

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

1. REGULATIONS OF ESTABLISHMENTS TRADING IN MATERIALS AND SERVICES HARMFUL TO MINORS.
2. REGULATIONS FOR TELECOMMUNICATIONS TOWERS AND FACILITIES.
3. PEDDLERS, SOLICITORS, ETC.

CHAPTER 1**REGULATIONS OF ESTABLISHMENTS TRADING IN MATERIALS AND SERVICES HARMFUL TO MINORS****SECTION**

- 9-101. Not permitted in Residential A District.
- 9-102. Restrictions on location.

9-101. Not permitted in Residential A District. No business establishment or commercial venture offering for sale as a product or service any materials or services defined herein as harmful to minors shall be permitted in Residential A Districts within the City of Berry Hill. (Ord. #91-255, May 1991)

9-102. Restrictions on location. Any business establishment or commercial venture offering for sale as a product or service any materials or services defined herein as harmful to minors and any "adult bookstore," "adult cabaret," "adult entertainment," "adult mini-motion picture theater," "adult motion picture theater," "adult-oriented establishments," as defined herein, may be permitted in Commercial A and B and Industrial A Districts provided that in addition to full compliance with all other laws and ordinances the business or establishment shall also comply with the following:

(1) No such establishment may be located within 2500 feet of any residence, any property zoned for residential use, any school, school buildings or facilities, school bus stops, churches or establishments of worship. The distance of 2500 feet shall be measured from the front entrance of the business in a straight line or nearest distance to the residence, school, church or other establishment or facility.

(2) If there is offered materials for viewing on screen and on location, there must be a minimum of 500 square feet of open and unobstructed space in front of the screen.

(3) Any booths for reading or observing any materials or activities must be open and without doors or closures obstructing view into the booth or enclosure.

(4) No display of materials or products shall be visible from the public street.

(5) No such establishment may be by location and activity a nuisance.

(6) Definitions. The following definitions apply to this chapter:

(a) "Minor," any person who has not reached the age of eighteen (18) and is not emancipated.

(b) "Harmful to minors," means that quality of any description or representation, in whatever form, of nudity, sexual excitement, sexual conduct, excess violence, or sadomasochistic abuse when the matter or performance would be found by the average person applying contemporary community standards to appeal predominantly to the prurient, shameful or morbid interests of minors; is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and taken as a whole lacks serious literary, artistic, political or scientific values for minors.

(c) "Materials harmful to minors," those materials determined by the Tennessee State Legislature to be harmful to minors as listed in Tennessee Code Annotated, § 39-17-911 or any subsequent modification of this section by legislative act or court order.

(d) "Services harmful to minors," any service associated with or connected with the delivery of any material defined under paragraph (a) of Tennessee Code Annotated, § 39-17-911 to any minor.

(e) "Adult bookstore, adult cabaret, adult entertainment, adult mini-motion picture theater, adult motion picture theater, adult oriented establishments" are those activities or establishments as defined in Tennessee Code Annotated, § 7-51-1102.

(7) In the event any one part or portion of this chapter is declared unlawful it shall not effect the remainder of the chapter. (Ord. #91-255, May 1991)

CHAPTER 2

REGULATIONS FOR TELECOMMUNICATIONS TOWERS AND FACILITIES

SECTION

- 9-201. Findings.
- 9-202. Purposes.
- 9-203. Definitions.
- 9-204. Development of towers.
- 9-205. Setbacks.
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- 9-207. Separation or buffer requirements.
- 9-208. Method of determining tower height.
- 9-209. Illumination.
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- 9-212. Access.
- 9-213. Telecommunications facilities on antenna support structures.
- 9-214. Modification of towers.
- 9-215. Certifications and inspections.
- 9-216. Maintenance.
- 9-217. Criteria for site plan development modifications.
- 9-218. Abandonment.

9-201. Findings. The Communication Act of 1934 as amended by the Telecommunications Act of 1996 ("the Act") grants the Federal Communications Commission (FCC) exclusive jurisdiction over:

- (1) The regulation of the environmental effects of radio frequency (RF) emissions from telecommunications facilities, and
- (2) The regulation of radio signal interference among users of the RF spectrum.

The city's regulation of towers and telecommunications facilities in the city will not have the effect of prohibiting any person from providing wireless telecommunications services in violation of the act. (Ord. #98-300, July 1998)

9-202. Purposes. The general purpose of this chapter is to regulate the placement, construction, and modification of towers and telecommunications facilities in order to protect the health, safety, and welfare of the public, while at the same time not reasonably interfering with the development of the competitive wireless telecommunications marketplace in the city.

Specifically, the purposes of this chapter are:

- (1) To regulate the location of towers and telecommunications facilities in the city;
- (2) To protect residential areas and land uses from potential adverse impact of towers and telecommunications facilities;
- (3) To minimize adverse visual impact of towers and telecommunications facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
- (4) To promote and encourage shared use/collocation of towers and antenna support structures as a primary option rather than construction of additional single-use towers;
- (5) To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new tower structures to support antenna and telecommunications facilities;
- (6) To avoid potential damage to property caused by towers and telecommunications facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and
- (7) To ensure that towers and telecommunications facilities are compatible with surrounding land uses. (Ord. #98-300, July 1998)

9-203. Definitions. The following words, terms, and phrases, when used in this section, shall have the meaning:

- (1) "Antenna support structure" means any building or structure other than a tower which can be used for location of telecommunications facilities.
- (2) "Applicant" means any person that applies for a tower development permit.
- (3) "Application" means the process by which the owner of a parcel of land within the city submits a request to develop, construct, build, modify, or erect a tower upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to the city concerning such a request.
- (4) "Engineer" means any engineer licensed by the State of Tennessee.
- (5) "Owner" means any person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within the city who desires to develop, or construct, build, modify, or erect a tower upon such parcel of land.
- (6) "Person" is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.
- (7) "Stealth" means any tower or telecommunications facility which is designed to enhance compatibility with adjacent land uses, including but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and towers designed to look other than like a tower

such as light poles, power poles, and trees. The term stealth does not necessarily exclude the use of uncamouflaged lattice, guyed, or monopole tower designs.

(8) "Telecommunications facilities" means any cables, wires, lines, wave guides, antennas, and any other equipment or facilities association with the transmission or reception of communications which a person seeks to locate or has installed upon or near a tower or antenna support structure. However, telecommunications facilities shall not include:

(a) Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial; or

(b) Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category.

(9) "Tower" means a self-supporting lattice, guyed, or monopole structure constructed from grade which supports telecommunications facilities. The term tower shall not include amateur radio operators' equipment, as licensed by the FCC. (Ord. #98-300, July 1998)

9-204. Development of towers. (1) A tower shall be a permitted use of land in zoning districts commercial A and B and industrial A. No person shall build, erect, or construct a tower upon any parcel of land within a zoning district designated residential unless a development permit shall have been issued by the development review committee of the city. Application shall be made to the development review committee in the manner provided in this chapter.

(2) A tower shall be conditional use of land in the following zoning districts:

Commercial A

Commercial B

Industrial A

No person shall build, erect, or construct a tower upon any parcel of land within any zoning district set forth above unless a development permit shall have been issued by the development review committee of the city and approval of the city planning and zoning board is obtained.

(3) Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of one hundred and fifty (150) feet. Towers may be permitted in excess of one hundred and fifty (150) feet in accordance with § 9-217 "Criteria for site plan development modifications."

(4) No new tower shall be built, constructed, or erected in the city unless the tower is capable of supporting another person's operating telecommunications facilities comparable in weight, size, and surface area to the

telecommunications facilities installed by the applicant on the tower within six (6) months of the completion of the tower construction.

(5) An application to develop a tower shall include:

(a) The name, address, and telephone number of the owner and lessee of the parcel of land upon which the tower is situated.

(b) The legal description, folio number, and address of the parcel of land upon which tower is situated.

(c) The names, addresses, and telephone numbers of all owners of other towers or usable antenna support structures within a one-half (½) mile radius of the proposed new tower site, including city-owned property.

(d) A description of the design plan proposed by the applicant in the city. Applicant must identify its utilization of the most recent technological design, including microcell design, as part of the design plan. The applicant must demonstrate the need for towers and why design alternatives, such as the use of microcell, cannot be utilized to accomplish the provision of the applicant's telecommunications services.

(e) An affidavit attesting to the fact that applicant made diligent, but unsuccessful, efforts to install or collocate the applicant's telecommunications facilities on city-owned towers or usable antenna support structures located within a one-half (½) mile radius of the proposed tower site.

(f) An affidavit attesting to the fact that the applicant made diligent, but unsuccessful, efforts to install or collocate the applicant's telecommunications facilities on towers or usable antenna support structures owned by the other persons located within one-half (½) mile radius of the proposed tower site.

(g) Written technical evidence from an engineer(s) that the proposed tower or telecommunications facilities cannot be installed or collocated on another person's tower or usable antenna support structures owned by other persons located within one-half (½) mile radius of the proposed tower site.

(h) A written statement from an engineer(s) that the construction and placement of the tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.

(i) Written, technical evidence from an engineer(s) that the proposed structure meets the standards set forth in § 9-206, "structural requirements," of this chapter.

(j) Written, technical evidence from qualified engineer(s) acceptable to the fire marshal and the building official that the proposed

site of the tower or telecommunications facilities does not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.

(k) In order to assist city staff and the planning and zoning board in evaluating visual impact, the applicant shall submit color photo simulations showing the proposed site of the tower with a photo-realistic representation of the proposed tower as it would appear viewed from the closest residential property and from adjacent roadways.

(l) The act gives the FCC sole jurisdiction of the field of regulation of RF emissions and does not allow the city to condition or deny on the basis of RF impacts the approval of any telecommunication facilities (whether mounted on towers or antenna support structures) which meet FCC standards. In order to provide information to its citizens, the city shall make available upon request copies of ongoing FCC information and RF emission standards for telecommunications facilities transmitting from towers or antenna support structures. Applicants shall be required to submit information on the proposed power density of their proposed telecommunications facilities and demonstrate how this meets FCC standards.

(6) The development review committee may require an applicant to supplement any information that the committee considers inadequate or that the applicant has failed to supply the committee may deny an application on the basis that the applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the city in a prompt manner and all decisions shall be supported in writing setting forth the reasons for denial. (Ord. #98-300, July 1998)

9-205. Setbacks. (1) All towers up to one-hundred (100) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of one hundred (100) feet in height shall be set back one (1) additional foot per each foot of tower height in excess of one hundred (100) feet.

(2) Setback requirements for towers shall be measured from the base of the tower to the property line of the parcel of land on which it is located.

(3) Setback requirements may be modified, as provided in § 9-217(2)(a), when placement of a tower in location which will reduce the visual impact can be accomplished. For example, adjacent to trees which may visually may hide the tower. (Ord. #98-300, July 1998)

9-206. Towers must be certified. All towers must be designed and certified by an engineer to be structurally sound outlined in this chapter. All towers in operation shall be fixed to land. (Ord. #98-300, July 1998)

9-207. Separation or buffer requirements. For the purpose of this section, the separation distances between towers shall be measured by drawing or following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan of the proposed tower. Tower separation distances from residentially zoned lands shall be measured from the base of a tower to the closest point of residentially zoned property. The minimum tower separation distances from residentially zoned land and from other towers shall be calculated and applied irrespective of city jurisdiction boundaries.

(1) Towers shall be separated from all residentially zoned lands by a minimum of two hundred (200) feet or two hundred (200) percent of the height of the proposed tower, whichever is greater.

(2) Proposed towers must meet the following minimum separation requirements from existing towers or towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this code:

(a) Monopole tower structures shall be separated from all other towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet.

(b) Self-supporting lattice or guyed tower structures shall be separated from all other self-supporting or guyed towers by a minimum of fifteen hundred (1,500) feet.

(c) Self-supporting lattice or guyed tower structures shall be separated from all monopole towers by a minimum of seven hundred and fifty (750) feet. (Ord. #98-300, July 1998)

9-208. Method of determining tower height. Measurement of tower height for the purpose of determining compliance with all requirements of this section shall include the tower structure itself, the base pad, and any other telecommunication facilities attached thereto which extend more than twenty (20) feet over the top of the tower structure itself. Tower height shall be measured from grade. (Ord. #98-300, July 1998)

9-209. Illumination. Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Upon commencement of construction of a tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the tower

from the tower and when required by federal law, dual mode lighting shall be requested from the FAA. (Ord. #98-300, July 1998)

9-210. Exterior finish. Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, as approved by the appropriate reviewing body. (Ord. #98-300, July 1998)

9-211. Landscaping requirements. All landscaping on a parcel of land containing towers, antenna support structures, or telecommunications facilities shall be in accordance with the applicable landscaping requirements in the zoning district where the tower, antenna support structure, or telecommunications facilities are located. The city may require landscaping in excess of the requirements in the city code in order to enhance compatibility with adjacent land uses. Landscaping shall be installed on the outside of any fencing. (Ord. #98-300, July 1998)

9-212. Access. A parcel of land upon which a tower is located must provide access to at least one (1) paved vehicular parking space on site. (Ord. #98-300, July 1998)

9-213. Telecommunications facilities on antenna support structures. Any telecommunications facilities which are not attached to a tower may be permitted on any antenna support structure at least fifty (50) feet tall, regardless of the zoning restrictions applicable to the zoning district where the structure is located. Telecommunications facilities are prohibited on all other structures. The owner of such structure shall, by written certification to the zoning administrator, establish the following at the time plans are submitted for a building permit.

(1) That the height from grade of the telecommunications facilities shall not exceed the height from grade of the antenna support structure by more than twenty (20) feet.

(2) That any telecommunications facilities and their appurtenances, located above the primary roof of an antenna support structure, are set back one (1) foot from the edge of the primary roof for each one (1) foot in height above the primary roof of the telecommunications facilities. This setback requirement shall not apply to telecommunication facilities and their appurtenances, located above the primary roof of an antenna support structure, if such facilities are appropriately screened from view through the use of panels, walls, fences, or other screening techniques approved by the city. Setback requirements shall not apply to stealth antennas which are mounted to the exterior of antenna support structures below the primary roof, but which do not protrude more than

eighteen (18) inches from the side of such an antenna support structure. (Ord. #98-300, July 1998)

9-214. Modification of towers. (1) A tower existing prior to the effective date of this chapter, which was in compliance with the city's zoning regulations immediately prior to the effective date of this chapter, may continue in existence as a non-conforming structure. Such non-conforming structures may be modified or demolished and rebuilt without complying with any of the additional requirements of this section, except for §§ 9-207, "Separation or buffer requirements," 9-215 "Certification and inspections," and 9-216 "Maintenance," provided:

(a) The tower is being modified or demolished and rebuilt for the sole purpose of accommodating, within six (6) months of the completion of the modification or rebuild, additional telecommunications facilities comparable in weight, size, and surface area to the discrete operating telecommunications facilities of any person currently installed on the tower.

(b) An application for a development is made to the development review committee which shall have the authority to issue a development permit without further approval. The grant of a development permit pursuant to this section allowing the modification or demolition and rebuild of an existing non-conforming tower shall not be considered a determination that the modified or demolished and rebuilt tower is conforming.

(c) The height of the modified or rebuilt tower and telecommunications facilities attached thereto do not exceed the maximum height allowed under this chapter.

(2) Except as provided in this section, a non-conforming structure or use may not be enlarged, increased in size, or discontinued in use for a period of more than one hundred eighty (180) days. This chapter shall not be interpreted to legalize any structure or use existing at the time this chapter is adopted which structure or use is in violation of the code prior to enactment of this chapter. (Ord. #98-300, July 1998)

9-215. Certifications and inspections. Building code and all other construction. (1) All towers shall be certified by an engineer to be structurally sound in conformance with the requirements of the standards set forth by the city's code and federal and state law. For new monopole towers, such certification shall be submitted with an application pursuant to § 9-204 of this chapter and every five (5) years thereafter. For existing monopole towers, certifications shall be submitted within sixty (60) days of the effective date of this chapter and then every five (5) years thereafter. For new lattice or guyed

towers, such certification shall be submitted with an application pursuant to § 9-204 of this chapter and every two (2) years thereafter. For existing lattice or guyed towers, certification shall be submitted within sixty (60) days of the effective date of this chapter and then every two (2) years thereafter. The tower owner may be required by the city to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the tower is jeopardized.

(2) The city or its agents shall have authority to enter onto the property upon which a tower is located, between the inspection and certification required above, to inspect the tower for the purpose of determining whether it complies with the building code and all other construction standards provided by the city code and federal and state law.

(3) The city reserves the right to conduct such inspections at any time, upon reasonable notice to the tower owner. All expenses related to such inspections by the city shall be borne by the tower owner. (Ord. #98-300, July 1998)

9-216. Maintenance. (1) Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(2) Tower owners shall install and maintain towers, telecommunications, facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.

(3) All towers, telecommunications facilities, and antenna support structures shall

(4) All maintenance or construction of towers, telecommunications facilities, or antenna support structures shall be performed by licensed maintenance and construction personnel.

(5) All towers shall maintain compliance with current RF emission standards of the FCC.

(6) In the event that the use of a tower is discontinued by the tower owner, the tower owner shall provide written notice to the city of its intent to discontinue use and the date when the use shall be discontinued. (Ord. #98-300, July 1998)

9-217. Criteria for site plan development modifications.

(1) Notwithstanding the tower requirements provided in this chapter, a modification to the requirements may be approved by the planning and zoning board as a conditional use in accordance with the following:

(a) In addition to the requirements for a tower application for modification shall include the following:

(i) A description of how the plan addresses any adverse impact that might occur as a result of approving the modification.

(ii) A description of off-site or on-site factors which mitigate any adverse impacts which might occur as a result of the modification.

(iii) A technical study that documents and supports the criteria submitted by the applicant upon which the request for modification is based. The technical study shall be certified by an engineer and shall document the existence of the facts related to the proposed modifications and its relationship to surrounding rights-of-way and properties.

(iv) For a modification of the setback requirement, the application shall identify all parcels of land where the proposed tower could be located, attempts by the applicant to contract and negotiate an agreement for collocation, and the result of such attempts.

(v) The development review committee may require the application to be reviewed by an independent engineer under contract to the city to determine whether the antenna study supports the basis for the modification requested. The cost of review by the city's engineer shall be reimbursed to the city by the applicant.

(b) The planning and zoning board shall consider the application for modification based on the following criteria:

(i) That the tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.

(ii) Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.

(iii) In addition, the board may include conditions on the site where the tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed tower and mitigate any adverse impacts which arise in connection with the approval of the modification.

(2) In addition to the requirements of subparagraph (1) of this section, in the following cases, the applicant must also demonstrate, with written evidence, the following:

(a) In the case of a requested modification to the setback requirement, § 9-205, that the setback requirement cannot be met on the

parcel of land upon which the tower is proposed to be located and the alternative for the person is to locate the tower at another site which is closer in proximity to a residentially zoned land.

(b) In the case of a request for modification to the separation and buffer requirements from other towers of § 9-207, "Separation or buffer requirements," that the proposed site is zoned "industrial" or "heavy industrial" and the proposed site is at least double the minimum standard for separation from residentially zoned lands as provided for in § 9-207.

(c) In the case of a request for modification of the separation and buffer requirements from residentially zoned land of § 9-207, if the person provides written technical evidence from an engineer(s) that the proposed tower and telecommunications facilities must be located at the proposed site in order to meet the coverage requirements of the applicant's wireless communications system and if the person is willing to create approved landscaping and other buffers to screen the tower from being visible to residentially zoned property.

(d) In the case of a request for modification of the height limit for towers and telecommunications facilities or to the minimum height requirements for antenna support structures, that the modification is necessary to:

(i) Facilitate collocation of telecommunications facilities in order to avoid construction of a new tower; or

(ii) To meet the coverage requirements of the applicant's wireless communication system, which requirements must be documented with written, technical evidence from an engineer(s) that demonstrates that the height of the proposed tower is the minimum height required to function satisfactorily, and no tower that is taller than such minimum height shall be approved. (Ord. #98-300, July 1998)

9-218. Abandonment. (1) If any tower shall cease to be used for a period of 365 consecutive days, the (city council) shall notify the owner, with a copy to the applicant, that the site has been abandoned. The owner shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence, that the tower has been in use or under repair during the period. If the owner fails to show that the tower has been in use or under repair during the period, the (city council) shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the owner shall, within seventy-five (75) days, dismantle and remove the tower.

(2) To secure the obligation set forth in this section, the applicant [and/or owner] shall post a bond in the amount of \$10,000.00. Such amount

shall be determined by the (city council) based on the anticipated cost of removal of the tower. (Ord. #98-300, July 1998)

CHAPTER 3

PEDDLERS, SOLICITORS, ETC.

SECTION

- 9-301. Definitions.
- 9-302. Exemptions.
- 9-303. Permit required.
- 9-304. Permit procedure.
- 9-305. Restrictions on peddlers, street barkers and solicitors.
- 9-306. Restrictions on transient vendors.
- 9-307. Display of permit.
- 9-308. Suspension or revocation of permit.
- 9-309. Expiration and renewal of permit.
- 9-310. Violation and penalty.

9-301. Definitions. Unless otherwise expressly stated, whenever used in this chapter, the following words shall have the meaning given to them in this section:

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

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

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

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

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

(c) Has been in continued existence as a charitable or religious organization in 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 vendor¹" means any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of selling or offering to sell the merchandise to the public. Transient vendor does not include any person selling goods by sample, brochure, or sales catalog for future delivery; or to sales resulting from the prior invitation to the seller by the owner or occupant of a residence. For purposes of this definition, "merchandise" means any consumer item that is or is represented to be new or not previously owned by a consumer, and "temporary premises" means any public or quasi-public place including a hotel, rooming house, storeroom, building or part of a building, tent, vacant lot, railroad car, or motor vehicle which is temporarily occupied for the purpose of exhibiting stocks of merchandise to the public. Premises are not temporary if the same person has conducted business at those premises for more than six (6) consecutive months or has occupied the premises as his or her permanent residence for more than six (6) consecutive months.

(6) "Street barker" means any peddler who does business during recognized festival or parade days in the city and who limits his business to selling or offering to sell novelty items and similar goods in the area of the festival or parade. (Ord. #2002-326, April 2002)

¹State law references

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

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

9-302. Exemptions. The terms of this chapter shall neither apply to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to persons selling agricultural products, who, in fact, themselves produced the products being sold. (Ord. #2002-326, April 2002)

9-303. 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. (Ord. #2002-326, April 2002)

9-304. Permit procedure. (1) Application form. A sworn application containing the following information shall be completed and filed with the city recorder by each applicant for a permit as a peddler, transient vendor, solicitor, or street barker and by each applicant for a permit as a solicitor for charitable or religious purposes or as a solicitor for subscriptions:

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

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

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

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

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

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

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

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

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

9-305. 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.
- (Ord. #2002-326, April 2002)

9-306. Restrictions on transient vendors. A transient vendor shall not advertise, represent, or hold forth a sale of goods, wares or merchandise as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver's manufacturer's wholesale, cancelled order, or misfit sale, or closing-out sale, or a sale of any goods damaged by smoke, fire, water or otherwise, unless such advertisement, representation or holding forth is actually of the character it is advertised, represented or held forth. (Ord. #2002-326, April 2002)

9-307. 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. (Ord. #2002-326, April 2002)

9-308. 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 paragraph (1) above. Notice of the hearing for suspension or revocation of a permit shall be given by the city recorder in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed to the permit holder at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (Ord. #2002-326, April 2002)

9-309. 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. (Ord. #2002-326, April 2002)

9-310. 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 by a penalty of up to fifty dollars (\$50.00) for each offense. Each day a violation occurs shall constitute a separate offense. (Ord. #2002-326, April 2002)