

## TITLE 9

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

## CHAPTER

1. MISCELLANEOUS .
2. PEDDLERS, ETC.
3. CHARITABLE SOLICITORS.
4. CABLE TELEVISION.
5. ADULT-ORIENTED BUSINESS ESTABLISHMENTS.

## CHAPTER 1

MISCELLANEOUS

## SECTION

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

9-101. "Going out of business" sales. It shall be unlawful for any person to falsely represent a sale as being a "going out of business" sale. A "going out of business" sale, for the purposes of this section, shall be a "fire sale," "bankrupt sale," "loss of lease sale," or any other sale made in anticipation of the termination of a business at its present location. When any person after advertising a "going out of business" sale adds to his stock or fails to go out of business within ninety (90) days, he shall prima facie be deemed to have violated this section. (1985 Code, § 5-101)

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<sup>1</sup>Municipal code references

Beer business regulations: title 8, chapter 2.

Building, plumbing, and wiring, etc.: title 12.

Privilege tax provisions, etc.: title 5.

Health and sanitation: title 13.

Posting notices or advertisements: title 11.

Zoning provisions: title 14.

## CHAPTER 2

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

## SECTION

- 9-201. Permit required.
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- 9-211. Revocation or suspension of permit.
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9-201. Permit required. It shall be unlawful for any peddler, canvasser, or solicitor, or transient merchant to ply his trade within the corporate limits without first obtaining a permit therefor in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one to whom it is issued. (1985 Code, § 5-201)

9-202. Exemptions. The terms of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to bona fide charitable, religious, patriotic, or philanthropic organizations. (1985 Code, § 5-202)

9-203. Application for permit. Applicants for a permit under this chapter must file with the recorder a sworn written application containing the following:

- (1) Name and physical description of any applicant.
- (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.

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<sup>1</sup>Municipal code reference

Privilege taxes: title 5.

Trespass by peddlers, etc.: section 11-801.

(4) If employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship.

(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.

(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.

(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; and, the punishment or penalty assessed therefor.

(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.

(10) At the time of filing of the application, a fee of five dollars (\$5.00) shall be paid to the town to cover the cost of investigating the facts stated therein. (1985 Code, § 5-203)

9-204. Issuance or refusal of permit. (1) Each application shall be referred to the chief of police for investigation. The chief shall report his findings to the recorder within seventy-two (72) hours.

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

(3) If, on the other hand, the chief's report indicates that the moral reputation and business responsibility of the applicant are satisfactory, the recorder shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by Section 9-206. The recorder shall keep a permanent record of all permits issued. (1985 Code, § 5-204)

9-205. Appeal. Any person aggrieved by the action of the chief of police and/or the recorder in the denial of a permit shall have the right to appeal to the board of mayor and aldermen. Such appeal shall be taken by filing with the mayor within fourteen (14) days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The mayor shall set a time and place for a hearing on such appeal and notice of the time and place of such hearing shall be given to the appellant. The notice shall be in writing and shall be mailed, postage prepaid, to the applicant at his last known address at least five (5) days prior to the date set for hearing, or shall be

delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1985 Code, § 5-205)

9-206. Bond. Every permittee shall file with the recorder a surety bond running to the town in the amount of one thousand dollars (\$1,000.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of this town and the statutes of the state regulating peddlers, canvassers, solicitors, transient merchants, itinerant merchants, or itinerant vendors, as the case may be, and shall guarantee to any citizen of the town that all money paid as a down payment will be accounted for and applied according to the representations of the permittee, and further guaranteeing to any citizen of the town doing business with said permittee that the property purchased will be delivered according to the representations of the permittee. Action on such bond may be brought by any person aggrieved and for whose benefit, among others, the bond is given, but the surety may, by paying, pursuant to order of the court, the face amount of the bond to the clerk of the court in which the suit is commenced, be relieved without costs of all further liability. (1985 Code, § 5-206)

9-207. Loud noises and speaking devices. No permittee, nor any person in his behalf, shall shout, cry out, blow a horn, ring a bell, or use any sound amplifying device upon any of the sidewalks, streets, alleys, parks, or other public places of the town 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 purposes of attracting attention to any goods, wares, or merchandise which such permittee proposes to sell. (1985 Code, § 5-207)

9-208. Use of streets. No permittee shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon, nor shall any be permitted to operate in a congested area where such operation might impede or inconvenience the public use of such streets. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (1985 Code, § 5-208)

9-209. Exhibition of permit. Permittees are required to exhibit their permits at the request of any policeman or citizen. (1985 Code, § 5-209)

9-210. Policemen to enforce. It shall be the duty of all policemen to see that the provisions of this chapter are enforced. (1985 Code, § 5-210)

9-211. Revocation or suspension of permit. (1) Permits issued under the provisions of this chapter may be revoked by the board of mayor and aldermen after notice and hearing, for any of the following causes:

(a) Fraud, misrepresentation, or incorrect statement contained in the application for permit, or made in the course of carrying on the business of solicitor, canvasser, peddler, transient merchant, itinerant merchant, or itinerant vendor.

(b) Any violation of this chapter.

(c) Conviction of any crime or misdemeanor.

(d) Conducting the business of peddler, canvasser, solicitor, transient merchant, itinerant merchant, or itinerant vendor, as the case may be, in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

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

(3) When reasonably necessary in the public interest the mayor may suspend a permit pending the revocation hearing. (1985 Code, § 5-211)

9-212. Reapplication. 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. (1985 Code, § 5-212)

9-213. Expiration and renewal of permit. Permits issued under the provisions of this chapter shall expire on the same date that the permittee's privilege license expires and shall be renewed without cost if the permittee applies for and obtains a new privilege license within thirty (30) days thereafter. Permits issued to permittees who are not subject to a privilege tax shall be issued for one (1) year. An application for a renewal shall be made substantially in the same form as an original application. However, only so much of the application shall be completed as is necessary to reflect conditions which have changed since the last application was filed. (1985 Code, § 5-213)

## CHAPTER 3

CHARITABLE SOLICITORS<sup>1</sup>

## SECTION

9-301. Permit required.

9-302. Prerequisites for a permit.

9-303. Denial of a permit.

9-304. Exhibition of permit.

9-305. Road blocks and solicitations from public streets and thoroughfares.

9-301. Permit required. No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose without a permit from the recorder authorizing such solicitation. Provided, however, that this section shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes if the solicitations are conducted exclusively among the members thereof, voluntarily and without remuneration for making such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies of any such established organization or church. (1985 Code, § 5-301)

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

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

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

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

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

(5) The solicitation is prompted solely by a desire to finance the charitable cause described by the applicant. (1985 Code, § 5-302)

9-303. Denial of a permit. Any applicant for a permit to make charitable or religious solicitations may appeal to the board of mayor and aldermen if he

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<sup>1</sup>Municipal code reference

Trespass by peddlers, etc.: section 11-801.

has not been granted a permit within fifteen (15) days after he makes application therefor. (1985 Code, § 5-303)

9-304. Exhibition of permit. Any solicitor required by this chapter to have a permit shall exhibit such permit at the request of any policemen or person solicited. (1985 Code, § 5-304)

9-305. Road blocks and solicitations from public streets and thoroughfares. All road blocks and solicitations from public streets and thoroughfares within the Town of Dover are prohibited except for those national organizations whose chartered purpose is for medical research, health improvements, and promotion of the general welfare. (1985 Code, § 5-305)

## CHAPTER 4

CABLE TELEVISION<sup>1</sup>

## SECTION

9-401. To be furnished under franchise.

9-401. To be furnished under franchise. Cable television shall be furnished for the town and its inhabitants under such franchise as the board of mayor and aldermen may grant. The rights, powers, duties, and obligations of the town, its inhabitants, and the grantee of the franchise shall be clearly stated in the written franchise agreement which shall be binding on all parties concerned. (1985 Code, § 13-401)

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<sup>1</sup>Ordinance number 120, March 1981 of record in the office of the recorder, established the terms and parameters of cable television franchises granted by the board of mayor and aldermen. See also Ordinances # 152-86, June 1986; #172-87, Dec. 1987; and #238-96, July 1996 for franchise assignments.



## CHAPTER 5

ADULT-ORIENTED BUSINESS ESTABLISHMENTS

## SECTION

- 9-501. Purpose and intent.
- 9-502. Definitions.
- 9-503. License to operate.
- 9-504. License to operate -- application.
- 9-505. License to operate -- qualifications.
- 9-506. Inspectors -- notice of results.
- 9-507. Revocation, suspension or annulment of licenses.
- 9-508. Hearings on disciplinary actions -- judicial review -- prohibition on operation of business.
- 9-509. Termination and renewal of licenses -- applications -- fees.
- 9-510. Prohibited hours of operation -- hours open for inspection.
- 9-511. Duties and responsibilities of operators, entertainers and employees.
- 9-512. Prohibited activities.
- 9-513. Entertainers or escorts -- permits -- required.
- 9-514. Entertainers or escorts -- permits -- application.
- 9-515. Entertainers or escorts -- permits -- qualifications -- investigations.
- 9-516. Operators, entertainers and escorts -- licenses and permits -- fees.
- 9-517. Penalties for violation of part.

9-501. Purpose and intent. It is the purpose of this chapter to regulate adult-oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to govern the operation of adult-oriented businesses within the city. 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 adult-oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to adult-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of adult-oriented entertainment to their intended market. (as added by Ord. #223-94, June 1994)

9-502. Definitions. As used in this part, unless the context otherwise requires:

(1) "Adult bookstore" means an establishment having a substantial or significant portion of its stock or trade in books, films, video cassettes or any other kind of video tape, or magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specific sexual activities" or "specific anatomical areas" as defined below, and, in conjunction therewith, have facilities for the presentation of adult

entertainment, as defined below, and including adult-oriented films, movies, or live entertainment, for observation by patrons therein;

(2) "Adult cabaret" means a cabaret which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers;

(3) "Adult entertainment" means any exhibition of any adult-oriented motion picture, live performance, display or dance of any type, which has as a significant or substantial portion of such performance, any actual or simulated performance of specified sexual activities of exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers;

(4) "Adult mini-motion picture theater" means an enclosed building with a capacity of less than fifty (50) persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below, for observation by patrons therein;

(5) "Adult motion picture theater" means an enclosed building with a capacity of fifty (50) or more persons regularly used for presenting material having as a dominant theme or presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below, for observation by patrons therein;

(6) "Adult-oriented establishment," includes, but is not limited to, "adult bookstores," "adult motion picture theaters," "adult mini-motion picture establishments," or "adult cabarets" and further means any premises to which the public patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect. An "adult-oriented establishment" further includes, without being limited to, any "adult entertainment studio" or any premises that is physically arranged and used as such whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, model studio, escort service, escort or any other term of like import; massage parlor, health club;

(7) "City" means the Town of Dover.

(8) "Employee" means any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of an adult-oriented establishment;

(9) "Entertainer" means any person who provides entertainment within an adult-oriented establishment as defined in this section, whether or not

a fee is charged or accepted is provided as an employee, escort or an independent contractor;

(10) "Escort" means a person who, for monetary consideration in the form of a fee, commission, salary or tip, dates, socializes, visits, consort or accompany to social affairs, entertainment or places of amusement or within any place of public resort or within any private quarters of a place of public resort;

(11) "Escort service" means a person as defined herein, who, for a fee, commission, profit, payment or other monetary consideration, furnishes or offers to furnish escorts or provides or offers to introduce patrons to escorts;

(12) "Open office" means an office at the escort service from which the escort business is transacted and which is open to patrons or prospective patrons during all hours during which escorts are working, which is managed or operated by an employee, officer, director or owner of the escort service having authority to bind the service to escort and patron contracts and adjust patron and consumer complaints;

(13) "Operator" means any person, partnership, or corporation operating, conducting or maintaining an adult-oriented establishment;

(14) "Person" means an individual, partnership, limited partnership, firm, corporation or association;

(15) "Specified anatomical areas" means:

(a) Less than completely and opaquely covered:

(i) Human genitals;

(ii) Pubic region;

(iii) Buttocks; and

(iv) Female breasts below a point immediately above the top of the areola; and

(b) Human male genitals in a discernibly turgid state, even if completely opaquely covered; and

(16) "Specified sexual activities" means:

(a) Human genitals in a state of sexual stimulation or arousal;

(b) Acts of human masturbation, sexual intercourse or sodomy;

or

(c) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts. (as added by Ord. #223-94, June 1994)

9-503. License to operate. (1) Except as provided in subsection (5), from and after the effective date of this part<sup>1</sup> no adult-oriented establishment shall be operated or maintained in the city without first obtaining a license to operate issued by the city manager.

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<sup>1</sup>These provisions were taken from Ord. #223-94 which passed second reading June 21, 1994.

(2) A license may be issued only for one (1) adult-oriented establishment located at a fixed and certain place. Any person, partnership or corporation which desires to operate more than one (1) adult-oriented establishment must have a license for each.

(3) No license or interest in a license may be transferred to any person, partnership or corporation.

(4) It is unlawful for any entertainer, employee, escort or operator to knowingly work in or about or to knowingly perform any service directly related to or at the request of the operation of any unlicensed adult-oriented establishment or escort service.

(5) All existing adult-oriented establishments at the time of the passage of this chapter must submit an application for a license within thirty (30) days of the effective date of this chapter. If a license is not issued within such thirty day (30) period, then such existing adult-oriented establishment shall cease to operate.

(6) No license shall be issued by the city manager unless the applicant certifies, by proof satisfactory to the city manager, that the applicant has satisfied the rules, regulations and provision of the applicable zoning requirements in the city. Any zoning requirement shall be in addition to and an alternative to any requirement of this legislation.

(7) No adult-oriented establishment shall be operated or maintained in the city within two thousand (2,000) feet, measured from property line to property line, of a school, church, public recreation facility, day care facility, municipal, state, federal or private park or playground, picnic ground and undeveloped wood or forest land.

(8) No adult-oriented establishment shall be operated or maintained in the city within two thousand (2,000) feet, measured from property line to property line, of a boundary of a residential zone or a lot devoted to residential use, but it single family or multi-family in use or as zoned.

(9) No adult-oriented business establishment shall be operated or maintained in the city within two thousand (2,000) feet, measured from property line to property line, of another adult-oriented business establishment. (as added by Ord. #223-94, June 1994)

9-504. License to operate -- application. (1) Any person, partnership, or corporation desiring to secure a license shall make application to the city manager. The city manager shall establish procedures and criteria for the issuance of a license.

(2) The application for a license shall be upon a form provided by the city manager. An applicant for a license, including any partner or limited partner of the partnership applicant, and any officer or director of the corporate applicant and any stockholder holding more than five percent (5%) of the stock of a corporate applicant, or any person who is interested directly in the

ownership or operation of the business shall furnish the following information under oath:

- (a) Name and address, including all aliases;
- (b) Written proof that the individual is at least eighteen (18) years of age;
- (c) All residential addresses of the applicant for the past three years;
- (d) The applicant's height, weight, color of eyes and hair;
- (e) The business, occupation, or employment of the applicant for (5) five years immediately preceding the date of the application;
- (f) The adult-oriented establishment or similar business license history of the applicant; whether such applicant is previously operating in this or any other county, city, or state under license, has had such license revoked or suspended, the reason therefor, and the business activity or occupation subject to such action of suspension or revocation;
- (g) All criminal statutes, whether federal or state, or city ordinance violations, for which conviction, forfeiture of bond or pleading of nolo contendere have occurred, except a minor traffic violation;
- (h) Two (2) portrait photographs at least two inches (2") by two (2") of the applicant;
- (i) The address of the adult-oriented establishment to be operated by the applicant;
- (j) The names and addresses of all persons, partnerships, or corporations holding any beneficial interest in the real estate upon which such adult-oriented establishment is to be operated, including, but not limited to, contract purchasers or sellers, beneficiaries of land trust or lessees subletting to applicant;
- (k) If the premises are leased or being purchased under contract, a copy of such lease or contract shall accompany the application;
- (l) The length of time the applicant has been a resident of the city or its environs, immediately preceding the date of the application;
- (m) If the applicant is a corporation, the name of the corporation and the date and state of incorporation, and the name and address of the registered agent; and
- (n) A statement by the applicant that the applicant is familiar with the provisions of this legislation and is in compliance with them.

(3) Within thirty (30) days, or a reasonable time thereafter of receiving the results of the investigation conducted by the city manager, the city manager shall notify the applicant that the application is granted, denied or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days, unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigation, the city manager shall advise the applicant in writing whether the application is granted or denied.

(4) Whenever an application is denied or held for further investigation, the city manager shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held thereafter before the city manager at which time the applicant may present evidence bearing upon the question.

(5) Failure or refusal of the applicant to give any information relevant to the investigation or the application of the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding the application of the applicant's refusal to submit to or cooperate with any investigation required by this part constitutes an admission by the applicant that the applicant is ineligible for such license and shall be grounds for denial thereof by the city manager. (as added by Ord. #223-94, June 1994)

9-505. License to operate -- qualifications. To receive a license to operate an adult-oriented establishment, an applicant must meet the following standards:

- (1) If the applicant is an individual:
  - (a) The applicant shall be at least eighteen (18) years of age;
  - (b) The applicant shall not have been convicted or pleaded nolo contendere to a felony or any crime involving moral turpitude within ten (10) years immediately preceding the date of the application or the date of release from confinement or incarceration, whichever is later.
  - (c) The applicant shall not have been convicted of or pleaded nolo contendere to any violation of this part;
- (2) If the applicant is a corporation:
  - (a) All officers, directors and stockholders required to be named under section 9-503(2) shall be at least eighteen (18) years of age;
  - (b) No officer, director or stockholder required to be named under section 9-503(2) shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude within ten (10) years immediately preceding the date of the application or the date of release from confinement or incarceration, whichever is later; and
  - (c) No officer, director or stockholder required to be named under section 9-503(2) shall have been convicted of or pleaded nolo contendere to any violation of this part.
- (3) If the applicant is a partnership, joint venture or any other type of organization where two (2) or more persons have a financial interest:
  - (a) All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen (18) years of age;
  - (b) No persons having a financial interest in the partnership, joint venture or other type of organization shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral

turpitude within ten (10) years immediately preceding the date of the application or the date of release from confinement or incarceration, whichever is later.

(c) No persons having a financial interest in the partnership, joint venture or other type of organization shall have been convicted of or pleaded nolo contendere to any violation of this part; and

(4) No license shall be issued unless the city manager has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the city manager no later than thirty (30) days after the date of the application. (as added by Ord. #223-94, June 1994)

9-506. Inspectors -- notice of results. (1) In order to effectuate the provisions of this chapter, the city manager or his/her authorized representative, is empowered to conduct investigations of persons engaged in the operation of any adult-oriented establishment and inspect the license of the operators and establishment for compliance. Refusal of an operation or establishment to permit inspections shall be grounds for revocation, suspension or refusal to issue licenses provided by this part.

(2) Within thirty (30) days, or a reasonable time thereafter, of receiving the results of the investigation the city manager shall notify the applicant that the application is granted, denied or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days, unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigation, the city manager shall advise the applicant in writing whether the application is granted or denied. (as added by Ord. #223-94, June 1994)

9-507. Revocation, suspension or annulment of licenses. (1) The city manager shall revoke, suspend or annul a license for any of the following reasons:

(a) Discovery that false or misleading information or data was given on any application;

(b) The operator or entertainer, or any employee of the operator, violates any provision of this part or any rule or regulation adopted by the city manager pursuant to this chapter, provided, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a license suspension of thirty (30) days if the city manager shall find that the operator had no actual or constructive knowledge of such violation and could not, by the exercise of due diligence, have had such actual or constructive knowledge;

(c) The operator becomes ineligible to obtain a license;

(d) Any cost or fee required to be paid by this part is not paid; or

(e) Any intoxicating liquor or malt beverage is served or consumed on the premises of the adult-oriented establishment.

(f) Any narcotic or scheduled drug is used, consumed or sold on the premises.

(2) The city manager, before revoking or suspending any license, shall give the operator at least ten (10) days written notice of the charges against the operator and the opportunity for a public hearing before the city manager at which time the operator may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing.

(3) The transfer of a license or any interest in a license shall automatically and immediately revoke the license. The transfer of any interest in a non-individual operator's license shall automatically and immediately revoke the license held by the operator.

(4) Any operator whose license is revoked shall not be eligible to receive a license for five (5) years from the date of revocation. No location or premises for which a license had been issued shall be used as an adult-oriented establishment for two (2) years from the date of revocation of the license. (as added by Ord. #223-94, June 1994)

9-508. Hearings on disciplinary actions -- judicial review -- prohibition on operation of business. (1) The city manager shall provide applicants denied issuance of licenses or operators whose licenses are revoked or not renewed a hearing on such refusal, revocation or non-renewal, which is consistent with due process of law.

(2) All decisions of the city manager on the revocation, refusal to issue, or non-renewal of licenses shall be reviewable in the chancery courts of the county wherein the board is located only as to the existence of any substantial evidence upon which the city manager could base his/her decision.

(3) Upon a decision of the city manager to refuse to issue, revoke or not to renew a license, the operator or establishment shall be prohibited from operating the establishment until the city manager's decision is overturned. (as added by Ord. #223-94, June 1994)

9-509. Termination and renewal of licenses -- applications -- fees.

(1) Every license issued under this part will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the city manager. The application for renewal must be filed not later than ninety (90) days before the license expires. The application for renewal shall be filed in triplicate with and dated by the city manager. The application for renewal shall contain such information and data, given under oath or affirmation, as may be required by the city manager, but not less than the information contained in the original application.

(2) A license renewal fee of one thousand dollars (\$1,000.00) shall be submitted with the application for renewal. If the license renewal fee of one



thousand dollars (\$1,000.00) is not tendered by money order or cashier's check at the time the application for renewal is tendered, the application for renewal shall be refused.

(3) If the city manager is aware of any information bearing on the operator's qualifications, the information shall be filed in writing with the city manager not later than ten (10) days after the date of the application for renewal.

(4) Every permit issued under this part will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked and must be renewed before an entertainer is allowed to provide entertainment in an adult-oriented establishment in the following calendar year. Any entertainer desiring to renew a permit shall make application to the city manager. The application for renewal must be filed not later than ninety (90) days before the permit expires. The application for renewal shall be filed in triplicate with and dated by the city manager. The application for renewal shall be upon a form provided by the city manager and shall contain such information and data, given under oath or affirmation, as may be required by the city manager.

(5) A permit renewal fee of five hundred dollars (\$500.00) shall be submitted with the application for renewal.

(6) If the city manager is aware of any information bearing on the entertainer's qualification, that information shall be filed in writing with the city manager not later than ten (10) days after the date of the application for renewal. (as added by Ord. #223-94, June 1994)

9-510. Prohibited hours of operation -- hours open for inspection. (1) No adult-oriented establishment shall be open between the hours of twelve o'clock a.m. (12:00 a.m.) and eight o'clock (8:00 a.m.). No adult-oriented establishment shall be open between the hours of twelve o'clock (12:00 a.m.) Sunday and eight o'clock (8:00 a.m.) Monday.

(2) All adult-oriented establishments shall be open to inspection at all reasonable times by the city manager or such other persons as the city manager may designate. (as added by Ord. #223-94, June 1994)

9-511. Duties and responsibilities of operators, entertainers and employees. (1) The operator shall maintain a register of all employees, showing the name, the aliases used by the employee, home address, age, birth date, sex, height, weight, color of hair and eyes, telephone number, social security number, driver license number, date of employment and termination and duties of each employee, and such other information as may be required by the city manager. The above information on each employee shall be maintained in the register on the premises for a period of three (3) years following termination.

(2) The operator shall make the employee register available immediately for inspection by the city manager or his designee at all reasonable times.

(3) Every act or omission by an employee constituting a violation of the provisions of this part shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(4) An operator shall be responsible for the conduct of all employees while on the licensed premises and any act or omission of any employee constituting a violation of the provisions of this part shall be deemed the act or omission of the operator for purposes of determining whether the operators license shall be revoked, suspended or renewed.

(5) There shall be posted and conspicuously displayed in the common areas of each adult-oriented establishment a list of any and all entertainment provided on the premises. Viewing adult-oriented motion pictures shall be considered as entertainment. The operator shall make the list available immediately upon demand of the city manager or his designee.

(6) No employee of an adult-oriented establishment shall allow any minor to loiter around or to frequent an adult-oriented establishment or to allow any minor to view adult entertainment as herein defined.

(7) Every adult-oriented establishment shall be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls, wherein adult entertainment is provided, shall be visible from the common area of the premises. Visibility shall not be blocked or obscured by doors, curtains, partitions, drapes or any other obstruction whatsoever. It is unlawful to install booths, cubicles, rooms or stalls within adult-oriented establishments for whatever purpose but especially for the purpose of secluded viewing of adult-oriented motion pictures or other types of adult entertainment.

(8) The operator shall be responsible for and shall provide that any room or area used for the purpose of viewing adult-oriented motion pictures or other types of live adult entertainment shall be readily accessible at all times and shall be continuously opened to view in its entirety.

(9) No operator, entertainer or employee of an adult-oriented establishment shall demand or collect all or any portion of a fee for entertainment before its completion.

(10) The license shall be conspicuously displayed in the common area of the premises at all times. (as added by Ord. #223-94, June 1994)

9-512. Prohibited activities. (1) No operator, entertainer or employee of an adult-oriented establishment shall permit to be performed, offer to perform, perform or allow, patrons to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia, including, but not limited to masturbation.

(2) No operator, entertainer or employee of an adult-oriented establishment shall encourage or permit any person upon the premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person.

(3) No operator, entertainer or employee of an adult-oriented establishment shall be unclothed or in such attire, costume or clothing so as to expose to view any portion of the sex organs, breasts or buttocks of the operator, entertainer or employee with the intent to arouse or gratify the sexual desires of the operator, entertainer, employee or customer.

(4) Public nudity is prohibited in an adult-oriented establishment. (as added by Ord. #223-94, June 1994)

9-513. Entertainers or escorts -- permits -- required. No person shall be an entertainer or escort in an adult-oriented establishment without a valid permit issued by the city manager. (as added by Ord. #223-94, June 1994)

9-514. Entertainers or escorts -- permits -- application. (1) Any person desiring to secure a permit shall make application to the city manager. The city manager shall establish procedures and criteria for the issuance of a permit. The application shall be filed in triplicate with and dated by the city manager.

(2) The application for a permit shall be upon a form provided by the city manager. An application for a permit shall furnish the following information under oath:

- (a) Name and address, including all aliases;
- (b) Written proof that the individual is at least eighteen (18) years of age;
- (c) All residential addresses of the applicant for the past three (3) years;
- (d) The applicant's height, weight, color of eyes and hair;
- (e) The business, occupation or employment of the applicant for five (5) years immediately preceding the date of the application;
- (f) The adult-oriented establishment or similar business permit history of the applicant; whether such person, in previously operating in this or any other city or state under permit, has had such permit revoked or suspended, the reason therefore, and the business activity or occupation subject to such action of suspension or revocation;
- (g) All criminal statutes, whether federal or state, or city ordinance violation for which a conviction, forfeiture of bond and pleadings of nolo contendere have occurred, except minor traffic violations;
- (h) Two (2) portrait photographs at least two inches (2") by two inches (2") of the applicant;

(i) The length of time the applicant has been a resident of the county or its environs immediately preceding the date of the application; and

(j) A statement by the applicant that the applicant is familiar with the provisions of this part and is in compliance with them.

(3) Within ten (10) days of receiving the results of the investigation conducted by the city manager, the city manager shall notify the applicant that the applicant's application is granted, denied or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant in writing whether the application is granted or denied.

(4) Whenever an application is denied or held for further investigation, the city manager shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held thereafter before the city manager, at which time the applicant may present evidence bearing upon the question.

(5) Failure or refusal of the applicant to give any information relevant to the investigation of the applicant or the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding the application for the applicant's refusal to submit to or cooperate with any investigation required by this part constitutes an admission by the applicant that the applicant is ineligible for such permit and is grounds for denial thereof by the city manager. (as added by Ord. #223-94, June 1994)

9-515. Entertainers or escorts -- permits -- qualifications -- investigations. (1) To receive a permit as an entertainer or escort, an applicant must meet the following standards:

(a) The applicant shall be at least eighteen (18) years of age;

(b) The applicant shall not have been convicted of or pleaded no contest to a felony or any crime involving moral turpitude within ten (10) years immediately preceding the date of the application or the dates of release from confinement or incarceration whichever is later; and

(c) The applicant shall not have been convicted of or pleaded nolo contendere to any violation of this part.

(2) No permit shall be issued until the city manager has investigated the applicant's qualifications to receive a permit. The results of that investigation shall be filed in writing with the city manager no later than thirty (30) days after the date of the application. (as added by Ord. #223-94, June 1994)

9-516. Operators, entertainers and escorts -- licenses and permits -- fees.

(1) A license fee of one thousand (\$1,000) dollars shall be submitted with the application for a license.

(2) A permit fee of five hundred (\$500.00) dollars shall be submitted with the application for a permit. (as added by Ord. #223-94, June 1994)

9-517. Penalties for violation of part. (1) Any person, partnership or corporation who is found to have violated this part shall be fined a definite sum not exceeding fifty dollars (\$50.00) and shall result in the suspension or revocation of any license.

(2) Each violation of this part shall be considered a separate offense, and any violation continuing more than one (1) hour of time shall be considered a separate offense for each hour of violation. (as added by Ord. #223-94, June 1994)