

TITLE 9

BUSINESS, PEDDLERS, SOLICITORS, ETC.¹

CHAPTER

1. FRUIT STANDS, ETC.
2. CABLE TELEVISION.
3. ROAD BLOCKS.
4. ADULT-ORIENTED ESTABLISHMENTS.
5. PEDDLERS AND SOLICITORS.

CHAPTER 1

TEMPORARY VENDORS AND/OR FRUIT STANDS

SECTION

- 9-101. Transient vendor.
- 9-102. Taxes to be collected.
- 9-103. License required.
- 9-104. Revocation of permits.
- 9-105. Permits to be exhibited.
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9-101. Transient vendor. "Transient vendor" means any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of selling or offering to sell merchandise to the public. For purposes of this section, "merchandise" means any consumer item that is or is represented to be new or not previously owned by a consumer, and "temporary premises" means any public or quasi-public place, including a hotel, rooming house, store room, building or part of a building, tent, vacant lot, railroad car or motor vehicle which is temporarily occupied for the purpose of exhibiting stocks of merchandise to the public. Premises are not temporary if the same person has conducted business at that premises for more than six (6) consecutive months or has occupied the premises at the person's permanent residence for more than six (6) consecutive months. (Ord. #32, Dec. 1975, as replaced by Ord. #162, April 2005)

¹Municipal code references

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

Liquor and beer regulations: title 8.

Zoning: title 14.

9-102. Taxes to be collected. Transient vendors shall pay a tax of fifty dollars (\$50.00) for each fourteen (14) day period in which such vendors sell or offer to sell merchandise or for which they are issued a business license. Such tax shall be paid prior to the first day of engaging in the business, and the vendor shall not be liable for taxation based on the gross income of the transient vendor. (Ord. #32, Dec. 1975, Dec. 2000, as replaced by Ord. #162, April 2005)

9-103. License required. It shall be the duty if the town recorder to issue all business licenses set forth in other provisions of the Kimball Municipal Code and/or state regulations. (Ord. #32, Dec. 1975, Dec. 2000, as replaced by Ord. #162, April 2005)

9-104. Revocation of permits. Permits issued under this chapter may be revoked at any time by the board of mayor and aldermen. Ord. #32, Dec. 1975, Dec. 2000, as replaced by Ord. #162, April 2005)

9-105. Permits to be exhibited. Permits must be exhibited upon request of any town official or police officer. (Ord. #32, Dec. 1975, Dec. 2000, as replaced by Ord. #162, April 2005)

9-106. Penalties. Failure to acquire and/or display the appropriate business license will subject the vendor to a fine of fifty dollars (\$50.00) for each day of operation without said license. (As added by Ord. #137, Dec. 2000, and replaced by Ord. #162, April 2005)

CHAPTER 2

CABLE TELEVISION

SECTION

9-201. To be furnished under franchise.

9-201. To be furnished under franchise. Cable television service shall be furnished to the Town of Kimball and its inhabitants under franchise as the board of mayor and aldermen shall grant. The rights, powers, duties and obligations of the Town of Kimball 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.¹

¹For complete details relating to the cable television franchise agreement, see Ord. #37, June 1978, as amended by Ord. #40, Nov. 1979, Ord. #99, Aug. 1994, Ord. #107, June 1996, Ord. #127A, May 1999, Ord. #173, May 2006, and Ord. #174, May 2006 in the office of the recorder.

CHAPTER 3

ROAD BLOCKS

SECTIONS

9-301. Road blocks.

9-302. Permit procedure.

9-301. Road blocks. Road blocks may be conducted by a solicitor for charitable purposes provided the following are complied with:

(1) "Solicitor for charitable or religious purposes" means an organization which solicits contributions from the public, either on the streets of the Town of Kimball or on public property within the town for any charitable, religious or school purpose, and which does not sell or offer to sell any single item at a cost to the purchaser in excess of ten dollars (\$10.00). No organization shall qualify as a "charitable" or "religious" organization unless the organization meets all of the following conditions:

(a) It has a current exemption certificate from the Internal Revenue Service issued under Section 501(c)(3) of the Internal Revenue Service Code of 1954, as amended or is a public school organization or church.

(b) It is organized for charitable, religious or school purposes.

(c) It has been in continued existence as a charitable, religious or school organization for a period of two (2) years prior to the date of its application for registration under this chapter.

(d) Any person soliciting for the organization for such charitable, religious or school purpose must be properly permitted as set forth hereinafter and must be sixteen (16) years of age or older.

(e) Any charitable, religious or school organization shall have immediate local connection by either being based within twenty-five (25) miles of the Town of Kimball, Tennessee, benefit directly a citizen or resident of Marion County, Tennessee, or a nationally recognized charitable organization.

(f) All roadblocks conducted under this section shall be held between the hours of 8:00 A.M. and 3:00 P.M. Central time on Saturdays, and at no other time unless agreed upon by the Board of Mayor and Aldermen of the Town of Kimball, Tennessee. Roadblocks shall be limited to one (1) per Saturday, and same shall be held only at the intersection of Main Street and Dixie Lee Center Drive, at the traffic light in front of the Kimball Municipal Building. (As added by Ord. #137, Dec. 2000, as amended by Ord. #177, Jun 2006, re-enacted and relocated by Ord. #183, May 2007, and amended by Ord. #222, May 2013)

9-302. Permit procedure. (1) A sworn application containing the following information shall be completed and filed with the town recorder at least ten (10) days before the requested activity by each applicant for a permit and by each applicant for a permit as a solicitor for charitable or religious purposes:

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

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

(c) The dates, times and locations which the applicant intends to do business or make solicitations.

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

(e) Tennessee state sales tax number, if applicable.

(2) Permit fee. Each applicant for a permit shall submit with his application a nonrefundable fee of fifteen dollars (\$15.00).

(3) Permit issued. Upon the completion of the application form and the payment of the permit fee, where required, the town recorder shall issue a permit and provide a copy of the same to the applicant; however, the permit shall be subject to such additional conditions and requirements as imposed thereon by the chief of police as he deems necessary for the safety and well being of the public.

(4) Submission of application form to chief of police. Immediately after the applicant obtains a permit from the town recorder, the recorder shall submit to the chief of police a copy of the application form and the permit; and the chief of police shall place such additional conditions and requirements thereon as he deems necessary for the safety and well being of the general public. Upon failure of the permittee to comply with the conditions and requirements imposed by the chief of police or failure to comply with any other provisions of this chapter, the permit may be suspended and/or revoked by the town recorder. (As added by Ord. #137, Dec. 2000, as re-enacted and relocated by Ord. #183, May 2007)

CHAPTER 4

ADULT-ORIENTED ESTABLISHMENTS

SECTION

- 9-401. Purpose.
- 9-402. Definitions.
- 9-403. License required.
- 9-404. Application for license.
- 9-405. Standards for issuance of license.
- 9-406. Permit required.
- 9-407. Application for permit.
- 9-408. Standards for issuance of permit.
- 9-409. Fees.
- 9-410. Display of license or permit.
- 9-411. Renewal of license or permit.
- 9-412. Revocation of license or permit.
- 9-413. Hours of operation.
- 9-414. Responsibilities of the operator.
- 9-415. Prohibitions and unlawful sexual acts.
- 9-416. Penalties and prosecution.

9-401. Purpose. It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the town. It is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. (as added by Ord. # 187, Oct. 2007)

9-402. Definitions. For the purpose of this chapter, the words and phrases used herein shall have the following meanings, unless otherwise clearly indicated by the context:

(1) "Adult-oriented establishment" shall include, but not be limited to, "adult bookstore," "adult motion picture theaters," "adult mini-motion picture establishments," or "adult cabaret," and further means any premises to which the public patrons or members (regardless of whether or not the establishment is categorized as a private or members only club) are invited or admitted and/or which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member,

when such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect. An "adult-oriented establishment" further includes, without being limited to, any "adult entertainment studio" or any premises that is physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.

(2) "Adult bookstore" means an establishment having as a substantial portion of its stock in trade ("substantial portion" meaning over twenty percent (20%) of floor area, or over twenty percent (20%) of inventory by units or value, or over twenty percent (20%) of revenues, or an inventory of two hundred (200) or more units) in books, films, video cassettes, compact discs, computer software, computer generated images or text, or magazines and other periodicals or publications or reproductions of any kind which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below, and in conjunction therewith have facilities for the presentation of adult entertainment, as defined below, and including adult-oriented films, movies, or live entertainment, for observation by patrons therein.

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

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

(5) "Adult cabaret" is defined to mean an establishment which features as a principle use of its business, entertainers and/or waiters and/or bartenders and/or any other employee or independent contractor, who expose to public view of the patrons within said establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material; including swim suits, lingerie or latex covering. Adult cabarets shall include commercial establishments which feature entertainment of an erotic nature including exotic dancers, table dancers, private dancers, strippers, male or female impersonators, or similar entertainers.

(6) "Board of mayor and aldermen" means the board of mayor and aldermen of the Town of Kimball, Tennessee.

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

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

(9) "Adult-entertainment" means any exhibition of any adult-oriented: motion pictures, live performance, computer or CD Rom generated images, displays of adult-oriented images or performances derived or taken from the internet, displays or dance of any type, which has a substantial portion of such performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal or partial removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers.

(10) "Operator" means any person, partnership, corporation, or entity of any type or character operating, conducting or maintaining an adult-oriented establishment.

(11) "Specified sexual activities" means:

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

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

(c) Fondling or erotic touching of human genitals, pubic region, buttock or female breasts.

(12) "Specified anatomical areas" means:

(a) Less than completely and opaquely covered:

(i) Human genitals, pubic region;

(ii) Buttocks;

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

(b) Human male genitals in an actual or simulated discernibly turgid state, even if completely opaquely covered. (as added by Ord. # 187, Oct. 2007)

9-403. License required. (1) Except as provided in subsection (5) below, from and after the effective date of this chapter, no adult-oriented establishment shall be operated or maintained in the Town of Kimball without first obtaining a license to operate issued by the Town of Kimball.

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

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

(4) It shall be unlawful for any entertainer, 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.

(5) All existing adult-oriented establishments at the time of the passage of this chapter must submit an application for a license within one hundred twenty (120) days of the passage of this chapter on second and final reading. If a license is not issued within said one hundred twenty (120) day period, then such existing adult-oriented establishment shall cease operations.

(6) No license may be issued for any location unless the premises is lawfully zoned for adult-oriented establishments and unless all requirements of the zoning ordinance are complied with. No license shall be issued for a location if the premises is located within one and one-half (1.5) miles of any school, church or similar place of local gathering. Said measurement shall be made along the nearest highway or street right-of-way. (as added by Ord. # 187, Oct. 2007)

9-404. Application for license. (1) Any person, partnership, or corporation desiring to secure a license shall make application to the police chief of the Town of Kimball. The application shall be filed in triplicate with and dated by the police chief. A copy of the application shall be distributed promptly by the police chief to the town recorder and to the applicant.

(2) The application for a license shall be upon a form provided by the police chief. An applicant for a license including any partner or limited partner of the partnership applicant, and any officer or director of the corporate applicant and any stockholder holding more than five percent (5%) of the stock of a corporate applicant, or any other person who is interested directly in the ownership or operation of the business (including but not limited to all holders of any interest in land of members of any limited liability company) shall furnish the following information under oath:

(a) Name and addresses, including all aliases.

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

(c) All residential addresses of the applicant(s) for the past three (3) years.

(d) The applicants' height, weight, color of eyes and hair.

(e) The business, occupation or employment of the applicant(s) for five (5) years immediately preceding the date of the application.

(f) Whether the applicant(s) previously operated in this or any other county, town or state under an adult-oriented establishment license or similar business license; whether the applicant(s) has ever had such a license revoked or suspended, the reason therefore, and the business

entity or trade name under which the applicant operated that was subject to the suspension or revocation.

(g) All criminal statutes, whether federal or state, or town ordinance violation convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations.

(h) Fingerprints and two (2) portrait photographs at least two inches by two inches (2" x 2") of each applicant.

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

(j) The names and addresses of all persons, partnerships, limited liability entities, or corporations holding any beneficial interest in the real estate upon which such adult-oriented establishment is to be operated, including but not limited to, contract purchasers or sellers, beneficiaries of land trust or lessees subletting to applicant.

(k) If the premises are leased or being purchased under contract, a copy of such lease or contract shall accompany the application.

(l) The length of time each applicant has been a resident of the Town of Kimball, or its environs, immediately preceding the date of the application.

(m) If the applicant is a limited liability entity, the applicant shall specify the name, the date and state of organization, the name and address of the registered agent and the name and address of each member of the limited liability entity.

(n) A statement by the applicant that he or she is familiar with the provisions of this chapter and is in compliance with them.

(o) All inventory, equipment, or supplies which are to be leased, purchased, held in consignment or in any other fashion kept on the premises or any part or portion thereof for storage, display, any other use therein, or in connection with the operation of said establishment, or for resale, shall be identified in writing accompanying the application specifically designating the distributor business name, address phone number, and representative's name.

(p) Evidence in form deemed sufficient to the town manager that the location for the proposed adult-oriented establishment complies with all requirements of the zoning ordinances as now existing or hereafter amended.

(3) Within ten (10) days of receiving the results of the investigation conducted by the Kimball Police Department, the police chief shall notify the applicant that his/her application is conditionally granted, denied or held for further investigation. Such additional investigation shall not exceed thirty (30) days unless otherwise agreed to by the applicant. Upon conclusion of such additional investigation, the police chief shall advise the applicant in writing whether the application is granted or denied. All licenses shall be further held

pending consideration of the required special use zoning permit by the board of mayor and aldermen.

(4) Whenever an application is denied or held for further investigation, the police chief 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 of mayor and aldermen at which time the applicant may present evidence as to why his/her license should not be denied. The board shall hear evidence as to the basis of the denial and shall affirm or reject the denial of any application at the hearing. If any application for an adult-oriented establishment license is denied by the board of mayor and aldermen and no agreement is reached with the applicant concerning the basis for denial, the town attorney shall institute suit for declaratory judgment in the Chancery Court of Marion County, Tennessee, within five (5) days of the date of any such denial and shall seek an immediate judicial determination of whether such license or permit may be properly denied under the law.

(5) Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the police chief. (as added by Ord. # 187, Oct. 2007)

9-405. Standards for issuance of license. (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 a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.
 - (iii) The applicant shall not have been found to have previously violated this chapter within five (5) years immediately preceding the date of the application.
- (b) If the applicant is a corporation:
 - (i) All officers, directors and stockholders required to be named under § 9-603 shall be at least eighteen (18) years of age.
 - (ii) No officer, director or stockholder required to be named under § 9-603 shall have been found to have previously

violated this chapter within five (5) years immediately preceding the date of application.

(c) If the applicant is a partnership, joint venture, limited liability entity, 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 shall be at least eighteen (18) years of age.

(ii) No persons having a financial interest in the partnership, joint venture or other type of organization shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.

(iii) No persons having a financial interest in the partnership, joint venture or other type of organization shall have been found to have previously violated this chapter within five (5) years immediately preceding the date of the application.

(2) No license shall be issued unless the Kimball Police Department has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the police chief no later than twenty (20) days after the date of the application. (as added by Ord. # 187, Oct. 2007)

9-406. Permit required. In addition to the license requirements previously set forth for owners and operators of "adult-oriented establishments," no person shall be an employee or entertainer in an adult-oriented establishment without first obtaining a valid permit issued by the police chief. (as added by Ord. # 187, Oct. 2007)

9-407. Application for permit. (1) Any person desiring to secure a permit as an employee or entertainer shall make application to the police chief. The application shall be filed in triplicate with and dated by the police chief. A copy of the application shall be distributed promptly by the police chief to the town recorder and to the applicant.

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

(a) Name and address, including all aliases.

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

(c) All residential addresses of the applicant for the past three (3) years.

(d) The applicant's height, weight, color of eyes, and hair.

(e) The business, occupation or employment of the applicant for five (5) years immediately preceding the date of the application.

(f) Whether the applicant, while previously operating in this or any other town or state under an adult-oriented establishment permit or similar business for whom applicant was employed or associated at the time, has ever had such a permit revoked or suspended, the reason therefore, and the business entity or trade name for whom the applicant was employed or associated at the time of such suspension or revocation.

(g) All criminal statutes, whether federal, state or town ordinance violation, convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations.

(h) Fingerprints and two (2) portrait photographs at least two inches by two inches (2" x 2") of the applicant.

(i) The length of time the applicant has been a resident of the Town of Kimball, or its environs, immediately preceding the date of the application.

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

(3) Within ten (10) days of receiving the results of the investigation conducted by the Kimball Police Department, the police chief shall notify the applicant that his 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 investigations, the police chief shall advise the applicant in writing whether the application is granted or denied.

(4) Whenever an application is denied or held for further investigation, the police chief 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 of mayor and aldermen at which time the applicant may present evidence bearing upon the question.

(5) Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the applicant that he or she is ineligible for such permit and shall be grounds for denial thereof by the police chief. (as added by Ord. # 187, Oct. 2007)

9-408. Standards for issuance of permit. (1) To receive a permit as an employee or entertainer, an applicant must meet the following standards:

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

(b) The applicant shall not have been convicted of or pleaded no contest to a felony or any crime involving moral turpitude or prostitution,

obscenity or other crime of a sexual nature (including violation of similar adult-oriented establishment laws or ordinances) in any jurisdiction within five (5) years immediately preceding the date of the application.

(c) The applicant shall not have been found to violate any provision of this chapter within five (5) years immediately preceding the date of the application.

(2) No permit shall be issued until the Kimball Police Department has investigated the applicant's qualifications to receive a permit. The results of that investigation shall be filed in writing with the police chief not later than twenty (20) days after the date of the application. (as added by Ord. # 187, Oct. 2007)

9-409. Fees. (1) A license fee of five hundred dollars (\$500.00) shall be submitted with the application for a license. If the application is denied, one-half (1/2) of the fee shall be returned.

(2) A permit fee of one hundred dollars (\$100.00) shall be submitted with the application for a permit. If the application is denied, one-half (1/2) of the fee shall be returned. (as added by Ord. # 187, Oct. 2007)

9-410. Display of license or permit. (1) The license shall be displayed in a conspicuous public place in the adult-oriented establishment.

(2) The permit shall be carried by an employee and/or entertainer upon his or her person and shall be displayed upon request of a customer, any member of the Kimball Police Department, or any person designated by the board of mayor and aldermen. (as added by Ord. # 187, Oct. 2007)

9-411. Renewal of license or permit. (1) Every license issued pursuant to this chapter will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the police chief. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed in triplicate with and dated by the police chief. A copy of the application for renewal shall be distributed promptly by the police chief to the town recorder and to the operator. The application for renewal shall be a form provided by the police chief and shall contain such information and data, given under oath or affirmation, as may be required by the board of mayor and aldermen.

(2) A license renewal fee of five hundred dollars (\$500.00) shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of one hundred dollars (\$100.00) shall be assessed against the applicant who files for a renewal less than sixty (60) days before the license expires. If the application is denied, one-half (1/2) of the total fees collected shall be returned.

(3) If the Kimball Police Department is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the police chief.

(4) Every permit issued pursuant to this chapter will terminate at the expiration of one (1) year from the date of issuance unless sooner revoked, and must be renewed before an employee and/or entertainer is allowed to continue employment in an adult-oriented establishment in the following calendar year. Any employee and/or entertainer desiring to renew a permit shall make application to the police chief. The application for renewal must be filed not later than sixty (60) days before the permit expires. The application for renewal shall be filed in triplicate with and dated by the police chief. A copy of the application for renewal shall be distributed promptly by the police chief to the town recorder and to the employee. The application for renewal shall be upon a form provided by the police chief and shall contain such information and data, given under oath or affirmation, as may be required by the board of mayor and aldermen.

(5) A permit renewal fee of one hundred dollars (\$100.00) shall be submitted with the application for renewal. In addition to said renewal fee, a late penalty of fifty dollars (\$50.00) shall be assessed against the applicant who files for renewal less than sixty (60) days before the license expires. If the application is denied one-half (1/2) of the fee shall be returned.

(6) If the Kimball Police Department is aware of any information bearing on the employee's qualifications, that information shall be filed in writing with the police chief. (as added by Ord. # 187, Oct. 2007)

9-412. Revocation of license or permit. (1) The police chief shall revoke a license or permit for any of the following reasons:

(a) Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.

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

(c) The operator or employee becomes ineligible to obtain a license or permit.

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

(e) An operator employs an employee who does not have a permit or provide space on the premises, whether by lease or otherwise,

to an independent contractor who performs or works as an entertainer without a permit.

(f) Any intoxicating liquor, cereal malt beverage, narcotic or controlled substance is allowed to be sold or consumed on the licensed premises.

(g) Any operator, employee or entertainer sells, furnishes, gives or displays, or causes to be sold, furnished, given or displayed to any minor any adult-oriented entertainment or adult-oriented material.

(h) Any operator, employee or entertainer denies access of law enforcement personnel to any portion of the licensed premises wherein adult-oriented entertainment is permitted or to any portion of the licensed premises wherein adult-oriented material is displayed or sold.

(i) Any operator allows continuing violations of the rules and regulations of the Marion County Health Department.

(j) Any operator fails to maintain the licensed premises in a clean, sanitary and safe condition.

(k) Any minor is found to be loitering about or frequenting the premises.

(2) The police chief, before revoking or suspending any license or permit, shall give the operator or employee at least ten (10) days' written notice of the charges against him or her and the opportunity for a public hearing before the board of mayor and aldermen, at which time the operator or employee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing.

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

(4) Any operator or employee whose license or permit is revoked shall not be eligible to receive a license or permit for five (5) years from the date of revocation. No location or premises for which a license has been issued shall be used as an adult-oriented establishment for two (2) years from the date of revocation of the license. (as added by Ord. # 187, Oct. 2007)

9-413. Hours of operation. (1) No adult-oriented establishment shall be open between the hours of 1:00 A.M. and 8:00 A.M. Monday through Saturday, and between the hours of 1:00 A.M. and 12:00 P.M. on Sunday.

(2) All adult-oriented establishments shall be open to inspection at all reasonable times by the Kimball Police Department, the Marion County Sheriff's Department, or such other persons as the board of mayor and aldermen may designate. (as added by Ord. # 187, Oct. 2007)

9-414. Responsibilities of the operator. (1) The operator shall maintain a register of all employees and/or entertainers showing the name, and aliases used by the employee, home address, age, birth date, sex, height, weight, color of hair and eyes, phone numbers, social security number, date of employment and termination, and duties of each employee and such other information as may be required by the board of mayor and aldermen. The above information on each employee shall be maintained in the register on the premises for a period of three (3) years following termination.

(2) The operator shall make the register of the employees available immediately for inspection by police upon demand of a member of the Kimball Police Department at all reasonable times.

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

(4) An operator shall be responsible for the conduct of all employees and/or entertainers while on the licensed premises and any act or omission of any employees and/or entertainer constituting a violation of the provisions of this chapter 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) There shall be posted and conspicuously displayed in the common areas of each adult-oriented establishment a list of any and all entertainment provided on the premises. Such list shall further indicate the specific fee or charge in dollar amounts for each entertainment listed. Viewing adult-oriented motion pictures shall be considered as entertainment. The operator shall make the list available immediately upon demand of the Kimball Police Department at all reasonable times.

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

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

(8) The operator shall be responsible for and shall provide that any room or area used for the purpose of viewing adult-oriented motion pictures or

other types of live adult entertainment shall be readily accessible at all times and shall be continuously opened to view in its entirety.

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

(10) A sign shall be conspicuously displayed in the common area of the premises, and shall read as follows:

This Adult-Oriented Establishment is Regulated by the Town of Kimball Municipal Code. Entertainers are:

1. Not permitted to engage in any type of sexual conduct;
2. Not permitted to expose their sex organs;
3. Not permitted to demand or collect all or any portion of a fee for entertainment before its completion. (as added by Ord. # 187, Oct. 2007)

9-415. Prohibitions and unlawful sexual acts. (1) No operator, entertainer, or employee of an adult-oriented establishment shall permit to be performed, offer to perform, perform or allow customers, employees or entertainers to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia.

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

(3) No operator, entertainer, or employee shall encourage or permit any other person upon the premises to touch, caress, or fondle his or her breasts, buttocks, anus or genitals.

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

(5) 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 eighteen inches (18") above the immediate floor level and removed six feet (6') from the nearest entertainer, employee and/or customer. (as added by Ord. # 187, Oct. 2007)

9-416. Penalties and prosecution. (1) Any person, partnership, corporation, or other business entity who is found to have violated this chapter shall be fined a definite sum not exceeding fifty dollars (\$50.00) for each violation and shall result in the suspension or revocation of any permit or license.

(2) Each violation of this chapter shall be considered a separate offense, and any violation continuing more than one (1) hour of time shall be considered a separate offense for each hour of violation. (as added by Ord. # 187, Oct. 2007)

CHAPTER 5

PEDDLERS AND SOLICITORS

SECTION

- 9-501. Definitions.
- 9-502. Registration and permit required.
- 9-503. Permit and fee duration.
- 9-504. Identification.
- 9-505. Hours of operation.
- 9-506. No soliciting signs compliance.
- 9-507. Use of streets, parks or rights-of-way.
- 9-508. Exemptions.
- 9-509. Enforcement and penalties.
- 9-510. Prior ordinances.
- 9-511. Severability.

9-501. Definitions. (1) "Peddler" means any person, firm or corporation, either a resident or a nonresident of the town, who has no permanent regular place of business and who goes from dwelling to dwelling, business to business, place to place, or from street to street, carrying or transporting goods, wares or merchandise and offering or exposing the same for sale.

(2) "Solicitor" means any person, firm or corporation who goes from dwelling to dwelling, business to business; place to place, or from street to street, taking or attempting to take orders for any goods, wares, or merchandise, or personal property of any nature whatever, for future delivery.

(3) "Registered solicitor" means and includes any person, firm or corporation which has obtained a valid certificate or registration as provided in this chapter. (as added by Ord. #207, May 2010)

9-502. Registration and permit required. It is unlawful and a nuisance for any person, firm or corporation to engage in commercial or business solicitation and/or canvassing or calling at residences without the previous consent of the occupant for purposes of soliciting orders, sales, subscriptions or business commercial information without first having registered in and obtained a permit from the office of the town recorder. The applicant shall provide a written, sworn and signed application stating:

- (1) The complete name, permanent address, telephone number, and contact person for the principal applicant;
- (2) The nature of the products or services involved, the names of the manufacturers, if any, and a brief description of the type of business and the goods to be sold;
- (3) The proposed method of operation in the town;

(4) Dates, times, and locations in which the applicant intends to do business or make solicitations;

(5) A list of persons who will solicit or canvass in the town, including each person's name, address and telephone number, and a general description of each person;

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

(7) Tennessee state sales tax number, if applicable; and

(8) Any other information required by the town. (as added by Ord. #207, May 2010)

9-503. Permit fee and duration. Each applicant for a permit hereunder shall submit with its application a non-refundable fee of one hundred dollars (\$100.00) for each person or entity engaged in the activities described herein. There shall be no fee for an application for a permit by a solicitor for charitable or religious purposes. All permits issued hereunder shall be valid for a period of thirty (30) days from the date of issuance. (as added by Ord. #207, May 2010)

9-504. Identification. No peddler, solicitor or registered solicitor shall conduct business within the town limits without possessing a valid copy of their solicitor/peddler permit at all times. (as added by Ord. #207, May 2010)

9-505. Hours of operation. Peddlers, solicitors or registered solicitors as defined herein shall not operate within the town limits of Kimball between the hours of 4:00 P.M. and 8:00 A.M. without a prearranged appointment. (as added by Ord. #207, May 2010)

9-506. No soliciting signs compliance. No peddler, solicitor or registered solicitor shall contact any residence that is posted by signage that such contacts are not desired by the residents. (as added by Ord. #207, May 2010)

9-507. Use of streets, parks or rights-of-way. No peddler, solicitor or registered solicitor shall have any exclusive right to any location in the public streets, parks or public rights-of-way, nor be permitted a stationary location, nor be permitted to operate in any congested area where operations might impede or inconvenience the public. For the purpose of this section, the judgment of a law enforcement officer, exercised in good faith, shall be conclusive as to whether the area is congested or the public impeded or inconvenienced. (as added by Ord. #207, May 2010)

9-508. Exemptions. Except where noted, the following shall be exempt from all provisions of this chapter:

(1) Officers, employees or agents of the town, county, state or federal government, or any subdivision thereof when on official business;

(2) Charitable, religious, nonprofit organizations, any political campaign on behalf of (or in opposition to) any candidate for public office or other similar civic, charitable or non-profit organizations shall be exempt from all provisions hereof except the section pertaining to compliance with "No Soliciting" signage. Upon request of the town, any organization or person claiming status as a "charitable" or "religious" organization shall demonstrate its eligibility to claim such status by showing that it meets all of the following conditions:

(a) It has a current exemption certificate from the Internal Revenue Service issued under section 501(c)(3) of the Internal Revenue Code, as amended, or as a public school organization or church.

(b) It is organized for charitable, religious or school purposes.

(c) It has been in continued existence as a charitable, religious, or school organization in the Town of Kimball for a period of one (1) year prior to the date of its application for registration under this chapter.

(3) The terms of this chapter shall not apply to persons selling at wholesale to dealers, nor to newsboys, nor to bonafide merchants who merely deliver goods in the regular course of business, nor to persons selling agricultural products who, in fact, themselves produced the products being sold. (as added by Ord. #207, May 2010)

9-509. Enforcement and penalties. Violation - penalty: Violation of this chapter shall be punished by a fine not to exceed fifty dollars (\$50.00) per offense, plus court costs. Each violation of this chapter shall be deemed a separate offense and punishable as herein provided. (as added by Ord. #207, May 2010)

9-510. Prior ordinances. Any prior ordinances or parts of ordinances in conflict with the terms of this chapter are preempted, superceded, and replaced by the terms and provisions of this chapter. (as added by Ord. #207, May 2010)

9-511. Severability. Should any section, paragraph, sentence, clause or phrase of this chapter, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this chapter be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this chapter or its application to other persons or circumstances. (as added by Ord. #207, May 2010)