

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.¹

CHAPTER

1. MISCELLANEOUS.
2. PEDDLERS, ETC.
3. CHARITABLE SOLICITORS.
4. POOL ROOMS.
5. CABLE TELEVISION.
6. SEXUALLY ORIENTED BUSINESSES.

CHAPTER 1

MISCELLANEOUS

SECTION

- 9-101. "Going out of business" sales.
9-102. Pin ball machines.
9-103. [Repealed.]

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. (1973 Code, § 5-102)

9-102. Pin ball machines. It shall be unlawful for any person having custody or charge of any pin ball machine to permit any minor under the age of eighteen to play, operate, or use any such machine or to loiter about the same.

For the purpose of enforcing the provisions of this section, the burden of proof shall be upon any person having control or custody of such machine to establish the age of minors using said machine. For this purpose, the possession

¹Municipal code references

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

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

of a selective service registration card shall be prima facie evidence of the age of any person. (1973 Code, § 5-101)

9-103. [Repealed.] (as added by Ord. #539, March 2003, and repealed by Ord. #688, Dec. 2007)

CHAPTER 2

PEDDLERS, ETC.¹

SECTION

- 9-201. Permit required.
- 9-202. Exemptions.
- 9-203. Application for permit.
- 9-204. Issuance or refusal of permit.
- 9-205. Appeal.
- 9-206. Bond.
- 9-207. Loud noises and speaking devices.
- 9-208. Use of streets.
- 9-209. Exhibition of permit.
- 9-210. Policemen to enforce.
- 9-211. Revocation or suspension of permit.
- 9-212. Reapplication.
- 9-213. Expiration and renewal of permit.
- 9-214. Violation and penalty.

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

9-202. 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. (1973 Code, § 5-202)

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

- (1) Name and physical description of 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.

¹Municipal code reference
Privilege taxes: title 5.

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

(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 the application, a fee of fifty dollars (\$50.00) shall be paid to the city to cover the cost of investigating the facts stated therein. (1973 Code, § 5-203, as amended by Ord. #379, July 1995)

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 city recorder within seventy-two (72) hours.

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

(3) If, on the other hand, the chief's report indicates that the moral reputation and business responsibility of the applicant are satisfactory the city recorder shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by § 9-206. The city recorder shall keep a permanent record of all permits issued. (1973 Code, § 5-204)

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

last known address at least five (5) days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1973 Code, § 5-205)

9-206. Bond. Every permittee shall file with the city recorder a surety bond running to the city in the amount of two thousand dollars (\$2,000.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of the City of Fairview and the statutes of the state regulating peddlers, canvassers, solicitors, transient merchants, itinerant merchants, or itinerant vendors, as the case may be, and shall guarantee to any citizen of the city that all money paid as a down payment will be accounted for and applied according to the representations of the permittee, and further guaranteeing to any citizen of the city doing business with said permittee that the property purchased will be delivered according to the representations of the permittee. Action on such bond may be brought by any person aggrieved and for whose benefit, among others, the bond is given, but the surety may, by paying, pursuant to order of the court, the face amount of the bond to the clerk of the court in which the suit is commenced, be relieved without costs of all further liability. (1973 Code, § 5-206, as amended by Ord. #379, July 1995)

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 city or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the adjacent sidewalks, streets, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such permittee proposes to sell. (1973 Code, § 5-207)

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 the operation might impede or inconvenience the public use of the streets. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (1973 Code, § 5-208)

9-209. Exhibition of permit. Permittees are required to exhibit their permits at the request of any policeman or citizen. (1973 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. (1973 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 commissioners 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 city recorder in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed to the permittee at his last known address at least five (5) days prior to the date set for hearing, or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing.

(3) When reasonably necessary in the public interest the city manager may suspend a permit pending the revocation hearing. (1973 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. (1973 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. (1973 Code, § 5-213)

9-214. Violation and penalty. In addition to any other action the city may take against a permit holder in violation of this chapter, such violation shall be punishable by a penalty of up to one hundred dollars (\$100) for each offense. Each day a violation occurs shall constitute a separate offense.

CHAPTER 3

CHARITABLE SOLICITORS

SECTION

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

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

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

- (1) The applicant has a good character and reputation for honesty and integrity, or if the applicant is not an individual person, that every member, managing officer or agent of the applicant has a good character or reputation for honesty and integrity.
- (2) The control and supervision of the solicitation will be under responsible and reliable persons.
- (3) The applicant has not engaged in any fraudulent transaction or enterprise.
- (4) The solicitation will not be a fraud on the public but will be for a bona fide charitable or religious purpose.
- (5) The solicitation is prompted solely by a desire to finance the charitable cause described by the applicant. (1973 Code, § 5-302)

9-303. Denial of a permit. Any applicant for a permit to make charitable or religious solicitations may appeal to the board of commissioners if he has not been granted a permit within fifteen (15) days after he makes application therefor. (1973 Code, § 5-303)

9-304. Exhibition of permit. Any solicitor required by this chapter to have a permit shall exhibit such permit at the request of any policeman or person solicited. (1973 Code, § 5-304)

CHAPTER 4

POOL ROOMS¹

SECTION

9-401. [Repealed.]

9-402. [Repealed.]

9-403. [Repealed.]

9-404. Gambling, etc., not to be allowed.

9-401. [Repealed.] (1973 Code, § 5-401, as repealed by Ord. #529, Oct. 2002)

9-402. [Repealed.] (1973 Code, § 5-402, as repealed by Ord. #529, Oct. 2002)

9-403. [Repealed.] (1973 Code, § 5-403, as repealed by Ord. #529, Oct. 2002)

9-404. Gambling, etc., not to be allowed.² It shall be unlawful for any person operating, conducting, or maintaining any place where pool tables or billiard tables are kept for public use or hire, to permit any gambling or other unlawful or immoral conduct on such premises. (1973 Code, § 5-404)

¹Municipal code reference
Privilege taxes: title 5.

²Tennessee Code Annotated, § 39-17-509, passed subsequent to the enactment of this section, prohibits enforcement of this section.

CHAPTER 5

CABLE TELEVISION¹

SECTION

- 9-501. Authorization.
- 9-502. Purpose.
- 9-503. Definitions.
- 9-504. Application fee and acceptance: effective date.
- 9-505. Term of franchise.
- 9-506. Revocation of franchise and other penalties.
- 9-507. Transfer of cable television system.
- 9-508. Authority granted by the franchise.
- 9-509. Franchise fee.
- 9-510. Limitations of franchise.
- 9-511. Additional city rights in franchise.
- 9-512. Service area.
- 9-513. Condition of use of streets.
- 9-514. System design and channel capacity.
- 9-515. Interconnection.
- 9-516. Service to government buildings.
- 9-517. Service to single family house or individual dwelling unit.
- 9-518. Parental control devices.
- 9-519. Construction standards.
- 9-520. Operational standards and performance monitoring.
- 9-521. Rates and charges.
- 9-522. Rights of individuals.
- 9-523. Liability and indemnification.
- 9-524. Insurance.
- 9-525. Franchise bond.
- 9-526. Filing and communications with regulatory agencies.
- 9-527. Reports.
- 9-528. Franchise renewal.
- 9-529. Franchise required.
- 9-530. Unauthorized connections or modifications.
- 9-531. Notice.
- 9-532. Captions.

9-501. Authorization. Pursuant to TCA §7-59-101 et seq. the City of Fairview is duly authorized under the laws of the State of Tennessee to grant

¹See Ord. #412 (May 1997) and Ord. #655 (Feb. 2007) of record in the office of the recorder for an ordinance renewing the cable television franchise.

upon reasonable terms a franchise and to contract for the operation of a cable television system to furnish services to the city and its citizens. (1973 Code, § 13-201)

9-502. Purpose. The City of Fairview finds that the continued development of cable communication has the potential of having great benefit and impact upon the citizens of Fairview. Because of the complex and rapidly changing technology associated with cable communications, the city further finds that the public convenience, safety, and general welfare can best be served by establishing and maintaining regulatory powers which should be vested in the city or such city officials as the city shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters. Further, it is recognized that cable communications systems have the capacity to provide not only entertainment and information services to the city's residents, but can provide additional services.

For these purposes, the following goals underlie the provisions contained herein:

- (1) Where economically reasonable, cable television services should be made available to all city residents.
- (2) The system should be capable of accommodating both the present and the reasonably foreseeable future cable television needs of the citizens of the city. (1973 Code, § 13-202)

9-503. Definitions. Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the following meanings when used in this chapter:

- (1) "Cable television service." The provision of television reception, communications, and/or entertainment services for direct or indirect compensation, or as otherwise provided by this chapter, and distributing the same over a cable television system.
- (2) "Cable television system." A facility consisting of a set of closed transmission paths and associated signal generation and control equipment that is designed to provide cable television service to multiple subscribers within a community, not including a facility or combination of facilities that serves only to retransmit the television signals of one or more television broadcast stations; or a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way or public utility easement.
- (3) "Channel." A portion of the electro-magnetic frequency spectrum (or any other means of transmission, including but not limited to optical fibers) which is capable of carrying the equivalent of one (1) six megaHertz television

broadcast signal and includes uses of all or any portion of such band of frequencies.

(4) "County." The unincorporated area of Williamson County.

(5) "City commission." The city commission of the City of Fairview, State of Tennessee.

(6) "Commercial subscriber." All subscribers not defined as either residential or non-commercial.

(7) "FCC." The Federal Communications Commission.

(8) "Cable act." The Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 521 et seq.

(9) "Franchise." The nonexclusive rights granted pursuant to this chapter to construct, operate, and maintain a cable television system along the public rights-of-way within the city. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the city as required by other ordinances and laws of the city.

(10) "Franchise agreement." A contract entered into between the city and the grantee pursuant to this chapter, containing additional provisions of the franchise granted.

(11) "Grantee." The person, partnership, firm, or corporation to whom a franchise, as herein defined, is granted by the city commission under this chapter and the lawful successor, transferee, or assignee of said person, firm, or corporation.

(12) "Gross revenues." All revenue derived directly by the grantee and its subsidiaries, from or in connection with the operation of the cable television system pursuant to this chapter and the franchise agreement, including, but not limited to, gross annual basic cable service receipts, gross annual premium channels receipts, pay-per-view programming receipts, all other service receipts, gross annual advertising receipts, gross annual receipts from use of commercial channels, installation and reconnection fees, and converter and other equipment rentals.

(13) "Service area." The geographical area within the unincorporated limits of the city as now exist or hereafter are expanded.

(14) "Non-commercial." Any public, educational, or governmental institution.

(15) "Person." Any individual, firm, partnership, association, corporation, or organization of any kind.

(16) "Residential subscriber." A subscriber who receives cable television service in a single family home or in an individual dwelling unit of a multiple dwelling, where the service is not to be utilized in connection with a business trade or profession.

(17) "Street(s)." The surface of and the space above and below any publicly-owned or maintained property or right-of-way, street, road, highway,

freeway, land, path, alley, court, sidewalk, parkway, or drive, now or hereafter existing as such within the city.

(18) "Subscriber." Any person or entity lawfully receiving any portion of the cable television service of a grantee pursuant to this chapter.

(19) "Verifiable outage." That time during which transmission signal at subscriber's point of tie-in to the cable television system is of insufficient quality to provide a reasonably enjoyable audio and visual presentation; and the condition of which has been reported to the grantee in accordance with provisions herein; and the grantee has been given reasonable access to investigate/repair outage. (1973 Code, § 13-203)

9-504. Application fee and acceptance: effective date.

(1) Application fee. (a) Applicants for a new franchise hereunder shall pay an application fee to the City of Fairview of two thousand five hundred dollars (\$2,500) which sum shall be due and payable to the city upon submission to the city of an application for a franchise or as soon thereafter as demanded by the city executive of the city. The application fee shall be nonrefundable.

(b) Applications for renewal of a franchise shall not be accompanied by a filing fee. The franchise fee collected by city shall be used to cover the costs associated with a renewal application.

(2) Acceptance: effective date. (a) Within thirty (30) days after final action granting a franchise, which shall be done by ordinance of the city commission, the grantee shall file with the city clerk a written acceptance acknowledged before a notary public of the conditions required for the franchise. Such acceptance shall acknowledge that the grantee agrees to be bound by and to comply with the provisions of this chapter, the franchise agreement (if any) and applicable law. The acceptance shall be in such form and content as to be satisfactory to and approved by the city attorney. If such acceptance is not filed within said time, then the franchise so awarded may be deemed void and of no further force and effect and the offer of franchise so awarded to grantee may stand revoked, at the option of the city.

(b) Concurrently with the filing of the written acceptance, the grantee shall file with the city clerk the bond and insurance certificate required by this chapter.

(c) The effective date of the franchise shall be the first day of the first month next following the date on which the grantee files the acceptance, bond and insurance certificate as required herein; provided, however, if any of the material required to be filed with the acceptance or the acceptance itself is defective or fails to meet with approval, the franchise shall not be effective until such defect is cured, or such approval is obtained. (1973 Code, § 13-204)

9-505. Term of franchise. The duration of a new franchise granted pursuant to this chapter shall not be more than fifteen (15) years from the effective date. For renewal franchises, a term of no more than ten (10) years may be granted, with the possibility of an extension of five (5) years without formal renewal proceedings in situations in which the performance of the grantee has been especially satisfactory, and as authorized by a two-thirds vote of the city commission. (1973 Code, § 13-205)

9-506. Revocation of franchise and other penalties. (1) Subject to the provisions of this section, city reserves the right to revoke, at any time, any franchise granted hereunder and rescind all rights and privileges associated therewith in the event that:

(a) grantee has not substantially complied with a material provision of this chapter, the franchise agreement, or of any supplemental written agreement entered into by and between the city and the grantee; or

(b) grantee has made a material false statement in the application for the franchise, knowing it to be false, or grantee commits a fraud in its conduct or relations under the franchise with the city; or

(c) grantee becomes insolvent, enters into receivership or liquidation, files for bankruptcy or assignment for benefit of creditors, is unable to pay its debts as they mature, unless the grantee is in legal process of contesting such debts; or

(d) grantee fails to comply with any final federal or state judgement arising directly from the exercise of grantee's rights under its franchise; or

(e) grantee fails to provide or maintain in full force and effect the bond and insurance policies required by this chapter; or

(f) grantee assigns, sells, or transfers its title control or interest in its franchise without the consent of the city commission.

(2) In the event that the city shall make a preliminary decision to revoke a franchise granted hereunder, it shall give the grantee a minimum of sixty (60) days written notice of its intention to terminate and stipulate the cause. A public hearing shall be scheduled for the end of said sixty (60) day period. If during said period, the cause shall be cured to the satisfaction of the city, the city shall declare the notice to be null and void. If the cause is not cured to the satisfaction of the city, before a franchise may be terminated, the grantee must be provided with an opportunity to be heard before the city commission in the public hearing in accordance with due process procedures. After the public hearing, if the city determines that the franchise should be terminated, it shall issue a written decision containing its findings of fact and stating the specific grounds for termination. The decision to terminate a franchise shall be subject to judicial review as provided by writ of certiorari.

(3) In the event the city determines that a franchise should not be renewed at its expiration or that a franchise should be revoked for cause as permitted hereunder, an independent expert shall be appointed to determine the fair market value of the grantee's system. The appointment of said expert shall be based upon the recommendation of two persons, one of whom shall be selected by the city and one of whom shall be selected by the grantee; provided, however, that if the two persons selected are unable to reach an agreement as to their recommendation within sixty (60) days of the written decision of termination, then the matter of appointing an expert shall be submitted to the American Arbitration Association, (unless the city and the grantee mutually agree upon some other arbitrator(s), and the expert designated by the American Arbitration Association or such other arbitrators shall be appointed, the cost of which shall be borne equally by the grantee and the city. The findings of such expert shall be binding on both parties. Upon determination of the fair market value of the grantee's system as provided herein, the grantee shall be required to sell its system to any entity, including the city, which offers said fair market value and which has obtained the approval of the city commission to purchase said system. (1973 Code, § 13-206)

9-507. Transfer of cable television system. (1) No transfer of control of the cable television system other than a pro forma transfer to a parent or a wholly owned subsidiary corporation, or to a partnership with the same general partner as grantee, or hypothecation as the result of a commercial loan shall take place, whether by force or voluntary sale, lease, assignment, foreclosure, attachment, merger, or any other form of disposition, without prior notice to and approval by the city commission, which approval shall not be unreasonably withheld. The notice shall include full identifying particulars of the proposed transaction. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the city may inquire into the qualifications of the prospective controlling party, and the grantee shall assist the city in any such inquiry. The city shall have ninety (90) days within which to approve or disapprove, by ordinance, the proposed transfer of control. If the city fails to act within said ninety (90) day period, the application to transfer control or assign the franchise shall be deemed to be granted.

(2) Approval of such transfer shall be expressly conditioned upon full compliance with the material terms of the franchise and this chapter. The transferee shall agree in writing to comply with all provisions of this chapter and the franchise agreement.

(3) For the purpose of this section, the term "control" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of affiliated persons of twenty-five (25) percent of the voting shares of the grantee. (1973 Code, § 13-207)

9-508. Authority granted by the franchise. (1) The grantee of any franchise granted pursuant to the provisions of this chapter shall, subject to the conditions and restrictions set out in this chapter, be authorized to construct or have constructed, operate, and maintain a cable television system, and to engage in the business of providing cable television service in the city as defined herein and in the franchise and for that purpose to erect, install, construct, repair, replace, reconstruct, and maintain such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the cable television system; **provided**, however, that before any pole, wire, or other thing mentioned above which is necessary and appurtenant to the cable television system is placed on or within any street or associated right-of-way, the required permits to do so must be obtained by the grantee from the city; and, **provided further**, that before any such construction is commenced, the plans and specifications thereof must be approved in writing by the city manager of the city of Fairview. It shall be unlawful for any telephone, telegraph, or power company or any other public utility company or person to lease or otherwise make available to any person, any poles, lines, facilities, equipment, or other property for use in connection with the operation of a cable television system or the provision of cable television service, unless such other person holds a valid franchise granted pursuant to the provisions of this chapter.

(2) The authority granted to a grantee pursuant to the provisions of this chapter is not and shall not be deemed to be an exclusive right or permission. The city expressly reserves the right to grant one or more non-exclusive franchises to operate a cable television system to other persons for the entire franchise area at any time under the same substantive terms and conditions as apply to the existing grantee. No such additional franchise granted by the city shall in any way affect the obligations of any other grantee.

(3) If the city grants an additional franchise under this chapter which contains terms deemed more favorable by any existing grantee, said existing grantee may elect to incorporate said terms or provisions into its existing franchise upon notice to the city.

(4) Grantee shall inform all subscribers annually that a copy of the ordinance governing city cable franchises is available from the city manager upon request. (1973 Code, § 13-208)

9-509. Franchise fee. (1) Because the city finds that the administration of a franchise granted pursuant to this chapter imposes upon the city additional regulatory responsibility and expense, a grantee of any franchise hereunder shall pay to the city a sum equal to **five percent (5%)** of its gross revenues. Said fee shall be paid quarterly not later than thirty (30) days after the last day of each quarter. This fee shall be in addition to any and all taxes which are now or may be required hereafter to be paid pursuant to any federal, state, or local law. This fee shall be deemed to reimburse the city for all costs

of regulating the cable television system of the grantee and shall cover the expense of all regulatory requirements including, but not limited to, any performance testing required by the city under the terms of this chapter and any renewal or transfer procedures arising hereunder.

(2) Acceptance of payments hereunder shall not be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable under this chapter or for the performance of any other obligations hereunder. (1973 Code, § 13-209)

9-510. Limitations of franchise. (1) In addition to the limitations otherwise herein appearing, the franchise is subject to the limitation that the grantee shall at all times during the life of any franchise hereunder be subject to the lawful exercise of its police power by the city and other duly authorized regulatory state and federal bodies and shall comply with any and all ordinances which the city has adopted or shall adopt applying to the public generally and shall be subject to all laws of the State of Tennessee and the United States.

(2) Time shall be of the essence in any franchise granted hereunder. The grantee shall not be relieved of its obligations to comply promptly with a provision of this chapter by the failure of the city to enforce compliance. Failure of the city to enforce any breach by the grantee shall not constitute a waiver by the city.

(3) Any poles, cable, electronic equipment or other appurtenances of the grantee to be installed in, under, over, along, across or upon a street or associated right-of-way shall be located so as to contribute in no way to unsafe traffic conditions, and cause minimum interference with the public use of the streets, to cause minimum interference with the rights of other users of the streets or of property owners who adjoin any of the streets.

(4) Grantee shall maintain surety and obtain construction permits in accordance with the City of Fairview's Rules and Regulations. In the event of disturbance of any other public property, or private property by grantee, it shall, at its own expense and using reasonable efforts, replace and restore property to the condition existing before the work was done.

(5) Grantee shall contract, maintain and operate the cable television system so as to cause minimum inconvenience to, and greatest concern for, the safety of, the general public. All excavations shall be properly guarded and protected. All excavations shall be filled and the surface restored promptly after completion of the work at grantee's sole cost and expense. The grantee shall at all times comply with all excavation ordinances of the city. Any site(s) used for the storage of maintenance or construction equipment shall be properly zoned for such use, and shall have received specific site plan approval from the Fairview city manager.

(6) The grantee shall, upon reasonable notice from any person holding a building moving permit issued by the city, temporarily alter its facilities to permit the moving of such building. The actual cost of such altering shall be

borne by the person requesting the altering and the grantee shall have the right to request payment in advance. For the provisions of this chapter, reasonable notice shall be construed to mean at least seventy-two (72) hours prior to the move, after which, grantee having failed to make required alteration(s), person requesting alteration(s) may assume right to accomplish temporary alteration(s).

(7) If, at any time, in case of fire or disaster in the city it shall become necessary in the judgement of the city manager of the City of Fairview or his designee to cut or move any of the wires, cable amplifiers, appliances, or appurtenances thereto of the grantee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the grantee at no expense to the city. (1973 Code, § 13-210)

9-511. Additional city rights in franchise. (1) The city reserves the right upon reasonable notice to require the grantee at his expense to protect, support, temporarily disconnect, relocate or remove from the streets any property of the grantee by reason of traffic conditions, public safety, street construction or excavation, change or establishment of street grade, installation of sewers, drains, water pipes, power or communication lines, tracts, or other types of structure or improvements by governmental agencies. Reasonable notice for this provision of the regulations shall be construed to mean at least **thirty (30)** days except in the case of emergencies where no specific notice period shall be required.

(2) In the event of the failure by the grantee to complete any work required by subsection (1) above or any work required by city law or regulation within the time established, the city may cause such work to be done; and the grantee shall reimburse the city the reasonable costs thereof within thirty (30) days after receipt of an itemized list of such cost.

(3) The grantee shall provide at no cost and, within 180 days of granting franchise, make available to the city manager of the City of Fairview, or his designee:

(a) Audio and video override capability on all activated channels, and

(b) Emergency broadcast capability on the community channel from the city emergency operations center, for emergency use during an emergency or disaster period or threat thereof and for periodic tests.

(4) The grantee shall reserve one (1) channel for public, educational and governmental (PEG) access use initially, and two (2) channels for PEG use once the capacity has been increased to at least fifty-four (54) channels in accordance with section 13-214 herein. With prior approval of the city, such channel(s) may be used by the grantee for other purposes when not required by PEG users. The city or its designee shall assume responsibility for regulation and/or scheduling the use of PEG channels by any and all PEG users.

(5) The city reserves the right during the life of any franchise hereunder to inspect, or cause to have inspected by its designee(s) (including auditor(s)), upon reasonable notice, at reasonable hours, the grantee's contracts and engineering records dealing with gross revenue and technical service provided by grantee, provided that information pertaining to service to individual subscribers will be available pursuant to Section 631 of the Cable Act.

(6) The city reserves the right during the life of any franchise granted hereunder, to install and maintain free of charge upon the poles or in the conduits of a grantee any wire and pole fixtures necessary for municipal networks such as police and fire, on the condition that such installations and maintenance thereof do not interfere with the operations of the grantee.

(7) The city reserves the right during the life of any franchise granted hereunder, to reasonably inspect all construction or installation work performed subject to the provisions of the chapter to ensure compliance with the terms of the chapter. At its own expense, the city may also perform measurements upon and randomly inspect any portion of a grantee's system to ensure compliance with the technical standards under which the grantee is authorized to operate provided that such measurement or inspection does not interfere with the operation of the cable television system.

(8) At any time during the term of the franchise, and upon thirty (30) days notice, the city reserves the right to hold a public hearing for the expressed purpose of reviewing the general and specific performance of the grantee with regard to all franchise provisions contained herein or in any franchise agreement issued hereunder.

(9) Any right or power in or duty impressed upon any officer, employee, department, or board of the city shall be subject to transfer by the city manager of the City of Fairview by law to any other officer, employee, department, or board of the city. The city reserves all rights not specifically granted herein, and the enumerations of the rights herein shall not be construed to be a limitation of any right or power the city may otherwise have.

(10) The city reserves all rights as it may have now or in the future pursuant to the Cable Act and Rules and Regulations of the Federal Communications Commission with regard to the regulation of rates and charges. (1973 Code, § 13-211)

9-512. Service area. (1) The grantee of any franchise hereunder shall, within three (3) years following the effective date of this chapter,¹ offer cable television service to all potential residential subscribers within the city, subject to the provisions of paragraph (2) of this section.

¹These provisions were taken from Ord. #363 which passed third reading July 21, 1994.

(2) The grantee of any franchise hereunder shall offer cable television service to all potential residential subscribers located within one hundred and fifty (150) feet of grantee's feeder cable; and where there exists a minimum density of thirty-five (35) dwelling units per mile or fractional equivalent thereof and the first dwelling unit included in this density is within three hundred (300) feet of grantee's feeder cable. The grantee may elect, but has no obligation, to offer cable television service to areas not meeting the above standard.

(3) Unless otherwise authorized by the city commission, all potential residential subscribers whose dwelling units meet the requirements herein as of the effective date of a franchise granted pursuant to this chapter shall have cable television service available to their dwelling units within twelve (12) months of such effective date. Potential residential subscribers subsequently meeting the requirements of this section, including potential subscribers occupying homes built after the effective date of a franchise, shall have cable television service available to their dwelling units within one hundred twenty (120) days of the time said requirements have been met, except that, upon written request, the city manager may extend such time period by an additional sixty (60) days in the event the grantee encounters difficulties related to weather, availability of equipment or other problems beyond its control. Such extension of time by the city manager shall not be unreasonably denied.

(4) In the event the continued use of a street is denied for any reasonable reason related to public health, safety or welfare, the grantee will make every reasonable effort to provide residential service over alternate routes. (1973 Code, § 13-212)

9-513. Condition of use of streets. (1) The poles used for a distribution system shall be, to the extent possible, those erected and maintained by a power company. Notwithstanding any other provisions of this chapter, no poles except replacements for existing poles shall be erected by or for the grantee, in any street, except when necessary to service a subscriber. Any poles, wires, cable or other facilities to be constructed or installed by grantee on or within the streets shall be constructed or installed only at such locations and depths and in such a manner as to comply with all state statutes and rules and regulations of the State of Tennessee, the County, and any other agency of competent jurisdiction. See paragraph (4) of § 9-510.

(2) The installation of trunk and distribution lines, including service drops to subscribers, shall be made underground in areas where both telephone and power lines are underground or are placed underground and the service poles are removed. (1973 Code, § 13-213)

9-514. System design and channel capacity. The cable television system shall be constructed and operated in a manner as set forth in this chapter. Within three (3) years after the effective date of a franchise agreement,

the cable television system shall have a capacity which permits at least fifty-four (54) channels. (1973 Code, § 13-214)

9-515. Interconnection. Where economically reasonable and technically possible, grantee may connect its system with other cable systems adjoining it so as to provide the widest possible combination of programming in the most efficient manner. (1973 Code, § 13-215)

9-516. Service to government buildings. The grantee shall, upon request therefor, provide and furnish without charge to all public educational institutions and governmental buildings within the service area and within 150 feet of grantee's existing distribution cable, one (1) service outlet. The institutions shall be entitled to receive, free of charge, the grantee's basic cable television service. (1973 Code, § 13-216)

9-517. Service to single family house or individual dwelling unit. Wiring internal to a residence shall not be installed by a grantee without the specific permission of the owner, nor shall the provision of service be conditional upon such wiring unless additional internal wiring is needed to meet the specific service needs of the subscriber. When additional internal wiring is needed, the subscriber shall be allowed the option of having such wiring provided by the technician of his choice, provided that such wiring shall meet minimum standards as established by applicable statutes, codes and regulations. Where internal wiring is to be installed by the grantee, it shall notify the subscriber in advance of the estimated charges for the services to be provided, as well as any ongoing charges related to such wiring or to the use of multiple outlets connected to such wiring. (1973 Code, § 13-217)

9-518. Parental control devices. The grantee shall at all times have available parental control devices for the purpose of controlling premium television programming on individual subscriber television sets. The grantee shall have the right to charge reasonable fees. (1973 Code, § 13-218)

9-519. Construction standards. (1) Grantee shall construct, install, operate, and maintain the cable television system in a manner consistent with all laws, chapters, construction standards, governmental requirements, and the construction and operational standards contained in this chapter and any franchise agreement.

(2) All installation and maintenance of electronic equipment shall be of a permanent nature, durable, and installed in accordance with the applicable sections of the National Electric Safety Code, the National Electrical Code of the National Bureau of Fire Underwriters, and all state and local codes where applicable.

(3) Antenna supporting structures (towers) shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable local or state codes and regulations, and shall receive specific site plan approval from the city's manager and the board of zoning appeals.

(4) All construction methods and standards shall conform to standard industry practices at the time of construction, and as specified herein and in any franchise agreement.

(5) Any contractor used by a grantee for construction, installation, operation, maintenance, or repair of system equipment must be properly licensed under the laws of the state to which the contractor is licensed, and all local chapters.

(6) The city does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public rights-of-way, where necessary, the locations shall be verified by excavation. (1973 Code, § 13-219)

9-520. Operational standards and performance monitoring.

(1) The cable television system shall be operated in compliance with the service standards established by the National Cable Television Association (NCTA) as adopted by the NCTA Board of Directors on February 14, 1990, and as may be subsequently amended.

(2) The grantee shall put, keep and maintain all parts of the system in good condition throughout the entire franchise term.

(3) The grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

(a) Service repair response time to a subscriber outage call shall not exceed forty-eight (48) hours except in circumstances beyond the reasonable control of the grantee; and

(b) Trained technicians shall respond on a seven (7) days a week basis, during normal viewing hours (defined as 8:00 AM until 11:00 PM), whenever five (5) or more verifiable subscriber complaints of outage are received.

(c) The grantee shall have a local, publicly listed telephone number. The grantee shall provide the means to accept complaint calls twenty-four (24) hours a day, seven (7) days a week.

(d) In the event of a verifiable outage in which all service is demonstrably lost to a customer or group of customers for a period of time greater than four (4) hours, credit will be granted to such affected customer or customers upon request by such affected customer or customers according to the following schedule:

Outage lasting more than four (4) hours, but less than twelve (12) hours: one half day's credit.

Outage lasting more than twelve (12) hours, but less than twenty-four(24) hours: one day's credit.

Outage lasting more than twenty-four (24) hours, but less than thirty-six (36) hours: one and one half day's credit.

Outage lasts more than thirty-six (36) hours, but less than forty-eight (48) hours: two days' credit.

Outage lasts more than forty-eight (48) hours: two days' credit for the first forty-eight (48) hours, one day's credit for each additional day or fraction thereof.

All customers within the city shall receive conspicuous written notice of this policy from the grantee no less than once a year.

(e) If unspecified otherwise herein, NCTA standards for telephone answering time shall apply, regardless of number of subscribers.

(4) The grantee shall maintain a business office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunction and similar matters and for bill payment and other customer transactions. Said business office shall be located within the city, unless otherwise permitted by the franchise agreement. The grantee shall provide the city manager with the name, address and phone number of the local manager or other agent responsible for receiving complaints.

(5) Subject to the privacy provisions of Section 631 of the Cable Act, the grantee shall keep a maintenance service log indicating the nature of each service complaint, the date and time it was received, the disposition of the complaint and the date and time of the disposition. The log shall be made available for periodic inspection by the city manager or his designee.

(6) Whenever it appears that the grantee is not complying with the service standards as established herein or in the franchise agreement, the city commission may at any time order the grantee to appear before it for a show cause hearing. At said hearing, the grantee may be questioned by and/or on behalf of the city commission. The grantee may present evidence to show that it is in fact in compliance with service standards or that its non-compliance is for reasons beyond its control. If the city commission, by majority vote, determines that the grantee has not complied with the service standards established herein or in the franchise agreement, and that such non-compliance is without adequate justification, it may enforce such penalties or initiate such

remedial procedures as may be provided for herein or in the franchise agreement and/or it may direct that the grantee be cited for violation of this chapter and subjected to punishment. (1973 Code, § 13-220)

9-521. Rates and charges. Grantee shall file with the city schedules which shall describe all services offered, all rates and charges of any kind, and all terms and conditions relating thereto, sixty (60) days prior to the desired effective date of such rates and charges. Grantee shall have the right to pass through to its subscribers all taxes and fees related to the provision of cable television service, and may designate that portion of a subscriber's bill attributable to the franchise fee as a separate item on the bill. (1973 Code, § 13-221)

9-522. Rights of individuals. (1) The grantee shall not deny service, deny access, deny employment, or otherwise discriminate against subscribers or other users, or any citizen on the basis of race, color, religion, national origin, sex or sexual orientation. The grantee shall comply at all times with all other applicable federal, state, and local laws and regulations, and all executive and administrative orders relating to nondiscrimination.

(2) Grantee shall comply with individual privacy provisions contained in the Cable Act. (1973 Code, § 13-222)

9-523. Liability and indemnification. (1) The grantee shall, at its sole cost and expense, fully indemnify, defend, and save harmless the county, its officers, councils, commissions, and employees against any and all actions, liability, judgments, executions, claims or demands whatsoever by others, including, but not limited to, copyright infringement and all other damages arising out of the installation or operation or maintenance of the cable television system authorized herein, whether or not any act of omission complained of is authorized, allowed, or prohibited by this chapter and any franchise granted hereunder. Grantee shall further indemnify and save the city harmless against all liabilities to others arising out of such construction, operation and maintenance, including, but not limited to, any liability for damages by reason of, or arising out of any failure by, grantee to secure licenses from the owners, authorized distributors or licensees of programs to be transmitted or distributed by the grantee, and against any loss, cost, expense, and damages resulting therefrom, including reasonable attorney's fees, arising out of the grantee's exercise or enjoyment of this franchise, irrespective of the amount of any comprehensive liability policy required hereunder.

(2) The foregoing liability and indemnity obligations of the grantee pursuant to this section shall not apply to damages occasioned by acts of the city, its agents, or employees, nor shall it be deemed a waiver of any defense of contributory negligence which the grantee may assert against the city, its agents, or employees. (1973 Code, § 13-223)

9-524. Insurance. (1) At the time of filing written acceptance of the franchise, the grantee shall file with City of Fairview either a copy of the policy declaration; or an insurance binder for the following:

(a) A Comprehensive General Liability contract (CGL) indemnifying, defending, and holding harmless the city, its officers, councils, commissions, agents, or employees from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of the grantee under the franchise granted hereunder with a minimum of liability of one million dollars (\$1,000,000) for personal injury or death of any one or more person(s) in any one occurrence. Renewal certificates of such insurance shall be promptly forwarded to City of Fairview, P. O. Box 69, Fairview, Tennessee 37062, as such renewals are made, and such insurance shall be constantly kept in force and effect during the term of this franchise.

(b) Property damage insurance indemnifying, defending and holding harmless the city, its officers, councils, commissions, agents, and employees from and against all claims by any person whatsoever for property damage occasioned by the operation of a grantee under the franchise granted hereunder with a minimum liability of one million dollars (\$1,000,000) for property damage to any one or more person(s) in any one occurrence.

(2) Such insurance as provided for in this section shall be provided at the grantee's sole cost and expense and be kept in full force and effect by the grantee during the existence of the franchise and until the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and fixtures incidental to the maintenance and operation of the cable television system as defined in the franchise.

(3) All the foregoing insurance contracts shall be issued and maintained by companies admitted or approved to do business in the State of Tennessee and shall carry an A. M. Best rating of A or above, and shall require thirty (30) days' written notice of any cancellation or reduction in coverage to both Fairview City and the grantee herein. (1973 Code, § 13-224)

9-525. Franchise bond. (1) The amount of the franchise bond required by the cable television franchise ordinance to be maintained in full force and effect throughout the term of the franchise shall be no less than twenty-five thousand dollars (\$25,000). The franchise bond shall be issued by a company authorized to do business in the State of Tennessee and which is rated "A" or better by the A. M. Best Company; or which meets all alternative criteria as may be established by the city for the acceptance of bonds.

(2) The rights to the city with respect to the bond are in addition to all other rights of the city, whether reserved by this chapter or authorized by law; and no action, proceeding or exercise of right with respect to such bond shall affect any other right the city may have. (1973 Code, § 13-225)

9-526. Filing and communications with regulatory agencies. The grantee shall maintain copies of all petitions, applications, and communications, relative to any franchise granted pursuant to this chapter transmitted by the grantee to, or received by the grantee from all Federal and State regulatory commissions or agencies having competent jurisdiction to regulate the operations of any cable television system authorized hereunder. Said copies shall be available for inspection by the city during regular business hours of the grantee. (1973 Code, § 13-226)

9-527. Reports. (1) The grantee shall file annually with the city manager not later than four (4) months after the end of its fiscal year during which it accepted a franchise hereunder and within four (4) months after the end of each subsequent fiscal year, a letter containing the amount of the gross revenues for the previous fiscal year certified by grantee's controller or chief financial officer.

(2) The grantee shall file annually with the city manager or his designee copies of all reports submitted to the FCC and any other regulating body for the preceding fiscal year, along with any related correspondence. The grantee shall simultaneously file with the city executive annual reports on the status of current capital projects and plans for future capital projects affecting the grantee's cable system within the city.

(3) The grantee shall at all times keep on file with the city manager or his designee a current list of its partners and stockholders with an interest of ten percent (10%) or greater, its officers and directors and bond holders.

(4) The grantee shall maintain on file with the city manager or his designee a current, true and accurate map or plat of all existing and proposed installations. (1973 Code, § 13-227)

9-528. Franchise renewal. Upon completion of the term of any franchise granted pursuant to this chapter, the procedures for franchise renewals as established by the cable act will apply. (1973 Code, § 13-228)

9-529. Franchise required. It shall be unlawful for any person to construct, operate, or maintain a cable television system in the city unless such person or the person for whom such action is being taken shall have first obtained and shall currently hold a valid franchise granted pursuant to this chapter. It shall also be unlawful for any person to provide cable television service in the city unless such person shall have first obtained and shall currently hold a valid franchise granted pursuant to the provisions of this chapter. All franchises granted by the city pursuant to this chapter shall contain the same substantive terms and conditions. Any violation under this section shall be a Class C misdemeanor, and every day in which a violation occurs, or is allowed to continue, shall be a separate violation. (1973 Code, § 13-229)

9-530. Unauthorized connections or modifications. (1) It shall be unlawful for any person without the expressed consent of the grantee, to make any connection, extension, or division whether physically, acoustically, inductively, electronically, or otherwise with or to any segment of the cable television system as installed by grantee for any purpose whatsoever, other than that connection provided at the residence in order to provide service.

(2) It shall be unlawful for any person to willfully interfere, tamper, remove, obstruct, or damage any part, segment, or content of a franchised cable television system as installed and owned by grantee for any purpose whatsoever.

(3) Any person found guilty of violating this section may be punished as prescribed by Tennessee State Statute. (1973 Code, § 13-230)

9-531. Notice. Whenever under the terms of the franchise either party shall be required or permitted to give notice to the other, such notice shall be in writing and if to be served on the city, it shall be delivered either by first class U. S. mail or by handing such notice to the city manager at the city administrative offices, and if to grantee, then by delivering by first class U. S. mail or by handing such notice to such officer at such address as grantee shall from time to time direct. The original name and address of the officer on behalf of grantee shall be included in grantee's acceptance of the franchise. (1973 Code, § 13-231)

9-532. Captions. The captions to sections are inserted solely for convenience and shall not affect the meaning or interpretation of the chapter. (1973 Code, § 13-233)

CHAPTER 6**SEXUALLY ORIENTED BUSINESSES****SECTION**

- 9-601. Title.
- 9-602. Definitions.
- 9-603. Prevention of sexual activity.
- 9-604. Involvement of minors.
- 9-605. Specified criminal activity by operators, employees, entertainers and others.
- 9-606. Prohibited hours of operation.
- 9-607. Duties and responsibilities of operators, entertainers and employees.
- 9-608. Prohibited activities.
- 9-609. Reports.
- 9-610. Inspections.
- 9-611. Applicability of state statutes.
- 9-612. Violations.

9-601. Title. This chapter shall be known and may be cited as the "Sexually Oriented Business Ordinance." (As added by Ord. #477, Jan. 2000)

9-602. Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

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

(2) "Adult bookstore, adult novelty store or adult video store" means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, computer software or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" or

(b) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical area" 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 the principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

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

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

(b) Live performances which are characterized by "specified sexual activities" or by the exposure of any of the "specified anatomical areas," even if partially covered or opaque material or partially or completely covered by translucent material including swim suits, lingerie, or latex covering; or

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

(4) "Adult entertainment" means any exhibition of any adult-oriented motion picture, live performance, display or dance of any type, which has a significant or substantial portion of such exhibition any actual or simulated performance of "specified sexual activities" or the viewing of "specified anatomical areas."

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

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

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

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

(7) "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 the exposure of "specified anatomical areas" or by "specified sexual activities."

(8) "Codes department" means the department or division of the city which is authorized to enforce building codes and other provisions of this code of ordinances.

(9) "Employee" means a person who performs any service on the premises of a sexually oriented business on a full-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

(10) "Entertainer" means any person who provided entertainment within a sexually oriented business as defined in this section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.

(11) "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.

(12) "Massage parlor" means an establishment or place primarily in the business of providing massage or tanning services for the purposes of sexual stimulation or where one or more of the employees exposes to public view of the patrons within said establishment, at any time, "specified anatomical areas."

(13) "Nude model studio" means a commercial establishment where a person appears semi-nude or in a state of nudity, or displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude model studio as defined herein 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 a structure:

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

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

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

(14) "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.

(15) "Operator" means a person operating, conducting or maintaining a sexually oriented business or a person who is identified in any report filed with the city as the operator of a sexually oriented business.

(16) "Sauna" means an establishment or place primarily in the business of providing for the purposes of sexual stimulation:

- (a) A steam bath or dry heat sauna; or
- (b) Massage services.

(17) "Semi-nude" means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed in whole or in part.

(18) "Sexual conduct" means the engaging in or the commission of an act of sexual intercourse, oral-genital contact, or the touching of the sexual organs, pubic region, buttocks or female breast of a person for the purpose of arousing or gratifying the sexual desire of that person or another person.

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

- (a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (b) For purpose of sexual stimulation, activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

(20) "Sexually oriented business" includes, but is not limited to, an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, nude model studio, sexual encounter center, massage parlor, or sauna, and further means any premises to which patrons or members of the public 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 entertainment, when such is held, conducted, operated or maintained for a profit, direct or indirect.

(21) "Sexual stimulation" means to excite or arouse the prurient interest or to offer to solicit acts of "sexual conduct" as defined in this chapter.

(22) "Specified anatomical areas" means:

- (a) Less than completely and opaquely covered:
 - (i) Human genitals;
 - (ii) Pubic region;

- (iii) Buttocks; and
- (iv) Female breast below a point immediately above the top of the areola, and

(b) Human male genitals in a discernible turgid state, even if completely opaquely covered.

(23) "Specified criminal activity" means any of the following offenses: prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; rape; sexual assault; molestation; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of this state or other states or countries; for which:

(a) Less than five years have elapsed since the date of conviction or plea of nolo contendere or the date of release from confinement imposed, whichever is the later date, if the conviction or plea is for a misdemeanor offense;

(b) Less than ten years have elapsed since the date of conviction or plea of nolo contendere or the date of release from confinement imposed, whichever is the later date, if the conviction is of a felony offense; or

(c) Less than ten years have elapsed since the date of convicting or plea of nolo contendere or the date of release from confinement imposed for the last conviction or plea, whichever is the later date, if the convictions or pleas are for two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period;

provided further that the fact that a conviction is being appealed shall have no effect whatsoever on the provisions of this article.

(24) "Specified services" means massage services, private dances, private modeling, or acting as an "escort" as defined in this chapter.

(25) "Specified sexual activities" means:

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

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

(c) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts. (As added by Ord. #477, Jan. 2000)

9-603. Prevention of sexual activity. (1) No person who owns, operates or manages a sexually oriented business shall permit "specified sexual activities," as defined in this chapter, to occur on the premises.

(2) No commercial building, structure, premises or portion thereof shall be designed for or used to promote high-risk sexual conduct.

(3) No person who owns, operates, causes to be operated or manages a sexually oriented business, other than an adult motel, which exhibits on the premises in any one or more viewing rooms or booths of less than 150 square feet of floor space, a film, video cassette, other reproduction or live entertainment which depicts "specified sexual activities" or "specified anatomical areas," shall cause or allow any deviation from the following requirements:

(a) 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 equipment. No manager's station may exceed 32 square feet of floor area. If the premises has two or more manager's stations, 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, excluding restrooms, from at least one of the manager's stations. Each such area shall remain unobstructed by doors, curtains, partitions, walls, merchandise, display racks or other materials. All viewing rooms and booths shall have at least one side open so that the area inside is visible from a manager's station. The view required in this subsection must be by direct line of sight from the manager's station.

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

(c) At least one employee shall be on duty and situated in each manager's station at all times that any patron is present inside the premises.

(d) No viewing room or booth may be occupied by more than one person at any time.

(e) Each viewing room or booth shall be lighted in such a manner that persons within are visible from a manager's station. The illumination level of each viewing room or booth, when not in use, shall be a minimum of ten foot candles at all times, as measured from the floor. The illumination level of all other portions of the premises open to the public shall be a minimum of ten foot candles at all times.

(f) No patron shall be permitted access to any area which has been designated as an area in which patrons will be not allowed.

(g) Each viewing room or booth shall be totally separated from adjacent viewing rooms and booths and any non-public areas by walls. All such walls shall be solid and extended from the floor to a height of not less than six feet and shall be of light colored, nonporous, non-absorbent, smooth textured and easily cleanable material. No such wall may be constructed of plywood or composition board. No opening or aperture of any kind shall be allowed to exist between viewing rooms or booths. No

person shall make or attempt to make an opening or aperture of any kind between viewing rooms or booths.

(h) All floor coverings in viewing rooms or booths shall be light colored, nonporous, non-absorbent, smooth textured, easily cleanable surfaces, with no rugs or carpeting.

(i) Their premises shall be maintained in a clean and sanitary manner at all times.

(j) No occupant of a viewing room or booths shall be allowed to damage or deface any portion therein or to engage in any type of sexual activity, cause any bodily discharge or litter while inside. (As added by Ord. #477, Jan. 2000)

9-604. Involvement of minors. An operator of a sexually oriented business is in violation of this article if:

(1) The operator is less than 18 years of age.

(2) Any officer, director, partner, stockholder or other individual having a direct or beneficial financial interest in the operator is less than 18 years of age, if the operator is a corporation, partnership or other form of business organization.

(3) Any employee of the sexually oriented business is less than 18 years of age.

(4) Any entertainer at the sexually oriented business is less than 18 years of age. (As added by Ord. #477, Jan. 2000)

9-605. Specified criminal activity by operators, employees, entertainers and others. (1) No person may own or operate a sexually oriented business within the city if:

(a) He has a record of "specified criminal activity," as defined in this article, the owner of operator is an individual.

(b) Any officer, director partner or other individual having at least a 10% direct or beneficial financial interest in the operator has a record of "specified criminal activity" as defined in this article, if the owner or operator is a corporation, partnership or other form of business organization.

(2) No operator of a sexually oriented business may allow any employee who has a record of "specified criminal activity," as defined in this article, to work on the premises of the business.

(3) No operator of a sexually oriented business may allow any entertainer who has a record of "specified criminal activity," as defined in this article, to perform on the premises of the business.

(4) No operator or employee of a sexually oriented business may knowingly allow any "specified criminal activity" to occur on the premises of the business.

(5) No operator or employee of a sexually oriented business may allow any patron or customer who has carried out any "specified criminal activity" on the premises of the business to reenter the premises.

(6) The police department may at any time investigate the criminal record of any person identified pursuant to § 9-609(4) or of any employee of a sexually oriented business or any entertainer performing at a sexually oriented business. (As added by Ord. #477, Jan. 2000)

9-606. Prohibited hours of operations. No sexually oriented business, except for an adult motel, shall be open between the hours of 11:00 P.M. and 8:00 A.M. No adult motel may allow any guest to check into a room between the hours of 11:00 P.M. and 8:00 A.M. (As added by Ord. #477, Jan. 2000)

9-607. Duties and responsibilities of operators, entertainers and employees. (1) The operator of each sexually oriented business shall maintain a register of all employees, showing the name, all aliases, home address, age, birth date, sex, weight, color of hair and eyes, telephone number, social security numbers, driver license or their state identification number and state of issuance, date of employment and termination, and duties of each employee. The above information for each employee shall be maintained on the premises during his or her employment and for a period of three years following termination.

(2) The operator shall make such information available for inspection immediately upon request by the city manager or his authorized representative or by the police department or codes department. Alternatively, if the city manager or his authorized representative, the police department or the codes department request that copies of any such information be delivered to them, the operator shall have such copies delivered within three days of the request.

(3) An operator shall be responsible for the conduct of all employees on the premises of the sexually oriented business 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.

(4) There shall be posted and conspicuously displayed in the common areas of each sexually oriented business a list of any and all entertainment and services 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 authorized representative or by the police department or codes department.

(5) No operator or employee of a sexually oriented business shall allow any person under the age of 18 years on the premises of a sexually oriented business.

(6) A sign shall be conspicuously displayed in the common area of the premises of each sexually oriented business, and shall read as follows:

This sexually oriented business is regulated by the City of Fairview, Tennessee. Employees, entertainers and customers are not permitted to engage in any type of sexual contact.

(7) Operators of sexually oriented businesses that provide "specified services," as defined in this article, for customers or patrons shall comply with the following requirements:

(a) For each "specified service," such customers or patrons shall be provided with written receipts. Operators shall keep copies of such receipts for at least three years, showing:

- (i) "Specified service" provided.
- (ii) Cost of "specified service."
- (iii) Date and time of service provided.
- (iv) Name of person providing the "specified service."
- (v) Method of payment for service.

(b) Copies of all published advertisements for the business shall be kept for at least three years.

(c) Copies of the receipts and advertisements required under this section shall be made available immediately upon request by the city manager or his authorized representative or by the police department or codes department.

(8) It shall be the duty of the operator and all employees on the premises of a sexually oriented business to ensure that the line of sight between the manager's station(s) and each viewing room or booth remains unobstructed by doors, curtains, partitions, walls, merchandise, display racks or other materials.

(9) It shall be the duty of the operator and all employees on the premises of a sexually oriented business to ensure that the illumination required by this article is maintained at all times during business hours.

(10) It shall be the duty of the operator and all employees on the premises of a sexually oriented business to ensure that no openings of any kind exist between viewing rooms or booths.

(11) The operator of his/her agent shall, during each business day, regularly inspect the walls of all viewing rooms and booths to determine if any openings or holes exist. If such openings exist, it is the duty of the operator to immediately repair the damage. No patron shall be permitted access of a viewing room or booth where such an opening exists. It shall be the duty of the operator and all employees on the premises to ensure that such rooms or booths are unoccupied by patrons until the opening is repaired and covered. (As added by Ord. #477, Jan. 2000)

9-608. Prohibited activities. (1) No operator, entertainer or employee of a sexually oriented business shall perform or offer to perform any specified sexual activities on the premises of the business, or allow or encourage any

person on the premises to perform or participate in any specified sexual activities.

(2) No entertainer, employee, or customer shall be permitted to have any physical contact with any other person on the premises during any performance and all performances shall only occur upon a stage at least 18 inches above the immediate floor level and removed at least six feet from the nearest entertainer, employee, and/or customer.

(3) No business shall advertise that it offers or provides any entertainment or service which would fail under the definitions of "sexual conduct," "sexual simulation" or "specified sexual services" as defined in this chapter.

(4) No operator or employee shall serve or allow to be served or consumed any intoxicating liquor or malt beverage on the premises of a sexually oriented business.

(5) No operator or employee shall knowingly allow possession, use or sale of controlled substances on the premises of a sexually oriented business.

(6) The possession of weapons by any patron or customer on the premises of a sexually oriented business shall be prohibited. Notice of such prohibition shall be posted on the premises. No operator or employee shall knowingly allow a patron or customer on the premises of a sexually oriented business to have a weapon in his possession.

(7) No hotel, motel or similar commercial establishment may knowingly allow a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours. (As added by Ord. #477, Jan. 2000)

9-609. Reports. Any person operating or desiring to operate a sexually oriented business shall file a report with the codes department at least 30 days prior to the opening of the business and no later than November 1 of each year thereafter. The report shall be filed in triplicate with and dated by the codes department upon receipt. One copy of the dated report shall be returned to the operator and one copy shall be promptly provided to the police department. The report shall be upon a form provided by the codes department and shall include the following information, which shall be sworn by the operator to be true and correct under oath:

(1) The name under which the sexually oriented business is or will be operated.

(2) The location and all telephone numbers for the sexually oriented business.

(3) The type of sexually oriented business which is being or will be operated, using the terms included in the definition of "sexually oriented business" provided in this article, if applicable, and a complete description of all types of entertainment and services provided or to be provided by the business.

(4) If the operator is an individual, or for any individual who owns or will own at least a 10% direct or beneficial interest in the business:

- (a) Legal name and any other names or aliases used by the individual.
 - (b) Mailing address and residential address and telephone number.
 - (c) Business address and telephone number.
 - (d) A recent photograph of the individual.
 - (e) Age, date and place of birth.
 - (f) Height, weight, and hair and eye color.
 - (g) Date, issuing state and number of the individual's driver's license or other state identification card information.
 - (h) Social security number.
 - (i) Proof that the individual is at least 18 years of age.
 - (j) The business, occupation or employment of the individual for five years immediately preceding the date of the report.
- (5) If the operator is a partnership:
- (a) The partnership's complete name
 - (b) The names of all partners and the information required above for all individuals who own or will own at least 10% direct beneficial interest in the business.
 - (c) Whether the partnership is general or limited.
 - (d) A copy of any printed partnership agreement.
- (6) If the operator is a corporation:
- (a) The corporation's complete name, address and telephone number.
 - (b) The date and state of the corporation.
 - (c) The corporation's federal tax identification number.
 - (d) Evidence that the corporation is in good standing under the laws of the state of incorporation.
 - (e) The names and capacity of all officers, directors and principal stockholders and the information required above for all individuals who own or will own at least a 10% direct or beneficial interest in the business.
 - (f) The name and address of the registered corporate agent for service of process.
- (7) The sexually oriented business or similar business history of the operator and of each individual listed under § 9-609(4) above, including:
- (a) The name and location of each sexually oriented business or similar business currently or previously owned or operated by such operator or individual.
 - (b) If the operator or individual is or was a partner, officer, or director or holds or held at least a 10% direct or beneficial interest in a partnership, corporation or other business entity which operates or operated or is or was majority owner of any sexually oriented business or

similar business, the name and location of each such business and the owning or operating business entity.

(c) Whether such operator or individual, has had any license or permit issued to a sexually oriented business or similar business denied, suspended or revoked.

(d) The name and location of each sexually oriented business or similar business for which the license or permit was denied, suspended or revoked, and the dates and reasons for each such suspension or revocation.

(8) Whether the operator or any of the operator's officers or directors or any individual listed under § 9-609(4) above has a record of any "specified criminal activity" as defined in this article, and, if so, the "specified criminal activity" or activities involved and the date, place and jurisdiction of each.

(9) If the premises are leased or being purchased under contract, a copy of such lease or contract.

(10) A sketch or diagram showing the configuration of the premises, including the total amount of 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 of an accuracy of plus or minus six inches. The codes department may waive this requirement if the report adopts a sketch or diagram that was previously submitted and the operator certifies that the configuration of the premises has not been altered since it was prepared. This requirement does not excuse the operator from compliance with all other applicable requirements for approval of building plans.

(11) For the initial report, a current certificate and straight-line drawing prepared within 30 days prior to the filing of the report by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 1,000 feet of the property of the business filing the report; the boundary lines of any residential zoning district within 1,000 feet of said property; and the property lines of any parcel which includes an established religious facility, child care or educational facility, public park or recreation area, family entertainment business, liquor store or residence within 1,000 feet of said property. For purposes of this section, a use shall be considered existing or established if it is in existence at the time a report is submitted.

(12) A signed statement by the operator that the operator is familiar with the provisions of this article and is and will continue to be in compliance therewith, provided that if the operator is not an individual, such statement shall be signed by each individual who owns or will own at least a 10% direct or beneficial interest in the operator.

(13) Any other reasonably available information determined by the city manager, codes department or police department to be necessary in determining

whether the operator and the sexually oriented business meet the requirements of this article. (As added by Ord. #477, Jan. 2000)

9-610. Inspections. In order to effectuate the provisions of this article, the police department, codes department, city manager and/or his authorized representatives are empowered to:

(1) Conduct investigations of the premises of any sexually oriented business or any business believed by any of them to be a sexually oriented business at any time such business is occupied or open for business.

(2) Inspect all licenses and records of any sexually oriented business and its operators and employees for compliance with this article at any time such business is occupied or open for business.

(3) Conduct investigation of persons engaged or believed to be engaged in the operation of any sexually oriented business. (As added by Ord. #477, Jan. 2000)

9-611. Applicability of state statutes. The provisions of this article are not intended to supersede any obligations or requirements, including licensing requirements, imposed by state statute and shall be in addition thereto. (As added by Ord. #477, Jan. 2000)

9-612. Violations. (1) Each of the following acts and omissions shall be considered a civil offense against the city:

(a) Failure to file any report required under this article at the time required or submittal of false or misleading information or omission of any material facts in any report required under this article.

(b) Any operator, entertainer, or any employee of the operator, violates any provision of this article.

(c) Any operator, entertainer, or any employee of the operator, violates any provision of this article.

(d) Any operator fails to maintain the premises of a sexually oriented business in a clean, sanitary and safe condition.

(2) Upon a second or subsequent violation by an operator, entertainer or employee of a sexually oriented business, of any part of this article, or of any state statute regarding nudity, sexually oriented businesses or adult entertainment, such business shall be deemed a nuisance and shall also be subject to an order of closure, and/or to cease and desist, by chancery court action seeking injunctive relief to enforce the provisions of this article, provided that such second or subsequent violation occurs after a conviction or plea or nolo contendere has been obtained for the previous such violation. (As added by Ord. #477, Jan. 2000)