

**TITLE 9****BUSINESS, PEDDLERS, SOLICITORS, ETC.<sup>1</sup>****CHAPTER**

1. MISCELLANEOUS.
2. PEDDLERS, ETC.
3. PINBALL MACHINES, ETC.
4. CABLE TELEVISION.
5. ADULT ORIENTED BUSINESS ESTABLISHMENTS.
6. YARD SALES.

**CHAPTER 1****MISCELLANEOUS****SECTION**

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

**9-101. Going out of business" sales.** It shall be unlawful for any person to falsely represent a sale as being a "going out of business" sale. A "going out of business" sale, for the purposes of this section, shall be a "fire sale," "bankrupt sale," "loss of lease sale," or any other sale made in anticipation of the termination of a business at its present location. When any person, after advertising a "going out of business" sale, adds to his stock or fails to go out of business within ninety (90) days he shall prima facie be deemed to have violated this section. (1970 Code, § 5-102)

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<sup>1</sup>Municipal code references

Building, plumbing and housing regulations: title 12.

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

**CHAPTER 2****PEDDLERS, ETC.<sup>1</sup>****SECTION**

9-201. Not permitted.

**9-201. Not permitted.** It shall be unlawful for any peddler, canvasser, solicitor, or transient merchant to sell, inform, or give away any printed materials, labor, or products of his trade within the corporate limits. This does not apply to religious organizations or political and campaign organizations. (1970 Code, § 5-201, modified, as replaced by Ord. #18-14, Dec. 2018 *Ch7\_12-2-19*)

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<sup>1</sup>Municipal code reference  
Privilege taxes: title 5.

**CHAPTER 3****PINBALL MACHINES, ETC.****SECTION**

9-301. Pinball machines, etc. prohibited.

**9-301. Pinball machines, etc. prohibited.** It shall be unlawful for any person, firm, or corporation to own, operate, or maintain any pinball machines, or horserace machines, or baseball machines or similar devices in public places in the Town of Greenbrier, Tennessee. (1970 Code, § 5-601)

**CHAPTER 4****CABLE TELEVISION****SECTION**

9-401. To be furnished under franchise.

**9-401. To be furnished under franchise.** Cable television service shall be furnished to the Town of Greenbrier and its inhabitants under franchise as the governing body shall grant. The rights, powers, duties and obligations of the Town of Greenbrier and its inhabitants and the grantee of the franchise shall be clearly stated in the franchise agreement which shall be binding upon the parties concerned.<sup>1</sup>

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<sup>1</sup>For complete details relating to the cable television franchise agreement see Ord. #17-20 dated November 6, 2017 in the office of the city recorder.

## CHAPTER 5

### ADULT ORIENTED BUSINESS ESTABLISHMENTS

#### SECTION

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**9-501. Purpose and intent; findings.** (1) It is the purpose of this chapter to regulate adult-oriented businesses to promote the health, safety, morals and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to govern the operation of adult-oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to adult-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of adult-oriented entertainment to their intended market.

(2) Many adult-oriented establishments exist where enclosed booths, stalls or cubicles and entertainment are provided to persons for a fee for the purpose of viewing adult entertainment; and

Studies performed in a substantial number of communities around the country indicate that such closed booths, stalls or cubicles have been used by patrons, clients or customers of such adult-oriented establishments for the purpose of engaging anonymously in sexual acts which cause blood, semen, urine or excrement to be deposited on the floors and/or walls of such enclosures; and

These studies also found that closed booth activities are likely to foster a pattern of conduct inimical to the public health; that enclosed booths encourage illegal and unsanitary sexual activity; and per se present a health risk; and

The health risks include the possible unchecked spread of the AIDS virus, hepatitis B virus and other sexually transmitted diseases because tracking of potentially infected parties is not possible given the anonymity of the sexual encounter; and

Adult-oriented establishments, also known as sexually oriented business, require special supervision from public safety and health agencies in order to protect and preserve the health, safety and welfare of the patrons of such businesses, as well as citizens of the state and of the city and county in which they are located; and

Extensive reviews have been conducted of land use studies concerning the secondary effects of adult-oriented establishments and sexually oriented businesses in other cities, including, but not limited to, Garden Grove, California (1991); Phoenix, Arizona (1986); Minneapolis, Minnesota (1980); Houston, Texas (1983); Indianapolis, Indiana (1984); Amarillo, Texas (1977); City of Los Angeles, California (1977); Cleveland, Ohio (1977); Austin, Texas (1986); Seattle, Washington (1989); Oklahoma City (1986); Beaumont, Texas (1982); and Whittier, California (1978); and considered the experience of citizens and public officials in this state; and

From review of other cities' studies and evidence from this state, there is convincing documented evidence that adult-oriented establishments, because of their very nature, particularly when several of them are concentrated in any one area, have a deleterious effect on existing businesses around them, the surrounding residential areas, and the public at large, causing, among other adverse secondary effects, increased crime, downgrading of property values and spread of sexually transmitted and communicable diseases; and

It is recognized that adult-oriented establishments, due to their nature, have serious objectional operational characteristics, including location, hours of operation and physical layout of the establishment, thereby contributing to crime, disease, lower property values, urban blight and downgrading of the quality of life; and

It is recognized that adult-oriented establishments are frequently used for unlawful and/or dangerous sexual activities, including prostitution, indecent exposure and public or indiscriminate masturbation and sexual conduct; and

Increased crime and unhealthful conduct tend to accompany, concentrate round and be aggravated by adult oriented establishments, including, but not limited to, prostitution, pandering, unprotected or indiscriminate sexual conduct and masturbation, distribution of obscene materials and child pornography, possession and sale of controlled substances, violent crimes against persons, property crimes and exposing minors to harmful materials; and

Concern over sexually transmitted diseases including AIDS, is a legitimate health concern of the city which demands reasonable regulations of adult oriented establishments in order to protect the health and well being of the citizens; and

The experience of other states and cities demonstrate that reasonable restrictions on closing hours as contained in this act, are beneficial and necessary as a means of reducing and curtailing deleterious secondary effects of adult-oriented establishments, including crime, noise, traffic congestion, police response time and efforts, parking problems, sexual disease, sexual activity and discarded pornographic material on neighboring properties and whereas, the Supreme Court of the City of Henton v. Playtime Theaters, Inc., 475 U.S. 41, 50-52 (1986), hold that states and cities may rely on the experiences of other communities to prevent or reduce the attendant harmful secondary effects of adult oriented establishments and sexually oriented businesses, rather than await the impact of such effects, and whereas, several courts have upheld similar restrictions on hours of operations of such establishments and businesses, including: Mitchell v. Commission of Adult Entertainment, 803 F Supp 1112 (D.Def. 1992), affirmed at 10 F. 3d 123 (3<sup>rd</sup> Cir. 1993); Ellwest Stores v. Boner, 718 F. Supp. 1553, 1557 (M.D> Tenn 1989) (law is difficult to enforce and police in middle of night); Star Satellite, Inc. v. City of Biloxi, 779 F 2d 1074 (5<sup>th</sup> Cir. 1986); Broadway Books, Inc. v. Roberts, 642 F Supp. 486,491 (E.D. Tenn 1986) (law furthers legitimate law enforcement purpose), and that, therefore, such restrictions are lawful and proper to adopt in this state; and

Several courts have upheld restrictions on the configuration and viewability of the peep show motion picture viewing booths in adult-oriented establishments and sexually oriented businesses as a means of controlling and preventing the spread of sexual and communicable diseases, public unhealthy sexual activities, and unlawful sexual conduct in such booths, including: Libra Books, Inc. v. City of Milwaukee, 818 F. Supp. 263 (E.D. Wisc. 1993); City News & Novelty v. City of Waukesha, 487 N.W. 2d 316; (Wisc. App. 1993); Bamon Corp. v. City of Sayton, 923 F 2d 470 (5<sup>th</sup> Cir. 1991); Movie & Video World v. Board of County Commissioners, 723 F. Supp 695 S. D. Fla. 1989); Ellwest Stereo Theatre, Inc. v. Boner, 718 F. Supp 1553 (M.D. Tenn. 1989) (Nashville open booth law upheld to prevent prostitution, sexual conduct, diseases); Borg v. Health and Hospital Corp. of Madison County 837 F. 2d 797 (7<sup>th</sup> Cir. 1988);

IW/PBS, Inc. v. City of Dallas, 837 F.2d 1298 (5<sup>th</sup> Cir 1988); Postscript Enterprises v. City of Bridgeton, 699 F. Supp 1939 (E.D. Mo. 1988); Suburban Video, Inc. v. City of Delafield, 694 F. Supp 585 (E.D. Wisc. 1988); Doe v. City of Minneapolis, 693 F. Supp 774 (D. Minn. 1988); Wall distributors, Inc. v. City of Newport News, 782 F. 2d 1165 (4<sup>th</sup> Cir. 1986); Broadway Books, Inc. v. Roberts, 642 F. Supp., 486, 492 (E.D. Tenn. S.D. 1986) (Chattanooga open booth law upheld); Moody v. Board of County Commissioners, 697 P. 2d 1310 (Kan 1986); Ellwest Stereo Theaters, Inc. v. Wenner 681 F. 2d 1243 (9<sup>th</sup> Cir. 1982); EWAP, Inc. v. City of Los Angeles, 158 Cal. Rptr. 579 (Cal App. 1979), and that therefore such restrictions are lawful and proper to adopt in this city. (as added by Ord. #97-16, April 1997)

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

(1) "Adult arcade." Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguishable or characterized by the depicting [and/or] describing of specified sexual activities or specified anatomical areas.

(2) "Adult book store." An establishment having as more than 50% of the face value of its stock in trade, books, magazines, motion pictures, periodicals and other materials which are distinguished or characterized by depicting, describing, or relating to "specified anatomical areas" as defined below.

(3) "Adult motion picture theater." Any public place, whether open or enclosed, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or related to "specified sexual activities," or "specified anatomical areas" (as defined below) for observation by patrons therein.

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



sensitivity studio, model studio, escort service, escort or any other term of like import.

(5) "Adult theater or adult cabaret." A theater, concert hall, auditorium, nightclub, club, bar, restaurant or similar commercial establishment which regularly features:

(a) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or

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

(6) "Board." The adult entertainment appeals board.

(7) "City." The Town of Greenbrier.

(8) "Employee." Any person who performs any service on the premises of an adult-oriented establishment on a full-time, part-time, or contract basis, whether or not the person is denominated as any employee, independent contractor, agent or otherwise. "Employee" does not include a person exclusively on the premises for repair of the premises or for delivery of goods to the premises.

(9) "Entertainer/performer." Any person who provides entertainment within an adult-oriented establishment, as defined in this section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided an employee or as an independent contractor.

(10) "Escort." A person who, for monetary consideration in the form of a fee, commission, salary or tip, dates, socializes, visits, consorts with, accompanies, or offers to date, socialize, visit, consort or accompany to social affairs, entertainment or places of amusement or within any place of public resort or within any private quarters of a place of public resort.

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

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

(13) "Operator." Any person, partnership, or any other type of organization where two or more persons have a financial interest, joint venture or corporation operating, conducting or maintaining an adult-oriented establishment.

(14) Specified anatomical areas means:

(a) Less than completely and opaquely covered human genitals, pubic region, buttocks, and female breasts 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.

(15) Specified sexual activities means:

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

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

or

(c) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts. (as added by Ord. #97-16, April 1997)

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

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

(3) No license or interest in a license may be transferred to any person, partnership or corporation. No person who is ineligible to obtain a license under the chapter shall be eligible to serve as the agent of a license under this section.

(4) No person shall be an entertainer/performer or employee on the premises of an adult-oriented business without first obtaining a valid work permit issued by the city clerk. A work permit, once issued, shall be valid for employment of the employee or entertainer/performer at any adult-oriented business within the city.

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

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

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

(8) No adult-oriented establishment shall be operated or maintained in the city within fifteen hundred (1,500) feet, measured from property line to property line, of a school, educational facility, church or place of worship, day-care center, nursing home, library, park, cemetery, mortuary or hospital.

(9) The property line of such establishment shall not be located closer than 1,500 feet from the site of any public amusement or entertainment activity,

public gathering places, including, but not limited to, any area devoted to public recreation activity, city hall, city parks, arcades, motion picture theaters, bowling alleys, golf courses, miniature golf, playgrounds, ice-skating or roller-skating rinks, or arenas, community centers and similar amusements offered to the general public.

(10) No adult-oriented establishment shall be operated or maintained in the city within two hundred (200) feet, measured from property line to property line, of a boundary of a residential zone.

(11) No adult-oriented business establishment shall be operated or maintained in the city within fifteen hundred (1,500) feet, measured from property line to property line, of another adult-oriented business establishment. (as added by Ord. #97-16, April 1997)

**9-504. Same application.** (1) Any person, partnership, or corporation, or any other type of organization where two or more persons have a financial interest, desiring to secure a license shall make application to the city clerk. The city clerk shall establish procedures for the issuance of a license.

(2) The application for a license shall be upon a form provided by the clerk. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of the total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. In addition, the diagram of any adult-oriented business which exhibits, on the premises, in a viewing booth of less than one hundred fifty (150) square feet of floor space, a film, videocassette, or other video reproduction, or which provides private or semiprivate booths or cubicles for viewing live sex shows which depict specified sexual activities or specified anatomical areas must comply with the requirements of § 9-513 of this chapter.

(3) An applicant for a license, including any partner or limited partner of the partnership applicant, and any officer or director of the corporation rate applicant who is also interested directly in the actual operation of the business shall furnish the following information under oath:

- (a) Name and address, including any aliases;
- (b) Written proof that the individual is at least eighteen (18) years of age;
- (c) Whether such applicant has been convicted of or pleaded nolo contendere to, any of the offenses of aggravated rape, rape, aggravated sexual battery, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, aggravated prostitution, rape of a child, any crime involving obscenity, or any crime involving the sexual exploitation of children;

(d) Whether such applicant has previously violated this chapter within the five (5) years immediately preceding the date of the application;

(e) The address of the adult-oriented establishment to be operated by the applicant.

(4) A license fee of three hundred dollars (\$300.00) shall be submitted with the application for a license. (as added by Ord. #97-16, April 1997)

**9-505. Employees and entertainers/performers permits; application.**

(1) Any person desiring to secure a permit shall make application to the city clerk. The city clerk shall establish procedures and criteria for the issuance of a permit. The application shall be filed in triplicate with and dated by the city clerk.

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

(a) Name and address, including any aliases.

(b) Written proof that the individual is at least eighteen (18) years of age;

(c) Whether such applicant has been convicted of or pleaded nolo contendere to, any of the offenses of aggravated rape, rape, aggravated sexual battery, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, aggravated prostitution, rape of a child, any crime involving obscenity, or any crime involving the sexual exploitation of children;

(d) Whether such applicant has previously violated this chapter within the five (5) years immediately preceding the date of the application;

(3) A permit fee of sixty dollars (\$60.00) shall be submitted for a permit. (as added by Ord. #97-16, April 1997)

**9-506. Investigations of applicants' qualifications.** (1) No license or permit shall be issued unless the city police department has investigated all applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the chief of police no later than twenty (20) days after the date of the application. Within ten (10) days, or a reasonable time thereafter, of receiving the results of the investigation conducted by the city police department, the city clerk shall notify the applicant that the application is granted, denied or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigation, the city clerk shall advise the applicant in writing whether the application is granted or denied.

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

(3) Failure or refusal of the applicant to give any information relevant to the investigation of the application or the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding the application or the applicant's refusal to submit to or cooperate with any investigation required by this part constitutes an admission by the applicant that the applicant is ineligible for such license and shall be ground for denial thereof by the chief of police. (as added by Ord. #97-16, April 1997)

**9-507. Qualifications for license to operate, permit.** (1) To receive a license to operate an adult-oriented establishment, an applicant must meet the following standards:

(a) If the applicant is an individual:

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

(ii) The applicant shall not have been convicted of, or pleaded nolo contendere to, any of the offenses of aggravated rape, rape, aggravated sexual battery, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, aggravated prostitution, rape of a child, any crime involving the sexual exploitation of children; and

(iii) The applicant shall not have previously violated this chapter within the five (5) years immediately preceding the date of the application.

(b) If the applicant is a corporation:

(i) All officers and directors of the corporation shall be at least eighteen (18) years of age;

(ii) No officer or director shall have been convicted of, or pleaded nolo contendere to, any of the offenses of aggravated rape, rape, aggravated sexual battery, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, aggravated prostitution, rape of a child, any crime involving obscenity, or any crime involving the sexual exploitation of children; and

(iii) No officer or director shall have previously violated this chapter within the five (5) years immediately preceding the date of the application.

(c) If the applicant is a partnership, joint venture or any other type of organization where two (2) or more persons have a financial interest:

(i) All persons having a financial interest in the partnership, joint venture or other type of organization who also have an interest in the actual operation of the business shall be at least eighteen (18) years of age;

(ii) No such person shall have been convicted of, or pleaded nolo contendere to, any of the offenses of aggravated rape, rape, aggravated sexual battery, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, aggravated prostitution, rape of a child, any crime involving obscenity, or any crime involving the sexual exploitation of children; and

(iii) No such person shall have previously violated this chapter within the five (5) years immediately preceding the date of the application.

(2) To receive a permit, the applicant must meet the following qualifications:

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

(b) The applicant shall not have been convicted of, or pleaded nolo contendere to, any of the offenses of aggravated rape, rape, aggravated sexual battery, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, aggravated prostitution, rape of a child, any crime involving the sexual exploitation of children; and

(c) The applicant shall not have previously violated this chapter within five (5) years immediately preceding the date of the application. (as added by Ord. #97-16, April 1997)

**9-508. Inspections; notice of results.** In order to effectuate the provisions of this chapter, the chief of police or his/her authorized representative, as well as the city building and codes department, is empowered to conduct investigations of persons engaged in the operation of any adult-oriented establishment and inspect the license of the operators and the premises of an establishment for compliance. Refusal of an operation or establishment to permit inspections shall be grounds for revocation, suspension or refusal to issue licenses provided by this part. (as added by Ord. #97-16, April 1997)

**9-509. Injunctions.** The chief of police has the power and authority to enter into any court of the State of Tennessee having proper jurisdiction to seek an injunction against any person or adult-oriented establishment not in compliance with the provisions of this chapter, and is further empowered to enter into any such court to enforce the provisions of this chapter in order to ensure compliance with such provisions. (as added by Ord. #97-16, April 1997)

**9-510. Revocation, suspension or annulment of licenses.** (1) The chief of police shall revoke or suspend a license for any of the following reasons:

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

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

(c) The operator, entertainer/performer, or employee becomes ineligible to obtain a license or permit.

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

(e) An operator employs an entertainer/performer, employee, or independent contractor who does not have a permit or provides space on the premises, whether by lease or otherwise, to an independent contractor who performs as an entertainer/performer without a permit.

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

(g) There exists on the premises a violation of law which threatens the public health or safety; provided, however, that prior to a suspension of any license on this ground, the operator will be given written notice of the condition giving rise to the threat to health or safety and will be given ten (10) days to rectify the situation before the notice of suspension is sent.

(2) The chief of police, before revoking or suspending any license or permit, shall give the holder thereof at least ten (10) days' written notice of the charges against the holder and the opportunity for a public hearing before the board, at which time the holder may present evidence bearing upon the question. In such cases, the charges shall be specified and in writing. If the licensee or permittee requests a hearing in writing within ten (10) days, no action shall be taken to revoke or suspend the license or permit until the hearing has been held in accordance with board procedure and the board has rendered a decision.

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

(4) Any operator whose license is revoked shall not be eligible to receive a license for five (5) years from the date of revocation. (as added by Ord. #97-16, April 1997)

**9-511. Termination and renewal of licenses and permits; applications; fees.** (1) Every license and permit issued under this part will terminate at the expiration of one year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator, employee or entertainer/performer desiring to renew a license or permit shall make application to the city clerk. The application for renewal shall be filed in triplicate with and dated by the city clerk. The application for renewal shall contain such information and data, given under oath or affirmation, as may be required by the chief of police, but not less than the information contained in the original application.

(2) **Fees.** (a) A license renewal fee of fifty dollars (\$50.00) shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of twenty dollars (\$20.00) shall be assessed against the applicant who files for a renewal less than thirty (30) days before the license expires.

(b) A permit renewal fee of twenty dollars (\$20.00) shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of ten dollars (\$10.00) shall be assessed against the applicant who files for a renewal less than thirty (30) days before the license expires.

(3) Whenever a renewal application is denied, the city clerk shall send notice to the applicant by certified mail informing him in writing of the specific reasons for such action. The notice shall inform the applicant of his right to request a hearing before the board within ten (10) days of receipt of the notice of denial. If the applicant requests a hearing in writing within ten (10) days, the applicant's current permit or license shall remain in effect until the board has rendered a decision on the applicant's appeal.

(4) If the city police department is aware of any information bearing on the operator's or employee's or entertainer/performer's qualifications, the information shall be filed in writing with the chief of police not later than ten (10) days after the application renewal. (as added by Ord. #97-16, April 1997)

**9-512. Prohibited hours of operation; hours open for inspection.**

(1) No adult-oriented establishment shall be open between the hours of 12:00 a.m. and 8:00 a.m. on weekdays or between the hours of 12:00 a.m. and 12:00 p.m. on Sundays.

(2) All adult-oriented establishments shall be open to inspection at all reasonable times by the city police department or such other persons as the chief of police may designate. (as added by Ord. #97-16, April 1997)

**9-513. Duties and responsibilities of operators, entertainers/performers/ employees.** (1) The operator shall maintain a register of all employees and entertainers/performers, showing the name, the aliases used by the individual, home address, birth date, telephone number, date



of employment and termination, and duties of each employee. The above information on each employee/entertainer/performer shall be maintained in the register on the premises for a period of three (3) years following termination of working at the establishment.

(2) The operator shall make the employee register available immediately for inspection by the chief of police or city police department upon demand of a member of the chief of police or city police department at all reasonable times.

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

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

(5) No operator, employee or entertainer/performer of an adult-oriented establishment shall allow any minor to loiter around or to frequent an adult-oriented establishments or to allow any minor to view adult entertainment as herein defined. (as added by Ord. #97-16, April 1997)

**9-514. Prohibited activities.** (1) No operator, entertainer/performer or employee of an adult-oriented establishment shall permit to be performed, offer to perform, perform, or allow patrons to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia.

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

(3) No operator, entertainer/performer or employee of an adult-oriented establishment shall be unclothed or in such attire, costume or clothing so as to commit the offense of public nudity. (as added by Ord. #97-16, April 1997)

**9-515. Exhibition of films, videos or live sex shows in booths, cubicles, rooms or stalls.** A person who operates or causes to be operated an adult-oriented business which exhibits on the premises, in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, videocassette,

or other video reproduction, or which provides private or semiprivate booths or cubicles for viewing live sex shows, which depict specified sexual activities or specified anatomical areas shall comply with the following requirements:

(1) Upon application for an adult-oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designate scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The chief of police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) It is the duty of the owners and operators of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises. Further, it is the duty of the owners and operators of the premises and the employees who are present to ensure that no more than one person occupies a booth, cubicle, viewing room or stall at any time, and that all entrances to booths or other viewing areas (and to the aisles, walkways and hallways leading to booths or other viewing areas) are maintained free of any obstruction such as a door, curtain, panel, board, plat, ribbon, cord, rope, chain or other device.

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

(4) It shall be the duty of the owners and operators, and it shall also be the duty of all employees present in the premises, to ensure that the line of sight and view area specified in subsection (3) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises, and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

(5) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot candle as measured at the floor level.

(6) It shall be the duty of the owners and operators and it shall be the duty of all employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(7) No operator, owner or employee shall allow openings of any kind to exist between viewing rooms or booths, and no person shall make or attempt to make an opening of any kind between booths or rooms. The operator or owner shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(8) The owner or operator shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting, and shall cause all wall surfaces and seating surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable materials. (as added by Ord. #97-16, April 1997)

**9-516. Display of license.** A sign shall be conspicuously displayed in the common area of the premises, and shall read as follows:

THIS ADULT-ORIENTED BUSINESS IS REGULATED BY THE OFFICIAL CODE OF THE CITY OF GREENBRIER, § 9-701 ET SEQ. EMPLOYEES AND PERFORMERS ARE NOT PERMITTED TO HAVE SEXUAL CONTACT WITH PERSONS ON THE PREMISES. (as added by Ord. #97-16, April 1997)

**9-517. Adult entertainment appeals board - created.** There is created for the city the adult entertainment appeals board, sometimes referred to in this chapter as the "board." (as added by Ord. #97-16, April 1997)

**9-518. Same-membership; terms; compensation.** The board shall consist of seven (7) members. Each ward representative shall be appointed to that membership by the alderman for that ward. The mayor shall appoint a member at large who shall be deemed the chairperson. Each term of office shall run concurrent with the elected officials term of office. Members of the board shall serve without compensation. (as added by Ord. #97-16, April 1997)

**9-519. Same-vacancy and removal.** Any vacancy due to any cause shall be filled for the unexpired term in the same manner as the original appointment. Any member of the board may be removed from office for cause by a three-fourths (3/4) vote of the city council after a hearing by the city council. (as added by Ord. #97-16, April 1997)

**9-520. Same-officers and staff.** The board shall elect from its membership a vice chairman, who shall be selected for one-year terms. The chief of police or his duly authorized representative shall serve as the secretary of the board and shall serve as the custodian of its records and minutes. (as added by Ord. #97-16, April 1997)

**9-521. Same-meetings.** Regular sessions of the board shall be held once each month on such date and at such time and place as established by the board, unless no business is scheduled to come before the board, in which case no meeting need be held. The presence of four (4) members shall constitute a quorum, and the concurring vote of at least four (4) members shall be necessary to uphold or overturn a decision of the chief of police. (as added by Ord. #97-16, April 1997)

**9-522. Same-powers.** The board is hereby vested with the power to assist in the regulation of adult-oriented business by:

(1) Hearing and deciding appeals from any order, requirement, decision or determination made by the chief of police in carrying out the enforcement of this chapter, whereby it is alleged in writing that the chief of police is in error.

(2) Promulgating such rules and regulations as are necessary for the conduct of its meetings and to carry out its duties, and filing such rules with the city clerk.

(3) Compelling the attendance of witness, the production of books, papers, records, or other documents relevant or material to any matter in question before the board. (as added by Ord. #97-16, April 1997)

**9-523. Same-procedures of hearings.** (1) Upon receiving a written request for a hearing, the board shall send the party requesting the hearing a notice stating the time and place of the hearing and the right to be represented by counsel. All hearings shall be open to the public.

(2) At the hearing of the case, the party requesting the hearing shall appear on his own behalf or be represented by counsel. All witness shall be sworn. The chairman shall allow the appealing party to present witnesses on his behalf and to cross examine all witness testifying against him.

(3) All decisions of the board shall be in writing, setting forth the findings of the board, and shall be signed. Any decision of the board to deny, suspend, or revoke a license or permit shall not take effect earlier than ten (10) days after the date the decision was rendered in order that the party receiving the decision may have adequate time to seek judicial review.

(4) Minutes shall be kept of all proceedings before the board in permanent form, and a record shall be kept of the actions of the board with respect to all hearings.

(5) A record (which may consist of a tape or similar electronic recording) shall be made of all oral proceedings. Such record or any part thereof shall be transcribed on request of any part at such party's expense, or may be transcribed by the board at its expense. If the board elects to transcribe the proceedings, any party shall be provided copies of the transcript upon payment to the agency of a reasonable compensatory fee. Should a party desire a court reporter to be present at the hearing, he or his representative must arrange for the court reporter's presence.

(6) Any party aggrieved by an action of the board may appeal the board's decision to a court of competent jurisdiction. (as added by Ord. #97-16, April 1997)

**9-524. Penalties for violation.** (1) Any person, partnership or corporation, or any other type of organization where two or more persons have a financial interest, who is found to have violated this chapter shall be fined a definite sum not exceeding the maximum fine for the violation of any Greenbrier municipal ordinance; such violation shall be grounds for the suspension or revocation of any license.

(2) Each violation of this part shall be considered a separate offense, and any violation continuing more than twenty-four (24) hours shall be considered a separate offense for each day of violation. (as added by Ord. #97-16, April 1997)

## CHAPTER 6

### YARD SALES

#### SECTION

- 9-601. Definitions.
- 9-602. Property permitted to be sold.
- 9-603. Permit required.
- 9-604. Permit procedure.
- 9-605. Permit conditions.
- 9-606. Hours of operation.
- 9-607. Exceptions.
- 9-608. Display of sale property.
- 9-609. Display of permit.
- 9-610. Advertising.
- 9-611. Persons exempted from chapter.
- 9-612. Violations and penalty.

**9-601. Definitions.** For the purpose of this chapter, the following terms, phrases, words, and other derivations shall have the meaning given herein.

(1) "Garage sales" shall mean and include all general sales, open to the public, conducted from or on any premises in any residential or nonresidential zone, as defined by the zoning ordinance,<sup>1</sup> for the purpose of disposing of personal property including, but not limited to, all sales entitled "garage," "lawn," "yard," "attic," "porch," "room," "backyard," "patio," "flea market," or "rummage" sale. This definition does not include the operation of such businesses carried on in a nonresidential zone where the person conducting the sale does so on a regular day-to-day basis. This definition shall not include a situation where no more than five (5) specific items or articles are held out for sale and all advertisements of such sale specifically names those items to be sold.

(2) "Personal property" shall mean property which is owned, utilized and maintained by an individual or members of his or her residence and acquired in the normal course of living in or maintaining a residence. It does not include merchandise which was purchased for resale or obtained on consignment. (as added by Ord. #01-22, Dec. 2001)

**9-602. Property permitted to be sold.** It shall be unlawful for any person to sell or offer for sale, under authority granted by this chapter, property other than personal property. (as added by Ord. #01-22, Dec. 2001)

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<sup>1</sup>Municipal code reference:

Zoning ordinance: title 14, chapter 2.

**9-603. Permit required.** No garage sale shall be conducted unless and until the individuals desiring to conduct such sale obtains a permit therefore from the city recorder. Members of more than one residence may join in obtaining a permit for a garage sale to be conducted at the residence of one of them. Permits may be obtained for any nonresidential location. (as added by Ord. #01-22, Dec. 2001)

**9-604. Permit procedure.** (1) Application. The applicant or applicants for a garage sale permit shall file a written application with the city recorder at least three (3) days in advance of the proposed sale setting forth the following information:

- (a) Full name and address of applicant or applicants.
- (b) The location at which the proposed garage sale is to be held.
- (c) The date or dates upon which the garage sale shall be held.
- (d) The date or dates of any other garage sales by the same applicant or applicants within the current calendar year.

(e) A statement that the property to be sold was owned by the applicant at his own personal property and was neither acquired nor consigned for the purpose of resale.

(f) A statement that the applicant will fully comply with this and all other applicable ordinances and laws.

(2) Permit fee. An administrative processing fee of five dollars (\$5.00) for the issuance of such permit shall accompany the application.

(3) Issuance of permit. Upon the applicant complying with the terms of this chapter, the city recorder shall issue a permit. (as added by Ord. #01-22, Dec. 2001)

**9-605. Permit conditions.** The permit shall set forth and restrict the time and location of such garage sale. No more than three (3) such permits may be issued to one residential location, residence and/or family household during any calendar year. If members of more than one residence join in requesting a permit, then such permit shall be considered as having been issued for each and all of such residences. No more than six (6) permits may be issued for any nonresidential location during any calendar year. In the event that an unusual amount of traffic congestion is generated, access by emergency vehicles is restricted, or any kind of special hazard is created, the police department may put temporary controls in place or may close the sale if conditions warrant. (as added by Ord. #01-22, Dec. 2001)

**9-606. Hours of operation.** Garage sales shall be limited in time to no more than 7:00 A.M. to 6:00 P.M. on three (3) consecutive days or on two (2) consecutive weekends (Saturday and Sunday). (as added by Ord. #01-22, Dec. 2001)

**9-607. Exceptions.** (1) If sale not held because of inclement weather. If a garage sale is not held on the dates for which the permit is issued or is terminated during the first day of the sale because of inclement weather conditions, and an affidavit by the permit holder to this effect is submitted, the city recorder shall issue another permit to the applicant for a garage sale to be conducted at the same location within thirty (30) days from the date when the first sale was to be held. No additional permit fee is required.

(2) Fourth sale permitted. A fourth garage sale shall be permitted in a calendar year if satisfactory proof of a bona fide change in ownership of the real property is first presented to the city recorder. (as added by Ord. #01-22, Dec. 2001)

**9-608. Display of sale property.** Personal property offered for sale may be displayed within the residence, in a garage, carport, and/or in a front, side or rear yard, but only in such areas. No personal property offered for sale at a garage sale shall be displayed in any public right-of-way. A vehicle offered for sale may be displayed on a permanently constructed driveway within such front or side yard. (as added by Ord. #01-22, Dec. 2001)

**9-609. Display of permit.** Any permit in possession of the holder or holders of a garage sale shall be posted on the premises in a conspicuous place so as to be seen by the public, or any city official. (as added by Ord. #01-22, Dec. 2001)

**9-610. Advertising.** (1) Signs permitted. Only the following specified signs may be displayed in relation to a pending garage sale:

(a) Two signs permitted. Two (2) signs of not more than four(4) square feet shall be permitted to be displayed on the property of the residence or nonresidential site where the garage sale is being conducted.

(b) Directional signs. Two (2) signs of not more than two (2) square feet each are permitted, provided that the premises on which the garage sale is conducted is not a major thoroughfare, and written permission to erect such signs is received from the property owners on whose property such signs are to be placed.

(2) Time limitations. No sign or other form of advertisement shall be exhibited for more than two (2) days prior to the day such sale is to commence.

(3) Removal of signs. Signs must be removed each day at the close of the garage sale activities. (as added by Ord. #01-22, Dec. 2001)

**9-611. Persons exempted from chapter.** The provisions of this chapter shall not apply to or affect the following:

(1) Persons selling goods pursuant to an order of process of a court of competent jurisdiction.



(2) Persons acting in accordance with their powers and duties as public officials.

(3) Any sale conducted by any merchant or mercantile or other business establishment on a regular, day-to-day basis from or at the place of business wherein such sale would be permitted by zoning regulations of the Town of Greenbrier, or under the protection of the nonconforming use section thereof, or any other sale conducted by a manufacturer, dealer or vendor in which sale would be conducted from properly zoned premises, and not otherwise prohibited by other ordinances. (as added by Ord. #01-22, Dec. 2001)

**9-612. Violations and penalty.** Any person found guilty of violating the terms of this chapter shall be subject to a penalty of up to fifty dollars (\$50) for each offense. (as added by Ord. #01-22, Dec. 2001)