

## TITLE 9

### BUSINESS, PEDDLERS, SOLICITORS, ETC.

#### CHAPTER

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#### CHAPTER 1

### PEDDLERS, SOLICITORS, ETC.<sup>1</sup>

#### SECTION

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**9-101. Definitions.** Whenever used in this chapter, unless the context requires otherwise, the following definitions shall apply:

(1) "Merchandise." The word "merchandise" means and includes all personal property of whatever kind, whether tangible or intangible, including but not limited to, goods, wares, produce, insurance, stocks and bonds.

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<sup>1</sup>Municipal code reference

Privilege taxes: title 5.

Trespass by peddlers, etc.: title 11.

(2) "Nonprofit organization." The term "nonprofit organization" means and includes any church, school or eleemosynary, charitable, civic, social service, religious or educational organization whose purpose is not-for-profit and whose funds are used for charitable, civic, religious or educational purposes.

(3) "Soliciting." The term "soliciting" or "to solicit" means and includes offering merchandise for sale, barter or exchange, whether for present or future delivery, or in any manner disposing of personal property by peddling or hawking the same.

(4) "Solicitor." The term "solicitor" means and includes peddler, huckster or itinerant merchant and all persons of any age who solicit, attempt to solicit, sell, barter, exchange or offer to sell, barter or exchange, and includes persons soliciting on behalf of a nonprofit organization. (1998 Code, § 9-101)

**9-102. Shouting, using horns, bells, etc.** No person holding a permit under this chapter, or 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. (1998 Code, § 9-102)

**9-103. Use of streets.** No person holding a permit under this chapter shall have any exclusive right to any location in the public streets or be permitted a stationary location thereon, nor shall any such person be permitted to operate in a congested area where such operation might impede or inconvenience the public use of such streets, nor shall any such person be permitted to accept orders for goods or sell directly from a vehicle of any kind while standing in a public street. For the purpose of this section the judgment of the city administrator, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (1998 Code, § 9-103, modified)

**9-104. Exemptions from chapter.** The provisions of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods and merchandise in the regular course of business. (1998 Code, § 9-104)

**9-105. Permit required.** (1) It shall be unlawful for any solicitor to solicit the sale of merchandise or the furnishing of a service within the city without first obtaining a permit therefor in compliance with the provisions of this chapter.

(2) No person shall solicit contributions or the sale of merchandise for a nonprofit organization unless the organization first obtains a permit therefor in compliance with this chapter. ((1998 Code, § 9-106)

**9-106. Permit application.** Applicants for a permit under this chapter must file with the city administrator a sworn written application containing the following:

(1) Name and physical description of the applicant. In the case of a nonprofit organization, a list of all proposed solicitors or canvassers, if such a list is available.

(2) Complete permanent home address and local address of the applicant and, in the case of transient merchants, the local address from which proposed sales will be made.

(3) A brief description of the nature of the business and the goods to be sold.

(4) If applicant is employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship. This shall not apply to nonprofit organizations.

(5) The length of time for which the right to do business is desired.

(6) A recent clear photograph approximately two (2) inches square showing the head and shoulders of the applicant. This shall not apply to nonprofit organizations.

(7) 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. This shall not apply, however, to nonprofit organizations.

(8) 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, if any, and the punishment or penalty assessed therefor. This shall not apply, however, to nonprofit organizations.

(9) 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. This shall not apply, however, to nonprofit organizations.

(10) The applicant must provide a state sales tax number before a permit will be issued. This shall not apply, however, to nonprofit organizations. (1998 Code, § 9-107, modified)

**9-107. Permit fee.** At the time of filing the application for a permit under this chapter, a fee of fifty dollars (\$50.00) for a fifteen (15) day period shall be paid to the city. Producers of agricultural products, charitable groups,

nonprofit organizations and organized group events shall not be required to pay the fee. (1998 Code, § 9-108, modified)

**9-108. Investigation of applicant; issuance or refusal.** Each application for a permit under this chapter shall be submitted to the city administrator, who shall cause an investigation to be made of the applicant's moral reputation or business responsibility. If such reputation and business responsibility appear satisfactory, in the sole discretion of the city administrator, then he shall issue a permit upon payment of all applicable privilege taxes; otherwise, the city administrator shall deny the permit and shall so notify the applicant in writing. In no case shall a permit be issued before the expiration of seven (7) days from the date of the application in order that a full investigation be made of the applicant. However, this shall not apply to renewal permits. (1998 Code, § 9-110, modified)

**9-109. To be used by permittee only.** No permit issued under this chapter shall be used at any time by any person or organization other than the one to whom it is issued. (1998 Code, § 9-111)

**9-110. Exhibition.** Every person holding a permit under this chapter shall exhibit his permit at the request of any policeman or citizen. (1998 Code, § 9-112)

**9-111. Expiration and renewal of permit.** Permits issued under the provisions of this chapter shall expire at the end of the three (3) day or twelve (12) month period for which the permit was initially issued. Permits may be renewed by making application for renewal in substantially the same form as an original application. However, only so much of the application shall be completed as is necessary to reflect conditions which have changed since the last application was filed. (1998 Code, § 9-113)

**9-112. Revocation or suspension of permit.** (1) Permits issued under the provisions of this chapter may be revoked by the mayor and city council, after notice and hearing, for any of the following causes:

- (a) Fraud, misrepresentation, or incorrect statement contained in the application for the 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.

(2) Notice of the hearing for revocation of a permit under this section shall be given by the city administrator 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 city administrator may suspend a permit issued under this chapter pending the revocation hearing.

(4) 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. (1998 Code, § 9-114, modified)

**9-113. Violations and penalty.** Any person violating the provisions of this chapter shall, upon conviction, pay a fine of not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00) for each offense and every day such violation continues shall constitute a separate offense. (1998 Code, § 9-105)

## CHAPTER 2

### PERSONAL PROPERTY SALES IN RESIDENTIAL DISTRICTS

#### SECTION

- 9-201. Intent and purpose.
- 9-202. Permit required.
- 9-203. Term of permit.
- 9-204. Application for permit.
- 9-205. Permit fee.
- 9-206. Exceptions.
- 9-207. Conditions to be met.
- 9-208. Right of access for inspections.
- 9-209. Permit conditions.

**9-201. Intent and purpose.** It is the intent of this chapter 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. (1998 Code, § 9-201)

**9-202. 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 city administrator. (1998 Code, § 9-202, modified)

**9-203. Term of permit.** Any such permit issued shall be for a term not exceeding three (3) consecutive calendar days. (1998 Code, § 9-203)

**9-204. Application for permit.** Application for permit shall be made to the city administrator upon forms furnished by the administrator. 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. (1998 Code, § 9-204, modified)

**9-205. Permit fee.** The permit fee for each sale shall be one dollar (\$1.00). (1998 Code, § 9-205)

**9-206. 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 person selling or advertising for sale an item or items of personal property which are specifically named or described in the advertisement in which separate items do not exceed three (3) in number.

(4) Any bona fide charitable, eleemosynary, educational, cultural, or governmental institution or organization, provided, however, that the burden of establishing the exemption shall be on the organization or institution claiming such exemption. (1998 Code, § 9-206)

**9-207. 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. (1998 Code, § 9-207)

**9-208. Right of access for inspections.** A police officer or any other official designated by any city ordinance to make inspections under the licensing or regulating ordinance or to enforce the same, shall have the right of entry to any premises showing evidence of a personal property sale for the purpose of enforcement or inspection and may close the premises from such sale or arrest any person who violates the provisions of this chapter. (1998 Code, § 9-208)

**9-209. Permit conditions.** (1) No more than six (6) such permits may be issued to a residence and/or family household during any calendar year; and not exceeding three (3) consecutive calendar days for each resident.

(2) The site is required to be cleaned up after the sale.

(3) All signs must be removed after the sale, to avoid applicable littering fines. (1998 Code, § 9-209)

**CHAPTER 3****CABLE TELEVISION****SECTION**

9-301. To be furnished under franchise.

**9-301. To be furnished under franchise.** Cable television service shall be furnished to the City of Bolivar and its inhabitants under franchise as the board of mayor and aldermen shall grant. The rights, powers, duties and obligations of the City of Bolivar and its inhabitants and the grantee of the franchise shall be clearly stated in the franchise agreement which shall be binding upon the parties concerned.<sup>1</sup> (1998 Code, § 9-301)

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<sup>1</sup>Complete details relating to the cable television franchise agreement are available in the office of the city administrator.



CHAPTER 4

POOL ROOMS

SECTION

9-401. Definition.

9-402. Violations and penalty.

**9-401. Definition.** (1) For purposes of this chapter the term "game room" means any public place, building, or room where three (3) or more gaming devices, machines, pool tables, or apparatus are kept for the use and entertainment of the public; or any place where the purpose of such business is to maintain three (3) or more machines, which, upon the insertion of a coin, token, or disc may be operated by the public generally for use of a game or amusement, whether or not registering a score, and whether its operation demands skill or chance or both. The definition of "game room" shall be limited to those places which derive their principal source of income from such machines.

(2) **Hours of operation.** It shall be unlawful for any game room to be open for except during the following specified hours:

Monday through Saturday. . . . .8:00 A.M. to 12:00 A.M.

Sunday. . . . .12:00 noon to 12:00 A.M.

(Ord. #12-001, Feb. 2012)

**9-402. Violations and penalty.** Any person violating any provision of this chapter shall be guilty of an offense and upon conviction shall pay a penalty of not less than one dollar (\$1.00) nor more than fifty dollars (\$50.00) for each offense. Each occurrence shall constitute a separate offense. (Ord. #12-001, Feb. 2012)

## CHAPTER 5

### VEHICLES FOR HIRE<sup>1</sup>

#### SECTION

- 9-501. Definitions.
- 9-502. Franchise required.
- 9-503. Qualifications for franchise.
- 9-504. Application for franchise--form and contents.
- 9-505. Investigation and recommendation by chief of police.
- 9-506. Issuance or denial of franchise by mayor and council; criteria to be considered.
- 9-507. Public liability insurance or bond required for franchise.
- 9-508. Revocation or suspension of franchise.
- 9-509. Mechanical condition and equipment requirements for taxicabs.
- 9-510. Cleanliness.
- 9-511. Inspection by chief of police; fee; certificate.
- 9-512. Special chauffeur's license and driver's permit required.
- 9-513. Application and qualifications for taxicab driver's permit.
- 9-514. Revocation or suspension of driver's permit.
- 9-515. Indiscriminate solicitation of passenger business prohibited.
- 9-516. Parking.
- 9-517. Passenger to be transported by direct routes.
- 9-518. Illegal use of taxicabs.
- 9-519. General standards of conduct for drivers.
- 9-520. Requiring passengers to share taxicab.

**9-501. Definitions.** As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this section:

(1) "Taxicab" refers to all motor vehicles used on the city streets for carrying passengers for hire except motor busses or coaches operated by bus lines over designated routes in and through the city.

(2) "Taxicab business" is the use of one (1) or more taxicabs within the city for the purpose of carrying passengers for hire. (1998 Code, § 9-601)

**9-502. Franchise required.** It shall be unlawful for any person to engage in the taxicab business unless he has first obtained a franchise therefor from the city. (1998 Code, § 9-602)

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<sup>1</sup>Charter reference

Regulation and license of vehicle operated for hire, § 1.04(t).

Municipal code reference

Motor vehicles and traffic: title 15.

**9-503. Qualifications for franchise.** An applicant for a franchise under this chapter shall:

- (1) Be of good moral character.
- (2) Be a bona fide resident of the city.
- (3) Not have been convicted of a felony. (1998 Code, § 9-603)

**9-504. Application for franchise--form and contents.**

(1) Applications for taxicab franchises shall be in writing, under oath and filed with the chief of police.

(2) The application shall be accompanied by not less than two (2) affidavits of reputable local citizens attesting to the good moral character of the applicant, and shall state:

- (a) The name and address of the applicant.
- (b) The name and address of the proposed place of business.
- (c) The number of cabs the applicant proposes to operate.
- (d) The make and model of such cabs.
- (e) Such other relevant information as the chief of police may require. (1998 Code, § 9-604)

**9-505. Investigation and recommendation by chief of police.**

(1) Within ten (10) days after receipt of an application for a taxicab franchise, the chief of police shall conduct a thorough investigation of the applicant and shall determine whether or not there is a current public need for additional taxicab service in the city.

(2) Upon completion of such investigation, the chief of police shall present the application to the mayor and city council at their next regular meeting, with his recommendation to either grant or refuse to grant a franchise to the applicant. (1998 Code, § 9-605)

**9-506. Issuance or denial of franchise by mayor and council; criteria to be considered.** (1) Upon receipt of the report and recommendation of the chief of police as required by § 9-505, the mayor and city council shall, upon due consideration, issue the franchise applied for or deny the application.

(2) In determining whether or not to grant a taxicab franchise, the mayor and city council shall consider the following:

- (a) The public need for additional service.
- (b) Effect on traffic congestion and parking space requirements.
- (c) Preservation of safe use of streets by vehicles and pedestrians. (1998 Code, § 9-606)

**9-507. Public liability insurance or bond required for franchise.**

(1) No taxicab franchise shall be issued or continued in operation unless there is in full force and effect public liability insurance or bond for each taxicab to be operated in the amount of ten thousand dollars (\$10,000.00) for

bodily injury to any one person, in the amount of twenty thousand dollars (\$20,000.00) for injuries to more than one person which are sustained in the same accident, and five thousand dollars (\$5,000.00) for property damage resulting from any one accident.

(2) Such insurance or bond shall inure to the benefit of any person who shall be injured or who shall sustain damage to property proximately caused by the negligence of a taxicab franchise holder, his servants, or his agents.

(3) Insurance policies or bonds required by this section shall be with surety or insurance companies authorized to do business in the state and shall be kept on file with the city administrator. (1998 Code, § 9-607, modified)

**9-508. Revocation or suspension of franchise.** The mayor and city council, after a public hearing, may revoke or suspend any taxicab franchise for repeated violations by the franchise holder or his drivers of this chapter or the provisions of this code relating to traffic. (1998 Code, § 9-608)

**9-509. Mechanical condition and equipment requirements for taxicabs.** (1) All taxicabs operating in the city shall be equipped with proper four (4) wheel brakes, front and rear lights, tires, horn, muffler, windshield wiper, and rear vision mirror, all of which shall conform to the requirements of the state motor vehicle law.

(2) 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.

(3) The motor and all mechanical functions of each taxicab shall be kept in such condition of repair as may be reasonably necessary to provide for the safety of the public and the continuous satisfactory operation of the taxicab. (1998 Code, § 9-609)

**9-510. Cleanliness.** Every taxicab operated in the city shall at all times be kept in a clean and sanitary condition. They shall be thoroughly swept and dusted at least once each day. At least once each week they shall be thoroughly washed and the interior cleaned with some suitable antiseptic solution. (1998 Code, § 9-610)

**9-511. Inspection by chief of police; fee; certificate.** Every taxicab operated in the city shall be inspected semiannually by the chief of police to insure that it complies with the requirements of this chapter with respect to mechanical condition, cleanliness, etc. For each such inspection the chief of police shall collect a fee of two dollars (\$2.00) and shall issue a certificate of inspection which shall be displayed prominently inside the taxicab. (1998 Code, § 9-611)

**9-512. Special chauffeur's license and driver's permit required.**

No person shall drive a taxicab unless he is in possession of a state special chauffeur's license and a taxicab driver's permit issued by the chief of police. (1998 Code, § 9-612)

**9-513. Application and qualifications for taxicab driver's permit.**

Any person desiring to operate a taxicab in the city shall make written application to the chief of police for a taxicab driver's permit. The applicant shall be and the application shall state that the applicant:

(1) Is twenty-one (21) years old or over and holds a state special chauffeur's license.

(2) Is of sound physical condition with good eyesight 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.

(3) Is clean in dress and person and is not addicted to the use of intoxicating drugs or liquor.

(4) Is of good character attested by affidavits 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.

(5) Has not been convicted of a felony, drunk driving, or driving under the influence of an intoxicant or drug.

(6) Is familiar with the city traffic laws. (1998 Code, § 9-613)

**9-514. Revocation or suspension of driver's permit.** The mayor and city council, after a public hearing, may revoke or suspend any taxicab driver's permit for a violation of this chapter or for repeated violations of the provisions of this code relating to traffic. (1998 Code, § 9-614)

**9-515. Indiscriminate solicitation of passenger business prohibited.** 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 of their cabs. (1998 Code, § 9-615)

**9-516. Parking.** No area on any street shall be reserved solely for the parking of taxicabs. Said vehicles are subject to the same provisions that regulate the parking of private automobiles.<sup>1</sup> (1998 Code, § 9-616)

**9-517. Passenger to be transported by direct routes.** Every taxicab driver shall deliver his passengers to their destinations by the most direct available route from the point at which they enter his cab. (1998 Code, § 9-617)

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<sup>1</sup>Municipal code reference

Stopping, standing and parking of motor vehicles generally: title 15.

**9-518. Illegal use of taxicabs.** No taxicab shall be used for or in the commission of any illegal act, business or purpose. (1998 Code, § 9-618)

**9-519. General standards of conduct for 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 blow the automobile horn unnecessarily, or otherwise to disturb the peace, quiet and tranquility of the city.(1998 Code, § 9-619)

**9-520. Requiring passengers to share taxicab.** No person shall be admitted to a taxicab already occupied by a passenger without the consent of the latter. (1998 Code, § 9-620)

## CHAPTER 6

### TELECOMMUNICATIONS RIGHTS-OF-WAY RENTAL ORDINANCE

#### SECTION

- 9-601. Purpose.
- 9-602. Applicable scope.
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- 9-609. Applicability.
- 9-610. Compensation to city.
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- 9-618. Indemnity.
- 9-619. Privacy of customer information.
- 9-620. Annexation; deannexation.
- 9-621. Unauthorized use of public rights-of-way.

**9-601. Purpose.** The purpose of this chapter is to establish a competitively neutral policy for usage of public rights-of-way for the provision of telecommunications services and enable the city to:

- (1) Permit non-discriminatory access to the public rights-of-way for providers of telecommunications services; and
- (2) Manage the public rights-of-way in order to minimize the impact and cost to the citizens of the placement of telecommunications facilities within the rights-of-way; and
- (3) Obtain fair and reasonable compensation for the commercial use of public rights-of-way through collection of rents; and
- (4) Promote competition among telecommunications service providers and encourage the universal availability of advanced telecommunications services to all residents and businesses of the city; and
- (5) Minimize the congestion, inconvenience, visual impact, and other adverse effects on the city's public rights-of-way. (1998 Code, § 9-701)

**9-602. Applicable scope.** This chapter applies to all telecommunications service providers under Titles II ("Title II") and VI ("Title VI") of the Communications Act of 1934, as amended, (47 U.S.C. 201 et seq.) excluding services provided solely by means of wireless transmission. This chapter does not exempt providers of cable service or open video systems service from the requirements of Title VI and applicable FCC rules and regulations. Any requirements and obligations imposed by this chapter are in addition to any requirements imposed by Title VI or state law and regulation on such providers. (1998 Code, § 9-702)

**9-603. Definitions.** (1) "Applicant." Any person who files an application with the city, under § 9-705 (application to provide telecommunication services) of this chapter, in order to obtain the necessary permission to use the public rights-of-way to provide telecommunications services within the city, whether by means of the person's own facilities or by means of capacity obtained from another provider of telecommunications services.

(2) "Chief administrative officer." The Chief Administrative Officer of the City of Bolivar, or the person designated by the city council to carry out the duties and responsibilities of the chief administrative officer. Chief administrative officer shall also mean the person under the chief administrative officer's management and control designated by the chief administrative officer to administer the provisions of this chapter.

(3) "City." The City of Bolivar, the present municipal corporation of Bolivar, together with any future annexation made pursuant to law.

(4) "City requirements." All laws, rules, regulations, policies and directives of general application of the City of Bolivar, in effect at present or to be adopted in the future by the city.

(5) "Gross revenue." All revenues received by a provider for telecommunications services furnished within the city. However, revenues received for use of network capacity, switched or unswitched access, and sale of unbundled elements under 47 U.S.C. 251(b) and (c) from resellers of telecommunications services who are in compliance with this chapter are not included. Gross revenue does not include revenue uncollectible from customers (bad debt) and any end user taxes collected from customers.

(6) "Municipal right-of-way use permit or municipal permit." The right granted by the city to use public rights-of-way to provide telecommunications services within the city to the public or to other providers, as specified by the terms of this chapter.

(7) "Person." Any person, firm, partnership, association, corporation, company or organization of any kind.

(8) "Provider." A person who has been granted a certificate of need by the Tennessee Regulatory Authority and/or who operates or uses a telecommunications network within the city to provide telecommunications



services, and who falls under the definition of § 9-702 (applicable scope) of this chapter.

(9) "Public rights-of-way." The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the city holds any property interest or exercises any rights of management or control over and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of a telecommunications network.

(10) "Telecommunications network" or "network." All facilities placed in the public rights-of-way and used to provide telecommunications services.

(11) "Telecommunications services." All transmissions between or among points specified by the user, of information of the user's choosing (whether voice, video or data), without change in content of the information as sent and received, where such transmissions are accomplished through a telecommunications network. Telecommunications services include all ancillary or adjunct switching services and signal conversions rendered as a function of underlying transmission services, but excludes long distance transmissions (inter-LATA and intra-LATA toll transmissions). Telecommunications services include all services provided. Telecommunications services also include all content or value-added services rendered in conjunction with transmission services. (1998 Code, § 9-703)

**9-604. Municipal right-of-way use permit required.** (1) A person may not deliver telecommunications services in the city by means of a network unless the person obtains a municipal right-of-way use permit.

(2) The use of public rights-of-way for the delivery of any service not covered by this chapter is subject to all other applicable city requirements. (1998 Code, § 9-704)

**9-605. Application to provide telecommunications services using the public rights-of-way.** (1) Any person proposing to provide telecommunications services by means of a telecommunications network located within the public rights-of-way (applicant) shall submit an application to the chief administrative officer. The application, in a form to be prescribed by the chief administrative officer shall describe all services the applicant wishes to provide, outline applicant's proposed network, and identify the uses of and potential impact on the public rights-of-way.

(2) The chief administrative officer shall have the duty to review applications submitted under this chapter and administer the provisions of this chapter regarding the granting or denial of a municipal right-of-way use permit to applicants. The chief administrative officer shall issue municipal right-of-way use permits, and shall administer and enforce compliance with respect to all municipal right-of-way use permits granted under this chapter. The chief

administrative officer shall submit a report annually to the city council analyzing whether any requirements imposed by each section of this chapter result in

- (a) Anticompetitive effects in the market for telecommunications services in the city, as defined by federal law, and/or
- (b) Discrimination in favor of or against a holder of a certificate of need under state law. (1998 Code, § 9-705)

**9-606. Municipal right-of-way use permit issuance.** (1) If the chief administrative officer finds that the application meets the requirements of this chapter, the chief administrative officer shall cause to be prepared a municipal right-of-way use permit for issuance to the applicant.

(2) The chief administrative officer shall complete all deliberations towards issuing a municipal right-of-way use permit, and shall issue the permit or a written denial within sixty (60) days of the receipt of an application. The applicant shall respond to all reasonable information requests of the chief administrative officer during this consideration period. Any delays in providing such information shall be documented in writing by the chief administrative officer, who may cite any delays or refusals in obtaining information from an applicant as grounds for denial of a permit. (1998 Code, § 9-706)

**9-607. Petition for reconsideration.** The act of granting, denying or terminating a municipal right-of-way use permit is an exercise of the police power of the city. A person whose application for a municipal right-of-way use permit is denied must petition the city council for reconsideration before seeking judicial remedies, and must file such a petition within forty-five (45) days of the written denial of such application by the chief administrative officer. A petition is considered denied if the city council does not act within forty-five (45) days after the petition is filed with the city administrator. (1998 Code, § 9-707, modified)

**9-608. Administration and enforcement.** (1) The chief administrative officer shall administer this chapter and enforce compliance with a municipal right-of-way use permit granted under this chapter.

(2) A provider shall report information that the chief administrative officer requires in the form and manner prescribed by the chief administrative officer relating to the use of public rights-of-way for the right-of-way occupancy authorized by a municipal right-of-way use permit granted under this chapter.

(3) The chief administrative officer shall report to the city council the chief administrative officer's determination that a provider has failed to comply with this chapter. (1998 Code, § 9-708)

**9-609. Applicability.** (1) Sections 9-615 (construction), 9-616 (ROW occupancy), and 9-619 (insurance) of this chapter apply only to a provider that owns or controls physical facilities in the rights-of-way.

(2) Section 9-618 (indemnity) of this chapter applies to a provider that has a property interest in a network. (1998 Code, § 9-709)

**9-610. Compensation to city.** (1) To compensate the city for the use and occupancy of the public rights-of-way, a provider shall pay a municipal right-of-way rental fee calculated as follows:

(a) **Rights-of-way rental fee.** Each provider shall be subject to a five percent (5%) annual fee based on gross revenue obtained from the provision of telecommunications services within the city.

(b) **Non-monetary consideration.** To the extent allowed by state and federal law, the city may include non-monetary consideration from each provider. To the extent not expressly prohibited by applicable law, a provider may agree to furnish to the city non-monetary consideration in the form of telecommunications services, network capacity, conduit, or other infrastructure, valued at the provider's direct cost. The chief administrative officer shall apply a credit or an offset for any non-monetary consideration received to the annual right-of-way rental fee. The chief administrative officer shall publicly disclose the form of non-monetary consideration and the credit amount.

(c) **Credit for cable television franchise fees and other contributions.** Any telecommunications provider who is currently franchised by the city under state and federal law and regulations to provide cable television service shall receive a credit against the annual rights-of-way rental fee for any cable television franchise fees paid to the city, and any other monetary or non-monetary contributions to the city under a cable franchise agreement.

(2) A provider may pass through to customers the municipal right-of-way rental fee on a pro rata basis, at its discretion, as permitted by state and federal law. The city does not require or recommend a pass-through charge of the fee on a per line or per customer basis. (1998 Code, § 9-710)

**9-611. Remitting rental fees to the city.** A provider shall remit the municipal right-of-way rental fee on a quarterly basis. Payment shall be made on or before the 45<sup>th</sup> day following the close of each calendar quarter for which the payment is calculated. (1998 Code, § 9-711)

**9-612. Audits.** (1) On thirty (30) days notice to a provider, the city may audit a provider at any time. The provider shall furnish information to demonstrate its compliance with the municipal right-of-way use permit.

(2) A provider shall keep complete and accurate books of accounts and records of business and operations in accordance with generally accepted

accounting principles for a period of five years. If the Federal Communications Commission requires, a provider shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed in 47 CFR part 32 or its successor. The city may examine the provider's books and records.

(3) A provider shall make available to the city, for the city to examine, audit, review and copy; in the city's offices, upon the chief administrative officer's reasonable written request, its books and records including papers, books, accounts, documents, maps, plans and other provider records pertaining to a municipal right-of-way use permit granted under this chapter. A provider shall fully cooperate in making records available and otherwise assist the city examiner. The city examiner shall not make copies of customer specific information. (1998 Code, § 9-712)

**9-613. Transfers.** (1) A provider may not transfer a municipal right-of-way use permit unless the chief administrative officer approves the transfer in writing.

(2) A change in control of a provider is a transfer requiring chief administrative officer approval. A change of twenty-five percent (25%) or greater in the ownership of the provider establishes a rebuttable presumption of a change in control.

(3) If a provider attempts to transfer or transfers the provider's municipal right-of-way use permit without approval of the chief administrative officer, the chief administrative officer may revoke the municipal right-of-way use permit. If a municipal right-of-way use permit is revoked, all rights of the provider under the municipal right-of-way use permit end.

(4) A provider may transfer, without the chief administrative officer's approval, the facilities in the rights-of-way under a municipal right-of-way use permit to the provider's affiliate or to another provider who has a municipal right-of-way use permit under this chapter. The provider transferring the facilities remains subject to all applicable obligations and provisions of the municipal right-of-way use permit unless the provider to which the facilities are transferred is also subject to these applicable obligations and provisions.

(5) The chief administrative officer must act on a request for transfer of a municipal permit within ninety (90) days of receipt of the request from the provider. Any request for a transfer of a municipal permit not acted upon within ninety (90) days shall be deemed to have been approved. (1998 Code, § 9-713)

**9-614. Notices to the city.** (1) A provider shall notify the chief administrative officer in writing contemporaneously with the transmittal of all petitions, applications, written communications and reports submitted by the provider, to the Federal Communications Commission and the Tennessee Regulatory Authority, or their successor agencies relating to matters affecting both the use of public rights-of-way and the telecommunications services

authorized by a municipal permit granted under this chapter. A provider shall furnish the chief administrative officer copies of the documents upon request.

(2) If a provider notifies the city of the confidential nature of information, the chief administrative officer shall maintain the confidentiality of the information to the extent permitted by law. Upon receipt in the chief administrative officer's office of requests for confidential information the city shall notify the affected providers of the request by facsimile transmission. (1998 Code, § 9-714)

**9-615. Construction obligations.** (1) A provider is subject to the police powers of the city, other governmental powers, and the city's rights as a property owner under state and federal laws. A provider is subject to city requirements and federal and state rules in connection with the construction, expansion, reconstruction, maintenance or repair of facilities in the public rights-of-way.

(2) A provider shall place certain facilities underground according to applicable city requirements.

(3) At the city's request, a provider shall furnish the city accurate and complete information relating to the construction, reconstruction, removal, maintenance, operation and repair of facilities performed by the provider in the public rights-of-way. If any information furnished is erroneous as to the location of facilities, and reliance on this information results in construction delays or additional expenses, the provider who furnished the erroneous information shall be liable for the cost of delays and the additional expenses.

(4) The construction, expansion, reconstruction, excavation, use, maintenance and operation of a provider's facilities and property are subject to applicable city requirements.

(a) A provider shall perform excavations and other construction in the public rights-of-way in accordance with all applicable city requirements, including the obligation to use trenchless technology whenever possible. The superintendent of streets and sanitation shall waive the requirement of trenchless technology if he determines that field conditions warrant the waiver. A provider shall minimize interference with the use of public and private property and shall follow the construction directions given by the city.

(b) When a provider completes construction work, a provider shall promptly restore the public rights-of-way in accordance with applicable city requirements. A provider may excavate only for the construction, installation, expansion, repair, removal, and maintenance of the provider's facilities.

(c) The city may require a provider to allow attachment of another provider's facilities to its poles and conduits, in accordance with the city charter, state and federal law.

(d) A provider shall furnish the superintendent of streets and sanitation and the chief administrative officer with construction plans and maps showing the routing of new construction at least forty-five (45) days before beginning construction that involves an alteration to the surface or subsurface of the public right-of-way. A provider may not begin construction until the plans and drawings have been approved in writing by the superintendent of streets and sanitation.

(e) If the chief administrative officer declares an emergency and requests the removal or abatement of facilities, by written notice, a provider shall remove or abate the provider's facilities by the deadline provided in the chief administrative officer's request. A provider and the city shall cooperate to the extent possible to assure continuity of service. If a provider, after notice, fails or refuses to act, the city may remove or abate the facility, at the sole cost and expense of the provider, without paying compensation to the provider and without the city incurring liability for damages.

(f) Except in an emergency, a provider may not excavate the pavement of a street or public right-of-way without first complying with city requirements.

(g) Within one hundred twenty (120) days of completion of each new segment of a provider's facilities, a provider shall supply the city with a complete set of "as built" drawings for the segment in a format prescribed by the superintendent of streets and sanitation. A provider must obtain the city's approval before relocating the provider's facilities in the public rights-of-way. The city may not unreasonably withhold approval. A provider shall furnish a revised map including additional facilities on June 30 of each year to the superintendent of streets and sanitation showing how these facilities connect to existing facilities. (1998 Code, § 9-715, modified)

**9-616. Conditions of rights-of-way occupancy.** (1) In the exercise of governmental functions, the city has first priority over all other uses of the public rights-of-way. The city reserves the right to lay sewer, gas, water, and other pipelines or cables and conduits, and to do underground and overhead work, and attachment, restructuring or changes in aerial facilities in, across, along, over or under a public street, alley or right-of-way occupied by a provider, and to change the curb, sidewalks or the grade of streets.

(2) In case of conflict or interference between the facilities of different providers, the provider whose facilities were first permitted shall have priority over a competing provider's use of the public rights-of-way.

(3) If, during the term of a municipal permit, the city authorizes abutting landowners to occupy space under the surface of any public street, alley, or rights-of-way, the grant to an abutting landowner shall be subject to the rights of the provider. If the city closes or abandons a public right-of-way that

contains a portion of a provider's facilities, the city shall convey the land in the closed or abandoned public rights-of-way subject to the rights granted in the municipal permit.

(4) If the city gives written notice, a provider shall, at the provider's expense, temporarily or permanently, remove, relocate, change or alter the position of provider's facilities that are in the public rights-of-way within one hundred twenty (120) days. The city shall give notice whenever the city has determined that removal, relocation, change or alteration is reasonably necessary for the construction, operation, repair, maintenance or installation of a city or other governmental entity's public improvement in the public rights-of-way. This section shall not be construed to prevent a provider's recovery of the cost of relocation or removal from private third parties who initiate the request for relocation or removal.

(5) A provider who holds a municipal permit may trim trees in or over the rights-of-way for the safe and reliable operation, use and maintenance of its network. All tree trimming shall be performed in accordance with standards promulgated by the city. When ordered by the superintendent of streets and sanitation, tree trimming shall be done under the supervision of the city.

(6) Providers shall temporarily remove, raise or lower its aerial facilities to permit the moving of houses or other bulky structures, if the city gives written notice of no less than forty-eight (48) hours. The expense of this temporary rearrangement shall be paid by the party or parties requesting and benefitting from the temporary rearrangement. Provider may require prepayment or prior posting of a bond from the party requesting the temporary move. (1998 Code, § 9-716, modified)

**9-617. Insurance requirements.** (1) A provider shall obtain and maintain insurance in the amounts prescribed by the chief administrative officer with an insurance company licensed to do business in the State of Tennessee acceptable to the chief administrative officer throughout the term of a municipal permit granted under this chapter. A provider shall furnish the city with proof of insurance at the time of issuance of a municipal permit. The city reserves the right to review the insurance requirements while a municipal permit is in effect, and to reasonably adjust insurance coverage and limits when the chief administrative officer determines that changes in statutory law, court decisions, or the claims history of the industry or the provider require adjustment of the coverage. For purposes of this section, the city will accept certificates of self-insurance issued by the State of Tennessee providing the same coverage.

(2) The chief administrative officer may, on request and at no cost to the city, receive copies of certificates of insurance evidencing the coverage required by this section. The chief administrative officer may request the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, unless the policy provisions are established by a law or regulating binding the city, the provider, or the underwriter. If the chief

administrative officer requests a deletion, revision or modification, a provider shall exercise reasonable efforts to pay for and to accomplish the change.

An insurance certificate shall contain the following required provisions:

(a) Name the city and its officers, employees, board members and elected representatives as additional insureds for all applicable coverage;

(b) Provide for thirty (30) days notice to the city for cancellation, non-renewal, or material change;

(c) Provide that notice of claims shall be provided to the chief administrative officer by certified mail; and

(d) Provide that the terms of the municipal permit which impose obligations on the provider concerning liability, duty, and standard of care, including the indemnity section, are included in the policy and that the risks are insured within the policy terms and conditions.

(3) A provider shall file and maintain proof of insurance with the chief administrative officer during the term of a municipal permit. An insurance certificate obtained in compliance with this section is subject to city approval. The city may require the certificate to be changed to reflect changing liability limits. A provider shall immediately advise the city of actual or potential litigation that may develop that would affect insurance coverage related to a municipal permit.

(4) An insurer has no right of recovery against the city. The required insurance policies shall protect the provider and the city. The insurance shall be primary coverage for losses covered by the policies.

(5) The policy clause "other insurance" shall not apply to the city where the city is an insured under the policy.

(6) The provider shall pay premiums and assessments. A company which issues an insurance policy has no recourse against the city for payment of a premium or assessment. Insurance policies obtained by a provider must provide that the issuing company waives all right of recovery by way of subrogation against the city in connection with damage covered by the policy. (1998 Code, § 9-717)

**9-618. Indemnity.** (1) During the term of a municipal permit, a provider is liable for the acts or omissions of an entity used by the provider, including an affiliate, when the entity is involved directly or indirectly in the construction and installation of the provider's facilities. The acts or omissions of the entity shall be considered the acts or omissions of the provider.

(2) Each provider granted a municipal permit under this chapter shall provide to the chief administrative officer, in writing, a statement that the provider agrees to defend, indemnify and hold the city harmless against all damages, cost, loss or expense arising out of, incident to, concerning or resulting from the negligence or willful misconduct of the provider, its agents, employees, or subcontractors, in the performance of activities under the municipal permit;



(a) For the repair, replacement, or restoration of city property, equipment materials, structures and facilities which are damaged, destroyed or found to be defective; and

(b) Against any and all claims, demands, suits, causes of action, and judgments for:

(i) Damage to or loss of the property of any person including, but not limited to the provider, its agents, officers, employees and subcontractors, the city's agents, officers and employees, and third parties; and

(ii) Death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person including but not limited to the agents, officers and employees of the provider, the provider's subcontractors, the city, and third parties, no matter how, or to whom, the loss may occur.

(3) The chief administrative officer shall give prompt written notice to a provider of any claim for which the city seeks indemnification. The provider shall have the right to investigate, defend and compromise these claims subject to the city's prior approval. (1998 Code, § 9-718)

**9-619. Privacy of customer information.** A provider shall comply with state and federal law regarding privacy of customer information. (1998 Code, § 9-719)

**9-620. Annexation; deannexation.** Within thirty (30) days following the date of passage of any action affecting any deannexation or annexation, the chief administrative officer shall notify providers of this action by furnishing to the providers maps of the affected area(s), showing the new boundaries of the city. (1998 Code, § 9-720)

**9-621. Unauthorized use of public rights-of-way.** (1) A person commits an offense if a person uses the public rights-of-way to provide a telecommunications service without first securing a municipal permit from the city.

(2) Each unauthorized use of the public rights-of-way and each unauthorized placement of facilities constitutes a separate offense. Each day a violation of this chapter occurs shall constitute a distinct and separate offense.

(3) An offense under this subsection is punishable by a fine of fifty dollars (\$50.00). (1998 Code, § 9-721, modified)

## CHAPTER 7

### SEXUALLY ORIENTED BUSINESSES

#### SECTION

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**9-701. Construction of language and definitions.** (1) Rules for construction of language. In the construction of this chapter, the rules and definitions contained in this chapter shall be observed and applied, except when the context clearly indicates otherwise;

- (a) The particular shall control the general.
- (b) The word "shall" is always mandatory and not discretionary.
- (c) The word "may" is permissive.
- (d) The word "lot" shall include the words "piece" or "parcel."
- (e) The word "building" or "structure" includes all other structures, or parts there of, of every kind regardless of similarity to buildings; and the phrase "used for" shall include the phrases "arranged for," "designed for," "intended for," "maintained for," and "occupied for."

(f) In the case of any difference of meaning or implication between the text of this chapter and any caption, illustration or table, the text shall control.

(g) Words used in the present tense shall include the future, and words used in the singular include the plural, and the plural the singular, unless the context clearly indicates the contrary.

(h) All public officials, bodies and agencies to which reference is made are those of the City of Bolivar, Tennessee.

(2) Definitions. Except where definitions are specifically included in various articles and sections, words in the text or tables of this chapter shall be interpreted in accordance with the provisions set forth in this section. Where words have not been defined, the standard dictionary definition shall prevail.

(a) "Adult arcade" means any place of 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 or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(b) "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:

(i) Books, magazines, periodicals, or other printed matters, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which regularly depicts material which is distinguished or characterized by an emphasis on matter depicting or describing "specified sexual activities" or "specified anatomical areas," or,

(ii) 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 regularly depicts material which is distinguished or characterized by an emphasis on matter depicting or describing "specified sexual activities" or "specified anatomical areas."

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

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

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

(iii) Films, motion pictures, video cassettes, slides or other photographic reproductions which regularly depicts material which is distinguished or characterized by an emphasis on matter depicting or describing "specified sexual activities" or "specified anatomical areas."

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

(i) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides, or other photographic reproductions which regularly depicts material which is distinguished or characterized by an emphasis on matter depicting or describing "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,

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

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

(e) "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 regularly depicts materials which is distinguished or characterized by an emphasis on matter depicting or describing "specified sexual activities" or "specified anatomical areas."

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

(g) "Employee" 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.

(h) "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.

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

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

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

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

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

(iv) The relocation of any sexually oriented business.

(k) "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.

(l) "Massage parlor" means any place where for and form of consideration or gratuity, massage alcohol rub administration of formentations electric or magnetic treatments, or any treatments, manipulation of the human body occurs as part of or in connection with "specified sexual activities," or where any person providing such treatment, manipulation, or service related thereto, exposes his or her "specified anatomical areas." The definition of sexually oriented business shall not include the practice of massage in any licensed hospital, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semi-professional, or professional athletic team or school program.

(m) "Nude model studio" means any place where a person regularly appears semi-nude or in a state of nudity, or regularly displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by another persons who pay money or any form of 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:

(i) 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,

(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 or semi-nude model is on the premises at any one (1) time.

(n) "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, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

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

(p) "Semi-nude or semi-nude condition" means the showing of the bare female breast below a horizontal line across the top of the areola at its highest point or the showing of the bare 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.

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

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

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

(r) "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.

(s) "Specified anatomical areas." "Specified anatomical areas" means, but is not limited to, the following:

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

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

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

(i) Prostitution; patronizing prostitution; promoting prostitution; sexual performance by a child; aggravated sexual exploitation of a minor; sexual exploitation of a minor; possession or distribution of child pornography; public indecency; indecent exposure; engaging in organized criminal activity; aggravated 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 of countries;

(ii) For which:

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

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

(C) Less than five (5) years have elapsed since the date of the last conviction 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.

(iii) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

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

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

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

(iii) Excretory functions as part of or in connection with any of the activities set forth in (i) through (ii) above.

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

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

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

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

(iii) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by request or other operation of law upon the death of the person possessing the ownership or control. (1998 Code, § 9-801)

**9-702. Purpose and findings.** (1) Purpose. It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City of Bolivar, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City of Bolivar. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by 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 hearings and in reports made available to the City of Bolivar City Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.* 475 U.S. 41(1986), *Young v. American Mini Theaters*, 426 U.S. 50 (1976), and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Phoenix, Arizona; Tucson, Arizona; Indianapolis, Indiana; Minneapolis, Minnesota; St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Newport News, Virginia; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Oklahoma City, Oklahoma II; Cleveland Ohio, and Beaumont, Texas; and also on findings from the report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the board finds:

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

(b) Certain employees of sexually oriented businesses defined in this chapter 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 business, 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 purposes of engaging in sex within the premises of such sexually oriented businesses.

(f) At least fifty (50) communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, Hepatitis B, and Non A, Non B amebiasis, salmonella infections 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: six hundred (600) in 1982, two thousand two hundred (2,200) in 1983, four thousand six hundred (4,600) in 1984, eight thousand five hundred fifty five (8,555) in 1985 and two hundred fifty three thousand four hundred forty eight (253,448) through December 31, 1992.

(h) As of July 31, 1998, there were seven thousand six hundred eighty nine (7,689) reported cases of AIDS and three thousand nine hundred four (3,904) deaths resulting from AIDS in the State of Tennessee. There were two thousand five hundred twenty two (2,522) reported cases of AIDS in neighboring Shelby County Tennessee 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 nine thousand three hundred sixty three (9,363) reported cases of HIV. There were three thousand six hundred fifty one (3,651) reported cases of HIV in neighboring Shelby County, Tennessee as of July 31, 1998.

(j) The number of cases of early (less than one (1) year) syphilis in the United States reported annually has risen, with thirty three thousand six hundred thirteen (33,613) cases reported in 1982 and forty five thousand two hundred (45,200) through November of 1990. There were nine hundred thirty four (934) reported cases of early syphilis in Shelby County, Tennessee 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 four thousand eight hundred seventy six (4,876) reported cases of gonorrhea in neighboring Shelby County, Tennessee 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 the 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 persons view "adult" oriented films.

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

(p) Sexually oriented business 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 hereto fore 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 of Bolivar. 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 on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

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

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

(x) The general welfare, health, morals and safety of the citizens of the City of Bolivar will be promoted by the enactment of this chapter. (1998 Code, § 9-802)

**9-703. Classification.** Sexually oriented businesses are classified as follows:

- (1) Adult arcades;
- (2) Adult bookstores, adult novelty stores, or adult video stores;
- (3) Adult cabarets;
- (4) Adult motels;
- (5) Adult motion picture theaters;
- (6) Adult theaters;
- (7) Escort agencies;
- (8) Massage parlors;
- (9) Nude model studios; and
- (10) Sexual encounter centers. (1998 Code, § 9-803)

**9-704. 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 of Bolivar 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 of Bolivar 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 of Bolivar.

(3) All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information as to enable the City of Bolivar 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 a twenty percent (20%) or greater interest in the business must sign the application 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's fictitious name and

(ii) Submit the required registration documents.

(c) 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.

(d) Whether 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 has been a partner in a partnership or an officer, director or principal stockholder of a 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 holds any other licenses 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) The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number.

(j) 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").

(k) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within five hundred feet (500') of the property to be certified; the property lines of any 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.

(l) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which regularly depicts material which is distinguished or characterized by an emphasis on matter depicting or describing specified anatomical areas, then the applicant shall comply with the application requirements set forth in § 9-814.

(6) 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 of Bolivar the following information:

- (a) The applicant's name or any other name (including "stage" names) or aliases used by the individual;
- (b) Age, date, and place of birth;
- (c) Present residence address and telephone number;
- (d) Present business address and telephone number;
- (e) Date, issuing state and number of driver's permit or other photographic identification card information;
- (f) Social Security number; and,
- (g) Proof that the individual is at least eighteen (18) years of age.

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

(a) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant in this or any other city, 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, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(b) 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. (1998 Code, § 9-804)

**9-705. Issuance of license.** (1) Upon the filing of said application for a sexually oriented business employee license, the City of Bolivar shall issue a temporary license to said applicant. 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 of Bolivar shall issue a license, unless it is determined by a preponderance of the evidence that one (1) 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" as defined in this chapter;

(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 by the City of Bolivar within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in § 9-710.

(2) A sexually oriented business license and sexually oriented business employee license granted pursuant to this chapter shall be subject to annual renewal upon the written application of the applicant and a finding by the City of Bolivar 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 § 9-706.

(3) Within thirty (30) days after receipt of a completed sexually oriented business application, the City of Bolivar shall approve or deny the issuance of a license to an applicant. The City of Bolivar shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:

(a) An applicant is under eighteen (18) years of age.

(b) An applicant is overdue in payment to the City of Bolivar 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 has been denied a license by the City of Bolivar to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

(e) An applicant 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 § 9-703. All license 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 of Bolivar.

(6) A sexually oriented business license shall issue for only one (1) classification as found in § 9-703. (1998 Code, § 9-805)

**9-706. Fees--sexually oriented business license and employee license sexually oriented business license.** (1) 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 two hundred fifty dollars (\$250.00). In addition to the renewal fee, a late penalty of one hundred dollars (\$100.00) shall be assessed against the applicant who files for renewal less than thirty (30) days before the license expires.

(2) In addition to the application fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the City of Bolivar an annual license fee of one hundred dollars (\$100.00) within thirty (30) 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 of Bolivar.

(3) All license applications and fees shall be submitted to the administrator of the City of Bolivar, Tennessee. (1998 Code, § 9-806, modified)

**9-707. 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 and any other applicable laws of the State of Tennessee if he refuses to permit such lawful inspection of the premises at any time it is open for business. (1998 Code, § 9-807)

**9-708. Expiration of license.** (1) Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in § 9-704. 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 of Bolivar 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 of Bolivar 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. (1998 Code, § 9-808)

**9-709. Suspension.** (1) The City of Bolivar shall suspend a sexually oriented business license for a period not to exceed thirty (30) days if it determines that a licensee or an 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 § 9-710 below exist. (1998 Code, § 9-809)

**9-710. Revocation.** (1) The City of Bolivar shall revoke a sexually oriented business license if a cause of suspension in § 9-709 occurs and the license has been suspended within the proceeding twelve (12) months.

(2) The City of Bolivar shall 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; or,

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

(3) The City of Bolivar shall 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 control 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 of Bolivar 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 of Bolivar 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. (1998 Code, § 9-810)

**9-711. 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. (1998 Code, § 9-811)

**9-712. Location of sexually oriented businesses.** (1) A person commits a violation of this chapter and any other applicable laws of the State of Tennessee if that person operates or causes to be operated a sexually oriented business in any zoning districts other than L-I Limited Industrial District as enumerated in the Zoning Ordinance of the City of Bolivar, Tennessee.<sup>1</sup>

(2) A person commits a violation of this chapter and any other applicable laws of the State of Tennessee offense if the person operates or causes to be operated a sexually oriented business within one thousand feet (1,000') of:

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

(b) A public or private educational facility, including but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not

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<sup>1</sup>The Zoning Ordinance for the City of Bolivar (and amendments) is available in the office of the city administrator.

include facilities used primarily for another purpose and only incidentally as a school;

(c) A boundary of any residential district as defined in the Zoning Ordinance of City of Bolivar, Tennessee:

(d) An occupied residential "dwelling" as defined in the Zoning Ordinance of City of Bolivar, Tennessee

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

(f) The property line of a lot devoted to use as a "residence" as defined the Zoning Ordinance of City of Bolivar, Tennessee;

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

(3) A person commits a violation of this chapter and any other applicable laws of the State of Tennessee if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand feet (1,000') of another sexually oriented business.

(4) A person commits a violation of this chapter and any other applicable laws of the State of Tennessee if that person causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(5) For the purposes of subsection (2) of this section, measurement shall be made in a straight line, without regard to the intervening structures of objects, from the nearest portion of the building or structure used as a part of their 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, city or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

(6) For purposes of subsection (3) of this section, the distance between any two (2) sexually oriented 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,

(7) Any sexually oriented business lawfully operating on October 14, 2003, that is in violation of subsection (1) through (6) of this section shall be deemed a nonconforming use. The non-conforming use will be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such

nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within one thousand feet (1,000') of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is/are nonconforming.

(8) A sexually oriented business lawfully in operation as a conforming use is not rendered a nonconforming 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 one thousand feet (1,000') of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked. (1998 Code, § 9-812, modified)

**9-713. Additional regulations for adult motels.** (1) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishments has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a refutable presumption that the establishment is an adult motel as that term is defined in this chapter.

(2) A person commits a violation of this chapter and any other applicable laws of the State of Tennessee 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 subrents a sleeping room to a person, and within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

(3) For purposes of subsection (2) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration. (1998 Code, § 9-813)

**9-714. 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 regularly depicts material which is distinguished or characterized by an emphasis on matter depicting or describing specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(a) An application for a sexually oriented license, shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also

designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The City of Bolivar 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 of Bolivar.

(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 patron is present inside the premises.

(e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be 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 feet (5') candles as measured at the floor level.

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

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

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

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

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

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

(2) A person having a duty under subsection (a) through (n) of subsection (1) above commits a misdemeanor if he knowingly fails to fulfill that duty. (1998 Code, § 9-814)

**9-715. Additional regulations for escort agencies.** (1) An escort agency shall not employ any person under the age of eighteen (18) years.

(2) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of eighteen (18) years. (1998 Code, § 9-815)

**9-716. 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 a violation of this chapter any other applicable laws of the State of Tennessee if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen (18) years was in a restroom not open to public view or visible to any other person.

(3) A person commits a violation of this chapter or any other applicable laws of the State of Tennessee 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. (1998 Code, § 9-816)

**9-717. Additional regulations concerning public nudity.** (1) It shall be a violation of this chapter and any other applicable laws of the State of Tennessee 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 and any other applicable laws of the State of Tennessee 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 patron or customer and on a stage at least two feet (2') from the floor.

(3) It shall be a violation of this chapter and any other applicable laws of the State of Tennessee for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.

(4) It shall be a violation of this chapter and any other applicable laws of the State of Tennessee for an employee, while semi-nude or in a state of nudity, to touch a customer or the clothing of a customer. (1998 Code, § 9-817)

**9-718. Prohibition against children in a sexually oriented business.** A person commits a misdemeanor if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business. (1998 Code, § 9-818)

**9-719. Alcoholic beverages prohibited.** No licensee shall permit any alcoholic beverages to be sold, served or offered on the premises. (1998 Code, § 9-819)

**9-720. Hours of operation.** No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 1:00 A.M. and 8:00 A.M. on weekdays and Saturdays, and 1:00 A.M. and 12:00 P.M. on Sundays. (1998 Code, § 9-820)

**9-721. Exemptions.** (1) It is a defense to prosecution under § 9-717 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 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,

(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 (1) time. (1998 Code, § 9-821)



**9-722. Violations and penalty.** Any violation of this chapter shall be punishable by a fine of not more than fifty dollars (\$50.00) per violation. Each day a sexually oriented business or sexually oriented business employee operates in violation of this chapter is a separate offense or violation. (1998 Code, § 9-822)

## CHAPTER 8

### REGULATIONS FOR WRECKER OPERATORS

#### SECTION

- 9-801. Purpose.
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**9-801. Purpose.** The purpose of this chapter is:

- (1) To establish regulations and procedures to permit wrecker operators for the purpose of providing a rotation call list procedure for those operators who apply to remove wrecked or disabled vehicles at the request or call of the Bolivar Police Department.
- (2) To further ensure the safe and efficient removal, storage and safekeeping of any and all transport vehicles being towed and placed into the custody of such wrecker services;
- (3) To utilize only those wrecker services whose equipment, procedures and services conform to the following rules and regulations. (Ord. #12-004, May 2012)

**9-802. Definitions.** For the purposes of this chapter the following words and phrases shall have the meaning respectively ascribed to them by this section:

(1) "City approved wrecker" is all wreckers or towing operators permitted by the city under this chapter who qualify to be placed on the rotation call list to respond to requests for towing of vehicles made by the city. The city does not assume any responsibility for negligence or damage caused by wrecker or towing operator.

(2) "Storage" consists of storing a motor vehicle within a building or lot being used by the towing operator as their place of business.

(3) "Wrecker or towing operator" is any person engaged in the business of or offering the services of a wrecker or towing service, whereby motor vehicles are or may be towed or otherwise removed from one (1) place to another by the use of a motor vehicle adapted to and designed for that purpose. (Ord. #12-004, May 2012)

**9-803. Wrecker classifications.** For purposes of this chapter, wreckers are classified into four (4) classes: Class A, Class B, Class C, and Class D, with minimum requirements for each classification as follows:

(1) Class A: for towing passenger cars, pick-up trucks, small trailers, etc. This classification also includes "wheel lift" type vehicle transporters.

(a) The towing vehicle chassis shall have a minimum manufacturer's capacity of fourteen thousand (14,000) pounds or greater GVWR;

(b) Individual boom capacity of not less than four (4) tons;

(c) Individual power winch pulling capacity of not less than four (4) tons;

(d) A minimum of one hundred feet (100') of three-eighths inch (3/8"), or larger, cable on each drum;

(e) Wheel lift capable of picking up a passenger car or pick-up truck;

(f) Belt-type cradle tow plate or tow sling to pick up vehicles, and cradle or tow plate to be equipped with safety chain;

(g) Dollies are suggested, but not required; and

(h) Wheel lift: towing vehicles possessing equipment capable of lifting the vehicle by the wheels only, with nothing touching the vehicle body.

(i) Wheel lift towing vehicles shall meet all Class A requirements, excluding the belt-type cradle tow plate or tow sling.

(ii) Safety restraint straps (nylon straps with ratchets or the equivalent) shall be provided to secure the towed vehicle's tires into the wheel lift forks.

(2) Class B: for towing medium size trucks, trailers, etc.

(a) The towing vehicle chassis shall have a minimum manufacturer's capacity of twenty-six thousand (26,000) pounds or greater GVWR;

(b) Boom specifications:

- (i) Double boom: so constructed as to permit splitting, each boom to operate independently or jointly, individual boom capacity of no less than eight (8) tons and individual power winch pulling capacity of not less than eight (8) tons; or
- (ii) Single boom: with no less than a sixteen (16) ton capacity and a power winch pulling capacity of not less than sixteen (16) tons.
- (c) Two hundred feet (200'), or more, seven-sixteenths inch (7/16"), or larger, cable on each drum; and
- (d) Cradle tow plate or tow sling to pick up vehicle, cradle or tow plate to be equipped with safety chain.
- (3) Class C: for towing large trucks, road tractors, and trailers.
  - (a) The towing vehicle chassis shall have a minimum manufacturer's capacity of thirty-five thousand (35,000) pounds or greater GVWR;
  - (b) Boom specifications:
    - (i) Double boom so constructed as to permit splitting; each boom to operate independently or jointly; individual boom capacity of no less than twelve and one-half (12 1/2) tons; or
    - (ii) Single boom with no less than a twenty-five (25) ton capacity and a power winch pulling capacity of no less than twenty-five (25) tons.
  - (c) Two hundred feet (200'), or more, of nine-sixteenth inches (9/16"), or larger, cable on each drum;
  - (d) Air brakes constructed so as to lock wheels automatically upon failure;
  - (e) Only tandem axle trucks with two (2) live drive axles will be accepted as Class C; and
  - (f) An under-reach capable of towing an eighty thousand (80,000) pound tractor trailer combination shall be required on all Class C towing vehicles that are added to the towing list after July 1, 2008.
- (4) Class D: Vehicle transporters designed to tow or carry passenger cars, pick-up trucks, small trailer, etc. This classification includes "car carrier" or "rollback" type vehicle transporters.
  - (a) Car carrier vehicle transporters:
    - (i) The truck chassis shall have a minimum manufacturer's capacity of fourteen thousand (14,000) pounds or greater GVWR;
    - (ii) Lift cylinders:
      - (A) Two (2) with a minimum of three inch (3") bore each; or
      - (B) One (1) with a minimum of five and one-half inch (5 1/2") bore;

- (iii) Individual power winch pulling capacity of not less than four (4) tons;
- (iv) Fifty feet (50'), or more, of three-eighths inch (3/8"), or larger, cable on winch drum;
- (v) Two (2) safety chains for securing vehicle to carrier bed;
- (vi) Carrier bed shall be a minimum of sixteen feet (16') in length and a minimum of eighty-four inches (84") in width inside side rails;
- (vii) Cab protector, constructed of solid steel or aluminum, that extends to a height of four feet (4') above the floor or to a height at which it blocks the forward movement of the bumper of the vehicle being towed; and
- (viii) Straps with ratcheting capability that provide for the transporting of motorcycles. (Ord. #12-004, May 2012)

**9-804. Permit required.** Permits shall be granted only for "city approved wreckers" as provided herein. Wrecker or towing operators desiring to engage in the business of or offer the services of, a wrecker or towing service as a city approved wrecker upon the streets of the City of Bolivar, Tennessee, shall be issued a permit as provided by this chapter for each wrecker operated by said wrecker or towing operator. Permits shall be issued for a Class A through Class D wrecker as the vehicles meet the requirements of § 9-803. Any wrecker service utilized by the City of Bolivar shall be properly licensed and insured.

Every person qualified under this chapter shall be issued a permit by the city finance director for each wrecker approved by the city administrator, which permit shall at all times be kept with each wrecker. Such permit shall have printed thereon the year for which it is valid. (Ord. #12-004, May 2012)

**9-805. Administrator.** (1) The city administrator or his/her designated agent shall be the administrator of the provisions of this chapter;

(2) The city administrator shall approve permits, revoke or suspend permits, and otherwise administer the provisions of this chapter;

(3) The action of the city administrator in granting or refusing a permit or in revoking or suspending a permit shall be final except as it may be subject to review as provided by law. (Ord. #12-004, May 2012)

**9-806. Application for permit.** Any person applying for qualification as a city-approved wrecker shall provide the following information and assurances:

- (1) Name and address of the person, firm, or corporation desiring the license.

- (2) The applicant is licensed and registered to do business in Tennessee.
- (3) Employs drivers that are twenty-one (21) years of age or older.
- (4) Display a highly visible sign with the towing company's name thereon at the business site of the towing company.
- (5) Be independent from other companies on the rotation list.
- (6) Ensure the tow driver has a valid driver's license with proper endorsement to drive the class of vehicle being operated.
- (7) Copies of employees' driver's license for a tow drivers file.
- (8) The location and full description of all property to be utilized in connection with the business.
- (9) The number of wreckers or towing cars owned or available for use by the applicant and a description of each wrecker sufficient to determine a proper classification under § 9-803 (i.e., Class A, Class B, etc.).
- (10) All wreckers are properly equipped for the applicable classification set forth in § 9-803 and contain required equipment set out in § 9-809.
- (11) The wrecker or towing operator will accept responsibility for any and all personal property left in towed or stored vehicles.
- (12) Maintain available space secured by fence or natural barrier sufficient to deter trespassing or vandalism for all disabled motor vehicles to be towed or otherwise removed from the place where they had been disabled.
- (13) The applicant will provide twenty-four (24) hour service, including holidays, and that he will have a qualified operator on duty at all times for each city approved wrecker location licensed hereunder.
- (14) The wrecker or towing operator will not release any vehicles impounded by the city without authorization by the police department, that a file will be maintained on all vehicle release forms and that this file will be made available for police inspection upon request. When no hold order is placed, the vehicle shall be released to the owner upon proof of ownership and when the necessary financial transactions between vehicle owner and wrecker service are completed.
- (15) The applicant will maintain a minimum of one (1) properly equipped and licensed wrecker throughout the year for which application is being made.
- (16) All local ordinances will be met in regards to vehicle storage, i.e., abandoned vehicle ordinances; and that failure to comply within thirty (30) days of notice will immediately eliminate the city approved status.
- (17) A listing of fees and charges for common towing services and for storage of disabled vehicles which the applicant shall agree will not be increased during the applicable calendar year except as provided in § 9-815(6). If the city administrator finds that such charges are excessive in any particular case, the operator shall be notified and the application for a city approved wrecker permit denied, unless the applicant shall agree to reduce those charges deemed excessive.

(18) Wrecker service owners with a felony conviction will not be allowed a permit for a city approved wrecker. (Ord. #12-004, May 2012)

**9-807. Application for permit, application fee, expiration date, and renewal.** (1) Any applicant for a permit under this chapter shall be charged an application fee of forty dollars (\$40.00). This initial fee shall cover all permits required for each wrecker owned and operated by the applicant.

(2) If an applicant changes his business location, or, adds or substitutes a new or different wrecker, there shall be a supplemental fee of ten dollars (\$10.00).

(3) There shall be an annual permit renewal fee of twenty dollars (\$20.00).

(4) All permits shall expire on December 31. (Ord. #12-004, May 2012)

**9-808. Investigation of applicant.** The city administrators shall cause to be investigated each applicant for a license to determine whether or not the applicant has the necessary equipment and facilities to qualify as a wrecker operator, and if the applicant is qualified, shall recommend to the city administrator that a city approved wrecker permit be issued to the applicant. The city administrator or his/her agent may inspect licensee's equipment or facilities at any time during business hours. The city administrator shall be advised when any rate in an application appears to be excessive upon consideration of the factors set forth in § 9-813. The city administrator shall direct or make such further investigation as he/she deems proper and grant or refuse a permit in his discretion. (Ord. #12-004, May 2012)

**9-809. Equipment and requirements for towing vehicles.**

(1) Towing companies shall be responsible for carrying the equipment necessary for removal of glass and other debris from the highway. The driver of the towing vehicle is responsible for the removal of all debris from the highway.

(2) Emergency equipment:

(a) At least one (1) functional, amber-colored, and rotating or strobe type light (LED lights are also permissible) shall be permanently mounted on the top of the towing vehicle. No other color will be approved. All emergency flashers and directional lights showing to the front must be amber in color.

(b) Sirens on towing vehicles are prohibited.

(3) Additional required equipment:

(a) At least one (1) heavy-duty push broom;

(b) Flood lights mounted at a height sufficient to illuminate the scene at night;

(c) One (1) shovel;

(d) One (1) axe;

(e) One (1) pinch bar, pry bar or crowbar;

- (f) One (1) set of bolt cutters;
  - (g) Minimum of one (1) fully charged twenty (20) pound or two (2) fully charged ten (10) pound fire extinguisher(s) having an Underwriters Laboratory (UL) rating of four (4) A: B: C: or more. The fire extinguisher must be securely mounted on the towing vehicle;
  - (h) Minimum of one (1) fifty (50) pound bag of a fluid absorption compound;
  - (i) Three (3) red emergency reflectors; and
  - (j) One (1) light bar. The towed vehicle must be capable of displaying all lights on the rear of the vehicle, while in tow. When this is not possible, a light bar must be attached to the rearmost vehicle while in tow. The bar must consist of two (2) tail lamps, two (2) stop lamps and two (2) turn signals. All lights on the light bar must be fully operational.
- (4) All towing vehicles shall display the towing company's name and address. Such information shall be painted on, or permanently affixed, to both sides of the towing vehicle. All lettering shall be at least three inches (3") high. Magnetic signs are not permitted. (Ord. #12-004, May 2012)

**9-810. Towing company's places of business and storage facilities.**

Towing companies must be equipped to provide an adequate storage lot or building for proper, safe and secure storage of all vehicles towed at the request of the police department.

(1) The place of business and storage facility shall be located within the towing company's approved zone.

(2) If storage facilities are not adjoined to the towing company's place of business, the towing company's storage facility must be identified with a highly visible sign that has the towing company's name, address and phone number thereon. No two (2) or more towing companies will be permitted to share the same storage facility.

(3) The towing company shall be responsible for storing, safekeeping and preventing vandalism of all towed vehicles and their contents.

(4) The towing company's place of business shall be staffed, between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday, excluding legal holidays. The towing company's storage facility, if not adjoined with the place of business, shall be readily available for access to customers and members of the police department between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday, excluding legal holidays.

(5) Vehicles towed at the request of a member of the police department shall be stored in an area of the storage facility with security fencing at least six feet (6') in height. (Ord. #12-004, May 2012)

**9-811. Hold orders.** A tow company must have an area of storage not opened to the public. An officer may request that a vehicle have a "hold order" placed on it. When the "hold order" is requested neither the general public nor



the owner/agent are allowed to the vehicle. The officer that placed the hold or a member of the Bolivar Police Department will contact the tow company if or when the order is lifted.

Vehicles that have no hold order may be released by the tow company at any time to an owner/agent of the vehicle. The owner/agent will be responsible for any tow and storage fees. Before releasing the vehicle the tow company will make copies of identification of the person to whom the vehicle is being released. (Ord. #12-004, May 2012)

**9-812. Notification required for vehicles held over thirty days.**

The Tennessee Department of Revenue will be notified of all vehicles held over thirty (30) days, except when arrangements for longer storage are made by the owner, as required by Tennessee Code Annotated, § 55-16-101. (Ord. #12-004, May 2012)

**9-813. Call and notification procedures.** (1) When an officer is dispatched to a crash, motorist assist, or any other request for assistance, the officer, after determining the need, shall contact the dispatcher. The dispatcher will notify the next scheduled towing company to respond, provided that the parties have not already made contact with a towing company of their choice. No towing company, whether or not on the towing list, shall remove a crashed vehicle from the scene without authorization from a law enforcement agency.

If emergency personnel or other emergency services are being performed and the immediate use of a towing vehicle is not required. Members of the police department should request the towing vehicle when all other services have been performed and are completed.

(2) Towing companies shall also be available for immediate response twenty-four (24) hours a day, seven (7) days a week.

(a) If a towing company fails to respond in a reasonable length of time, as determined by the member of the police department, the next scheduled towing company will be called and the first called towing company will lose its turn.

(b) If the police department receives a busy signal, the next scheduled towing company will be called and the first called towing company will lose its turn.

(c) Towing companies are restricted to a maximum of two (2) telephone numbers on the towing list. "Call waiting" and "call forwarding" are recommended; however, pagers, answering services, and beepers are not permitted. Cell phones are permitted.

(d) Towing companies shall be given all known information regarding the type of incident and equipment that may be required. A towing company shall answer, "yes" or "no" when asked if it can respond to the call in a reasonable amount of time.

(e) A towing company shall not refer a call to another towing company or substitute another company's towing vehicle to avoid losing its turn on the towing list.

(f) A towing company that refuses a call, or fails to respond promptly to a call, may be removed/suspended from the towing list.

(g) A towing company that fails to answer a call will lose the call, if two (2) calls are missed on the rotation of the towing list an investigation will be made and the company shall be notified of the status of its permit. (Ord. #12-004, May 2012)

**9-814. Insurance.** Before the city administrator shall approve any permit under this chapter including a renewal permit, the applicant shall deposit with the city administrator a certificate of insurance showing that the applicant has in force a policy issued by an insurance company authorized to transact business in the State of Tennessee as follows:

(1) Insurance must be sufficient to compensate for any loss of, or damage to, property entrusted to the wrecker service.

(a) Minimum vehicle liability amounts:

(i) Class A and D wrecker classification - three hundred thousand dollars (\$300,000.00);

(ii) Class B wrecker classification - five hundred thousand dollars (\$500,000.00);

(iii) Class C wrecker classification - seven hundred fifty thousand dollars (\$750,000.00).

(b) While in the care, custody, and control of the wrecker service operator, garage keepers liability to cover any loss by fire, theft, explosion, and collision.

(2) The certificate of insurance must contain an endorsement providing for a minimum of ten (10) days' notice to the city in the event of any cancellation of the policy.

(3) The owner of the wrecker service shall make written notification of any changes in insurance coverage (i.e., changing companies, vehicles, etc.) to the city administrator within ten (10) days prior to the change. (Ord. #12-004, May 2012)

**9-815. Billing and charges for city approved wreckers.** The applicants for a city approved wrecker permit shall be subject to regulation as to billing and charges for any call from the police department referred to the city approved wrecker under the call rotation system as follows:

(1) The owner of a wrecker or towing car shall have prepared billheads with his name and the address of his place of business printed thereon. The operator of the wrecker before towing a disabled vehicle shall prepare a bill on his billhead form in duplicate, the original of which shall be given to the owner

of the disabled vehicle or his authorized representative if available at the scene. This bill shall contain the following information:

- (a) Name and address of person engaging towing car.
  - (b) State license number of disabled vehicle.
  - (c) Storage rates per day or part thereof.
  - (d) An estimate of the amount to be charged for towing which may thereafter only be adjusted for good cause. The printing of a schedule of fees on a billhead marked as to services rendered shall be sufficient for this purpose.
- (2) The duplicate copy of the bill shall be retained by the wrecker or towing car owner for a period of one (1) year, and shall be subject to inspection by the city administrator or his duly authorized representative.
- (3) All charges for towing and storing a disabled vehicle, or other related charges, shall be reasonable.
- (4) All applicants for a permit shall file with their application a schedule of charges for routine services proposed to be charged for the calendar year for which the application is filed. This form shall be approved by the city administrator. The city administrator shall review the proposed charges and determine whether or not they are excessive. No application for a city approved wrecker shall be approved if the city administrator determines any portion of the fees to be excessive. Applicants may modify their proposed schedule of charges to reduce charges that the city administrator determines to be excessive. The city administrator shall consider the following factors in determining the reasonableness of charges for routine services:
- (a) The average charge for such services proposed by applicants for the ensuing calendar year;
  - (b) The median charge for such services proposed by applicants for the ensuing calendar year;
  - (c) The cost and labor, materials, equipment, and the reason for providing such services;
  - (d) Fees charged for similar services in this community or for other similar communities in Tennessee.
- (5) There may be a surcharge of one-half (1/2) of the basic towing fees for calls which are dispatched outside normal business hours.
- (6) Any change of rates shall be forwarded to the city administrator no later than ten (10) days prior to the proposed change. (Ord. #12-004, May 2012)

**9-816. Regulations for city approved wrecker.** A city approved wrecker permittee shall follow these regulations:

- (1) Permittees will not be permitted to operate wrecker equipment under more than one (1) company name out of the same location. A spouse, child or children, sibling, son-in-law, daughter-in-law, partner, stockholder, or other person having an interest in a business shall not be permitted to operate another wrecker out of the same location.

(2) Each city approved wrecker must have distinct and separate storage facilities.

(3) All permittees are expected to be familiar and comply with the traffic laws of the City of Bolivar and the State of Tennessee.

(4) Permittees will be familiar with and abide by all provisions of this chapter.

(5) No permittee shall charge unreasonable rates for services rendered.

(6) Permittees shall be available for twenty-four (24) hours service with vehicles in proper operating condition and a qualified operator on duty.

(7) Operators shall carry vehicles to any destination within the City of Bolivar at the owner's or operator's request when charges therefor have been prepaid.

(8) Permittees shall have a telephone number prominently posted for after-hours release of vehicles. The permittees may make an additional charge for releasing a vehicle other than during normal business hours, except when the location is otherwise open for business.

(9) The police department may direct that a police impoundment be towed to a city lot at no additional charge.

(10) Amber lights are to be used in the immediate vicinity of a wreck and while towing a vehicle.

(11) All operators shall respond to a wreck within fifteen (15) minutes, with an additional five (5) minute grace period for those wrecker services en-route, after being called, and except for extenuating or unusual circumstances, a response must be made within this time after the dispatch request is made to the wrecker operator. If the wrecker is engaged elsewhere or for any reason the wrecker operator cannot reasonably expect to respond within the above specified time, it shall be the duty of the wrecker operator to so advise the police department and decline to accept the call, whereupon the next wrecker operator on rotation shall be called. Class C wreckers shall be granted additional time to respond to a tow for a large truck, road tractor and trailers.

(12) No permittee shall refer or delegate police calls to other wrecker companies.

(13) No answering service, paging service or similar service or procedure may be used to forward a call to an owner or employee of the wrecker service during normal business hours. The operator may provide for an after-hours number which shall be provided to the city administrator.

(14) The first city approved wrecker operator at the scene shall tow the vehicle causing the greatest hazard as directed by the investigating police officer.

(15) No repairs or other additional services shall be performed except on written request of the owner.

(16) Wrecker or towing operators who fail to answer a call will lose the call. If two (2) calls are missed, an investigation will be made and suspension or removal as a city approved wrecker will be considered. Operators refusing a call

or failing to respond promptly to a call may be removed as a city approved wrecker.

(17) If additional equipment or recovery vehicles are needed to adequately complete a tow (i.e., tractor-trailer roll-over or difficult auto recovery), discretion of the responding wrecker service should be used in deciding what and whose additional equipment will be required. The severity of the situation and the estimated response time of additional equipment will be weighed by the officer at the scene, who is the deciding authority. (Ord. #12-004, May 2012)

**9-817. Permit revocation/suspension.** (1) The city administrator shall revoke or suspend the permit of any permittee on any of the following grounds:

(a) If the permit was procured by fraudulent conduct or false statement of a material fact or a fact concerning the applicant which was not disclosed at the time of his making the application that would have constituted just cause for refusing to issue the license.

(b) Failure of a city approved wrecker permittee to have an operable and properly equipped wrecker and qualified operator on duty at all times or to promptly respond to police calls.

(c) If the city approved wrecker permittee has knowingly overcharged or consistently overcharges.

(d) A violation of any provision of this chapter.

(e) The city administrator may revoke or suspend a permit for due cause not specified herein.

(2) Revocation of a permit shall terminate all authority and permission granted by such permit to the permittee. Any person whose permit has been revoked shall not be eligible to again apply for a permit for a period of one (1) year from the date of such revocation. Suspension of a permit shall be decided on a case-by-case basis. An appeal of a revocation or suspension may be made to the city administrator. (Ord. #12-004, May 2012)

**9-818. Vehicles to be towed to place designated by owner--coercion at scene of accident prohibited.** The wrecker operator may tow the wrecked or disabled vehicle to the operator's place of business; provided, if the owner or agent of the wrecked or disabled vehicle pays or secures the towing charges, then the wrecker operator shall pull the vehicle to any place designated by said owner or agent. It shall be unlawful for the owner of a wrecker, his agent, employee or representative at the scene of any accident to high-pressure or otherwise to coerce or insist upon any owner of a wrecked or disabled vehicle to sign a work order or agreement at the scene of the accident for any repairs to be made on such wrecked or disabled vehicle. (Ord. #12-004, May 2012)

**9-819. Wreckers to go to scene of accident on call of owner or police only.** It shall be unlawful for any wrecker operator, or his agent or

representative, to go to any place where an accident has occurred unless called by the driver or owner of a disabled vehicle, or his authorized representative, or by the police department dispatcher. In any event, the wrecker shall clean with the police dispatcher before going to the accident scene. It shall be unlawful for the owner of any wrecker or towing car, or his agent or representative, to go to the place of a wreck by reason of information received by shortwave or police radio. (Ord. #12-004, May 2012)

**9-820. Solicitation of towing work by operator, etc., of towing car prohibited.** It shall be unlawful to drive along any street and solicit towing work. A wrecker operator shall not proceed to the scene of a disabled motor vehicle without having been requested or notified to do so, as provided in § 9-818 of this chapter. Responding to a call upon notice from gas station attendants, taxicab drivers or unauthorized persons shall be considered a violation of this chapter. (Ord. #12-004, May 2012)

**9-821. Solicitation of business by city employees.** It shall be unlawful for any city employee to solicit business for any wrecker or towing car operator. Any employee guilty of violating the provisions of this section shall be subject to disciplinary action up to and including termination. (Ord. #12-004, May 2012)

**9-822. Owner's request wreckers.** Police officers shall honor the request of the owner or operator of a wrecked or disabled vehicle to call a particular wrecker service, whether a city approved wrecker or not. The officer shall radio the dispatcher who shall contact the wrecker operator requested to determine if the operator is willing and able to respond to the scene of the wreck for a disabled motor vehicle within twenty (20) minutes or, within thirty (30) minutes for a Class C wrecker. If so, the dispatcher shall dispatch the operator requested. The City of Bolivar assumes no liability or responsibility regarding owner's requested wreckers. If there is any traffic hazard or other reason why the vehicle cannot be left unattended or the requested operator cannot respond within the applicable time limit then the dispatcher shall dispatch a city approved wrecker. (Ord. #12-004, May 2012)