddlers, canvassers, solicitors, transient merchants, itinerant merchants, or itinerant vendors, as the case may be, and shall guarantee to any citizen of the city that all money paid as a down payment will be accounted for and applied according to the representations of the permittee, and further guaranteeing to any citizen of the city doing business with said permittee that the property purchased will be delivered according to the representations of the permittee. Action on such bond may be brought by any person aggrieved and for whose benefit, among others, the bond is given, but the surety may, by paying, pursuant to order of the court, the face amount of the bond to the clerk of the

court in which the suit is commenced, be relieved without costs of all further liability. (1973 Code, § 5-206, as renumbered by Ord. #03-1, Jan. 2003)

9-211. Loud noises and speaking devices. No permittee, 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 permittee proposes to sell. (1973 Code, § 5-207, as renumbered by Ord. #03-1, Jan. 2003)

9-212. Use of streets. No permittee 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. (1973 Code, § 5-208, as renumbered by Ord. #03-1, Jan. 2003)

9-213. Exhibition of permit. Permittees are required to exhibit their permits at the request of any policeman or citizen. (1973 Code, § 5-209, as renumbered by Ord. #03-1, Jan. 2003)

9-214. Policemen to enforce. It shall be the duty of all policemen to see that the provisions of this chapter are enforced. (1973 Code, § 5-210, as renumbered by Ord. #03-1, Jan. 2003)

9-215. Revocation or suspension of permit. (1) Permits issued under the provisions of this chapter may be revoked by the board of mayor and aldermen after notice and hearing, for any of the following causes:

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

(e) Any sales at a location other than location named in application will result in loss of permit.

(2) Notice of the hearing for revocation of a permit shall be given by the city recorder in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed to the permittee at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing.

(3) When reasonably necessary in the public interest the mayor may suspend a permit pending the revocation hearing. (1973 Code, § 5-211, as replaced by Ord. #03-1, Jan. 2003)

9-216. Re-application. No permittee whose permit has been revoked shall make further application until a period of at least six (6) months has elapsed since the last revocation. (1973 Code, § 5-212, as renumbered by Ord. #03-1, Jan. 2003)

9-217. [Repealed.] (1973 Code, § 5-213, as replaced by Ord. #03-1, Jan. 2003, and repealed by Ord. #08-05, Dec. 2008)

9-218. Door to door solicitors. (1) "Door-to-door solicitor" means any person, firm or corporation, either a resident or nonresident of the City of Milan, who goes from dwelling to dwelling, business to business, place to place, or from street to street, carrying or transporting goods, wares or merchandise and offering or exposing same for sale.

(2) In order to maintain its citizens' privacy and quiet use of their properties, to prevent or reduce crimes associated with scams or swindles, and to promote consumer protection, the provisions of this chapter, except § 9-206, shall apply to door-to-door solicitors and, furthermore, door-to-door solicitors shall be allowed to operate within the City of Milan only between the hours of 12:00 P.M. (noon) and 5:00 P.M., with the exception of ice cream trucks which will be extended to 8:00 P.M.

(3) The provisions of this section, except § 9-218 (4), shall not apply to any established church or school operated exclusively for charitable, education, or religious purposes if door-to-door solicitations are conducted exclusively by the members thereof voluntarily and without remuneration for such solicitations. Charitable solicitations shall be governed by § 9-301, et seq. of the Milan Municipal Code.

(4) It is a violation of this section to enter in or upon any premises or attempt to enter in or upon any premises wherein a sign or placard bearing the notice "No Solicitations," or similar language, is located.

(5) In addition to any other action the City of Milan may take against a person, firm, corporation or other entity in violation of this section, such violation shall be punishable according to the general penalty provision of the

Milan Municipal Code. (as added by Ord. #02-7, Dec. 2002, and replaced by Ord. #08-05, Dec. 2008)

9-219. Mobile food vendors. (1) This section shall apply to mobile food vendors.

(2) It is unlawful for any person, firm, corporation, or association to engage in or carry on the business of mobile food vending in the City of Milan without first having secured a permit as required by this section.

(3) "Mobile food vendor" means a person or entity engaged in conveying, with or without charge, food or beverages from a movable cart, trailer or vehicle of any sort other than a mobile home or travel trailer, as those terms are defined by the City of Milan Zoning Ordinance; except, however, the provisions of this section shall not apply to caterers, defined as persons or entities engaged in the business of transporting food and beverages by vehicle to residential or business establishments pursuant to a prearranged schedule.

(4) "Commercial zone" means any property which is zoned B-1, B-2, B-3, M-1, R-P or any commercial zone subsequently adopted by the City of Milan.

(5) Applications for a mobile food vendor permit shall be filed at the office of the city recorder on forms to be developed by the city recorder. Such application shall contain the information required below along with the current fee. All applications for permits shall be investigated by such departments or officers of the City of Milan as the city recorder or mayor may direct.

(6) The applicant must satisfy the following requirements before a mobile food vendor permit can be issued:

(a) The applicant shall submit the name and home and business address of the applicant, and the name and home and business address of the owner, if other than the applicant, of the mobile food vendor business and any vehicles, trailers or other equipment to be used in such operation.

(b) The applicant must submit a copy of written, notarized permission from the owner of the property on which the mobile food vendor will operate.

(c) The applicant shall submit an accurate photograph of any vehicles, trailers or other equipment to be used in its operation.

(d) For applicants proposing to locate on property owned by or in which the City of Milan has an easement or other legal interest, the applicant shall present a copy of the declarations page of a general liability insurance policy in the amount of at least one million dollars (\$1,000,000.00) naming the City of Milan as an additional insured for all time periods in which the mobile food vendor will operate on any such property.

(e) The applicant must specify the time period such applicant seeks to operate as a mobile food vendor in the City of Milan.

(f) Except as may be specifically set forth in this section, the applicant must have all other licenses or permits required by the city, county or state including, but not limited to, business licenses and a Tennessee sales tax certificate of registration.

(7) Each application for a mobile food vendor permit shall be accompanied by a nonrefundable application fee of fifty dollars (\$50.00).

(8) All mobile food vendor permits issued by the City of Milan, unless otherwise specified herein, shall be effective for one year unless revoked.

(9) Mobile food vendors seeking to operate on a limited-time basis shall be bound by the terms of this section, except such vendors, upon approval of their application by the city, shall be entitled to no more than two (2) permits of fourteen (14) days each per year and such vendors shall not be required to have a City of Milan business license. The application fee of fifty dollars (\$50.00) shall apply to each permit. Any permit issued pursuant to this section shall be valid for fourteen (14) days from the date of issuance unless the city recorder indicates a different time period, not to exceed fourteen (14) days, on the permit.

(10) The city shall review applications for mobile food vendor permits and shall notify applicants that their application has either been granted or denied. The city recorder shall issue a mobile food vendor permit to mobile food vendors whose applications have been granted. Applications may be denied by the city for reasons including, but not limited to, failure to comply with the application requirements of this section. Applicants who have been denied a mobile food vendor application may request a review of the city's decision by the board of mayor and aldermen.

(11) All persons or entities with a mobile food vendor permit issued by the City of Milan shall be subject to the following regulations:

(a) A mobile food vendor is limited to one (1) location unless specifically authorized by the City of Milan.

(b) A mobile food vendor shall only operate within a commercial zone.

(c) A mobile food vendor shall only operate on property with the express, written consent of the property owner. If the property owner notifies the City of Milan or the mobile food vendor that such consent is revoked, the permit shall be immediately revoked for such location and the mobile food vendor shall be allowed to make an application for a new location.

(d) Mobile food vendors shall display, in a prominent and visible manner, the mobile food vendor permit issued by the City of Milan.

(e) The size of a mobile food vendor's operation including vehicles, trailers or other equipment shall not exceed three hundred twenty (320) square feet.

(f) The location of the mobile food vendor shall be clean and orderly at all times, and the mobile food vendor shall provide a refuse container for use by the public.

(g) Mobile food vendors shall not use drive-through windows to conduct business, unless such drive-through window service generates no more than ten percent (10%) of the mobile food vendor's average monthly gross revenue.

(h) Mobile food vendors shall not hinder the use of any mailbox, fire hydrant or traffic control device.

(i) Mobile food vendors shall not make loud noises or use mechanical audio equipment.

(j) Mobile food vendors shall comply with all applicable state and local health laws and regulations regarding the preparation, handling and presentation of food.

(k) Mobile food vendors are prohibited from operating from mobile homes or travel trailers, as those terms are defined by the City of Milan Zoning Ordinance.

(12) The City of Milan shall have the power to revoke or deny any permit or permit application for reasons including, but not limited to, the following:

(a) Cancellation or revocation of the mobile food vendor's state or local license or permit.

(b) Failure of the mobile food vendor to comply with the Milan Municipal Code. (as added by Ord. #2014-2, Nov. 2014)

CHAPTER 3

CHARITABLE SOLICITORS¹

SECTION

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

9-301. Permit required. No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose without a permit from the city recorder authorizing such solicitation. Provided, however, that this section shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes if the solicitations are in the form of collections or contributions at the regular assemblies of any such established organization or church. (1973 Code, § 5-301)

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

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

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

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

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

(5) The solicitation is prompted solely by a desire to finance the charitable cause described by the applicant. (1973 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. (1973 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. (1973 Code, § 5-304)

¹Municipal code reference

Door to door ordinance: § 9-218.

CHAPTER 4

TAXICABS¹

SECTION

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

9-401. Taxicab franchise and privilege license required. It shall be unlawful for any person to engage in the taxicab business unless he has first obtained a taxicab franchise from the board of mayor and aldermen and has a currently effective privilege license. (1973 Code, § 5-401)

9-402. Requirements as to application and hearing. No person shall be eligible to apply for a taxicab franchise if he has a bad character or has been convicted of a felony within the last ten (10) years. Applications for taxicab franchises shall be made under oath and in writing to the chief of police. The application shall state the name and address of the applicant, the name and address of the proposed place of business, the number of cabs the applicant desires to operate, the makes and models of said cabs, and such other pertinent information as the chief of police may require. The application shall be accompanied by at least two (2) affidavits of reputable local citizens attesting to the good character and reputation of the applicant. Within ten (10) days after receipt of an application the chief of police shall make a thorough investigation of the applicant; determine if there is a public need for additional taxicab service; present the application to the board of mayor and aldermen; and make a recommendation to either grant or refuse a franchise to the applicant. The board shall thereupon hold a public hearing at which time witnesses for and

¹Municipal code reference
Privilege taxes: title 5.

against the granting of the franchise shall be heard. In deciding whether or not to grant the franchise the board of mayor and aldermen shall consider the public need for additional service, the increased traffic congestion, parking space requirements, and whether or not the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such an additional franchise. Those persons already operating taxicabs when this code is adopted shall not be required to make applications under this section but shall be required to comply with all of the other provisions hereof. (1973 Code, § 5-402)

9-403. 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 financial responsibility law as set out in Tennessee Code Annotated, title 55, chapter 12. The insurance policy or bond required by this section shall contain a provision that it shall not be cancelled except after at least twenty (20) days' written notice is given by the insurer to both the insured and the recorder of the city. (1973 Code, § 5-403)

9-404. Revocation or suspension of franchise. The board of mayor and aldermen, after a public hearing, may revoke or suspend any taxicab franchise for misrepresentations or false statements made in the application therefor or for traffic violations or violations of this chapter by the taxicab owner or any driver. (1973 Code, § 5-404)

9-405. 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. (1973 Code, § 5-405)

9-406. Cleanliness of vehicles. All taxicabs operated in the city shall, at all times, be kept in a reasonably clean and sanitary condition. They shall be thoroughly swept and dusted at least once each day. At least once every week they shall be thoroughly washed and the interior cleaned with a suitable antiseptic solution. (1973 Code, § 5-406)

9-407. Qualifications for driver's permit. No person shall be issued a taxicab driver's permit unless he complies with the following to the satisfaction of the chief of police:

- (1) Makes written application to the chief of police.
- (2) Is at least eighteen (18) years of age and holds a state special chauffeur's license.
- (3) Undergoes an examination by a physician and is found to be of sound physique, with good eyesight and hearing and not subject to epilepsy, vertigo, heart trouble or any other infirmity of body or mind which might render him unfit for the safe operation of a public vehicle.
- (4) Is clean in dress and person and is not addicted to the use of intoxicating liquor or drugs.
- (5) Produces affidavits of good character from two (2) reputable citizens of the city who have known him personally and have observed his conduct for at least two (2) years next preceding the date of his application.
- (6) Has not been convicted of a felony, drunk driving, driving under the influence of an intoxicant or drug, or of frequent minor traffic offenses.
- (7) Is familiar with the state and local traffic laws. (1973 Code, § 5-409)

9-408. Revocation or suspension of driver's permit. The board of mayor and aldermen, after a public hearing, may revoke or suspend any taxicab driver's permit for violation of traffic regulations, for violation of this chapter, or when the driver ceases to possess the qualifications as prescribed in § 9-409. (1973 Code, § 5-410)

9-409. 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. (1973 Code, § 5-411)

9-410. 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 unreasonably interfere with or obstruct other traffic and provided the passenger loading or discharging is promptly accomplished. (1973 Code, § 5-412)

9-411. Drivers to use direct routes. Taxicab drivers shall always deliver their passengers to their destinations by the most direct available route. (1973 Code, § 5-413)

9-412. 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. (1973 Code, § 5-414)

9-413. Miscellaneous prohibited conduct by drivers. It shall be unlawful for any taxicab driver, while on duty, to be under the influence of, or to drink any intoxicating beverage or beer; to use profane or obscene language; to shout or call to prospective passengers; to unnecessarily blow the automobile horn; or to otherwise disturb the peace, quiet and tranquility of the city in any way. (1973 Code, § 5-415)

9-414. 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. (1973 Code, § 5-416)

CHAPTER 5

POOL ROOMS¹

SECTION

9-501. Hours of operation regulated.

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

9-501. Hours of operation regulated. It shall be unlawful for any person to open, maintain, conduct, or operate any place where pool tables or billiard tables are kept for public use or hire at any time on Sunday or between the hours of 12:00 Midnight and 6:00 A.M. on other days. (1973 Code, § 5-501)

9-502. Minors to be kept out; exception. It shall be unlawful for any person engaged regularly, or otherwise, in keeping billiard, bagatelle, or pool rooms or tables, their employees, agents, servants, or other persons for them, knowingly to permit any person under the age of eighteen (18) years to play on said tables at any game of billiards, bagatelle, pool, or other games requiring the use of cue and balls, without first having obtained the written consent of the father and mother of such minor, if living; if the father is dead, then the mother, guardian, or other person having legal control of such minor; or if the minor be in attendance as a student at some literary institution, then the written consent of the principal or person in charge of such school; provided that this section shall not apply to the use of billiards, bagatelle, and pool tables in private residences. (1973 Code, § 5-502)

¹Municipal code reference
Privilege taxes: title 5.

CHAPTER 6

AUCTIONS

SECTION

- 9-601. Auctions regulated; exceptions.
- 9-602. Permit required; application; bond.
- 9-603. Issuance or denial of permit.
- 9-604. Miscellaneous prohibitions.
- 9-605. Permits not transferable; may be revoked.
- 9-606. Permit to be displayed.

9-601. Auctions regulated; exceptions. All public or private auctions of personal property within the City of Milan shall be controlled and governed by the provisions of this chapter except auctions held pursuant to the order of courts of record, or sales of sheriffs, executors or administrators of decedents' estates, bona fide sales by trustees under recorded mortgages or deeds of trust, or by lien holders acting in accordance with law. (1973 Code, § 5-601)

9-602. Permit required; application; bond. No person, firm, or corporation, directly or indirectly, through agents or otherwise, shall conduct any auction subject to this chapter without first having obtained a permit for conducting same, through a regularly licensed auctioneer, as hereinafter provided.

(1) Any person desiring to conduct such an auction sale shall first file a written application for permit therefor with the board of mayor and aldermen of Milan, Tennessee, stating:

(a) The name, address, and occupation or business of the person, firm, or corporation desiring to conduct such auction.

(b) The name, address, and occupation or business of the person, firm, or corporation for whom the auction is to be conducted, if other than the applicant.

(c) The name and address of the owner of the merchandise, stock of goods, or other personal property to be offered at such auction, with a true, complete, itemized, and sworn inventory of such property, showing the cost price thereof and the source of the title thereto, said cost information to be treated as confidential by the board of mayor and aldermen, except in prosecutions for violations of this chapter.

(d) The place and hour of such auction, with an estimate of the duration thereof.

(e) A statement showing dates, places, and nature of merchandise sold at all other auction sales by the applicant and/or the owner of the property to be auctioned, within two (2) years next preceding the date of the application.

(f) Whether or not additional merchandise, other than the inventory filed, or what is called "fill in" stock, will be offered at such auction and if so, the general nature and previous ownership of such additional or "fill in" stock, with a true, complete, and itemized sworn inventory thereof, showing the cost price and source of title thereof, said cost information to be treated as confidential by the board of mayor and aldermen except in prosecutions for violations of his chapter.

(g) A copy of proposed advertisements to be made of such auction and/or an agreement by the applicant that the quality or history of the merchandise will not be misrepresented in any advertisement thereof.

(h) Whether or not any other application for permit by him or the owner of the goods has been refused and/or whether any such permit has been revoked or challenged after its issuance.

(i) The name and address of the auctioneer or auctioneers who will call or cry the auction.

(j) The necessity or reasons for the conducting of such auction.

(2) The applicant shall file with said application a bond in the penal sum of \$1,000, with good and solvent sureties, in the following form, to wit;

STATE OF TENNESSEE
COUNTY OF GIBSON

KNOW ALL MEN BY THESE PRESENTS: That we _____, Principal, and _____ and _____, Sureties, are held and firmly bound unto the City of Milan, Tennessee, for its own use in the penal sum of One Thousand Dollars, for payment whereof well and truly to be made, we bind ourselves respectively and our heirs and administrators.

The condition of this bond is such, that whereas the above named _____ has obligated himself to the City of Milan, Tennessee, in the penal sum of \$1,000.00 now, therefore, if the said _____ does well and truly conform to the provisions of said ordinance then this obligation shall be void otherwise to remain it full force and effect for the period of one year from the date of this bond.

It is expressly understood that this bond is payable to and recoverable by the City of Milan, Tennessee, for its own use and for the use of all persons suffering loss or damage by reason of the violation of said ordinance by the above named principal, and to compel the principal herein to perform the obligation herein undertaken.

In witness whereof, we have hereunto set our hands, this ____ day of _____, 19__.

Principal

Surety

Surety

Approved:

City Attorney

(1973 Code, § 5-602)

9-603. Issuance or denial of permit. Upon the filing of such application and bond, the board of mayor and aldermen shall consider the application together with oral testimony of the applicant, the owner, and/or other witnesses, if required by said board. If, in the opinion of the board of mayor and aldermen, after due consideration, it appears that the auction is for legitimate business purposes and not as a fraud upon the public; that the auction is to be conducted at a suitable and proper place, considering the traffic on the street, the congestion of the sidewalk, the usual place of business of the applicant, and businesses surrounding the proposed place of auction; the proposed advertisements of the action fairly represent the merchandise to the public; the applicant, owner, and/or auctioneer is of good character and has not violated heretofore this chapter or similar ordinances; and, if the sureties on the bond are solvent, the board of mayor and aldermen shall issue a permit for such a period as shall be shown to be necessary to dispose of the property described, but in no event for a longer period than two (2) weeks from the date of issuance. If a longer time shall become necessary, additional or extension permits therefor shall be obtained in the same manner as the original permit, as hereinbefore provided. The board of mayor and aldermen shall accept or reject any application within ten (10) days of the date of filing. (1973 Code, § 5-603)

9-604. Miscellaneous prohibitions. It is hereby declared to be unlawful for any auctioneer, person, firm, or corporation conducting or holding

a public or private auction of personal property within the City of Milan, Tennessee, to:

(1) Mislead the public as to the reason or purpose for holding said auction by any type or method of advertisement or inducement.

(2) Offer for sale or sell at any auction held for the purpose of "going out of business" any merchandise other than merchandise in stock at the time of commencement of said auction.

(3) Have an agent or other person, designated by whatever title or in whatever manner, to sit in the audience and support the bids by making bids for the sole purpose of maintaining a high bid level and not as a bona fide offer to buy.

(4) Have or permit the auctioneer announce in any manner a fictitious bid or a bid that is not made bona fide by a prospective purchaser.

(5) Mislead the public by false, fraudulent, or negligent advertising concerning the quality of goods sold.

(6) Hold said auction at any time other than between the hours of 9:00 A.M. and 4:00 P.M. or between 8:00 P.M. and 11:00 P.M.

(7) Sell any merchandise which does not have firmly attached thereto the name of the manufacturer, or its standard brand name if distributed by other than the actual manufacturer.

(8) Sell any merchandise from which the manufacturer's or distributor's name, or standard brand name has been removed.

(9) Make any false representations or statements as to the ownership, of, or the character or circumstances of the owner, or pretended owner, of such property for the purpose of inducing the sale thereof.

(10) Falsely advertise, state, or represent that such goods, wares, and merchandise are in whole, or in part, a bankrupt or insolvent stock, or damaged goods saved from fire, or to make any false statement, representation, or advertisement as to the purchase, history, or character of such goods, wares, or merchandise.

(11) Substitute any article in lieu of that described and offered to and purchased by the bidder.

(12) Represent and/or sell as new or unused merchandise any second hand or used merchandise.

(13) Alter, transfer, lend, sell, or rent out any permit issued under this chapter or to use any permit not issued to the person so using.

(14) Conduct an auction sale covered by this chapter without a permit or after the expiration of the permit issued or after the revocation or suspension of such permit.

(15) Sell or offer for sale at such auction any article not specifically listed in the inventory filed with the board of mayor and aldermen. (1973 Code, § 5-604)

9-605. Permits not transferable; may be revoked. No permit issued hereunder shall be assignable or transferable. Any permit so issued may be suspended, recalled, or revoked by the board of mayor and aldermen for any violation of the terms of this chapter. (1973 Code, § 5-605)

9-606. Permit to be displayed. The permit issued hereunder shall be conspicuously displayed where such auction sale is conducted. (1973 Code, § 5-606)

CHAPTER 7

PERSONAL PROPERTY SALES IN RESIDENTIAL ZONING DISTRICTS

SECTION

- 9-701. Intent and purpose.
- 9-702. Permit required.
- 9-703. Term of permit.
- 9-704. Application for permit.
- 9-705. Exceptions.
- 9-706. Conditions to be met.
- 9-707. Signs.

9-701. Intent and purpose. It is the intent of these regulations to prohibit infringement of any businesses in any established residential areas and in so doing to regulate the term and frequency of a personal property sale (such as garage sales, porch sales, yard sales, and other similar types of sales) so as not to disturb or disrupt the residential environment of the area. It is not the intent of this chapter to seek control of sales by individuals selling a few of their household or personal items. (1973 Code, § 5-701)

9-702. Permit required. It shall be unlawful for any person desirous of holding a personal property sale (such as, but not limited to, garage sale, porch sale, or yard sale), of clothing or any personal property items which are owned by the residents of the premises to hold such sale without first obtaining a permit therefor from the Police Department of the City of Milan. (1973 Code, § 5-702)

9-703. Term of permit. Any such permit issued shall be for a term not exceeding three consecutive calendar days.

Permits shall be limited to four per calendar year, per residential dwelling. (1973 Code, § 5-703)

9-704. Application for permit. Application for a permit shall be made to the Milan Police Department upon forms furnished by the city.

The form shall contain at least the following information:

- (1) Full name and address of applicant.
- (2) The location at which the proposed sale is to be held.
- (3) The date or dates upon which the personal property sale shall be held.
- (4) The date or dates of any other personal property sales within the current calendar year.

(5) An affirmative statement that the property to be sold was owned by the applicant as his own personal property and was neither acquired or consigned for the purpose of resale. (1973 Code, § 5-704)

9-705. Exceptions. The provisions of this chapter shall not apply to or affect the following persons or sales:

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

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

(3) Any bona fide charitable, eleemosynary, educational, cultural, or government institution or organization, provided, however, that the burden of establishing the exemption shall be on the organization, or institution claiming such exemption. (1973 Code, § 5-705)

9-706. Conditions to be met. The permit shall be posted on the premises in a conspicuous place so as to be seen by the public and city inspectors. (1973 Code, § 5-706)

9-707. Signs. No signs shall be posted anywhere in the City of Milan advertising such sales, except that the property owner may install, on the residential lot on which the sale is held, one sign not larger than 2' x 3' advertising such sale. Such sign shall not be erected more than three days prior to the date of the sale and shall be removed at the end of the last day upon which the sale is held. (1973 Code, § 5-707)

CHAPTER 8

SEXUALLY ORIENTED BUSINESSES

SECTION

- 9-801. Definitions.
- 9-802. Purpose and findings.
- 9-803. Classification.
- 9-804. License required.
- 9-805. Issuance of license.
- 9-806. Fees--sexually oriented business license and employee license.
- 9-807. Inspection.
- 9-808. Expiration of license.
- 9-809. Suspension.
- 9-810. Revocation.
- 9-811. Transfer of license.
- 9-812. Location of sexually oriented business.
- 9-813. Additional regulations for adult motels.
- 9-814. Regulations pertaining to exhibition of sexually explicit films, videos or live entertainment in viewing rooms.
- 9-815. Additional regulations for escort agencies.
- 9-816. Additional regulations for nude model studios.
- 9-817. Additional regulations concerning public nudity.
- 9-818. Prohibition against children in a sexually oriented business.
- 9-819. Hours of operation.
- 9-820. Exemptions.
- 9-821. Penalties and injunction.
- 9-822. General provisions.

9-801. Definitions. (1) "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated, slug operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors video or laser disc players, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(2) "Adult bookstore," "adult novelty store" or "adult video store" means a commercial establishment which, as one of its principal 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 matters, or photographs, films, motion pictures, videocassettes or video reproductions, slides, or other visual representations which are

characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" or

(b) Instruments, devices, or paraphernalia, which 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, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is the offering for sale or rental for any form of consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

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

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

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

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

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

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

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

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

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

(6) "Adult theater" means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or seminude or live performances which are characterized by the exposure of "specified anatomical area" or by "specified sexual activities."

(7) "Employees" means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not 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 its premises or equipment on the premises, or for the delivery of goods to the premises.

(8) "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.

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

(10) "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.

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

(12) "Nude model studio" means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed; sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form or consideration. Nude model studio shall not include a proprietary school licensed by the State of Tennessee or a college, junior college, or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or in a structure:

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

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

(c) Where no more than one (1) nude or semi-nude model is on the premises at any one time.

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

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

(15) "Semi-nude" or "semi-nude condition" means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the 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.

(16) "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 (1) or more of the persons is in a state of nudity or semi-nude.

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

(18) "Specified anatomical areas" means but is not limited to the following:

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

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

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

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

(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 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 or the date of release from confinement for the conviction; whichever is the later date; if the conviction is of a felony offense; or

(iii) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction; whichever is the later date; if the convictions are of two (2) or more misdemeanor offenses or 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.

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

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

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

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

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

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

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

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

(c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control. (as added by Ord. #03-03, Sept. 2003)

9-802. Purpose and findings. (1) Purpose. It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect on imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials.

Similarly, it is not the intent nor effect of this chapter to restrict or deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

(2) Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.* 475 U.S. 41 (1986), *Young v. American Mini Theaters*, 427 U.S. 50 (1976) and *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to Phoenix, Arizona; Tuscan, Arizona; Minneapolis, Minnesota; St. Paul, Minnesota; Houston, Texas; Dallas, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Newport News, Virginia; Los Angeles, California; Whitier, California; Austin, Texas; Oklahoma City, Oklahoma; Oklahoma City, Oklahoma IT; Cleveland, Ohio; Beaumont, Texas; and Seattle, Washington; the board finds:

(a) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities.

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

(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.

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

(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.

(f) 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.

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

(h) As of July 31, 1998, there were 7,689 reported cases of AIDS and 3,904 deaths resulting from AIDS in the State of Tennessee. There were 2,522 reported cases of AIDS in Shelby County as of July 31, 1998.

(i) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in the State of Tennessee with 9,363 reported cases of HIV. There were 3,651 reported cases of HIV in Shelby County as of July 31, 1998.

(j) The number of cases of syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990. There were 934 reported cases of gonorrhea in Shelby County in 1997. The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990. There were 4,876 reported cases of gonorrhea in Shelby County in 1997.

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

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

(m) 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 operators of the facilities to self-regulate those activities and maintain those facilities.

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

(o) The findings noted in subsections number (a) through (n) raise substantial government concerns.

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

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

(r) Removal of doors in booths of sexually oriented businesses and requiring sufficient lighting on premises of sexually oriented

businesses with booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

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

(t) 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.

(u) 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 which this chapter is designed to prevent or who are likely to be witnesses to such activity.

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

(w) The general welfare, health and safety of the citizens of the city will be promoted by the enactment of this chapter. (as added by Ord. #03-03, Sept. 2003)

9-803. Classification. Sexually oriented businesses are classified as follows:

- (1) Adult arcades;
- (2) Adult bookstore, adult novelty stores, or adult video stores;
- (3) Adult cabarets;
- (4) Adult motels;
- (5) Adult motion picture theaters;
- (6) Adult theaters;
- (7) Escort agencies;
- (8) Nude model studios; and
- (9) Sexual encounter centers. (as added by Ord. #03-03, Sept. 2003)

9-804. License required. (1) It is unlawful:

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

(b) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not

licensed as a sexually oriented business employee by the city pursuant to this chapter.

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

(2) An application for a license must be made on a form provided by the city.

(3) All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information (including fingerprints) as to enable the city to determine whether the applicant meets the qualifications established in this chapter.

(4) If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has twenty percent (20%) or greater interest in the business must sign the applicant for a license as applicant. Each applicant must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.

(5) The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

(a) If the applicant is:

(i) An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is eighteen (18) years of age;

(ii) A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

(iii) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.

(b) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state:

(i) The sexually oriented business' fictitious name; and

(ii) Submit the required registration documents.

(c) Whether the applicant, or a person residing with the applicant has been convicted of a specified criminal activity as defined in this ordinance, and if so, the specified criminal activity involved, the date, place, and jurisdiction of each.

(d) Whether the applicant or a person residing with the applicant has had a previous license under this chapter or other similar sexually oriented business ordinances from another city or county denied, suspended or revoked; including the name and location of the sexually oriented business for which the permit 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 has been a partner in a partnership or an officer; director or principal stockholder of corporation that is licensed under this chapter whose license has previously been denied; suspended or revoked; including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(e) Whether the applicant or a person residing with the applicant holds any other license under this chapter or other similar sexually oriented business ordinance from another city or county and if so, the names and locations of such other licensed businesses.

(f) The single classification of license for which the applicant is filing.

(g) The location of the proposed sexually oriented business, including a legal description of the property, street address and telephone number(s); if any; which location shall be a permissible location under the terms of this chapter.

(h) The applicant's mailing address and residential address.

(i) A recent photograph of the applicant(s).

(j) The applicant's driver's license number; social security number; and/or his/her state or federally issued tax identification number.

(k) A sketch or diagram showing the configuration of the premises; including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared; but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6").

(l) 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 structures containing any existing sexually oriented businesses within five hundred feet (500') of the property to be certified; the property lines of an established religious institution; synagogue, school; or public park, or recreation area within five hundred feet (500') of the property to be certified. For purposes of this section; a use shall be considered existing or established if it is in existence at the time an application is submitted.

(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 (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment, which depict specified anatomical areas; then the applicant shall comply with the application requirement set forth in § 9-813.

(n) Before any applicant may be issued a sexually oriented business employee license the applicant shall submit on a form to be provided by the city the following information:

- (i) The applicant's name or any other name (including "stage" names) or aliases used by the individual;
- (ii) Age, date and place of birth;
- (iii) Height, weight, hair and eye color;
- (iv) Present residence address and telephone number;
- (v) Present business address and telephone number;
- (vi) Date, issuing state and number of driver's permit or other identification card information;
- (vii) Social Security number; and
- (viii) Proof that the individual is at least eighteen (18) years of age.

(o) Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:

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

(ii) 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 county, city, state or country, has ever had a 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, the name of the issuing or denying jurisdiction, and description in full of the reason for the denial, revocation or suspension shall be attached to the application.

(iii) A statement whether the applicant has been convicted of a specified criminal activity as defined in this chapter and if so, the specified criminal activity involved, the date, place and jurisdiction of each. (as added by Ord. #03-03, Sept. 2003)

9-805. Issuance of license. (1) Upon the filing of said application for a sexually oriented business employee license, the applicant shall then be

referred to the appropriate city departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty (30) days from the date the completed application is filed. After the investigation, the city shall issue a 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 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;"

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

(e) The applicant has had a sexually oriented business employee license revoked within two (2) years of the date of the current application. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in § 9-810.

(2) A sexually oriented business license and sexually oriented business employee license granted pursuant to this ordinance shall be subject to annual renewal upon the written application of the applicant and a finding by the city that the applicant has not been convicted of any specified criminal activity as defined in this chapter or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in § 9-806.

(3) Within thirty (30) days after receipt of a completed sexually oriented business application the city shall approve or deny the issuance of a license to an applicant. The city shall approve the issuance of 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 is under eighteen (18) years of age.

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

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

(d) 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 with in the preceding twelve (12) months or whose

license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

(e) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this chapter.

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

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

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

(4) The license, 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 classification for which the license is issued pursuant to § 9-803. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.

(5) The health department; fire department and the building official shall complete their certification that the premises is in compliance within twenty (20) days of receipt of the application by the city.

(6) A sexually oriented business license shall be issued for only one (1) classification as found in § 9-803. (as added by Ord. #03-03, Sept. 2003)

9-806. Fees--sexually oriented business license and employee

license. (1) Sexually oriented business license. (a) Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by an application fee of five hundred (\$500.00) dollars. In addition to the renewal fee, a late penalty of fifty (\$50.00) dollars shall be assessed against the applicant who files for a renewal less than thirty (30) days before the license expires. The application fee is non-refundable.

(b) In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the city an annual license fee of two hundred fifty dollars (\$250.00) within thirty (30) days of license issuance or renewal. Failure to pay the annual license fee within thirty (30) days of issuance or renewal shall result in the immediate revocation of license by the city.

(c) Every application for a sexually oriented business employer license (whether for a new license or for a renewal of an existing license) shall be accompanied by a two hundred fifty dollar (\$250.00) application, investigation and license fee, a late penalty of one hundred (\$100.00) shall be assessed against the applicant who files for renewal less than thirty (30) days before the license expires.

(d) All license applications and fees shall be submitted to the City Recorder of the City of Milan.

(2) Sexually-oriented business employees license. (a) Every application for a sexually oriented business employee license (whether for a new or for renewal of an existing license) shall be accompanied by an application fee of one hundred dollars (\$100.00). In addition to the renewal fee, a late penalty of fifty dollars (\$50.00) shall be assessed against the applicant who files for a renewal less than thirty (30) days before the license expires. Application fees are nonrefundable.

(b) In addition to the application and investigation fee required above, every sexually oriented business employee that is granted a license (new or renewal) shall pay to the city an annual license fee of one hundred dollars (\$100.00) within thirty (30) days of license issuance or renewal. Failure to pay the annual license fee shall within thirty (30) days of license issuance or renewal shall result in the immediate revocation of license by the city.

(c) All license applications and fees shall be submitted to the City Recorder of the City of Milan. (as added by Ord. #03-03, Sept. 2003)

9-807. Inspection. (1) An applicant or licensee shall permit representatives of the police department, health department, fire department, development department or other city 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 occupied or open for business.

(2) A person who operates a sexually oriented business or his agent or employee commits a violation of this chapter if he refuses such lawful inspection of the premises at any time it is open for business. (as added by Ord. #03-03, Sept. 2003)

9-808. 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 § 9-804. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.

(2) When the city denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial. If, subsequent to the denial, the city finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final. (as added by Ord. #03-03, Sept. 2003)

9-809. Suspension. (1) The city may suspend a sexually oriented business license for a period not to exceed thirty (30) days if it is determined that a licensee or employee of a licensee has:

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

(b) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter, provided, however; the provisions above relating to suspension shall not preclude revocation of a license if grounds as set out in § 9-810 below exist. (as added by Ord. #03-03, Sept. 2003)

9-810. Revocation. (1) The city may revoke a sexually oriented business license if a cause of suspension in § 9-809 occurs and the license has been suspended within the preceding twelve (12) months.

(2) The city may revoke a sexually oriented business license if it determines that:

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

(b) A licensee has knowingly allowed possession, use or sale of controlled substances on the premises;

(c) A licensee has knowingly allowed prostitution on the premises;

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

(e) Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises;

(f) A licensee is delinquent in payment to the city, county or state for any taxes or fees past due.

(3) The city may revoke a sexually oriented business employee license if it determines that:

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

(b) A licensee possessed, used or sold controlled substances on the premises;

(c) A licensee committed prostitution on the premises;

(d) A licensee operated within a sexually oriented business without proper license; or

(e) A licensee has participated in any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act in or on the licensed premises.

(4) When the city 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 the revocation became effective. If, subsequent to revocation, the city finds that the basis for the revocation has

been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

(5) After denial of an application or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court. (as added by Ord. #03-03, Sept. 2003)

9-811. Transfer of license. A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application. (as added by Ord. #03-03, Sept. 2003)

9-812. Location of sexually oriented business. (1) A person commits a violation of this chapter if that person operates or causes to be operated a sexually oriented business in any zoning district other than B-3 Commercial District, as defined and described in Chapter VI, section 11-603 of the Zoning Ordinance of Milan, Tennessee.

(2) A person commits an offense if the person operates or causes to be operated a sexually oriented business within five hundred feet (500') of:

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

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

(c) A boundary of any residential district as shown on the official Milan Zoning Map;

(d) An occupied residential "dwelling;"

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

(f) The property line of a lot devoted to use as a "residence;" or

(g) An entertainment business which is oriented primarily towards children or family entertainment.

(3) A person commits an offense if the person operates or causes to be operated a sexually oriented business within one hundred feet (100') of any government building or public assembly.

(4) A person commits a violation of this chapter if that person causes or permits the operation, establishment, substantial enlargement or transfer of ownership or control of a sexually oriented business within five hundred feet (500') of another sexually oriented business.

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

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

(7) For purposes of subsections (3) and (4) of this section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

(8) Any sexually oriented business lawfully operating on the date the ordinance comprising this chapter is approved by the mayor and board of aldermen that is in violation of subsections (1) through (7) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one (1) year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within five hundred feet (500') of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is/are non-conforming.

(9) A sexually oriented business lawfully in operation as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of a sexually oriented business license, of a use listed in subsection (2) of this section within five hundred feet (500') of the sexually oriented business. (as added by Ord. #03-03, Sept. 2003)

9-813. Additional regulations for adult motels. (1) Evidence that a sleeping room in a hotel, motel or a similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less

than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as the term is defined in this chapter.

(2) A person commits a misdemeanor if as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have a sexually oriented license, he rents or sub-rents a sleeping room to a person, and within ten (10) hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

(3) For purposes of subsection (2) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration. (as added by Ord. #03-03, Sept. 2003)

9-814. Regulations pertaining to exhibition of sexually explicit films, videos or live entertainment in viewing rooms. (1) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(a) Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted; if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprints shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (6"). The city 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 it was prepared.

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

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

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

(e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more manager's stations designated; then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area on the premises to 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 licensee to ensure that the view area specified in subsection (e) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and; at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (a) of this section.

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

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

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

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

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

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

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

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

(2) A person having a duty under subsections (a) through (n) of subsection (1) above commits a misdemeanor if he knowingly fails to fulfill that duty. (as added by Ord. #03-03, Sept. 2003)

9-815. Additional regulations for escort agencies. (1) An escort agency shall not employ any person under the age of eighteen (18) years of age.

(2) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of eighteen (18) years. (as added by Ord. #03-03, Sept. 2003)

9-816. Additional regulations for nude model studios. (1) A nude model studio shall not employ any person under the age of eighteen (18) years.

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

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

(4) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises except that a sofa may be placed in a reception room open to the public. (as added by Ord. #03-03, Sept. 2003)

9-817. Additional regulations concerning public nudity. (1) It shall be a violation of this chapter for a person to knowingly and intentionally, in a sexually oriented business, appear in a state of nudity or depict specified sexual activities.

(2) It shall be a violation of this chapter for a person to knowingly or intentionally in a sexually oriented business appear in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten feet (10') from any person or customer and on a stage at least two feet (2') from the floor.

(3) It shall be a violation of this chapter for an employee, while semi-nude in a sexually oriented business, to solicit any payor 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 in a sexually oriented business.

(4) It shall be a violation of this chapter for an employee, while semi-nude, to touch a customer or the clothing of a customer. (as added by Ord. #03-03, Sept. 2003)

9-818. Prohibition against children in a sexually oriented business. A person commits a violation of this chapter if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business. (as added by Ord. #03-03, Sept. 2003)

9-819. Hours of operation. No sexually oriented business, except for an adult motel, may remain open at any time between the hours of twelve

o'clock midnight (12:00) and eight o'clock (8:00) A.M. on weekdays and Saturdays. No sexually oriented business shall be open for business on any Sunday or legal holiday as designated in Tennessee Code Annotated, § 15-1-101. (as added by Ord. #03-03, Sept. 2003)

9-820. Exemptions. (1) It is a defense to prosecution under § 9-817 that a person appearing in a state of nudity did so in a modeling class operated:

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

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

(c) In a structure:

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

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

(iii) Where no more than one (1) nude model is on the premises at any one time. (as added by Ord. #03-03, Sept. 2003)

9-821. Penalties and injunction. Any violation of this chapter shall be punishable by a fine of not more than fifty dollars (\$50.00). Each day a sexually oriented business or sexually oriented business employee operates in violation of this chapter is a separate offense or violation. (as added by Ord. #03-03, Sept. 2003)

9-822. General provisions. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.

All ordinance or parts of ordinances in conflict with the provisions of this chapter are hereby repealed. (as added by Ord. #03-03, Sept. 2003)