

TITLE 9

BUSINESSES, PEDDLERS, SOLICITORS, ETC.¹

CHAPTER

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CHAPTER 1

PEDDLERS, SOLICITORS, ETC.²

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9-101. Definitions. Unless otherwise expressly stated, whenever used in this chapter, the following words shall have the meaning given to them in this section:

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

¹Municipal code references

Building and residential codes: title 12.
 Junkyards: title 13, ch. 2.
 Liquor and beer regulations: title 8.
 Noise reductions: title 11, ch. 4.
 Parades regulated: § 16-110.
 Zoning: title 14.

²Municipal code references

Trespassing: title 11, ch. 7.
 Wholesale beer tax: title 5, ch. 2.

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

(3) "Solicitor for charitable or religious purposes," means any person, firm, corporation or organization who or which solicits contributions from the public, either on the streets of the city or from door to door, business to business, place to place, or from street to street, for any charitable or religious organization, and who does not sell or offer to sell any single item at a cost to the purchaser in excess of ten dollars (\$10.00). No organization shall qualify as a "charitable" or "religious" organization unless the organization meets one (1) of the following conditions:

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

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

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

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

(5) "Transient vendor,"¹ means any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of selling or offering to sell the merchandise to the public. Transient vendor does

¹State law reference

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

The definition of "transient vendors" is taken from Tennessee Code Annotated, § 67-4-709(a)(19). Note also that Tennessee Code Annotated, § 67-4-709(a) prescribes that transient vendors shall pay a tax of \$50.00 for each 14 day period in each county and/or municipality in which such vendors sell or offer to sell merchandise for which they are issued a business license, but that they are not liable for the gross receipts portion of the tax provided for in Tennessee Code Annotated, § 67-4-709(b).

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

(6) "Street barker," means any peddler who does business during recognized festival or parade days in the city and who limits his business to selling or offering to sell novelty items and similar goods in the area of the festival or parade. (1987 Code, § 5-101)

9-102. Exemptions. The terms of this chapter shall not apply to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to persons selling agricultural products, who, in fact, themselves produced the products being sold. (1987 Code, § 5-102)

9-103. Permit required. No person, firm or corporation shall operate a business as a peddler, transient vendor, solicitor or street barker, and no solicitor for charitable or religious purposes or solicitor for subscriptions shall solicit within the city unless the same has obtained a permit from the city in accordance with the provisions of this chapter. (1987 Code, § 5-103)

9-104. Permit procedure. (1) Application form. A sworn application containing the following information shall be completed and filed with the city recorder by each applicant for a permit as a peddler, transient vendor, solicitor, or street barker and by each applicant for a permit as a solicitor for charitable or religious purposes or as a solicitor for subscriptions:

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

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

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

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

(e) The make, model, complete description, and license tag number and state of issue, of each vehicle to be used to make sales or solicitation, whether or not such vehicle is owned individually by the

person making sales or solicitations, by the business or organization itself, or rented or borrowed from another business or person.

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

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

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

(4) Submission of application form to chief of police. Immediately after the applicant obtains a permit from the city recorder, the city recorder shall submit to the chief of police a copy of the application form and the permit. (1987 Code, § 5-104)

9-105. Restrictions on peddlers, street barkers and solicitors. No peddler, street barker, solicitor, solicitor for charitable purposes, or solicitor for subscriptions shall:

(1) Be permitted to set up and operate a booth or stand on any street or sidewalk, or in any other public area within the city.

(2) Stand or sit in or near the entrance to any dwelling or place of business, or in any other place which may disrupt or impede pedestrian or vehicular traffic.

(3) Offer to sell goods or services or solicit in vehicular traffic lanes, or operate a "road block" of any kind.

(4) Call attention to his business or merchandise or to his solicitation efforts by crying out, by blowing a horn, by ringing a bell, or creating other noise, except that the street barker shall be allowed to cry out to call attention to his business or merchandise during recognized parade or festival days of the city.

(5) Enter in or upon any premises or attempt to enter in or upon any premises wherein a sign or placard bearing the notice "Peddlers or Solicitors Prohibited," or similar language carrying the same meaning, is located. (1987 Code, § 5-105)

9-106. Restrictions on transient vendors. A transient vendor shall not advertise, represent, or hold forth a sale of goods, wares or merchandise as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver's manufacturer's wholesale, canceled order, or misfit sale, or closing-out sale, or a sale of any goods damaged by smoke, fire, water or otherwise, unless such advertisement, representation or holding forth is actually of the character it is advertised, represented or held forth. (1987 Code, § 5-106)

9-107. Display of permit. Each peddler, street barker, solicitor, solicitor for charitable purposes or solicitor for subscriptions is required to have in his possession a valid permit while making sales or solicitations, and shall be required to display the same to any police officer upon demand. (1987 Code, § 5-107)

9-108. Suspension or revocation of permit. (1) Suspension by the recorder. The permit issued to any person or organization under this chapter may be suspended by the city recorder for any of the following causes:

(a) Any false statement, material omission, or untrue or misleading information which is contained in or left out of the application; or

(b) Any violation of this chapter.

(2) Suspension or revocation by the board of mayor and aldermen. The permit issued to any person or organization under this chapter may be suspended or revoked by the board of mayor and aldermen, after notice and hearing, for the same causes set out in subsection (1) above. Notice of the hearing for suspension or revocation of a permit shall be given by the city recorder in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed to the permit holder at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1987 Code, § 5-108)

9-109. Expiration and renewal of permit. The permit of peddlers, solicitors and transient vendors shall expire on the same date that the permit holder's privilege license expires. The registration of any peddler, solicitor, or transient vendor who for any reason is not subject to the privilege tax shall be issued for six (6) months. The permit of street barkers shall be for a period corresponding to the dates of the recognized parade or festival days of the city. The permit of solicitors for religious or charitable purposes and solicitors for subscriptions shall expire on the date provided in the permit, not to exceed thirty (30) days. (1987 Code, § 5-109)

9-110. Violation and penalty. In addition to any other action the city may take against a permit holder in violation of this chapter, such violation shall be punishable according to the general penalty provision of this municipal code of ordinances. (1987 Code, § 5-110)

CHAPTER 2

MISCELLANEOUS

SECTION

9-201. Registration of businesses required.

9-202. Open air sales.

9-203. Sales of ephedrine and ephedrine-related products.

9-201. Registration of businesses required. (1) The owner or operator of each and every business operating within the corporate limits of the city is required to register with the city recorder. On a form provided for that purpose, the owner or operator of the business, and in descending order of importance, the full name, addresses and telephone numbers of three (3) persons, if that many who can be contacted in the event of an emergency involving the business premises. Persons who can be contacted in the event of an emergency should generally be those persons, who have keys or other quick access to the business premises, and who can be quickly and easily contacted.

The recorder shall compile and maintain an up-to-date file of businesses and the information pertaining to them required to be kept under this chapter, and shall provide the police, fire and public works departments with the same. However, the business file required to be kept under this chapter may be kept in a central file to which the police, fire and public works and utility departments have immediate and convenient access.

(2) The owner or operator of businesses required to notify the city recorder of any change of information contained on the registration form within five (5) weekdays after such changes. The recorder shall immediately enter such change on the registration form, along with the name of the person who provided the information relative to the change, and shall immediately communicate that change to the police, fire, and public works and utility departments, unless such information is maintained in a central file as provided for in subsection (1).

(3) The conduct of a business or businesses at two (2) or more locations, or the conduct of two (2) or more separate businesses at the same location (such as, but not limited to situations where part of the premises is leased, under concession to, or owned wholly or in part by a different person or person on the same premises) shall, for the purposes of this chapter be deemed to be separate businesses, and each shall be subject of the registration and all other provisions of this chapter, including payment of the registration fee.

(4) The registration period shall be within ten (10) days after this chapter and the owner and operator is notified. New businesses shall have a maximum of five (5) weekdays after they open their doors for business the first time in which to register. Any change in ownership of a business shall be considered a new business.

(5) The registration fee for business shall be fifteen dollars (\$15.00). The registration fee is due and payable in full at the time of registration, and is nonrefundable. Business which fail to register within the time required by this chapter shall pay the registration fee from the time they were to register rather than the time they actually registered.

(6) The intent of this chapter is exclusively regulatory, and is in no way intended to be a tax on businesses operating within the City of Baxter.

(7) Any owner or operator of a business who fails or refuses to comply with this shall be subject to a minimum fine of fifty dollars (\$50.00). (1987 Code, § 5-301)

9-202. Open air sales. This section regulates open air sales and activities whereby sales of merchandise occur under tents, in booths, and other such portable shelters within the corporate city limits of Baxter, Tennessee.

(1) Permit. An application for a permit shall be submitted to the board of mayor and aldermen at a stated monthly meeting for approval. Permits shall be considered on a "first come" basis. No more than one (1) permit per quarter shall be issued to any one (1) applicant or his/her cause.

(2) Fee. A fee of fifty dollars (\$50.00) shall be required for the issuance of a permit.

(3) Duration. Approved permits shall be valid for a period of seven (7) days, which shall include the beginning and end date. The activity (to include the tents, booths or any portable shelter) must be removed no later than the end day of the approved permit.

(4) Requirements.

(a) Activity shall not violate city ordinances.

(b) Temporary structures must be in compliance with all applicable fire, electrical and safety codes.

(c) The permit applicant shall provide portable toilet facilities adequate for the seating provided.

(d) The permit applicant shall provide trash/refuse receptacles.

(e) Grounds maintenance shall be the responsibility of the permit applicant. (Ord. #2004-5, May 2004)

9-203. Sales of ephedrine and ephedrine-related products. No person shall sell or deliver, or attempt to sell or deliver in any single retail sale, a package that contains more than one hundred (100) tablets of any product that contains any quantity of ephedrine, pseudoephedrine or phenylpropanolamine, or any number of packages that contain a combined total of three (3) or more grams of ephedrine, pseudoephedrine, or phenylpropanolamine whether as the sole active ingredient or in combination products that have less than therapeutically significant quantities of other active ingredients.

(1) The following definitions apply to this section:

(a) The use of the terms "ephedrine," "pseudoephedrine," "phenylpropanolamine" in this section all include the salts, optical isomers, or salts of optical isomers of ephedrine, pseudoephedrine and phenylpropanolamine.

(b) The use of the term "retail establishment" in this section shall include any business entity and individual person who sells, offers for sale or attempts to sell any product containing ephedrine, pseudoephedrine or phenylpropanolamine at retail.

(c) The use of the term "consumer accessible shelving" in this shall mean any area of a retail establishment other than product display area behind a counter where the public is not permitted, or within a locked display case or within six feet (6') of a register located on a checkout counter.

(2) All packages of any product containing ephedrine, pseudoephedrine or phenylpropanolamine, whether as the sole active ingredient or in combination products that have less than therapeutically significant quantities of other active ingredients, shall not be displayed or offered for sale in any retail establishment on consumer-accessible shelving.

(3) This section shall not apply as follows:

(a) To any product labeled pursuant to federal regulations for use only in children under twelve (12) years of age;

(b) To any products that the state department of health, upon application of a manufacturer, determines has been formulated in such a way as to effectively prevent its use in the illicit manufacture of methamphetamine;

(c) To any animal feed products containing ephedrine, or naturally occurring or herbal ephedra or extract of ephedra, pseudoephedrine, or phenylpropanolamine; and

(d) To the sale or delivery of any product containing ephedrine, pseudoephedrine, or phenylpropanolamine pursuant to the lawful prescription of a person authorized by state law to prescribe such products.

(4) Any person who is considered the operator of a retail establishment where products containing ephedrine, pseudoephedrine, or phenylpropanolamine are available for sale who violates subsections (2) or (3) shall not be penalized pursuant to this chapter if such a person documents that an employee training program was in place to provide the employees with information on the local, state and federal regulations regarding ephedrine, pseudoephedrine and phenylpropanolamine, and that the employees had completed the training program.

(5) Register required for sales:

(a) Any retail establishment that sells or delivers, or attempts to sell or deliver, to a person any product containing ephedrine, pseudoephedrine, or phenylpropanolamine whether as the sole active

ingredient or in combination products that have less than therapeutically significant quantities of other active ingredients, shall require such person to show proper identification and to sign a register.

(b) The register described in subsection (a) shall be created by any retail establishment that sells a product or products described in subsection (a) and shall require at least the following information:

(i) The specific quantity of ephedrine, pseudoephedrine or phenylpropanolamine purchased;

(ii) The signature of the purchaser;

(iii) The name and residential or mailing address of the purchaser, other than a post office box number;

(iv) The number of the purchaser's motor vehicle operator's license or other proper identification at the time of the purchase;

(v) The date of such purchase; and

(vi) The signature of an employee of the retail establishment as witness to the purchase and identification of the purchaser.

(c) The retail establishment shall retain each original register for three (3) years in a readily presentable and readable manner, and present the register upon demand by any law enforcement officer or authorized representative of the district attorney general's office.

(d) As used in this section, "proper identification" means a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser that contains a photograph of the purchaser.

(e) This section shall not apply to the sale or delivery of any product containing ephedrine, pseudoephedrine, or phenylpropanolamine by a licensed pharmacy upon a pharmacist making a good faith determination that the purchase of the product is for a legitimate medical purpose.

(6) It is a civil offense to fail to comply with the foregoing regulations. Any violation of this section is punishable by civil penalty of up to fifty dollars (\$50.00). Each day a violation continues under this section shall constitute a separate offense. (Ord. #2003-11, Jan. 2004)